Kashmir Refugees? An analysis

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Abstract: In this research paper we will try to find out the problems which are faced by the Kashmir migrants because the Kashmir Refugee problem which has become a permanent feature in United Nations, which we can not deny it. These refugees have existed throughout the world record history and probably since the creation of Pakistan. If we will go through in the history of refugees before the existence of nation states, religious faith or a sense of common experience gave new birth to concepts of, Christian refugee, Islamic sanctuary and African brotherhood. Temples, Pagodas, Churches some times entire free cities represented potential heavens for the refugees all over the world. It is believed that the refugees in general are the victim of persecution and violence, they are threatened and they need help and protection, they are the peoples just like us, but they had lost their homes, jobs and community, perhaps family members and as friends. Refugees are ordinary peoples who have suffered in coordinate and who often have non one to whom they can return. Most refugees leave their home countries only under the duress and they return to their homes as soon as circumstances permit them. In this paper an attempt has been made to examine that those who are displaced from Jammu and Kashmir and now living in other places of the world whether they are legally or under UN charter come under the status of refugees or not?

Key words:

INTRODUCTION

Kashmir problem is an old as the United Nation itself, though the United Nation have given the right of self determination to Kashmiri people, but India denied the truth and Indian army compelled the Kashmiri’s to leave their home and land. By this Kashmiri people left the valley. Indian troops are doing every wrong activities against Human Rights against Kashmiri peoples in Kashmir. When Kashmiri forced to leave their homes, they face many social and economic problems in Refugees camps, many among them are living in worst conditions and even some have fled away to abroad to get shelter.

Different Definitions Regarding Refugee:

There are many definition regarding the term, some of them are:

a. “One who flees for refugee to another country, from religious or political persecution is called the refugee.” (Davidson, 1903)

b. “A person who for objective or subjective reasons, have to leave their country or are expatriated by force can called the refugee.” (smanczyb, 1985)

c. “Person who flees from his country of residence because of the fear of persecution on rational, religious or political ground or because of hardship brought about the natural disaster or famine in international law, the conduct of states towards status of refugees1951.” (Harrap)

d. “One who owing to well founded fear of being persecuted for reasons of race, religion, nationality, memberships of particular social groups or political opinion is out side the country of his or her nationality an is unable or owing to such fear is unwilling to avail himself / herself of the protection of that country, or who, not having a nationality and being out side that country of his/ her former habitual
residence as a result of such event is unable or owing to such fear is unwilling to return to it. “ (Curzon 1998)

e. “Person compelled to seek asylum abroad owing to well-founded fear being persecuted.” (Boeles 1996)

f. “Any one who fulfills the definition is there by automatically a refugee recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is a recognized because he is a refugee.” (Boeles 1996a)

g. “A refugee may not in any manner what so every be expelled or returned (refold) to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of particular social group or political opinion.” (Boeles 1996b)

h. “The term refugee and displaced person are often used erroneously as synonyms, but where refugees refer to a well defined status displaced person is a broad popular term for all those driven from their homeland by war or tyranny and frequently including person is a broad popular term for all those driven from their homeland by war or tyranny and frequently including persons displaced with in their home country as well.” (Encyclopedia Americana)

i. “Person who has been forced to leave his country, or home etc and seek refuge from political or religious precaution”. (UNHCR b)

j. “Refugee are people who have fled their countries because of well founded fear of persecution for reasons of their race, religion, nationality, political opinion or membership in a particular social group and who can not or do not want to return”. (Hussain 1988)

Basic Characteristics for Refugee:

According to these characteristics refugees are those persons who:
- They are outside the country of their former native residence.
- They are unable or unwilling to avail themselves of the protection of that land or return to it.
- That impossibility or unwillingness is due to well founded fear of persecution.
- The persecution they fear is based on race, religion, nationality, membership of particular social group or political opinion. (UNHCR)

Concept or Perception of Refugees in Islam:

Being the Muslims it is our Islamic duty to help Refugees, there are many verses in Holy Quran which applies on refugees, for example, “Sarah Anfaat” (the spoil of war) in the verse 74 in which Allah says:

“Those who believe
And fight for the faith
In the cause of God (Allah)
As well as those
Who gave (them) Asylum
And aid these are (all)
In very truth the Believers
For them in the forgiveness
For them in the forgiveness
Of sin and a provision
Most generous.” (Hussain 1988a)

Another example can also be quoted that, after the arrival of Muhajreen in Medina Prophet Mohammad (peace be upon him) assembled them along with the Ansar, addressing the Ansar said “They (Muhajreen) are your brotheren.” (Hussain 1988b)

Through the above given example we can easily understand that what Holy Quraan says about the position of refugees in Islam.

Losing the Status of the Refugee:

If we will analyze we could find out that how a refugee can lost his status of refugee, he or she can lose the status in following ways:
- if he or she has committed a crime against peace, a war crime or a crime against humanity, as defined in International instruments drawn up to make provision in respect of such crime.
- if he/she has committed a serious non-political crime out side the country of refugee prior to his or her admission to that country as a refugee.
If he/she has been guilty of the United Nations. (Hussain 1988c)
If he or she voluntarily goes back to his or her own country, or if the condition, which had led him to seek exile in another country have ceased to exit.
But the “1951 Convention” and “Addis Ababa Convention” prescribe some other conditions on the account of which a refugee loses his or her status. (Hussain 1988d)

**Definitional problem with Kashmir Refugees:**

If we carefully go through the different definitions regarding the term refugee, then we can easily understand the legal position of Kashmir refugees, which is clearly mentioned in UN charter. If we go through the articles of “Convention of 1951 and Protocol 1967” suggested by International Law regarding the refugees, Kashmiri did not fulfill the conditions of refugees because they have not crossed any International border.

Articles of Conventions and Protocol say that those who cross the International border can be called refugees but Kashmiri did not cross the International border they only cross the LOC, which is not permanent border, so according to the articles of Convention, Kashmiri people can not be given the status of refugees and if we examine the basic characteristics regarding the status of refugees they say that the refugees or out side they country of their nationality. Which means term refugee is not fit for the Kashmiri peoples according to International Law. So they failed to get the status of refugees.

On other hand United Nations and International Agreements are also very much clear about the term Refugee, which clearly mentioned that one who crosses the International border is called refugee. In this regard, Kashmiri can not be given the status of Refugee because they did not cross the International Border.

UNHCR, which is the only International organization which helps the refugees, also denies and is of opinion that Kashmiri refugees can not be called the refugees because they only cross the LOC between India and Pakistan which is not permanent international border.

One can argue that Kashmir is disputed territory between India and Pakistan since 1947 and it is still unsolved problem, though United Nations had passed two resolutions, one in 1948 and other in 1949, according to which Kashmir is the bone of contention between India and Pakistan, one war had also fought on Kashmir problem in the year 1948 and from that day, a cease fire line has been drawn by United Nations between India and Pakistan which is also called is line of control (LOC), which is not recognized as the permanent border line by India, Pakistan and United Nations.

In this connection UNHCR’s position is very clear on the Question of Kashmiri Immigrates? Not only these but 1951 convention on Refugees and 1967 protocol which were specially made for the status of refugee and the convention in 1969 which was named as “the 1969 Convention of Organization of African Unity (OAU)”, all are disagree regarding the status of Kashmiri refugees because they are not fit according to these conventions and protocols.

In this context when we are not agree that Kashmir is an integral part of India then in which senecese we recognize the Kashmiri’s as Indian National, it is believed by the whole world that Kashmir is disputed territory between India and Pakistan and the line between India and Pakistan is not a permanent line but it recognized only as a Line Of Control (LOC) so in this convention Kashmir can not be recognized as the refugees. These definitional problems will remain there till the Kashmir problem is solved.

**Conclusion:**

It surely argued that Kashmiri are not refugees legally. Every definition disagrees with the position of Kashmiri’s as refugees. It proves that refugees are those who cross the international border, but with regard to Kashmiri, they have not crossed international border, but they have just cross line of control (LOC).

Difference between international border and line of control (LOC) is that former is recognized one, while, later is not so recognized and it is just ordinary lines but not permanent international is border. Different definitions of different books and the declaration of United Nations say that Kashmiri are not refugees, because they do not cross international border.

One argument that would help us in understanding, either Kashmiri are refugees or not. For except refugees are helped by UN and other countries and they need look after, but, so far as Kashmiri are concerned, they have not been extended any help and they have not been looked after. United Nations too does not care to Kashmiri, and she does not treat Kashmiris as refugees, as Afghan refugees are treated. So we can surely say that Kashmiri are not refugees in accordance with the definitions. The United Nations High Commissioner for refugees, which was specially brought in to for this purpose, but this has also not recognize Kashmir’s as refugees legally. So we may say that Kashmiri are not legally refugees according to any of the definition.
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