



Laws Relating to Refugees in India

Prof. Dr. Vir Narayan
Dean,
School of Legal Studies,
Vikrant University, Gwalior

Himani Nahar
Research Scholar
School of Legal Studies,
Vikrant University, Gwalior

Abstract

In India there are not specific legislations which is applicable to all the refugees in the country. Due to the lack of such a statute, the judicial system is forced to invoke laws that are applicable to foreigners in general, such as the Foreigners Act, 1946. The exception to this rule is the legislation that has been passed regarding specific groups of refugees, like the Tibetans. Laws have also been enacted relating to large-scale refugee movements during the partition of India in 1947 and the partition of Pakistan in 1971. These acts regulate the movement of refugees and address issues relating to their rehabilitation and the award of compensation. The concept of "refugee law" in the Indian judicial system has evolved over a period of time. This paper takes a brief look at the refugee-specific legislation that has been passed since India's independence. It also examines the national legislation which regulates the stay of foreigners and refugees in India as well as the constitutional rights which are applicable to refugees.

Introduction

LAWS FOR REFUGEES, EVACUEES AND DISPLACED PERSONS

A number of legislative measures dealing with refugees were passed and issued under the Seventh Schedule of the Constitution of India. Although many of them have lost their importance in the current context, they provide useful legislative precedents. Given below is the legislation that was enacted following the partition of India and before the Indian Constitution came into effect:

- East Punjab Evacuees (Administration of Property) Act, 1947
- UP Land Acquisition (Rehabilitation of Refugees) Act, 1948
- East Punjab Refugees (Registration of Land Claims) Act, 1948
- Mysore Administration of Evacuee Property (Emergency) Act, 1949
- Mysore Administration of Evacuee Property (Second Emergency) Act, 1949

Once the Constitution of India came into operation, the following acts were passed relating to refugees, evacuees and displaced persons:



-
- Immigrants (Expulsion from Assam) Act, 1950
 - Administration of Evacuee Property Act, 1950
 - Evacuee Interest (Separation) Act, 1951
 - Displaced Persons (Debts Adjustment) Act, 1951
 - Influx from Pakistan (Control) Repelling Act, 1952
 - Displaced Persons (Claims) Supplementary Act, 1954
 - Displaced Persons (Compensation & Rehabilitation) Act, 1954
 - Transfer of Evacuee Deposits Act, 1954
 - Foreigners Law (Application & Amendment) Act, 1962
 - Goa, Daman & Diu Administration of Evacuee Property Act, 1969
 - Refugee Relief Taxes (Abolition) Act, 1973

All these laws, to some extent, have a bearing on the wider implications of the term "refugees."

INDIAN CONSTITUTIONAL LAW

Article 21 of the Constitution declares that no person, whether a citizen or an alien, shall be deprived of her life or personal liberty except in accordance with a procedure established by law that must be fair.

The Constitution of India expressly incorporates the concept of common law, which means that prior judicial decisions help define the current state of the law. The courts themselves have gone further and elevated the power of judicial review to the status of one of the basic structures of the Constitution, thus making this precept unamendable.

Article 51 asserts that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another. Article 51 is a directive principle of State policy, indicating the spirit in which India approaches her international relations and obligations.

The Indian system is a common law system. Article 253 of the Constitution clearly states that, "Parliament has the 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 country or countries or any decision made at any international conference, association or other body." Read with entry 14 of the union list of the Seventh Schedule, which declares that is a Union power to "enter into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign



countries," there is a clear understanding that the power to enter into treaties carries with it the right to encroach on the State list to enable the Union to implement a treaty. Therefore, any law made in accordance with this Article that gives effect to an international convention shall not be invalidated on the ground that it contains provisions relating to the State subjects.

In *Nilabati Behera vs State of Orissa* (1993 (2) SCC 746), a provision in the ICCPR was referred to in support of the view that the right to compensation should be a guaranteed right, and available as a public law remedy under Article 32, which is distinct from private law remedy in torts. The court held that "[a]ny international convention not inconsistent with the Fundamental Rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee." Thus, there is no reason why these international conventions and norms cannot be used for construing and substantiating the fundamental rights expressly guaranteed in the Constitution of India.

Conclusion

There is a common misconception prevailing in Indian legal circles that international conventions are not enforceable in Indian courts unless a statute is enacted.

This misconception is based on the American and English position, but ignores the specificities of the Indian Constitution. The clearest discussion on the issue is found in *Maganbhai Ishwarlal Patel vs Union of India* (1969 (3) (SC) AIR 783).

Making of law... is necessary when (international) treaty or agreement operates to restrict the rights of the citizens or others or modifies the laws of the State. If the rights of the citizens or others which are justiciable are not affected, no legislative measures are needed to give effect to the agreement or treaty.

Thus, if the use of executive power restricts or infringes the rights of citizens or others, or modifies any laws, that exercise of power must be supported by legislation. Where there is no such restriction or infringement of rights or modification of laws, the executive is competent to exercise power and international commitments are automatically enforceable in the state's courts.

In *Maganbhai Ishwarlal Patel vs Union of India*, the Supreme Court relied on Article 73(1) of the Constitution. This article states:

Subject to the provisions of the Constitution, the executive power of the Union shall extend:

- a) To all matters with respect to which Parliament has power to make laws; and



-
- b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

The Court also relied on Article 253 of the Constitution, which empowers Parliament to make laws for implementing a treaty, agreement or convention. A common misconception is that this article implies that unless such a statute is enacted, the treaty, agreement or convention cannot be enforced. The Supreme Court rejected this argument, saying that it proceeded from a misreading of Article 253. While the article confers upon Parliament a certain power, it does not seek to circumscribe the extent of the power conferred by Article 73.

Our Constitution makes no provisions making legislation as a condition of entering into an international treaty either in times of war or peace. The Executive is qua the State competent to represent the State in all matters in international forum and may by an agreement, convention or treaty incur obligations which in international law are binding upon the State.

The decision of the Court means that if an international instrument or resolution augments the rights of the citizens, it is directly enforceable. However, if the instrument or resolution restricts the existing rights of the citizens it requires the enactment of a statute before it can be enforced.

In *Gramophone Company of India Limited vs Birendra Pandey* (1984 (SC) AIR 677), the Supreme Court held:

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 nations requires that the 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.

In *Apparel Export Promotion Council vs A.K. Chopra* (1999(1)(SC) 756), the Supreme Court also reiterated the same principle and held that in cases involving violations of human rights, the Courts must forever remain aware of the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.

The position is thus quite clear. If an international convention runs counter to an Indian statute, it cannot be relied upon. If, however, the convention does not clash with any Indian law, then it must be accommodated and absorbed into domestic law.



References

1. List of legislation compiled by Prof. V. Vijayakumar, Professor of Refugee Law, National Law School of India University, Bangalore.
2. Mrs. Indira Gandhi vs. Raj Narain, 1975 (SC) AIR 2299.
3. Colin Gonsalves, The Somewhat Automatic Integration of International Refugee Conventions in Indian Law, Bulletin on International Humanitarian Law and Refugee Law, Vol. 3 issue 2, 247-254 (1998).
4. Khudiram Chakma vs. Union of India, 1994 Supp (1) SCC 614; Chairman, Railway Board and Others vs. Chandrima Das and Others, 2000 (2) SCC 465.