

Globalisation and Social Justice with Reference To The Migrants and Refugees

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Abstract

The realization of social justice in a State depends upon the state machinery, the Constitution and society itself but the absence of global state poses issues for globalization in the realization of justice (global justice). In a globalised scenario for the migrants and refugees it can be served through the better, friendly and uniform regimes established through the cooperation between the nations which is an inevitable requirement in the globalised world. Individual remains on mercy of the State to which they migrate or take refuge so determination and integration must be on the basis of legitimate, transparent and criterion based on common good which would in long way further the interests of migrants and refugees and social justice.

INTRODUCTION

In the absence of an actual 'Global State' or 'World State' the issues faced/emerged today due to the phenomena of globalisation, are diversified. One is inclined to develop a visionary or illusory world/global scenario perspective to recognize and address those issues on the essential points of uniformity of ideas representing their character. It involves the globalisation of issues which prior were state issues. In other words, it involves extension of the concepts which prior had state character and now have travelled to global stage. The fact that new issues has also emerged in connection with globalisation due to own peculiarities of the phenomenon, cannot also be denied.

Global Justice is one such concept which centres itself on all forms of justice which may be required or expected in a globalised world. The refugee and migrants are at the stage of practical aspect of globalization i.e. one of the visible impact of globalization whereby the goal required is the integration or assimilation which stays at fragile end due to State sovereignty, nationality and other exhortations relating to State character. Refugees are people who flee their country of origin to other nations due to fear of persecution in their own country and fear that state is unable, unwilling to protect or they are not willing to return either under the security of state of origin.¹ Migrants are people who migrate from their own country to other countries in better job prospects, better life prospects, ethnic conflicts etc (global context). In the age of globalisation this is bound to increase and nations need to prepare themselves to pay a global response to address this increase and to facilitate the course of justice to migrants and refugees and not to see it as a prima facie threat to sovereignty.

¹ Article 1, UN Convention on Refugees, 1951

SOCIAL JUSTICE FOR MIGRANTS AND REFUGEES

“If you wish peace, care for justice,’ averred ancient wisdom; and unlike knowledge, wisdom does not age. Absence of justice is barring the road to peace today as it did two millennia ago.”²

-Zygmunt Bauman, *Liquid Times Living in an Age of Uncertainty*

Statement of Bauman very aptly captures the idea of world peace as a phenomenon more interconnected in the age of globalisation. Migrants and refugees face issues relating to justice and access to justice and more particularly in their case it can be directed towards social justice as for the integration is one of the major issue faced by them when they reach to the other territories. Poor wages, less or absence of social security, lack of (equal) opportunities in the new place, absence of rights (and status) that they are provided in the native country, racism, xenophobia, difficulties to integrate (another face of migration is forced migration as well), delays in determination of status(refugees) and restrictions on migrants through various policies of the host state.

John Rawls too was cognizant about complexities of defining social justice (a universal theory of social justice has not yet been developed but ingredients of the concept have been projected in the international human rights documents and constitutions³) has laid down a general theory of justice which lays two principles; principle of equal liberty and difference principle⁴. Rawls provides a procedural model and signifies the role of individuals as rational-moral agents besides giving importance to just institutional procedures⁵ though sufficiency of the Theory of Rawls stands mileage in the globalising world when second principle is looked under microscope and practical and procedural justice is endeavoured to be ensured through that.

The theory and philosophy of social justice is basically derived from the primal ideas of the French Revolution of liberty, equality and fraternity. These three ideas are inseparable whole and constitute the idea of “social justice”⁶. In the absence of global state to ensure such justice to the migrants and refugees would be possible only through the cooperation of the states and international organisations. Contemporary neo-liberal theories of social justice may be classified as individualistic(Herbert Spencer, F.A. Hayek), communitarian(Michael Walzer, Joseph Raz), procedural (John Rawls) and substantive(Ronald Dworkin)⁷. Overview of these theories of social justice provides that a just society promotes two kinds of freedom; negative and positive⁸. Maggie O’Neill⁹ suggests that for the holistic understanding of the social justice it includes distributive, cultural and associational justice¹⁰.By distributive

² Zygmunt Bauman, *Liquid Times Living in an Age of Uncertainty* (Polity Press, 2007) p.5

³P.G. Jogdand, Prashant P. Bansode, N.G. Meshram, *Globalization and Social Justice: Perspectives, Challenges, and Praxis* (Rawat Publications, 2008) pp.106-107

⁴id. pp.28-29

⁵id. p.29

⁶id. p.163

⁷id. pp.164-171

⁸id. p.170

⁹ Maggie O’Neill, *Asylum, Migration And Community* (Policy Press 2010) p.57

¹⁰id. p.58

justice it means absence of exploitation, economic marginalisation and deprivation¹¹. Cultural justice can be defined as the absence of cultural domination, non-recognition and disrespect.¹² Associational justice can be understood as the absence of patterns of association amongst individuals and amongst groups which prevent some people from participating fully in decisions which affect the conditions within which they live and act.¹³

She observes the future areas of social justice shall focus on:

*“ accept the impact of migration, both forced and free, and the emergence of transnational communities and identities; build decent institutions based on justice, equality and global citizenship; develop interventions based on holistic concepts of social justice that will address humiliation, mis-recognition and ‘othering’ ”*¹⁴

GRANT OF STATUS TO REFUGEES AND SOVEREIGNTY

One of the main issue with the universal application of the refugee jurisprudence is that, though UN Convention on Refugees recognises the definition of ‘refugee’ but states have always defended for the individual sovereignty to escape their responsibility and they seek resort for their deportation or refoulement in the name of public order and security¹⁵. The protection which is offered to the refugees is on the basis which is temporary and rests on the expectation that eventually they will return to their respective country of origin. In this respect, the refugee jurisprudence impinges upon performing a legalisation of “surrogate” function for the countries of asylum and the protection which may be offered by them for the persons fleeing and migrating from their countries of origin for some obvious reasons. In this context, the people who are facing even horrific risks but it can be presumed that they can avail meaningful protection from their respective governments through the means of internal displacement or a refugee camp set up in the regional periphery are deemed to be having non-eligibility for the grant of refugee status as has been laid down in the Convention.

Refugees modify the sovereignty of the state to which they enter at least to the time they are not determined to the status of refugee. Protection to refugees are available in the form of various international instruments i.e. UN Convention Relating to the Status of Refugees 1951 and the Protocol 1967 which is also known as Geneva Convention. State obligations to protect individuals do not end with the Geneva Convention. Further, Article 7 of the UN International Covenant on Civil and Political Rights 1966(ICCPR) prohibits torture, inhuman or degrading treatment (including return to it). Article 3 of the UN Convention against Torture Inhuman and Degrading Treatment or Punishment 1984 (UN Convention against Torture) prohibits return of a person to a country where he or she is likely to be subjected to torture.

Article 3 of UN Convention against Torture does not provide to State the card of public order or security to refuse responsibility for determination of claim of a refugee where claim is

¹¹ id.

¹² id.

¹³ id.

¹⁴ id. p.60

¹⁵ James C. Simeon, *Critical Issues In International Refugee Law* (2010) pp.174-175

based on fear of torture¹⁶ even though refugees remain at whims of the state till the determination of status. They face myriad of problems due to the same i.e. unhygienic conditions in refugee camps, temporary camps, non-availability of potable drinking water, sanitary conditions, food, limited mobility in and around the camp area, healthcare reach, weather conditions etc. In absence of complete/valid documents of birth, identity etc they face excruciating conditions to which the suspicion of authorities adds more. They have to rely completely on the state aid of the host state and some NGOs only.

States see refugees with an eye of suspicion and fear them as security risks and in that line question their identity. In fact, not having your papers in order, being undocumented, sans papiers, is a form of social death¹⁷. States retain the determination procedure in their own hands and thereby the purpose of the Geneva Convention falls short to be achieved and variations in determination procedure (i.e. time taken by the courts of the country etc, cumbersome procedures) and asymmetrical sovereignty¹⁸ serves no good to the refugees. The fact here is that refugees have an oblique right to stay on the territory of the host country until the determination of claim/status of being a refugee in accordance with the International Conventions. They can be referred to as 'invisible individuals in a visible state'¹⁹ until their status is determined as they are in search for identity and protection in the new state and many considerations surface including the right of self-determination, human rights, socio economic and political justice.

The existing protection regime for the refugees has not worked to its efficient realisation as to its purpose because of "substantial differences in recognition rates of refugees with the same nationality and circumstances in different host states."²⁰ This has happened due to the fact that "the definition of an international refugee regime sorely lacks the critical component of national or domestic jurisprudence, as well as local and regional realities that determine the outcome of the applications of refugee jurisprudence"²¹.

Issue of human rights or treatment of refugees in accordance with their human identity has posed some theoretical divergence on the point whether refugee status shall stand which poses many challenges to the refugees. In the words of Hannah Arendt

*"The very phrase 'human rights' became for all concerned – victims, perpetrators, and onlookers alike – the evidence of hopeless idealism or fumbling feeble-minded hypocrisy"*²².

Further she holds that "[H]uman dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities"²³. "For Hathaway, refugee law is 'a direct challenge to

¹⁶ James C. Simeon, *Critical Issues In International Refugee Law* (2010) p.123

¹⁷ Maggie O'Neill, *Asylum, Migration And Community* (Policy Press 2010) p.56

¹⁸ States bow to the superior sovereignty claims of stronger state power. Cases like *Agiza v. Sweden* (UNCAT) and *Alzery v. Sweden* (UNHRC) are such examples where Sweden sent back the asylum seekers to their country of origin on the assurance of their security without determining the probable threat of torture after they are deported back to the native country.

¹⁹ James C Simeon, *Critical Issues In International Refugee Law* (2010).

²⁰ *id.* p. 121; 'The speed with which the applications are dealt with is also a matter of national sovereignty. Whether a state takes years to determine a claim or a few hours is a matter for their authorities'.

²¹ *id.* p.180

²² Satvinder S Juss and Colin Harvey, *Contemporary Issues In Refugee Law* (Edward Elgar 2013).

²³ *id.*

migration-based thinking' and 'refugee status amounts to a trump card which is held not by states, but by real, live human beings'.²⁴ Human rights telescope also involves the refugee regime within it and sides cannot be taken absolutely as the development of refugee regime for the efficient addressing of the issues that refugees face in determination of their status shall bring about the humanitarian considerations.

James C. Simeon investigates the possibility of accountability regime²⁵ in refugee regime as fragmented nature of determination of status and attitudes of states towards sovereignty due to "the increasing diversity of secondary rules and variant interpretations and readings of primary rules of international law"²⁶ and upholds the importance of secondary rules. He observes:

*"What needs to be added to this framework is the possible fruitful results of the intersection amongst different international accountability regimes, such as the refugee regime, human rights regime and humanitarian law regime."*²⁷

MIGRANTS' ISSUES IN GLOBALISED WORLD

Number of world migrants have grown more rapidly than the population of the world and accounted for 3.3% of the world population²⁸ in 2015 amounting to 244 million. Migrants are a population which is beneficial and adversary for both, host country as well as country of origin²⁹. For example, native countries suffer brain drain, loss of revenue from taxed wages, services (health) get affected, economic activity can become depressed but at the same time they receive remittances (though it triggers 'cumulative causation' for others to migrate) and in host countries benefits served are cheap labour, health care, number of workers per individual on the point of social security, immigrants also need housing, transportation, food, and so forth, the number of jobs expands and on the other hand lowering of wages in some sectors, pressure on the host country. People migrate for two major reasons; government failure to provide conducive factors for decent lives and extent of poverty in their countries which also has effects on those who do not leave or not have a capacity to migrate. Governments spent large sums of money to keep migrants away from their territory than would be required for welfare entitlements³⁰. Brock³¹, examines the various options in which

²⁴id. p.75

²⁵James C Simeon, *Critical Issues In International Refugee Law* (2010). Pp.209-210; "without the intervention and balancing effects of a multitude of accountability regimes coming into the aid of international refugee law, 1951 Convention and its additional protocols and treaties alone could not lead to a genuine exercise of systematic protection for those who suffer from the excesses of the nation state in the post Westphalian international order."

²⁶id. p.207

²⁷id. pp. 207-08

²⁸*International Migration Report 2015* (2015) <<https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015.pdf>> accessed 27 March 2019.

²⁹ Gillian Brock, *GLOBAL JUSTICE A Cosmopolitan Account* (Oxford University Press 2009) pp.190-219

³⁰Gillian Brock, *GLOBAL JUSTICE A Cosmopolitan Account* (Oxford University Press 2009) p.195

³¹id. "stay with the status quo, increase the number of people who may be permitted as potential citizens, decrease the number of people who may be permitted as potential citizens, stay with the current status quo for admitting potential citizens, but permit more migrants for work purposes or consider the potential for 'win-win' possibilities that benefit home and host countries, immigrants and locals."

migration opportunities are to be regulated or imbibed for the benefit of both the host as well as native country of migrants. He suggests creative possibilities through exploration of 'win-win' situations for both host country and country of origin like term limits for the migrants or policies of the host countries to not work permit until the migrant has served for a prescribed period in the country of origin, limit on number of workers that developed country can recruit, compensation to developing countries equal to five times the cost to train a worker in developing country, recruitment of emigrants by developed and when once trained to send back and teach the skill in their country of origin, shifting of migrants in the parts which require more development and locals would be benefitted through providing services etc and would lead to establishment of institutions and infrastructure there which would be a maintained interdependence and growth scenario³².

INDIAN SCENARIO: ROHINGYAS, NRC AND GOVERNMENT'S RESPONSE

India has not signed the UN Refugee Convention of 1951 or the Protocol of 1967, which provides for the protection of refugee rights. A national framework for protection of refugees is missing even though it has given asylum to a good number of refugees and continues to do so in case of refugees from the neighbour countries by respecting mandate of UNHCR for other nationals mainly from Afghanistan and Myanmar.³³

National Register of Citizens (NRC) is one such exercise to detect illegal migrants and prepare a draft of information of Indian Citizens. Government is ready to place the Citizenship Amendment Bill³⁴ amending the Citizenship Act, 1955 before the Parliament after the nod from the Cabinet which provides for the inclusion of minorities i.e. Hindus, Sikhs, Buddhists, Christians, Jains and Parsis for citizenship fleeing as illegal migrants from Afghanistan, Bangladesh and Pakistan. Though the amendment which is proposed does not recognise persecuted sects within Islam as religious minorities on the account of threat to national security, the same argument was taken in case of Rohingya Muslims fleeing persecution and ethnic violence from Myanmar. Supreme Court is going to hear PIL regarding the deportation of Bangladeshi immigrants and Rohingyas in coming weeks.³⁵ It would be an observing point to see what the Apex Court notes and gives decision on.

Government continues to plead for the arguments like threat to national security, snatching of bread and butter of Indian Citizens by the immigrants who enter the labour force, organised influx through touts and change in demographic structure of bordering districts by the migrants from Myanmar and Bangladesh etc. Though the concerns may have weightage but the point here which is highlighted in open is that the absence of cooperation and coordination among the nations, balancing of national and political interests and requirement

³²id. pp.190-219

³³G Seetharaman, 'NRC Row: Where Does India Stand on Refugees? - The Economic Times' (2018) <<https://economictimes.indiatimes.com/news/politics-and-nation/nrc-row-where-does-india-stand-on-refugees/articleshow/66102150.cms?from=mdr>> accessed 6 December 2019.

³⁴Poulomi Saha, 'Cabinet Clears Citizenship Amendment Bill, Govt Gears up for Crucial Parliament Test' (2019) <<https://www.indiatoday.in/india/story/cabinet-clears-citizenship-amendment-bill-govt-gears-up-for-crucial-parliament-test-1624973-2019-12-04>> accessed 6 December 2019.

³⁵SC Agrees to Hear PIL Seeking Deportation of Rohingyas, Bangladeshi Immigrants in Four Weeks' (2019) <<https://www.indiatoday.in/india/story/sc-agrees-to-hear-pil-seeking-deportation-of-rohingyas-bangladeshi-immigrants-in-four-weeks-1621130-2019-11-21>> accessed 6 December 2019.

of a uniform application of refugee and immigrant jurisprudence weakens the goal of global justice for the citizens of the world. A suggestion on the point of forced repatriation of immigrants and refugees is that governments should cooperate with the use of good office for a dialogue which ensures the security and freedom of such individuals in the country they have flown from.³⁶ Elements of human rights and social justice converge on many points when it comes to the globalised world where no personalised or nationalistic notions of justice can be observed with ease. So, in a global inevitable world in today's age it is not an exaggeration to call global rights as human rights or vice versa. What it needs is the cooperation and coordination of the nations of the world in dealings with one another and among them so as the rights of an individual are not denied for a human existence.

CONCLUSION

The sovereignty concerns of states mar this proposition to be termed in reality though the prospective cooperation would result in world peace. State sovereignty and security shall be respected but it should not come in way of a globalized human to get his own due in the age of cosmopolitanism. Justice in the age of globalization should also move with the person which may be said as an ideal goal of the phenomenon itself. Further, the major cause for migration lies in the State of origin itself so the root causes that why people feel they have to leave to be examined in order to have better lives and addressed after considering all strategies would be a greater achievement. Lifting import restrictions and resolving trade related issues after investigating more favourable terms of trade for poor countries would also be diligent steps to move forward.

Further, Countries of the world should come forward to draft a sanction mechanism where the violence and persecution is state sponsored or where the state is incapable to provide protection. In the absence of a global state which is not likely to happen soon in reality, the states should work in cooperation in such a manner that the justice is ensured to a citizen of the world where the flux of people is encouraged to go global where the national interest and global interest is balanced by trying to not at all infringe the basic social rights to live a human life on the planet.

³⁶Mudasir Amin, “‘Nobody’s Children, Owners of Nothing’”: Analysing the Indian State’s Policy Response to the Rohingya Refugee Crisis’ (2018) <www.thehinducentre.com/publications/policy-report/> accessed 6 December 2019.