

OVERVIEW OF REFUGEE/ASYLUM SEEKER SCENARIO IN MIZORAM

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Apology:

Whilst the topic which is assigned to me is '*Overview of Refugee/Asylum Seeker Scenario in Mizoram*' and although I was spared enough time to prepare the paper, during my research and preparation of the paper, I had failed to see the scenario of Refugee/Asylum seeker in Mizoram, there is also no official records at the Government level as well as no clues were found. In short, my endeavour for the topic is *non-est*. I may at least divert the paper which appears relevant in the context of Mizoram as under-

Meaning and Concept:

An **asylum seeker** is a person who has fled their own country and applies to the government of another country for protection as a refugee.

According to the '*United Nations Convention and Protocol relating to the status of Refugees, 28 July 1951*' entered into force on 22 April 1954 (In short-the Refugee Convention), a **refugee** is a person who is outside their own country and is unable or unwilling to return due to a well-founded fear of being persecuted because of their:

- race
- religion
- nationality
- membership of a particular social group
- political opinion.

The term 'asylum seekers' refers to all people who apply for refugee protection, whether or not they are officially determined to be refugees.

The terms asylum-seeker and refugee are often confused: an asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated.

Distinction between refugee and other foreigners:

While all persons who are not Indian citizens are 'Foreigners' including refugees, it is necessary to clearly distinguish the latter from other categories of 'foreigners'. There are considerable misgivings in the minds of many in India because of the failure to clearly understand the difference between 'refugees' and various 'other categories of foreigners'. The consequence of this misunderstanding, particularly because of the large number of 'illegal immigrants' from Bangladesh who have spread into different parts of India, has tended to adversely influence the thinking of many in the country about the basic issues involved in the problem of 'refugees'. Unless the distinction between the 'refugees' on the one hand and all other categories of 'foreigners' on the other, is clearly brought home, our attempts to sensitise people in the various strata of our society will remain inadequate.

There are at least three well-defined groups of foreigners who are different from 'refugees'. It is important that the distinction among them is clearly understood and none of them is confused with or mistaken for a 'refugee'. These categories are: (i) Temporary Residents, Tourists and Travellers

(ii) Illegal Economic Migrants (iii) Criminals, Spies, Infiltrators, Militants etc (iv) Internally Displaced Persons (IDP)

(i) Temporary Residents, Tourists and Travellers

Persons under this category come to India for a specific purpose and duration with the prior permission of the Government of India. However, in certain circumstances any one in this category could become eligible for being a refugee, if, during their sojourn in India, the situation in their country of origin becomes such as to endanger their lives and liberty if they were to return to their country. Many Iranians who had come to India for studies during the regime of the Shah of Iran, have stayed back in India as refugees after the fall of Shah of Iran and a revolutionary government took his place in 1978. It should be mentioned that no one can automatically claim the right for 'refugee status' under this category. It is the prerogative of the Indian government to satisfy themselves and decide each case according to merits and circumstances.

(ii) Illegal Economic Migrants

Any foreigner who might have left his or her country of origin without due authorisation from the authorities concerned, both in the country of origin as well as the country of destination, solely to improve his or her economic prospects, is *not a refugee*. After all, there is no element of persecution or coercion compelling the individual to leave the country of origin. Illegal migrants from Bangladesh are examples of this category. Such persons have to be treated as illegal and unauthorised entrants into the country and dealt with under the appropriate laws applicable to foreigners like Foreigners Act, Indian Passport Act etc. besides the IPC, Cr. PC etc.

(iii) Criminals, Spies, Infiltrators, Militants etc

None of these can ever become eligible to be refugees. They have to be dealt with under the provisions of the Indian criminal laws as well as any other special laws in force even though some of them may be in possession of valid travel documents.

(iv) Internally Displaced Persons (IDP)

Those persons who are fleeing persecution and human rights violations from one region of the country and have sought refuge in another region of the same country, fall under this category. Such persons cannot be categorised as 'refugees' as they have not crossed any international border. Moreover, they have the protection of their national government. These persons are categorised as 'internally displaced persons' (IDP)¹. Kashmiris who have been forced to flee from Jammu and Kashmir and who have settled in other parts of India fall under this category. Incidentally, in many African countries, the IDPs are also treated as 'refugees' within the ambit of the 1951 Convention.

A case study of Myanmar:

In accordance with "*Report Refugee Populations in India, Nov., 2007*" published by the Human Rights Law Network, Burma gained independence from Great Britain in 1948. Following the 1962 coup d'état, the leadership shifted from democracy to a military junta, the fore-runner of the current ruling regime; the State Peace and Development Council (SPDC). In 1990, despite multi-party legislative elections that resulted in the main opposition party, the National League for Democracy (NLD), winning a landslide victory, the SPDC refused to hand over power. The leader of the NLD was Aung San

Suu Kyi. There remains unsolved political chaos in the whole terrain. Various groups entered into Mizoram from Myanmar are as follows-

The *Mizo Group* migrated back to Mizoram by various circumstances but who already obtained 'National Registration Card' in Myanmar as per the "Ma Ma Operation" 6th April, 1963 known as "Myanmar Taingzinta Lusei" (Lusei of Myanmar).²

The *Chin Group* are the original citizens of Myanmar and chiefly found in the Chin Hills of Myanmar, they are formed chiefly by the two major tribes of Paihte or Zomi and Pawi or Lai, these peoples entered into Mizoram under various circumstances...²

The intact *Myanmar Group* due to political turmoil in Myanmar like famous 8.8.1988 mass uprising also entered into Mizoram.² In 1988, the Burmese government began suppressing the pro-democracy movement forcing 3,000 refugees to cross the border into India. The increased militarization under the SPDC and its effects continue to cause flight from Burma, especially in the western region. Torture, disappearances, forced labour, rape and extra-judicial killings are among the human rights abuses perpetrated by the military junta against its perceived opponents. Ethnic and religious persecution of the minorities, in particular the Chin Christians in the Chin state.

According to Mr. F. Lalremsiama, ethnologically, the tribes of the Chin Hills of Burma and Mizoram and southern Manipur of India are all related. Though a particular tribe could claim majority in their territory, a fair amount of other tribes would also reside in their midst. Such was the case in terms of ethnic distribution even before each tribe had been confined within a particular area.³

Their legal status

Most of Burmese enter India from the northeast and very few asylum seekers who travel to Delhi are recognized as refugees by the United Nations High Commissioner for Refugees (UNHCR). The UNHCR in Delhi assists about 2,000 Burmese refugees, the majority of whom are from Chin state. The organization provides the more vulnerable individuals with a small monthly stipend, which is often not enough to cover basic necessities.

In addition to the Burmese who are recognised refugees by the UNHCR, there are also a large number of Burmese asylum seekers living in India. The majority live in Mizoram in northeast India; they belong to the same ethnic group and find integration easier. Employment opportunities are also better there.

A case study of Chakma:

The Chakmas now inhabiting three countries viz. Bangladesh, Myanmar and India. In Myanmar and Bangladesh they are domiciled citizens, whereas in India almost thirty percent of them constitute refugees and illegal immigrants.⁴ According to the 1901 Census, the total population of Chakma in Mizoram was 128 and in accordance with the 1971 Census, they were 22393.

As per the *Order No. 5 of 1954* issued by Mr. K.G.R. Iyer, the then Deputy Commissioner of Lushai Hills under Memo No. GP/21/54/52, Dated Aizawl, the 2nd July, 1954, it was directed to all chiefs and headmen in the Lushai Hills District that no influx of Chakmas and Tripuras will be allowed without the prior permission in writing of the Deputy Commissioner, Lushai Hills. Howsoever, with effect from 29-04-1972, the new Chakma District (Chakma Autonomous District Council) is formed in the southern part of

Mizoram under the Sixth Schedule to the Constitution of India as per the *Mizoram District Councils (Miscellaneous Provisions) Order, 1972 Dt. 5-5-1972*.

Evidence required to establish a refugee claim:

The heart of the refugee determination process is the careful consideration of the claimant's own evidence, whether provided orally or in documentary form. It is ideally required that all claimants for refugee status receive an opportunity to be heard by the authority responsible for the adjudication of their case. All the materials thus collected and collated are then tallied with independent, internationally acknowledged information available on the region from which the claimant has arrived. In possible circumstances and cases, the information thus obtained is also reconfirmed from the United Nations High Commissioner for Refugees (UNHCR) office in the country of origin.

Along with making claims for refugee status, refugees may also seek redressal of immediate basic problems facing them, such as food, shelter, legal aid etc. In regard to such matters the UNHCR plays a major role by providing in suitable and deserving cases, a "Subsistence Allowance" to destitute refugees and their dependents. The UNHCR also helps in enabling the refugee to find his own accommodation or to share a tenanted accommodation with another similarly placed refugee. When a refugee seeks legal aid for himself or for his dependent, the UNHCR may provide the assistance or recommend an Advocate who is familiar with handling refugee matters, to help sort out the problem faced by the refugee. In cases where the refugee is to be deported back to his country of origin, the UNHCR officials may request the Central Government to stall deportation proceedings, pending UNHCR attempts at resettlement of the refugee in a safe country. In order to make such resettlement possible, the UNHCR takes up such cases with the Embassies of other countries for grant of travel to and stay facilities in their countries.

Problems:

The law relating to foreigner is very stern and is a *sine quo non* to enforce strictly as follows-

- Indian Passport Act, 1920 (XXXIV of 1920)
- Passport (Entry into India) Rules, 1950
- Foreigners Act, 1946
- Foreigners Order, 1948
- The Foreigners (Report to Police) Order, 1971
- Repatriation of Prisoners Act, 2003 (49 of 2003)
- Repatriation of Prisoners Rule, 2004 etc.

Section 14 of the Foreigners Act, 1946 (As amended in 2004) reads as-

"14. Penalty for contravention of provisions of the Act, etc.-. *Whoever-*

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3,

his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

Explanation.-For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920).

14A. Penalty for entry in restricted areas, etc.-Whoever-

(a) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a permit from the authority, notified by the Central Government in the Official Gazette, for this purpose or remains in such area beyond the period specified in such permit for his stay; or

(b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof, shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

14B. Penalty for using forged passport.-Whoever knowingly uses a forged passport for entering into India or remains therein without the authority of law for the time being in force shall be punishable with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.

14C. Penalty for abetment.-Whoever abets any offence punishable under section 14 or section 14A or section 14B shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Explanation.-For the purposes of this section,-

(i) an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the offence;

(ii) the expression "abetment" shall have the same meaning as assigned to it under section 107 of the Indian Penal Code (45 of 1860)."

Conclusion:

As we all know that the Govt. of India is alarmed over the unchecked infiltration of Myanmar nationals, particularly Chins and Burmese Mizos, into Mizoram in search of jobs and to escape the junta. The Centre has relaxed the norms for the movement for Myanmar nationals up to a point in a radius of 16km from the international border with Mizoram to enable the people of both countries to trade in local produce, particularly food and eatables. If any Myanmar national intends to travel beyond the limit of 16km radius, he or she will have to obtain permission from New Delhi. In this task, the Superintendent of Police, CID, Govt. of Mizoram is appointed to act as the 'Foreigners' Registration Officer' to check the travel permits obtained by the nationals from the eastern neighbour. The influx of the Myanmar people

across the 404-km borders it shares with India is indeed an uphill task. It is also paradoxical that the Government of Mizoram is concerned that these illegal migrants were usually involved in drug peddling and prostitution and other criminal activities.

Reference:

1. Roberta Cohen and Francis Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, 1998); Wendy Davies, *Rights Have no Borders : Internal Displacement Worldwide* (Oslo, 1998).
2. “*The Coming and settlement of Myanmarese in Mizoram since the beginning of the Twentieth Century A.D to the present*” a Seminar paper presented by Dr. Sangkima on 25th April, 2002 at Synod Conference Hall, Aizawl organized by Mizo History Association
3. “*Impact of the Myanmarese Settlement on Mizoram*” a Seminar paper presented on 25th April, 2002 at Synod Conference Hall, Aizawl organized by Mizo History Association
4. “*The Coming and settlement of Chakmas in Mizoram*” a Seminar paper presented by Dr. F. Lianchhinga on 25th April, 2002 at Synod Conference Hall, Aizawl organized by Mizo History Association