INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :

www.ijlra.com

ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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www.ijlra.com
Volume 2 Issue 7 | Aug 2023
ISSN: 2582-6433

ENCLAVES:
NEED FOR INTERNATIONAL ATTENTION

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Abstract

According to Article 1 of the Convention relating to the Status of Stateless Persons[1], the term "stateless person" means a person who is not considered as a national by any state under the operation of law. This article dwells into the concept of the Enclaves. Enclaves have not been defined under any statute. It aims to elucidate on the insufficiency of the International Laws with respect to the protection of the basic Human Rights of the persons residing in the Enclave. By confining itself to the UN Charter[2], New York Declaration for Refugee and Migrants[3] and UNHCR, it talks about the violation of rights of the enclave dwellers with special reference to the 'Chitmahal' and lack of statutes to address the same. The existing International Statutes &

[1] Convention relating to the Status of Stateless Persons, 1954
[2] The Charter of the United Nations, 1945
[3] The New York Declaration for Refugee and Migrants, 2016

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Conventions are insufficient for protecting the Human Rights of the persons residing in Politically Segregated Enclaves. This article questions as to whether there is need for a separate statute for the protection of the basic Human Rights of the persons residing in such politically segregated enclaves. On studying the various statutes that exist in the international fora, it is evident that there are no separate statutes or conventions in favor of the persons residing in Enclaves.

Key Words

Stateless Persons, UN Charter, Constitution, Enclaves, Chitmahal.

Introduction

Across ages, the geographical territory of states has expanded, receded or altered, and with it the people residing in such regions have shifted or reallocated their shelters to obtain secured livelihood options under one's regime. During such a process of geographical alteration, some territorial portions of one state may lie in the territory of another state forming enclaves. Enclaves have not been defined under any statute. The subjects of a monarch or, in the modern democracies, the citizens of a nation residing in such enclaves become stateless persons, thereby getting stripped off of all the rights enjoyed by those people while being citizens of the concerned state. These people suffer from lack of political identity in the geopolitical framework. Inability to get registration under any authority, and lack of access to formal education, job and so on and so forth make their lives a living nightmare.

According to Article 1 of the Convention relating to the Status of Stateless Persons[4], the term “stateless person" means a person who is not considered as a national by any state under the operation of law. One of the instances of enclaves was the dispute over 'Chitmahal' shared between India and Bangladesh. The Bangladeshis of the 'Chitmahal' lying within the territory of India were deprived of their basic human rights for decades as they were stateless persons in the legal spectrum who were unable to claim such rights neither from Bangladesh nor from India. Although inadequate, certain measures were taken by the Indian government for the aid of these people. However, it was not binding on the Indian Union to cater to their basic needs as India was not a signatory to the Convention Relating to the Status of Refugees, 1951[5].

[4] Convention relating to the Status of Stateless Persons, 1954
[5] Convention Relating to the Status of Refugees, 1951

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On studying the various statutes that exist in the international fora, it is evident that there are no separate statutes or conventions in favor of the persons residing in Enclaves.

Article 1 of United Nations Convention on Status of Refugees states that refugees are those who are "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country."

According to Article 55 of the UN Charter: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- higher standards of living, full employment, and conditions of economic and social progress and development;
- solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

In Article 57 of the UN Charter it is stated that:

1. The various specialized agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies."

Post Independence in 1971, issues of land and illicit migration have caused strain relations between Bangladesh and India. Both the countries are still unable to reach an agreement. The enclave dwellers are considered as men of nowhere land. The enclave dwellers are stripped of their basic human rights that are available to all the citizens, although the culture and languages are the same, and there is no demarcation that separates the enclave from the mainland. These enclave dwellers felt as if they were staying in a foreign land. The enclave dwellers suffer from an identity crisis. They are not given any birth certificates. They lack the basic amenities of life as well as they are deprived of the right to education. They are not allowed to send their children to

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school. They lack the right to health as well. The border security force had the authority to arrest these enclave dwellers anytime they moved out of their enclaves. Additionally the law authorities did not have the permission to enter their enclaves.

In the General Assembly resolution of the UNHCR, the General Assembly calls upon the government of the member states to cooperate with the UNHCR in the performance of its functions concerning refugees which falls under the competence of this office.

Laws available to the enclaves and stateless people

An enclave is a portion of a land that formed a part of a foreign territory within some existing country, the lives of the enclave dwellers remain under persistent threat because of innumerable reasons. These reasons are not favorable for their survival in reality. Majority of the countries lack advocate rules that will govern or rather provide and guarantee rights to the enclaves. Even India is one such country which lacks a proper legal framework that will govern the rights of the people residing in Enclaves. According to Article 1 of the Convention relating to the Status of Stateless Persons[6], the term "stateless person" means a person who is not considered as a national by any state under the operation of law.

Constitutional Protection

India is a signatory to the Universal Declaration of human rights. Due to this reason, India was bound to take immense precautions in order to ensure that the fundamental rights which are mentioned under part three of the Indian constitution can siding with the provisions mentioned under the UN declaration of human rights.

The constitution of India embodies a number of provisions that are available to all persons irrespective of the fact whether or not there is a citizen of India. Article 21 is paramount in the Indian constitution. article 21 embodies the right to life and personal liberty. This article states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. This fundamental right Is accessible to the Indian citizens as well as foreigners or any other person living within the Indian territory. In addition to this article 21A provides for the right to elementary education to everyone.

[6] Convention relating to the Status of Stateless Persons, 1954

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Article 14 guarantees to the people the right to equality before law. This article states that no person living within the territory of India will be denied equal protection of law. Article 22 of the Indian constitution gives the fundamental right to protection against arrest and detention in certain cases.

Article 25 gives to all the persons freedom of consciousness, freedom of profession, practice and propagation of religion. In addition to these provisions, article 23, 24, 26, 27 and even 28 is guaranteed to all the persons who reside within the territory of India eat a spectrum of the fact that whether they are an Indian or a foreigner.

In the case of Louis De Raedt v Union of India,[7] It was held by the court that the fundamental right to life, liberty, dignity will be accessible by non citizens of India as well. Further in the case of Vaisakha v state of Rajasthan[8] The court was of the opinion that international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, calmer right to work and human dignity in article 14, 15, 19(1)g and article 21 of the Constitution.

Enclaves and refugees are thought of as aliens or stateless in India. The term alien is embodied in the constitution of India under article 22, in the Civil Procedure code under article 83 and in the Indian citizenship act 1955 under Section 3(3)(b).Majority of the acts muddle up the issues prevailing rights of the refugees. In furtherance to this the foreigners act 1946 empowers the officers to arrest or detain any foreigner on mere grounds of suspicion for non compliance.

International laws

India has signed and ratified the UN charter and is an ipso facto member of all its organs.The UN charter under article 55 mentions that consciously to create a environment of stability and well-being which are required for the coexistence of peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:[9]

- Higher standards of living, full employment, and conditions of economic and social progress and development;
- Solutions of international economic, social, health, and related problems; and international

[7] 1991 AIR 1886, 1991 SCR (3) 149
[8] 13 August, 1997
[9] UN charter

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cultural and educational cooperation; and

- Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 of the UN charter reinforces that all the members "pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55"[10]

There are two landmark conventions that have Endeavour to define the status and rights of stateless persons. These are

- *the 1954 convention which relates to the status of stateless persons*
- *1961 convention on the reduction of statelessness*

From a lawful perspective, people living in an enclave can be considered as a stateless person. Article 1(1)Of the 1954 convention defines a stateless person as "A person who is not considered as a national by any state under the operation of its law[11]*" And it is observed by the international Law Commission that this definition forms an integral part of customary laws. Article 1(1) Of the convention is related to de jure statelessness. The pertaining question here is not Whether the person's identity is effective or not; rather, it is whether every person has an identity at all.*

De facto Stateless persons are considered to be the people who are not in the country of their own nationality and are not able to return to their country of nationality for whatever may be the reason or even if they do not return to the country of nationality by choice. In this case the stateless person may also be considered as a refugee. Enclave dwellers can be seen falling under the category of de facto statelessness but at the same time they do not belong to the refugee category. All the nation states were encouraged by the international humanitarian organization to give the consent to these conventions. Despite their encouragement many nation states including India and Bangladesh are not signatories to these conventions.

Having established that laws and conventions exist for refugee enclaves as well as stateless persons in the domestic as well as international fora a conclusion can be drawn that India lacks specific laws that would deal with the rights and protection of existing enclaves. After the land border agreement 2015 though cliffs are exchanged but still the increase will remain in India are facing a lot of issues. In 2018 the West Bengal land reform amendment bill 2018 was passed. According to this bill the included dwellers would acquire citizenship of India in addition to all

[10] UN Charter
[11] 1954, convention relating to the status of stateless persons

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the civil amenities and citizenship rights but even after so many years of the bill being passed, included dwellers are still facing the same problem. The included dwellers feel as if they are being cheated by the state government and are not receiving what they had been promised. Though they have received their voter cards, they are yet to receive the land documents without which they can neither sell or even get a loan on that land.

History of Chitmahal[12]

There exists a long history of the disputed land along the India-Bangladesh border. Some believe in legend while others rely on historical records.

A popular legend tells that centuries ago two regional kings, the Raja of Cooch Behar and the Maharaja of Rangpur, used to play card or chess games in which the enclaves were used as stakes. However, in recorded history, these patches of disputed land were apparently the result of a confused outcome of a 1713 treaty between the Kingdom of Koch Bihar and the Mughal Empire. Quite possible that the Kings of Koch Bihar and the Mughals ended a war without determining a boundary for what territories had been gained or lost.

After the partition of India in 1947, the Raja of Cooch Behar, who was the ruling a native state, was given the choice of merging its territory with India or Pakistan or maintain the status quo. He finally agreed to join hands with the Indian government and in 1949 the territory was merged with India forming the Cooch Behar district.

The intention to "de-enclave" the disputed land was realized with the introduction of an agreement in 1958 between Jawaharlal Nehru and Feroz Khan Noon, the then Prime Ministers of India and the erstwhile Pakistan respectively. The object of the agreement was to make an exchange of enclaves between India and East Pakistan without considering loss or gain of territory.

A case was filed in the Supreme Court regarding this agreement and the apex court's judgment became a roadblock in the path of such an ambitious exchange. It ruled that in order to transfer the land a constitutional amendment was required, and so the Ninth Amendment[13] was put to the legislative floor to facilitate the implementation of the agreement. However, the amendment could

[12] India–Bangladesh enclaves, *available at:* https://en.m.wikipedia.org/wiki/India%E2%80%93Bangladesh_enclaves (last visited on November 12, 2022)
[13] THE CONSTITUTION (NINTH AMENDMENT) ACT, 1960

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not be passed owing to the objections to the transfer of the southern Berubari enclave. With time, the India-Pakistan relation deteriorated and the issue was shelved. But with the independence of Bangladesh through the Bangladesh Liberation War of 1971 which was aided by India, the negotiations again began.

Decades later, on 16 May 1974 the Land Boundary Agreement was signed between Indira Gandhi and Sheikh Mujibur Rahman, the then Prime Ministers of India and Bangladesh respectively that paved the way for the exchange of enclaves and the surrender of adverse possessions.

As per the agreement, India retained the Berubari Union No. 12 enclave while Bangladesh retained the Dahagram- Angarpota enclaves with India providing access to it by giving a 178-by-85-meter corridor, called the Tin Bigha Corridor. Though Bangladesh ratified the agreement soon but India refrained from doing so. However, in 1992 the Tin Bigha Corridor was leased to Bangladesh.

A list of enclaves was prepared in 1997 by the two states. "Two Joint Boundary Working Groups were formed to work out the details of enclaves in 2001. A joint census was carried out in May 2007. In September 2011, India signed the Additional Protocol for the 1974 Land Boundary Agreement with Bangladesh." An announcement was made by the two states to swap 162 enclaves, giving residents a choice of nationality.

Under the agreement, India received 51 of the 71 Bangladeshi enclaves (from 51 to 54 of the 74 chhits) that were inside India proper (7,110.2 acres), while Bangladesh received 95 to 101 of the 103 Indian enclaves (111 out of 119 chhits) that were inside Bangladesh proper (17,160.63 acres). Bangladesh retained the 4,617 acres of its Dahagram-Angarpota exclave. After the exchange of enclaves, India lost around 40 km2 (10,000 acres) to Bangladesh. According to the July 2010 joint census, there were 14,215 people residing in Bangladeshi enclaves in India and 37,269 people residing in Indian enclaves in Bangladesh.

Amid protests from the Nationalist groups in Assam for losing 10,000 acres land, the Constitution (119th Amendment) Bill, 201314 was introduced in the Rajya Sabha. The Indian government under the leadership of Narendra Modi supported it in order to de-tangle the conflicting land along the India-Bangladesh border that was pending for decades. On 28 May, 2015 the bill received the Presidential assent of Pranab Mukherjee. On 6 June, 2015 the agreement was ratified from both

[14] The Constitution (119th Amendment) Bill, 2013

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ends under the presence of Modi and the then Bangladeshi Prime Minister Sheikh Hasina.

The implementation of the exchange of enclaves and land parcels in adverse possession, and the boundary demarcation took place in a phased manner between 31 July 2015 and 30 June 2016. The transfer of enclave residents was expected to be completed by 30 November 2015.

The choice of citizenship given to the enclave residents was to be completed by 13 July 2015. It was observed that 100 families residing in the Indian enclaves applied for Indian citizenship, while none of the residents of the Bangladeshi enclaves chose to go to Bangladesh. New citizenship took effect from 1 August 2015.

Though the residents of such enclaves after becoming the citizens of India have gained some rights that have improved opportunities of livelihood from the previous situation, it cannot be overlooked that there had been serious human rights violations on such residents. It should also be noted that such violations had taken place across history in other regions of the world and it may again happen in the near future. Thus, the world requires a statute to address the same.

Infringement of Human Rights

Persons voluntarily living in the enclaves are exploited in ways beyond imagination. They are slowly led towards a downfall whatsoever. There is a very poor Infrastructure in the education field and the health field. The problem of land demarcation still exists and is hardly taken care of. Persons living in these regions face poor hygiene and sanitation conditions.

The biggest problem of all is that the crime rate is very high and most of these persons are actively engaged in illegal activities. One of the many reasons behind this issue of crime rate being high is due to very less occupational diversion. There also exists a huge gender discrimination due to which there is low female labor force participation rate in these regions.

They effortlessly and conveniently hide their real income so that they can get away with the payment of taxes. The sad part is that even after all these aspects, the persons residing in these areas want to stay here willingly.

Though they are deprived of many facilities, they want to remain in these areas, creating a social conflict. According to the Social Conflict Approach Model economic outcome is less diversified due to the deprived economic opportunities.

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Most persons living in these regions are engaged in agricultural activity. The government is the least bothered to provide them with any kind of concession to improve their economic status.

Backwardness and orthodoxy still prevails amongst the people residing in these enclaves as these areas lack educational institutions and health centers. These areas are considered to be a buffer zone. The reason behind this is that there exists a lot of political disturbances. In accordance with this model it can be concluded that though they are deprived of a proper facility, economic subsidies, they still want to remain in these places and do not have any plan to migrate to another place in future.

Their backwardness and poor educational qualifications do not allow them to think and come across new and innovative ideas for the development of these regions. There can be various recommendations to improve their living conditions in these areas. Growth of poor infrastructure in the fields of education and health. A legal adviser can be deployed in order to demarcate the land. Improve poor sanitation conditions. Providing employment opportunities to decrease the high rate of crime. Requirement of women empowerment in all aspects of education, work and psychological freedom so that there is an increase in work participation rate of women. Strict prevention of illegal activity in these areas. There should also be an increased occupational diversion.

The persons residing in these areas have been leading their life in darkness of the future. The economic situation is not well sustained. The economic sphere of these areas has completely assimilated with the host country through illegal migration, currency and marketing. And therefore, there exists no economic relation with their own country. It is very difficult to conclude the present status for the residents of these areas as the people are equally happy with available resources as well as being deprived of basic amenities.

The Legal Vacuum

As far as the laws and conventions are concerned, there do exist a few international treaties to safeguard the refugees and illegal immigrants across the world. Certain organizations also fight for their rights when questioned on their identity or in violation of any statute of the concerned state. But when human right violations are faced by a section of people who are devoid of any nationality, there is dearth of proactive measures taken in this regard. Despite the undeniable fact that the intellectual community at various platforms has raised its voice in respect of such

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violations, in the framework of public international law, such voices are either unheard or best ignored.

Through the eyes of monistic school of thought, this issue may be addressed if a suo moto cognizance be executed by a Court of international recognition. But then again, such power of the Court comes in the way of sovereignty of a state which in itself will be a violation of general principles of law enshrined under Article 38 of the Statute of International Court of Justice.

Hence, it is well understood that there is a need for a new and separate international treaty or convention signed and ratified by the sovereign states or at least the member states of the United Nations (UN) to safeguard the rights of people residing in the politically segregated enclaves. It should be noted that a moral obligation also lies with the member states of the UN as protection of human rights is imbibed in the very UN Charter which is considered the constitution guiding the United Nations and its members.

Another initiative may be taken by the establishment of an international body with the consensus of the UN General Assembly to address any issue arising out of the politically segregated enclaves and to be given the authority to investigate matters pertaining to the people residing there, to regulate the norms of such territories, and to transfer any case emerging in respect of any violation of such norm to the International Court of Justice for adjudication.

Conclusion

From the above discussion, it is very well understood that enclaves have originated either out of protecting the ethnic sentiments of a faction of society or have been politically segregated by way of poor administration of the monarchical or republican states. The residents of the later region have met with serious human rights violations across space and time. The public international law failed to address the issue and thus events like that occurred and are bound to come to the geopolitical surface again. Hence, such a legal vacuum may be addressed by introducing a new international treaty or by establishment of a new international body.