

## Understanding the Politics of Refugee and A Way Forward

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### Abstract

1951 Convention has widely been adopted as the standard framework to deal with refugee issue, whether through being a signatory of convention or replicating the principles while deliberating over a national or regional refugee law. The paper would attempt to reveal the political basis of the refugee law and analyze the portrayal of the figure of refugee. Moving beyond the debate of having or not having a refugee law, it would accentuate the need to develop a multicultural space that could make integration, and not merely incorporation, for refugees permissible.

**Keywords:** Convention; Population; Epistemology; Expediency

### Introduction

Refugees not only suffer an arrhythmic oscillation between life and death but simultaneously get stuck within the unfamiliar fetters of legality and illegality. Unarmed of the decision making power and unaware of the logistics of international as well as national law, they remain in a transitional phase, in a constant struggle to understand and abide by the rules and principles laid down by powerful 'others' working in the name of humanitarianism. Despite the usage of language of humanitarianism for the provision of their protection, human rights of refugees continue to get violated explicitly, through violence by the country of origin and reluctant population of the host country, as well as implicitly due to the 'latent' violence of the state dualism and stringent laws to secure the sovereignty of nation [1].

With the implementation of Refugee Convention of 1951, the emergence of an era which introduced an uncontested perception of refugees could be witnessed. Refugees, like citizens, have since been conceptualized in a 'bounded definition'<sup>1</sup> but in relative terms. While the latter signifies a legitimate category privileged with civil, political and social rights within a confined spatial organization of state, the former is viewed as devoid of all these aspects – legitimacy, rights and particular space – but enjoys the possession of 'human rights'. Human rights are prone to ambiguity in the case of refugees which exhibit a range of meanings – from the provision of protection to the fulfillment of basic necessities of livelihood.

Comprehension of the epistemology of a concept, law or institution becomes imperative so as to understand its emergence and the manner/intention with which an issue was approached. To understand the underlying power structures of the refugee law, a close

retrospection is required in order to further reveal the organization's way of looking at the problem of displacement, and the refugees particularly [2]. The core of the discussion would revolve around the knowledge production within the domain of international sphere that stresses on the illustration of refugee, and not forced displacement, as a 'problem' and the compliance on international refugee law in a political manner. It would provide a comprehensive account of the rationale behind the emergence of refugee law, thereby criticizing its widely adopted standard framework and principles of the institution that constructs not only refugee's life but refugee as a figure itself. It would argue that the success of any law is contingent on the intention at the time of its formulation, its interpretation in post formulation phase, and finally on the respective state's nature.

### Modern Conception of Refugee

The occurrence of displacement goes back to the inception of human civilization. The history of movement of large number of people across 'fluid' borders<sup>2</sup> could be as earlier as 740 BC<sup>3</sup> or even before. With the formation of the nation states and the growing significance of closed boundaries accompanied with marked borders, the concern for identification of citizens and non-citizens gained pertinence. However, the blunt confrontation and astute realization of the severity of uncontrolled forced displacement hit the human imagination during the two world wars which had produced a distinct 'modern' conception of refugee. While the definition of refugee as per refugee convention in the post war era has widely occupied the refugee scholarship, there is also no dearth of scholarly works that abstain to employ singular notions of refugee devoid of ethical essence.

Historically, the apprehension of refugees was not in terms of the territorial boundaries because of the fluidity of disarrayed borders in the pre-modern pre-state communities. They had been discerned as

<sup>1</sup> Here, the term 'bounded' signifies the unaltered definitions of these two categories that remains dominant understanding despite the presence of other alternatives. Citizens are defined as per the national definitions of people being territorially bounded entities with rights. On the other hand, refugees are defined as per the definitions of 1951 refugee convention.

<sup>2</sup> Prior to the formation of modern nation states, the territorial boundaries were by no means fixed borders. See Chapter-2 titled "The Development of the Modern States" by David Held in the book "Formations of Modernity" edited by Stuart Hall and Gieben Bram.

<sup>3</sup> "What Happened to History's Refugees? | News | Theguardian.com." The Guardian. <http://www.theguardian.com/news/datablog/interactive/2013/jul/25/what-happened-history-refugees>.

per the association between the ruler and the ruled or the state and its citizens.<sup>4</sup> The definition of a refugee was contingent on the nature of such relationship [3]. 'Lack of protection' or 'lack of concern (for the inferior status)' was the criterion to identify a person as a refugee. As precisely explained, in the words of Hakan Sicakkan,

*"In ancient and medieval Europe, the refugee was simply a fugitive, and this included almost everybody who needed a shelter, and particularly the slaves. In the feudal state, where the main association between rulers and the ruled was the ruler's power and the distinction was kin and estate, the refugee concept was based on kin, estate, and power relations. Here, the excluded category was serfs. Later, the principle of 'cuius regio, eius religio' and the Reformation brought the coreligionists, or the culture dimension, into the conception of the refugee."*

*"The Peace of Westphalia in 1648 made territorial belonging more relevant to the refugee condition. The notion of 'political refugee' developed during the French and Russian Revolutions, where the primary association between the state and its citizens were political ideologies. With the adoption of Wilson's self-determination principles in the League of Nations Treaties, nationality and territory, understood in terms of alignment between ethnic and territorial boundaries, became relevant to the refugee condition. In the treaties and in the arrangements of 1926 and 1928, the refugee was a person who did not enjoy the protection of the government of his or her country, regardless of whether s/he was outside that country. During Japan's invasion of China in the 1930s and 40s, internally displaced people in China were referred to as 'refugees' in American official communications. Later, article 1 of the 1933 Convention relating to the International Status of Refugees defined the refugee similarly. 'Similar definitions were adopted for Armenian, Turkish, Assyrian, Assyro-Chaldean, and assimilated refugees.'"*<sup>5</sup>

Such understanding of refugees was marked by absence of any responsibility towards a particular set of people. Any divergence - on the basis of kin and estate, cultural dimension, political ideology, ethnicity - from the state described and structured refugee as a category. Refugee, thus, had never been a static category but remained in flux in these distinctions. A person, in accordance with such constant change, could simultaneously be a refugee for his distinct cultural dimension or ethnicity as well as for ideological difference, surviving under the same regime. Therefore, no bounded definition was characteristic for recognition of refugee, rather the conflation of refugees and migrants was prominent.

Refugee production is believed to be rooted in geopolitical structure. Since the nineteenth century, the dominant model of global political organization has been the nation state [4].<sup>6</sup> The language of nation state engendered an absolute distinction between natives and others as imperative. An individual began to be identified as a spatially bounded entity encapsulated within the nation state and entangled in the relationship between people, place and identity.<sup>7</sup> The broader

aspect of earlier conceptions was narrowed down to serve the exigencies of the time. In the modern conception, the predominance of other characteristics gained more expediency.

In his prolific work *"The Making of the Modern Refugee"*, Peter Gatrell traces the historical trajectory and the causes that contributed to the creation of modern refugee. Gatrell accentuates the transformation in conception of refugee, which occurred in the late nineteenth and early twentieth century, and introduction of refugee as a 'category of problem in need of a solution'<sup>8</sup>. According to him, the first world-war era witnessed the dispersing of refugees within the local population instead of the establishment of refugee camps. The post war era, however, set forth the rationale to incarcerate these refugees in camps in order to keep them aloof from the local population and under surveillance. 'Refugees' were appropriated by non-refugees and emerged as an umbrella term overlooking the identity and background of individuals. The tactics of politicians, humanitarians and diplomats, private as well as government organizations together constructed the figure of refugee [5]. The voice of refugees remained absent all along. He further laments that the emphasis, during the world wars, turned more to cultural and ethnic homogeneity, rather than heterogeneity and pluralism that characterized imperial administration.

While Gatrell sheds light on the particular events, politics and strategies of European governments to tackle refugee in twentieth century, James Hathaway steps back to trace the nature of and motivation behind few earlier international accords that emerged to tackle the displacement issue.<sup>9</sup> He argues that before 1951 convention, three different approaches were evident in international accords on forced migration: juridical approach (1920-35); social approach (1935-1939); and, individualist approach (1939-1950). The juridical approach advocated for the provision of assistance in the absence of protection to individuals by their respective sovereign states. Such assistance lacked the humanitarian intention but instead seemed more concerned regarding the instability caused to the state system and its sovereignty by such displacement and withdrawal of state's control over its citizens. The next phase witnessed the shift in concern from the status quo of sovereign states to the safety of individuals displaced. Hathaway calls this approach social perspective which takes up the social concerns of refugees and not just provision of physical protection. While explaining the last phase, Hathaway highlights the manner in which individualist approach got introduced in the international scenario overlooking the group identification of the individual. Under this perspective refuge could not be provided on the basis of group identification but individual basis after proper analyses of objective facts. Such steps were taken to loosen the burden of Europe and keep the reins of migration (individual and not group migration) in the hands of states and on the individual basis. For instance, Sri Lankan Tamil refugees, after the eruption of civil war, were not granted refuge in United Kingdom because the fear was not well founded.

<sup>4</sup> Sicakkan, Hakan. "The modern state, the citizen, and the perilous refugee." *Journal of Human Rights* 3, no. 4 (2004): 445-463. doi: 10.1080/1475483042000299705.

<sup>5</sup> Ibid. Pg-446.

<sup>6</sup> Keely, Charles B. "How Nation-States Create and Respond to Refugee Flows." *International Migration Review* 30, no. 4 (1996): 1046. doi:10.2307/2547603.

<sup>7</sup> Kibreab, Gaim. "Citizenship Rights and Repatriation of Refugees." *International Migration Review* 37, no. 1 (2006): 24-73. doi: 10.1111/j.1747-7379.2003.tb00129.x.

<sup>8</sup> Gatrell, Peter. "The Making of the Modern Refugee." 2013. doi:10.1093/acprof:oso/9780199674169.001.0001.

<sup>9</sup> Chimni, B. S. *International Refugee Law: A Reader*. New Delhi: Sage Publications, 2000.

Applauding the period of 1920 and 1950, however, as being better in tackling the refugee issue and offering insights regarding the flawed construction of international regime of 1951 thereafter, Katy Long laments that the post-1951 distinction between migrants and refugees that has been successful in delinking the fight against poverty from fight against persecution [6]<sup>10</sup>. Although this resolved the refugee physical protection by the provision of asylum, it had also diverted from the issue of socio-economic protection. The international protection framework, prior to 1951, was more concerned about solving the refugee crisis and their long term protection which could be possible by letting refugees have access to the migration channels which would not remain confined to "basic and immediate security and relief from persecution". But 1951 convention keep it confined to the humanitarian motives instead of dealing with long term access to rights of refugees [7]. The protection of the asylum space, instead of the protection of refugee, was the main concern behind the formation of separate category of refugee in 1951 and addition of the presence of objective facts proving fear of persecution.<sup>11</sup> Provision of socio economic protection would possibly reduce the chances of their repatriation. Even the amendment of expansion in geographical coverage of the convention to incorporate the refugees of the Third World through 1967 Protocol has also been alleged of being an attempt to avoid the detailed debate and amendments in refugees' protection.<sup>12</sup>

Refugee as a category has, therefore, confronted various transformations in its definition as well as in significance. Even the conception of modern refugee which emerged as a result of political events and their politics, was engendered by others in the absence of refugee voice [8]. The problem in the manner refugee is understood is the narrow scope of its definition with absence of differences among them which are not covered under any clause of international law.

### Humanitarian Language vs. Practical Rejection

The functions of UNHCR have been debated as to whether exhibiting political or humanitarian character [9]. Few scholars, like B.S. Chimni, have believed the constitution of the organization as intrinsically political that gets reflected in its functioning also. Others, like Alexander Betts, have believed in the transformation in the character of the refugee organization from humanitarian to political, in the wake of highly intricate global atmosphere confronting constant institutional proliferation. Refugees, approached following the principles of cosmopolitanism, are protected in the name of safeguard of their human rights. Human rights are provisions characterizing the universal character, which entitles rights that a person possesses for being born human.

The contradiction between theory and practice is a well-known concern, in the case of refugees; however, the contradiction between language and practice seems more evident [10]. The language of protection runs parallel to the practice of rejection. The humanitarian

assistance provided by the international organization is coupled with the security concerns of the sovereign states. The prioritization of security and sovereignty of the states suppresses the realization of human rights of the displaced forlorn figures. Despite the fact that the international organizations expect the states to open their doors for refugees, indeed, they leave it at the will of the state. In an anarchist scenario, the privilege of decision making remains with the powerful states. There are a plethora of examples where the displaced population in search of refuge is either returned back or a sudden change in policy that ceases the entry of refugees. The policy of non-refoulement also suffers from such criticism where the refugees are deprived of their rights. The denial of entry to SriLankan Tamil refugees by the British Government in 1987 is one example.

The principle of non refoulement has been derived from Kant's philosophy on the right of temporary sojourn [11].<sup>13</sup> Immanuel Kant, the advocate of human rights and cosmopolitanism, has propagated for the humanity's coexistence on earth where everyone possesses equal right on the common sphere, earth. He advocates for a non-hostile attitude towards what he calls a 'temporary sojourn' and required hospitality without denial of entry. However, such temporary sojourn should not be construed as permanent resident but because of the rights s/he possesses for being human, a temporary refuge could be granted. The limitation of Kant's conception of right of refugee is evident here for the moral obligation is not applicable if it threatens the self-preservation principle.<sup>14</sup> The functioning of international refugee system exhibits the similar limitation. States are not persuaded to transcend the confined concept of citizenship that could help refugees make claims on universal basis. Citizenship and nationality continues to be the main pillars in the provision of socio-economic rights. Indeed, 'when the refugees are provided shelter out of benevolence and might be viewed in some cases as "prospective citizens", undoubtedly through assimilation, they are suspiciously perceived as "enemy aliens" [12-14]. Very few individuals have the strength to conserve their own integrity when their social, political and legal status is completely confused'<sup>15</sup>.

Despite the evident facts that prove the pursuit of national interests prior to the interests of refugees, the international conventions remain reluctant to introduce any penalty on states in case of non-abidance of the concerned international law. As is precisely pointed out by Chimni, 'the contemporary international law has an imperial character.'<sup>16</sup>

### Case of Canada and India

International convention and laws have been adopted as standard and a final objective to be attained in order to seek ordered society that embraces humanitarian terms, despite the politicized functioning of the international system, that is manifested in implicit manipulated manner. The result of such reliance on the convention blocks the thought process and confines it to the belief of following the similar

<sup>10</sup> Long, K. "When refugees stopped being migrants: Movement, labour and humanitarian protection." *Migration Studies* 1, no. 1 (2013): 4-26. doi:10.1093/migration/mns001.

<sup>11</sup> Ibid.

<sup>12</sup> Chimni, B. S. *International Refugee Law: A Reader*. New Delhi: Sage Publications, 2000.

<sup>13</sup> Benhabib, Seyla. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press, 2004.

<sup>14</sup> Ibid.

<sup>15</sup> In her prolific work, 'We Refugees', Hannah Arendt shares her own experience and moves beyond loss of citizenship rights and loss of protection that defines one to be a refugee and emphasises on the loss of the sense of belonging as well as loss of very identity of individual that one suffers.

<sup>16</sup> Chimni, B. S. "Reforming the International Refugee Regime: A Dialogic Model." *Journal of Refugee Studies* 14, no. 2 (2001)

standard form of international law which itself suffers from several gaps and binding-ness.

At the national level the nature and content of “rule of law”, and thereby administrative law, is inter alia shaped by the nature and character of the state<sup>17</sup>. There are 142 countries which are parties to both the convention and its protocol. The failure of European nations in realizing the ethical responsibility to serve refugees is proven through their practice of the principles of Dublin Convention<sup>18</sup> in parallel with the Refugee Convention in order to reinstate border controls. Germany stated the ‘necessity’ of times, instead of humanitarian responsibility, as being the reason for welcoming refugees in the state of refugee crisis with the target to incorporate at most 1 million refugees.<sup>19</sup> The precondition of assimilation in confluence with the responsibility to maintain the ‘core culture’ of Germany is the solution offered to the refugees on their entry. Australia has also been accused for torturing refugees.<sup>20</sup> In such times, Canada and India set forth two anomalous, though quite distinct, examples in the refugee assistance. Although Canada is party to 1951 convention and India is not, both the countries have by far been performing better in terms of offering shelter and refugee protection [15].

Canada signed both the convention and its protocol on June 4, 1969.<sup>21</sup> Since then, its performance on refugee protection is applauded to such an extent that refugees have begun to consider it as one of their first destinations. It also contains in its record the resettlement of 25000 Syrian refugees in just four months. Canada’s culture of inclusiveness could be credited for its success in not only refugee settlement but also their integration. The multicultural policy adopted by Canadian government since 1971 further helps in increasing the possibility of integration for refugees along with the freedom to practice their own culture [16]. Moreover, the presence of private as well as government sponsorship for refugee settlement renders it possible to develop an easy path for refugees from their reception to better livelihood.

Similarly, India has confronted huge mass displacement in history while simultaneously succeeding in resolving the refugee issues to a considerable extent. India’s tradition of incorporating diverse cultures has allowed refugee groups like Tibetans with separate social and educational institutions [17]. India has proved to be good at reception of refugees and not returning them back, although they are treated at par with foreigners and hardly any ray of hope regarding the provision of citizenship to them, unlike in Canada. Indian Constitution, however,

has shown multicultural features of Indian society.<sup>22</sup> There have also been a number of pre-constitutional as well as post-constitutional legislations that have been employed to tackle refugee situation.<sup>23</sup>

Both Canada and India are known for their multicultural character and the absence of a single “core culture”. Although Indian multiculturalism is different in many ways from Canadian but lessons could be learnt from both the societies. More than being part of a refugee law formulated by powerful politicians, development of a society with open public sphere, respecting diverse cultures is more significant [18].

## Conclusion

International state’s system equips the Refugee Convention, which Katy Long precisely describes as a ‘political construct’, as intellect armor to grasp the figure of a refugee and strategies for its ‘resolution’. The conception of modern refugee has been stuck where the portrayal of problem has been shifted from the cause of displacement and its resolution to the refugee itself. The transformations in the definition of refugees provide sufficient reasons for the abstinence from engendering ‘refugee’ as a separate identity that dissolves the inherent identities of individuals. Scholarly debates on refugee protection largely revolve around, first, a state being party to convention or not; and second, states’ failures to preserve human rights of refugees. Debates regarding the text of convention where no amendment seems visible that incorporates human rights officially or further remains ambiguous if civil - political rights of refugees be counted as human rights or not, remain absent. The language of humanitarianism and cosmopolitanism remains inapplicable when the authority to refugee status determination falls on the respective state first where the interference by UNHCR could be at states’ will. The grip of the intricate duality of states’ system seems to have choked the world to the extent that has blocked the capacity to develop an alternative strategy to deal with refugees. Respective constitutions, judiciary and policies of India and Canada offer insights regarding the significance of developing a multicultural society even more than being part of an international law.

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<sup>17</sup> Chimni, B. S. "Reforming the International Refugee Regime: A Dialogic Model." *Journal of Refugee Studies* 14, no. 2 (2001)

<sup>18</sup> Dublin Convention regulates the applications of asylum seekers in European Union.

<sup>19</sup> "Multiculturalism is a Sham, Says Angela Merkel - The Washington Post." *The Washington Post*. <https://www.washingtonpost.com/news/worldviews/wp/2015/12/14/angela-merkel-multiculturalism-is-a-sham/>.

<sup>20</sup> "Australia: Appalling Abuse, Neglect of Refugees on Nauru | Amnesty International." Home | Amnesty International. <https://www.amnesty.org/en/latest/news/2016/08/australia-abuse-neglect-of-refugees-on-nauru/>.

<sup>21</sup> UNHCR - The UN Refugee Agency. <http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>.

<sup>22</sup> See Rajeev Dhavan's 'Refugee Law and Policy in India'.

<sup>23</sup> In a workshop on Forced Migration organised between 17-08-16 to 28-08-16 organised by Loyola College, Chennai in collaboration with UNHCR, Dr. Vijayakumar delivered a lecture on constitutional legislations that deal with refugees and stateless people. Here, pre-constitutional legislations include East Punjab Evacuees (Administration of Property) Act, 1947; U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948; East Punjab Refugees (Registration of Land Claims) Act, 1948; Mysore Administration of Evacuees Property (Emergency) Act, 1949; Mysore Administration of Evacuees Property (Second Emergency) Act, 1949; Bombay Refugees Act, 1948; and so on. Post constitutional legislations include Evacuee Interest (Separation) Act, 1951; Displaced Persons (Debts Adjustment) Act, 1951; Influx from Pakistan (Control) Repealing Act, 1952; Displaced Persons (Claims) Supplementary Act, 1954; Displaced Persons (Compensation and Rehabilitation) Act, 1954; Transfer of Evacuee Deposits Act, 1954; Refugee Relief Taxes (Abolition) Act, 1973; etc.



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