

Statelessness : A Study of Chakma Refugees of Arunachal Pradesh

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Abstract

The word statelessness has long been recognized as an important problem in international law. Nowhere is the problem of statelessness more acute than in South East Asia. The Sri Lankans, Tibetan, Afghani etc. in India, Burmese in Thailand and in Bangladesh, Vietnamese refugees in Cambodia and many ethnic Chinese in all parts of South East Asia are currently stateless and thus specially vulnerable the same type of human rights abuses as those suffered by the Chakmas of Arunachal Pradesh. The Chakmas are the victims of the partition of the country. They were displaced from their original homeland and migrated to Northeast India. They were rehabilitated in NEFA by the Government of India but still fighting for citizenship status. The present paper examines the statelessness of the Chakmas of North East India, especially in Arunachal Pradesh. It tries to analyze the origin of the problem of migration of the Chakmas from Chittagong Hill Tracts (CHT) of erstwhile East Pakistan to Mizoram and Tripura and their rehabilitation in NEFA (now Arunachal Pradesh). It examines the causes of reactions from the Arunachali indigenous tribes, the All Arunachal Pradesh Students Union and from the State Government. The paper concludes with a study of the role of the Chakma organizations, the Union Government and the Supreme Court in the fight for Indian citizenship status of the Chakmas.

Keywords: statelessness, displacement, migration, refugee, rehabilitation

Introduction

Migration, refugees, rehabilitation and statelessness are the words which were widely used in international spheres during the Second World War. Since then, the displacement of people and communities has been one of the challenges faced by stateless people in different parts of the world. It obviously renders people homeless, making them deprived of their places of abode. In the Indian Sub-continent, several thousand of people have been affected by displacement and living a stateless refugee life after the partition of the Sub-continent. At the time of partition of the country, the Northeast of India was territorially organized in such a manner that ethnic and cultural specificities were ignored during the process of delineation of state boundaries, giving rise to discontentment and assertion of one's identity. The region has experienced massive displacement, migration and refugee problems causing statelessness in the wake of independence.

Methodology

The present study adopts multi- method approaches of research, which include historical and descriptive. The primary sources include the firsthand information from the Chakma informant and extensive field work. The secondary sources such as relevant books, journals, periodicals and various websites have also been used in the study.

Objectives

1. To study the process of migration and rehabilitation of Chakmas in NEFA.
2. To assess the extent of opposition of the Chakmas by the local Arunachali Tribes, Students Organization, and the state Governments.

3. To know the present role of the Chakma organizations, Union Government and the Supreme Court of India on the issue.

Concept of Statelessness

In general, a person is referred to as a stateless person when he does not possess the nationality of any state. All individuals who have lost their original nationality without having acquired another are in fact, stateless persons. They do not possess or enjoy those rights which are conferred to a person by international law. A stateless person is not even essentially recognized with a refugee status. In order to shield a person from becoming stateless, a few attempts have been made. The first of such an attempt was the Convention on the Conflict of Nationality Laws, 1930. It tried to frame legal provisions for the Contracting States to accord nationality to a person born in their territory who would otherwise be stateless. The provision could not prove effective to solve the problem of statelessness.

However, considering the gravity of the problem of statelessness, the Universal Declaration of Human Rights, 1948 provided under Article 15 that each person is entitled to have nationality, and which cannot be taken or snatched arbitrarily. Subsequently, two more conventions relating to the status of stateless persons was adopted. The first Conference was convened in 1954 by the Economic and Social Council to regulate and improve the status of stateless persons. The Convention defined the term "stateless" person as a person who is not considered as a national under the operation of its law. It gave such a person judicial status but no provision was made to reduce or eliminate statelessness. The second conference was held in 1961 and it adopted a convention on the Reduction of

Statelessness. More importantly, the convention classifies the ways in which a person who would otherwise be stateless can acquire or retain nationality through an established link with a state by birth or descent.

In addition to these, in 1996 the UN General Assembly called on United Nations High Commissioner for Refugees (UNHCR) to encourage agreement to the two international conventions on statelessness and to assist government with technical and legal advice on their nationality legislation. The efforts of the UNHCR were commendable in this regard. In fact, the UNHCR's association with stateless persons is founded on the well built links between statelessness and displacement of the persons. For example, (a) Displacement can be the reason of statelessness; (b) Displacement can be a corollary of statelessness ;(c) Statelessness can be a barrier to the decree of refugee problem.

Despite of all these efforts, there are millions of stateless persons around the world. Ten million people worldwide have no nationality, leaving them in a legal limbo. This was stated by the UNHCR Chief Antonio Gutierrez launching a campaign "I Belong" to eradicate statelessness within a decade. He reported that, "every 10 minutes a new stateless person is born." describing the situation as "absolutely unacceptable and anomaly in the 21st century." It may be because the determination of nationality question is still within the competence of each state. The case of the Chakma refugees who are still living a stateless life in the state of Arunachal Pradesh may be cited here.

Displacement and Migration of Chakmas

The Chakmas of Arunachal Pradesh belong to a tribal group which has for centuries inhabited the CHT of Bangladesh (earlier East-Pakistan). The aboriginal dwelling place of the Chakma was found in CHT. Since the beginning of the 19th century, following natural calamities and socio-political disturbances the Chakmas were disintegrated and displaced from their original abode and started living a scattered refugee life in different parts of Assam, Tripura, and Mizoram and Arunachal Pradesh. After the partition of the country, the Chakmas who remained in East Pakistan (present Bangladesh) were displaced massively. The displacement was primarily due to the construction of the Kaptai hydroelectric project over the river Karnaphuli in 1962 with its funding from USAID (United States Agency for International Development). About 40 per cent of the best agricultural land of CHT was submerged owing to the commissioning of this dam. The project displaced about 100,000 indigenous people comprising about one-third of the total indigenous Chakma people who were forced to evacuate the designated area. Finding no shelter, the Chakmas along with other communities had left the

CHT of East Pakistan and took shelter in India as refugees.

Rehabilitation in NEFA

The Chakmas migrated in a hopeless and pathetic condition to the Mizo district of Assam and Tripura from the CHT of the erstwhile East Pakistan. According to the Government of India estimate, by the middle of 1964, at least 1, 40,000 persons including Chakmas and Hajongs consisting of 2902 families had migrated to Assam. The then Government of Assam expressed their inability to settle such a large number of migrants in the state and requested for their shifting to other places. Even the Government of Tripura did not encourage these displaced Chakmas to settle in the state despite requests from Chakma leaders. During that time, a suggestion was made that a substantial number of families could be accommodated in NEFA as "some surplus land was available there" and "NEFA agreed to accommodate some new migrants including the Chakmas and Hajongs under the already approved scheme" (CCRCAP, n. d.: 2).

But, the rehabilitation of the Chakma tribes in NEFA (now Arunachal Pradesh) has become a headache for the administration. It may be mentioned here that the NEFA was administered by the Ministry of External Affairs of the Government of India with the Governor of Assam acting as an agent to the President of India. On April 10, 1964, Vishnu Sahay, the Governor of Assam, in his letter No. GA-71/64, dated April 10, 1964, addressed to the then Chief Minister of Assam, Bimala Prasad Chaliha, pointed out:

"It occurred to me that we may get trouble between the Mizos and the Chakmas in the Mizo district. These Chakmas would be quite suitable people to go into the Tirap Division of NEFA where there is easily found vacant land in the area about which you and I have often spoken."

(White paper, 1996). Vishnu Sahay, the Governor of Assam, decided to make necessary arrangements to settle more than 10,000 refugees to Tirap divisions of NEFA to avoid any troubles between local people (Mizos) and refugees. On April 16, 1964, P.N. Luthara, the advisor to the Governor of Assam, replied that only 3000 families of refugees may be rehabilitated and expressed his inability to accommodate 10,000 families. In the mean time, there was strong opposition from the indigenous tribes against the rehabilitation plans in their areas. In April, 1966, Deputy Secretary (P&D) Shillong, wrote to the Liaison Officer, Ministry of Labour, Employment and Rehabilitation, NEFA:

"In Lohit district we had contemplated to settle 1000 families but on account of opposition from Khamtis, Singhpos, and Mishimis,

we had to slow down our program. We shall be rehabilitating nearly 2253 families by the end of 1966-67”.

In the midst of strong opposition, initially about 57 families of Chakmas and Hajongs from Government camps of Ledo in Dibrugarh were settled in Abhaypur block of Diyun Circle of the erstwhile Tirap district of NEFA. The Government records of Arunachal Pradesh indicate that between 1964 and 1969, a total of 2,748 refugees comprising some 14,888 persons were sent to the NEFA. Nearly 1000 members of the Hajong tribe, a Hindu group from Mymensing district of Bangladesh were also settled in these areas. Initially, these refugees were settled in 10,799 acres of land in the three districts namely, Lohit (214 families settled and 1192 persons altogether), Subansiri (now in Papum Pare; 238 families and 1133 persons in total) and Tirap (now in Changlang : 2146 Chakma families with 11,813 persons in total and 150 Hajong families with 750 persons in total). By 1979, these figures increased up to 3919 families consisting of 21,494 persons and 65,000 as per census in 1991. In 2001, it has been found that there are more than 85,000 Chakma refugees living in different areas of Arunachal Pradesh, especially in Changlang District.

Hindrances for Rehabilitation

The issue of rehabilitation of the Chakma refugees has been a matter of simmering discontent among the indigenous tribal people of Arunachal Pradesh. There was strong opposition from the indigenous tribes against the Central Government's initiatives of the rehabilitation plans of Hajong-Chakma refugees in their areas. It has been alleged by the local Arunachali tribes that the large influx of the Chakma and Hajongs from the then East-Pakistan (now Bangladesh) is responsible for a major demographic imbalance and displacement of the indigenous population. The immediate consequence is that the indigenous people are getting marginalized and displaced. Apart from the psychological fear of being reduced to a minority in their own habitat, the local tribes of A.P. are afraid of losing control over their ancestral land.

In the wake of anti-foreigners agitation in Assam, the state Government of Arunachal Pradesh undertook a series of repressive measures against the Chakmas beginning in 1980. The All Arunachal Pradesh Students Union (AAPSU) launched the “Refugee go back” movement serving “Quit Arunachal Pradesh” notice to the settlers to leave the state by 30 September 1995, in the wake of “people's referendum rally” held on September 20, 1995 at Naharlugun, Itanagar. All the major political parties including the ruling Congress-I Chief Minister Gegong Apang participated in the rally and vowed to resign from the primary membership of parties and organisations if their demand was not met by the

Central government before the expiry of the deadline. As a consequence, a large of Chakma refugees fled from Arunachal Pradesh and took shelter as refugees in the neighbouring state of Assam. The reality is that the Chakmas are at the risk of displacement for the second time and they are regularly threatened with expulsion by influential Arunachal students' organizations. Even before that the state government of Arunachal Pradesh undertook a series of repressive measures including social and economic boycott in support of the agitation programme against the Hajongs. For instance, the Arunachal Government vide its letter No. POL-21/80 dated 29, September 1980, banned public employment for the Chakmas in the state. In 1994, the state government further directed “withdrawal of all kinds of facilities” from Chakma settlement areas afflicting gross human rights violations on the Chakma refugees.

The state Government of A.P. is of the view that even if the Central Government is obliged to confer citizenship on to the Chakma-Hajong refugees under Indira-Mujib Agreement in 1972 cannot settle them permanently within the state since “... the Agreement [does] not take away the rights of the state Governments to restrict the entry of non-locals through the instrument of Inner Line Permit (ILP) and not to allow permanent settlements of non-locals in the state.” The issue is not of conferment of citizenship rights on these refugees but against the permanent settlement of these refugees in A.P. Furthermore, while responding to the charge of violating the political sanctity of the Indira-Mujib Agreement of 1972 by demanding the removal of the Chakma-Hajong refugees from the state, ex Chief Minister of Arunachal Pradesh Mr. G. Apang remarked:

“The Indira-Mujib accord was signed in 1972; our constitution came into being in 1950. The Indira Mujib Accord has not mentioned specifically about Chakma and Hajong refugees of Arunachal Pradesh. Moreover, the Chakma and Hajong settlement in the state has been done violating the legal sanctity and constitutional provisions, the questions of violating the political sanctity of Indira-Mujib Accord does not arise”.

The ignorance of the Supreme Court's judgment and the indifferent attitude of the state government and the dubious role played by the AAPSU made the Chakma refugee issue a more vexed politicized problem in the state.

Role of the Central Government

The central Government often asserted that the Hajongs and Chakmas have a legitimate claim to India citizenship. The desire for granting citizenship to the Chakma in A.P. by the Centre turned the relationship

bitter with the state. Since their resettlement in NEFA during 1964-69, the issue of granting citizenship to the Chakma refugees had figured prominently in almost all the debates and was being considered seriously by the Central Government. It becomes clear from the S. V. Chavan's repeated remarks in this respect met with strong opposition from all quarters in the state. The AAPSU strongly condemned Chavan's initiative on granting citizenship to the Hajong and Chakma refugees and accused that it was an attempt to woo the voters at the cost of annoying the indigenous people of the state. It was only on 23 September 1992 that the first official pronouncement to this effect was made in the Lok Sabha by M. M. Jacob, the Minister of State for Home and Parliamentary Affairs. He categorically stated that "being 'New Migrants', viz., refugees from Bangladesh who came to India between 1964 and 1971 respectively, are eligible to the grant of citizenship according to the policy of the Government on the subject and most of these migrants have already been granted citizenship." In fact, the central Government is strongly of the opinion that citizenship should be granted to the Chakma refugees to which they are entitled under the Citizenship Act, 1955, under section 5(1)(a) which provides for citizenship status by registration and the Indira-Mujib Agreement of 1972, which also reveals the Centre's firm determination to settle them permanently in Arunachal Pradesh.

Fighting for Citizenship Status

On September 9, 1994, the People's Union for Civil Liberties, Delhi brought the issue of Chakmas to the notice of the National Human Rights Commission, which in reply issued letters to the Chief Secretary, Arunachal Pradesh and Home Secretary, Government of India for making inquiries in this regard. On October 15, 1994, the Committee for Chakma-Hajong Citizenship Rights filed a representation to NHRC, complaining prosecution of Hajong and Chakma refugees and the latter brought the matter before the apex court. The Supreme Court in its historic judgment in January, 1996, in the case of National Human Rights Commission vs. State of Arunachal Pradesh directed the state government to provide adequate protection to the refugees to ensure against their forcible eviction. The apex court also directed that applications made by refugees for registrations as citizens under Section 5 of the Citizenship Act should be properly acted upon by local authorities and forwarded the same to the central government for consideration.

Following the Supreme Court directions the Election Commission of India (ECI) after scrutinizing 15,000 applications 1,497, Hajong and Chakma tribes born in India between 1964 and 1987 were included in the Voters' List and allowed to exercise their franchise during the 2004 Lok Sabha elections. For the first time in the history of their settlement in Arunachal Pradesh, a limited number of Hajongs and Chakmas were given voting rights as Indian citizens. There was a vehement

protest against the order of the ECI in the state. The AAPSU submitted a memorandum to the ECI demanding revocation of the said order and decided to ban forthcoming Parliamentary Election on 5 May 2004. Even the Chief Minister Gegong Apang resigned from the All-Party Core Committee on the Chakma and Hajong refugee issue in protest against the inclusion of these voters in the electoral rolls. In the midst of severe protest, the ECI held that the non-inclusion of the 1497 voters implied a violation of the constitutional mandate given to it by Article 325. The state government, however, is yet to take decision on the rest of the Chakma refugees seeking Indian citizenship, whose number is growing day by day.

The Chakmas continue to face an uncertain future with a status worse than that of refugees—as stateless people. The denial of right to nationality directly affects their personal security and makes them extremely vulnerable. The lack of citizenship and statelessness deprives them of their basic human rights such as the rights to education, health, water, employment, freedom of movement and developmental facilities. In the absence of any explicit (refugee) statute, it is not clear as to what shall be the legal status of refugees and how refugees shall be identified in India. At present the Central laws to tackle refugee problems in India are the Registration of Foreigners Act, 1939, the Foreigners Act 1946, the Foreigners Order 1948, the Passport Act 1967, the Emigration Act 1983. Above all, the Indian constitution under Article 21 is the primary document dealing with the treatment of foreigners in India. However, the Foreigners Act 1946 prevail over the other Acts. The most significant lacuna in the Act is that it does not comprise the term "refugee". Instead the term "foreigner" was used to cover aliens temporarily or permanently residing in the country. The official records reveal that the word "displaced" was used more frequently than any other words during the partition of the Indian sub-continent. In fact, Indian Government has dealt with refugee issues of different groups with a different administrative approach. According to an eminent legal expert Rajeev Dhavan, "Indian governance has not devised any systemic policy to deal with refugees, but has dealt with each particular crisis differently". As a result, the present Chakma issue has remained an unsolved problem in the state.

Conclusion

There can be no question that the Chakmas migrated from the Chittagong Hill Tracts of the erstwhile East-Pakistan and have been residing in Arunachal Pradesh for more than 47 years. Under the Indira- Mujib Agreement of 1972, it was determined that India and not Bangladesh would be responsible for all migrants who entered India before 25, March 1971. If the Tibetans who fled to Arunachal Pradesh on their own can be given Indian citizenship status, why cannot the Chakmas, who were given valid migration

Certificate and settled by the Central Government in Arunachal Pradesh? This is discrimination against Chakmas and a violation of the International Conventions relating to the rights of refugees. More importantly, the state government of Arunachal Pradesh and the Central Government in the affidavit to the Delhi High Court have recognized that the Chakmas are indigenous like the rest of the people of Arunachal Pradesh. Therefore, it is legitimate on the part of the Chakmas to claim Indian citizenship putting an end to their statelessness in Arunachal Pradesh. At the same time, basic human rights of both the Chakmas and indigenous Arunachali tribals need to be protected and both the Central and State Government should come forward to fulfil their democratic obligations in this regard.

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