



Widening of the Gap between Urban Refugees and Citizens of the Nation due to Covid-19 Pandemic

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Abstract

For most people, the term ‘refugee’ still conjures up images of endless rows of white tents spread out on a dusty field. However, this picture no longer tells the full story of life for refugees in the 21st Century. The jurisprudential aspect has developed over time, and now the term has various attributes, one being, the urban refugee. The growing number of urban refugees in many areas of the world present UNHCR offices with the difficult task of coping with a population that is often widely dispersed, undirected, unemployed and in several instances, whose basic needs for counselling, care and assistance cannot reasonably be met. Although, the migration of refugees towards urban is a natural phenomenon, in most of the situations they merely add on to the number of urban destitute who is a citizen of that area; the said position of the urban refugees coupled with the challenges posed to humankind all across the world by COVID-19 pandemic call for humanitarian concerns. Nonetheless, a lack of a comprehensive policy both at the national as well as international level demands redressal. This article is an attempt to track down the jurisprudential trail concerning urban refugees, identifying and appraising the basic human rights that they should be entitled to during the pandemic and assessing the economic impacts of including such a population with the mainstream given the scarcity of national resources. Along with the jurisprudential aspect, what

poses is the moral obligation of the States that gives rise to the ethics of admission of refugees into the countries. The article shall delve into both developed and developing-country model to assess the current situation of urban refugees, thereby trying to enumerate appropriate legal provisions.

Keywords: Urban-refugee, Jurisprudence, Economic Analysis, COVID, Human Rights

Introduction

There seems to be a sense of ambiguity over the term “urban refugees”. That is primarily because of the legal status of such refugees making one ponder whether, would it be any different from the conventional definition established by the 1951 Convention? There has been a change in the dynamics of international refugee law which is changing to cater to the new socio-economic structure.³ These dynamics have been analysed in three parts as to how this change is taking shape in all the countries. The paper would essentially deal with the jurisprudence of the definition of “urban refugees”, entailing the moral obligations imposed on States, in close relation to the ethical basis of admission of refugees. The ethical framework comes into play right from the entry of such refugees to their sustenance in that country. So, to further elaborate on that, the burdening of resources is mentioned. At the same time, economic implications for the same are given at the end, and in

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3 Guy S Goodwin-Gill, *The Dynamic of International Refugee Law*, International Journal of Refugee Law, Volume 25, Issue 4, December 2013, Pages 651–666, <https://doi.org/10.1093/ijrl/euu003> (last visited on Dec. 17, 2020).

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conclusion, one can say that issues concerning citizenship and alike would prove to widen the gap between urban refugees and citizens.

Urban Refugees: Hidden And Often Ignored

To understand the status of such refugees, we need first to understand the approaches for the same. Initially, it started out with the exceptionality approach. It has been stated in the UNHCR Handbook that persons who are compelled to leave their country as a result of national or international conflicts are normally not considered refugees under the said 1951 Convention. Nevertheless, the locus classicus of such a proposition is the “*special cases*” which highlight the exceptionality.⁴ Following that approach, it can be further branched into: i) Differential Risk Analysis and ii) Non-Comparative Analysis. The jurisprudential aspect of contemporary refugee law is embodied in these approaches. This would prove to be baseless with regard to the COVID-19 pandemic. This is because COVID-19 has caused indiscriminate loss of lives all across the world. To put it in terms of the differential risk analysis, one can say there is no differential risk involved as it affects all alike. Keeping that in mind, the most recent approach to a refugee is the internal protection alternative approach.⁵

The primary focus of such an approach is to the extent of meaningful protection against the risk of persecution which is genuinely available to an asylum seeker. Convention refugee status need not be recognised.⁶ For the possibility of protection, an inquiry framework has been established. Under this framework, the risk would be evaluated- as in this case, COVID-19, and then whether the protection can be availed by the refugee needs to be

assessed. The element which would be detrimental under such an inquiry would be human mobility. Human mobility is the thread which ties COVID-19 with urban refugees. Owing to the basics of international refugee law, one can say that not addressing the health needs of refugees on the ground of the legal status they hold, and their origin would constitute unreasonable discrimination against the safety of the entire community. The ground of discrimination with respect to COVID-19 can be put under broader topics of racism, xenophobia and stigma concerning the actual or perceived health status.⁷ However, having a closer look into the spread of COVID-19, we can understand how falsely nations have been using racist propaganda, rather than sticking to international humanitarian obligations. That is to say, the spread of the virus does not have an ethnic origin. This is because research has been carried out on human mobility patterns regardless of their national or ethnic origin. Thereby, monitoring immigrant stock or travel volume, it has been stated that the leading cause in the sharp rise of COVID-19 cases is the late reactionary responses of the State Governments.⁸

This raises the question about moral obligation, which is imposed on States due to the refugee regime. The issue raised mainly is that if States reject the entry of the refugee, then is it morally going against international humanitarian law norms. This way, giving priority to refugees based on the extent of the degree to which they experience discrimination and persecution would not be possible in the current scenario.⁹ The triage of refugees is crucial in the COVID-19 times, and that is where the need arises for additional or alternative principles of admission. One of the leading protagonists under this literature review would be Dr. Serena Parekh who has said that: The moral failure under the refugee

4 Hugo Storey & Rebecca Wallace, *War and Peace in Refugee Law Jurisprudence*, The American Journal of International Law, Vol. 95, No. 2 (Apr.,2001), pp. 349-366.

5 James C. Hathaway, *International Refugee Law: The Michigan Guidelines on the Internal Protection Alternative*, University of Michigan Law School Scholarship Repository (1999), available at <https://repository.law.umich.edu/articles/299> (last visited on Dec. 17, 2020).

6 The Program in Refugee and Asylum Law, *First Colloquium on Challenges in International Refugee Law*, The Michigan Journal of International Law Volume 21, Issue 1 (April 9-11, 1999), pp. 134-140.

7 *Human Mobility and Human Rights in the COVID-19 Pandemic: Principles of Protection for Migrants Refugees, and Other Displaced Persons*, International Journal of Refugee Law, Vol XX, No XX, 1–10 (April 2020).

8 Ibrahim Sirkeci & M. Murat Yüceşahin, *Coronavirus and Migration: Analysis of Human Mobility and the Spread of COVID-19*, Migration Letters, Volume: 17, No: 2, pp. 379 – 398 ISSN: 1741-8984 (April 2020), pp. 388-390.

9 Kasper Lippert-Rasmussen & Annamari Vitikainen, *The ethics of refugee prioritization: reframing the debate*, Ethics & Global Politics, 13:1, 1-5 (2020), available at, <https://doi.org/10.1080/16544951.2020.1735019> (last visited on Dec. 18, 2020).

regime is that either there is not enough resettlement of refugees, or the system strategically undermines the rights of the refugees. It cannot be justified either for the sake of sovereignty or citizenship.¹⁰

Challenges in Protection, Services and Policy

The merciless human rights violation of the refugee needs to be addressed with utmost concern now. Urban refugees necessarily adopt such status for want of a better lifestyle- often those who do not thrive in the urban settings go back to the camps only then.¹¹ Owing to the durability of the solution posed by the refugee regime, we need to incorporate the UN's basic tenets of safe and inclusive human mobility during COVID-19. There is a collective responsibility on the governments to include people on the move as part of the solution, and not as mutually exclusive to the safety of the community. Although there is constrained humanitarian assistance, and restricted access to services, these in turn, impose a burden on society. The brunt of this burden should be a shared responsibility; in a sense, urban refugees' contributions to the society should not be neglected.¹² And not only during COVID-19 times, but the freedom of movement has been contested on many different grounds, owing to the two sides of the coin - local integration or resettlement. The question of smuggling and trafficking hinders the genuine needs of the refugees and overplays with security concerns of all the governments.

In the survey conducted by the UN, it was founded by UNHCR that there are not only financial but even practical barriers to the accessibility of services for the urban refugees. Most of UNHCR offices are advocating for the purpose of accessibility of services and systems like that of the judicial system to the urban refugees.¹³

Moreover, that is where the main drawback is the burdening in the resources of that country. Furthermore, during the COVID-19 pandemic, the most crucial resource which needs to be tapped is the healthcare system. The recommendations are more of refugee investigations. This is because an investigator's responsibility would include the refugee which does not always include in the "vulnerable population." Moreover, they can be categorised following a comprehensive refugee-specific ethics framework. The three key areas which need to be stressed upon are: engage, educate and empower for a supporting structure to the framework.¹⁴ For the international cooperation, the functional necessity is responsibility sharing. The rights of the refugees can be protected when there is "shared responsibility" between them and the citizens. This can be in the form of development of better human mobility initiatives as required by the current scenario. The nature of responsibility has sparked debates all across on whether it should be legally binding or not and needs to be addressed.

Economic Considerations Concerning Urban Refugees and Citizens

It is a general assumption that remote camps pose as visual shorthand for refugees and displaced people. The UN Refugee Agency-UNHCR has estimated that around 60% of all refugees globally are in towns and cities.¹⁵ The reason is concerned with the 'push and pull' factors that act as the catalyst for such movements. The push factors may include the traditional picture of refugee camps and the problems prevailing there such as lack of sanitation, availability of food, clothing, proper shelter and the means to earn a livelihood. On the other hand, the pull factors may include employment oppor-

10 Serena Parekh, *Refugees and the Ethics of Forced Displacement*, Routledge, Taylor and Francis Group, 1st edition ISBN: 9781138346772 (last visited on Aug. 13, 2018).

11 Kofi Kobia and Leilla Cranfield, *Literature Review: Urban Refugees*, Refugees Branch, Citizenship and Immigration Canada

12 United Nations Sustainable Development Goals, *Policy Brief: COVID-19 and People on the Move*

13 Mary Beth Morand & Katherine Mahoney with Shaula Bellour, *The Implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas: Global Survey-2012*, UN Refugee Agency (2012)

14 Emma E. Seagle, Amanda J. Dam, *Research ethics and refugee health: A review of reported considerations and applications in published refugee health literature, 2015-2018*, Conflict and Health (2020), <https://doi.org/10.1186/s13031-020-00283-z>

15 "Global Trends, Forced Displacement in 2018" UNCHR (2018) available at <https://www.unhcr.org/globaltrends2018/>, (last visited on Dec. 22, 2020).

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tunities, modern culture and other amenities that come within the purview of urbanisation.

The significant factor demarcating between a citizen and a non-citizen would be access to basic necessities such as housing facilities and also the fact that non-availability of the same would entitle them to enforce such rights in the appropriate legal forums which appears as a challenge to the non-citizens (refugees). Refugees without documentation are particularly more vulnerable in this regard. Additionally, a growing humanitarian caseload and diminishing resources worldwide have led to increased emphasis among donor governments and humanitarian actors who are now advocating a change towards 'self-reliance' of the refugee populace which is also the focal consideration of the UN's Global Compact on Refugees.¹⁶

Housing facilities indicate the land resources, which are undoubtedly scarce and have to do with the town planning mechanisms in place in the concerned locale. For example, the Model Town and Country Planning Act, 1960¹⁷ in India, which has the objective to provide for the regulation of planned growth of land use and development so as to execute the town planning scheme in the State, is an essential feature of this legislation which prevents the uncontrolled development of land.

Keeping in mind, the above view, the feasibility of refugee amalgamation with the ordinary citizens of the nation can be analysed with the help of the following graph:

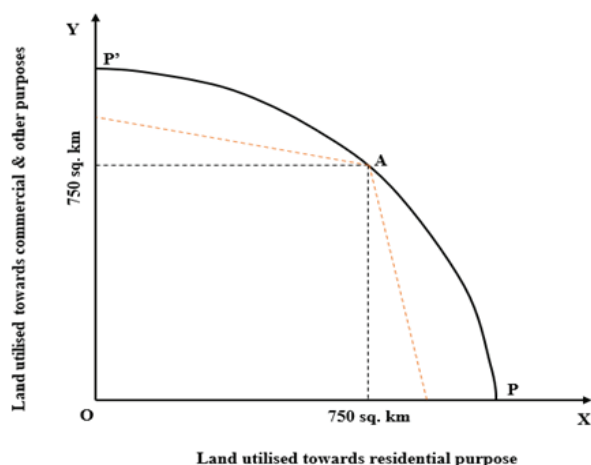


Figure: Production Possibility Frontier Depicting Burdening of Resources

The above figure depicts a Production Possibility Frontier (PPF) in which X-axis denotes land resource utilised for building residential complex for the purpose of fulfilling housing necessities whereas the Y-axis denotes land utilised for other purposes such as for commercial use, forest reserves, graveyards and so on. Let us imagine on similar lines that an urban set up has its land stretched across 1500 sq. km as we move across P to P' in the figure. The local planning committee has divided the land usage in the manner as shown by X and Y axes. The underlying assumption of a PPF is that a particular resource is scarce and that resource has various alternative uses¹⁸. In the present example, the resource in question is 'land' and the distribution of that land for different purposes. The said set-up also shows a position of equilibrium attained by the urban set-up with the population that is intended to stay there, ideally, the citizens. A further inflow in this set-up will demand additional land area for residential purpose as well as for the other purposes and will have the tendency to dismantle this equilibrium position as the overall area of the locality cannot be stretched beyond 1500 sq. km and this phenomenon is referred to as the burdening of resources. With the influx of the refugee population, not only the land, but other resources supporting human sustenance are also compromised and especially during extra-ordinary times like the coronavirus pandemic where the government resources of providing aid to those in need are strained. In such circumstances, the crucial aspect that needs consideration is whether the government owes a greater responsibility towards its citizens for they were the ones who elected and brought it to power, or whether the government is equally responsible towards these refugees as per the international norms?

Thomas Hobbes said that humans have a restless and perpetual desire for power that only ceases in death. Although, Hobbes has been criticised for having a cynical view on human nature; how-

16 Tsion Tadesse Abebe, *Refugees' Self-reliance: The dilemma of implementing the Global Compact on Refugees in Africa*, Refugee Law Initiative, School of Advanced Study University of London, <https://rli.blogs.sas.ac.uk/2019/04/03/refugees-self-reliance-the-dilemma-of-implementing-the-global-compact-on-refugees-in-africa/>

17 Town And Country Planning Act, 1960, No. 29, Acts of Parliament, 1960 (India).

18 Economics Online, *Production Possibility Frontiers*, (Jan. 13, 2022), https://www.economicsonline.co.uk/Competitive_markets/Production_possibility_frontiers.html, (last visited on Dec. 23, 2020).

ever, it cannot be denied that there is a degree of truth present in it. It implies that unless the necessities of the citizens are fulfilled, the government cannot devote its resources towards the refugee population. How then will the government protect their rights (fundamental human rights) against those who have a perpetual desire for power or who have endless needs? This is when the economic considerations concerning urban refugees and the citizens come into play. It is based on a simple cost-benefit analysis of the decisions taken presently. The reasoning takes the following flow – the refugees in question have merged with the general population and have gradually adopted the cultural identity of the larger population that they have merged with, and the identification of such refugees as being urban refugees is recent and inadequate, especially in India which has been the home for refugees since centuries. Undeniably, it has been dismantling the equilibrium so desired by the local planning committees. On the one hand, it benefits them by providing access to the shared resources in that particular locale, whereas, on the other hand, it imposes additional costs to the government. Restrictions, if any, are imposed on some refugees, whereas others are being free-riders due to a lack of identification mechanisms.

Conclusion

The issue which needs to be addressed is whether promoting self-reliance was ever the appropriate way to support refugees, let alone refugees in urban areas. The Indian government like many other governments does not give a legal status to urban refugees, and that is the very origin of the poverty caused to urban refugees. To make the long-term goals achievable, the in-

visible boundaries of the urban refugees have to be accepted. Research needs to get a better clarity at their personal geographies and experience which emanates from those places.¹⁹ And to begin with one of the focal elements to satisfy a claim to refugee status is for the claimant to prove a ‘genuine risk’ and various standards of proof have emerged over time in the Indian scenario. The Constitution of India also provides that the fundamental right to life under Article 21²⁰ extends to all irrespective of the citizenship criteria. In several judicial pronouncements such as in the case of *Gurunatham and Others v. Government of India*²¹ and in *A.C. Mohd. Siddique v. Government of India and Others*²² the Madras High Court had expressed its unwillingness to let any Sri Lankan refugee to be sent back to Sri Lanka against their will. Also, in the case of *P. Nedumaran v. Union of India*,²³ Sri Lankan refugees had prayed for a writ of mandamus directing the Union of India and State of Tamil Nadu to allow UNHCR officials to check the voluntariness of such refugees in going back to Sri Lanka which was affirmed by the court in positive.

Unlike the Capability approach, which is yet to come into force, the Graduation Approach by UNHCR in a selected few countries needs to be adopted on a large-scale manner by the remaining governments. The Graduation Approach can be followed using the Technical Guide, which has a multifarious uses and opportunities. This Technical Guide is directed towards the implementing agencies, and one needs to consider if it is applicable verbatim to their countries, or whether suitable changes need to be made.²⁴ The CGAP-Ford Foundation Graduation Program has worked efficiently to have three projects in India. India was one of the successful projects, with increased consumption and increased confidence for a better livelihood. Following the Graduation approach, it can be recommended

19 Jessica Field, Anubhav Dutt Tiwari and Yamini Mookherjee, *Urban Refugees in Delhi: Self-reliance can't be exclusively entrepreneurial*, International Institute for Environment and Development, <https://www.ucl.ac.uk/bartlett/development/research-projects/2020/nov/making-lives-refugee-self-reliance-and-humanitarian-action-cities>.

20 INDIA CONST. art. 21

21 *Gurunatham and others v. Government of India*, W. P. Nos. 6708 and 7916 of 1992.

22 *A.C. Mohd. Siddique v. Government of India and others*, 1998 (47) DRJ (DB).

23 *P. Nedumaran v. Union of India*, 1993 (2) ALT 291.

24 Louisa Lippi & Alexi Taylor-Grosman, *Graduation in an Urban Refugee Context: A Technical Guide by Trickle Up*, Trickle Up, New York.

https://trickleup.org/wp-content/uploads/2020/10/GraduationUrbanRefugeeTechnicalGuide_2017.pdf.

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that consultative strategic planning can be carried out by the UN and non-governmental organizations. The sole objective should not just be giving people a livelihood, but instead it should foster an environment for self-reliance.²⁵ The organisations or host communities

need to cooperate with the UN, and work towards establishing such an environment. When proper planning and mapping of refugees is done, only then sustainable livelihoods will become a reality.

25 UNHCR, *Designing appropriate interventions in urban settings: Health, Education, Livelihoods, and Registration for Urban Refugees and Returnees*, <https://www.unhcr.org/4b2789779.pdf>.