

Afghans in India - Status and their Rights

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Abstract: The people of Afghanistan are the victims of war and terrorism which established chaos, havoc and devastation from all corners. It has now been years that the people of Afghanistan have been fleeing to different countries to find a better life and escape from the war and its aftermaths. The last four decades of war has actually fuelled the Afghan people with fear, especially children. To immigrate and flee to neighbouring countries always become easy for them like India where there has been an upsurge in Afghan people from last few decades. In this paper I will be deliberating upon the status of the Afghan Families to identify the rights and privileges of Afghan children in India since India till date has not ratified the convention on refugees, but has allowed UNHCR to operate and how far can they enjoy the rights that refugees have ordinarily by way of international instruments. International law is supposed to provide protection to the persecuted communities as well as those whose lives are in danger and since India is lacking any such law, it raises a serious question as to how far should concerned parties take the related initiative. As looking into current situation of Afghanistan, it is obvious and clear that Afghan people are threatened to their lives to the most. They are no longer protected in their home country due to the war which UN has defined as persecution. Residing here under the supervision of UNHCR, I tend to understand how far the rights of children of Afghanistan protected in India are.

Introduction

For years there have been Human Rights violations and persecution of the inhabitants of Afghanistan. This scenario resulted in millions of Afghans fleeing the country and getting deprived of their basic rights as well as their homeland. Many of them chose the neighboring countries to migrate in order to resume their living such as India, Pakistan, Iran and other countries. Since millions were displaced over the time, neighboring countries got almost crowded with refugees and as of now, a lot of people among them are living in camps, detention centers and in rented accommodations with basic facilities provided by United Nations.¹

The basic question that arises here is why people accept to live in condition where they are deprived of even basic amenities. The answer lies in the simple fact that they are under a fear that they or their families will be subjected to cruel, inhumane conditions even back home or we can say they fear persecution. It has been now four decades of war in Afghanistan and each year the immigration crisis hit new and higher levels. Not all countries open doors for such refugees and if some allow, the condition they live in might not be even human for them as is evident.

Here in this research, I would discuss about the status of the Afghan Refugees living in India and since India has not ratified the 1951 Convention on refugees. What is their status here in India that is a question? In addition to this, I will also discuss the difference between foreigner and a refugee. If we are able to determine their status, we will be able to finally ascertain how far are child rights secured for their children whilst they are living in India. Since India has not ratified 1951 Refugee Convention and the lack of national legislation on refugees and their status makes it even tougher to determine the status of Afghan and Afghan Children in particular and this makes things more difficult for the operation of procedures of the United Nations. When it comes to Children, they are the most innocent and vulnerable groups that are prone to serious abuses and harms of many kinds in lots of circumstances. Their rights need to be protected and all spheres of their life need to be well and truly defended. So, a question arises, who is there to protect their rights in India and does Indian Government in absence of any laws, provide authorization to any organization to operate in India for safeguard of Afghans and secure the rights of Children of the Refugees.

Difference between Migrant and Refugees.

A Refugee has been very aptly defined under International Law as a person who is out of his country in order to safeguard himself and his family from persecution or any conflict that might be prevalent in his home country. However Migrant as such is nowhere clearly defined or we can say there is no clear Universal definition of the word Migrant. However, the refugees are protected strictly under Refugee law which includes protection from getting expelled to the places where their lives will be at risk.²

Thus, we can say that a Migrant is a person who makes a choice for himself and his/her family to leave the home country and move to a different one for better opportunities. Even before leaving, they may also try to get well versed with the culture, language and other values of the country that they are migrating. They are able to do good beforehand planning and transfer their assets as well. They don't flee but take a voluntary decision to leave the country and can return whenever they wish. On the other hand, the Refugees achieve the status of being Refugees because they leave their home country, not by their own will but because they were forced to leave. They experience persecution and that makes them flee from that place. The basic problems that refugees face ultimately are violation of Human Rights and threat to their safety. They leave in a jiffy and are not able to take any of their belongings at any cost. In search of a place to settle, they undertake many hazardous routes and risk their lives as well in search for places where they can live peacefully.³

Status and the Rights

Since Invasion by USSR in 1979, people in Afghanistan started fleeing to different countries such as India⁴ but the amount of people wasn't much. It was when Taliban came to rule Afghanistan in 1996 that millions of Afghans had to forcefully migrate to countries like India, Iran or Pakistan.⁵ A lot of Afghans travelled to India and stayed according to their purposes. Especially when Taliban

got reinstated in 2007, there was a huge increase in Afghan people fleeing to India.⁶ Firstly, most of the people, mostly Hindus and Sikhs in 1993 crossed borders from Pakistan to Amritsar.⁷ They have now set up good businesses and many of them have attained Indian citizenship as well. Here also the Citizenship Act helped them in getting the citizenship as well.⁸ According to a report, by 2009, there were 18,000 Afghan refugees and asylum seekers registered in India.⁹

Secondly, I would like to discuss Afghan family status, to better understand status of Afghan families who are living in India and to better evaluate the rights and status of the Afghan children. As India has not ratified 1951 Convention on Refugees¹⁰ and also it has not any convenient domestic law¹¹, so here, a question comes in mind that what is the status of Afghan families living in India and what should they be called?

To better understand the status of the Afghan families, we need to have a look into domestic laws and international aspects to ascertain which law is applicable. India does not have enough laws regarding Refugees in their national laws, but there are some laws which are applicable to national as well as foreigners of any status such as provisions of Indian Penal Code and Indian Constitutional Law.

Also here are some **International Instruments** of which India is a Signatory. "Even though India is not a signatory to the Convention on refugees (1951) and the Protocol of 1967,

1. India has signed a lot of UN and World Conventions on Human Rights, Refugee issues and related matters.
2. India's Membership of the EXCOM depicts the fact that India has to show a specific interest as well as a heartfelt commitment to the matters pertaining to the Refugees.
3. India has given a Yes Vote to adopt the Universal Declaration of Human Rights which secures the rights for all persons, citizens and non-citizens without any discrimination.
4. India has also adopted voted the UN Declaration of Territorial Asylum in 1967.
5. India has ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR) in 1976.
6. India also has ratified the UN Convention on the Rights of the Child in 1989.
7. In 1974, India ratified the famous Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
8. India has also accepted the principle of *non-refoulement* as laid down in Bangkok Principles, 1966".¹²

Finally, we can say that India has allowed UNHCR to do its operations with regard to the Afghan People so that they can register themselves in UNHCR as Refugees or Asylum Seekers as per their cases and ultimately their children would derive the rights out of the same.¹³ So, now children are privileged with those rights according to the respective statuses. Such as fundamental rights under domestic law of India, and also under International Law, all these international instruments which I mentioned are providing rights and privileges to the children as well and that too without any discrimination.

Here are some ground realities that in an empirical research by interview which says that Afghan people say that they register themselves in UNHCR, but they should wait there for years to get accepted in any country where they have filed a case. During the years of their pending status they live in very congested places and don't have access to humane facilities or even basic amenities. Since they suffer, so do their children and that becomes a more worrying concern for anyone.

UNHCR provides them very less of what they deserve actually. Here is the fact that they are happy as of now only because they want to live in calm places without explosions or fear of death. But another problem is that those I-cards registered with UNHCR are futile as people say that it is not that much convenient and reliable because they cannot even buy a SIM card with it. It is not acceptable to the Police and is not recognized in most of the parts of India.¹⁴

Conclusion

So according to several International Laws that India is part of, we can say that Afghan families and children who are living in India, have refugee status and can be considered as asylum seekers as well and it depends to the cases of each one of them that they have filed. Not all of them are refugees or asylum seekers, but some of them came here and started living in India on the visa basis. The main point is that they are not deprived of their fundamental rights, such as some domestic laws are applicable to the foreigners as well and that are for example fundamental rights laid down in Constitution of India, and Penal Code of India and some of other acts. Children do have rights such as fundamental rights and those rights of India is part of International treaties, conventions and other international aspects. There are rights of children mentioned in United Nations Charter also¹⁵ and other laws which were mentioned in this research above. Here in India children are pursuing their education, they are given admission to the schools, courses and other some basic facilities which UN provides them which is really commendable.

People of Afghanistan, most of them run businesses and some of them have started working and using their skills and they are happy here, and according to the researches, they say that they are happy here even with less because in Afghanistan they have fear of death, fear of Taliban and explosions, other arbitrariness and violence.¹⁶ Another Afghan Woman she says that her husband was killed by Taliban because he was working in the government, and now she is not supported in Afghanistan. She has young children that she should take care of. Afghanistan is a male-dominant country that most probably causes people to misuse the situation of a woman especially the one who has not a man in her house. She is a domestic helper and does other small works to feed her family as UN provided them very little for survival.¹⁷

Here I would like to request UN and other world community to help refugees who are in need and to provide them a ground to use their skills and to start earning on their own skills and thereby help their children who form the basis of a future. Fundamental and elementary education should be free for children anywhere as well as mentally they should not be in fear whether tomorrow that they can find earnings or not or will they be able to study in universities or not. Some of the refugees staying in India are waiting for their cases to get accepted by any country and this can go on for 10 more years. So, here is a request to UN to consider their

problems and to process their cases faster so that they can know clearly their status and define their future because as of now they are like in space, and without waiting for their future to be decided they don't stand any chance.

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