

Review Note Assignment for Module F 2004

Review Note

Atta ur Rehman Sheikh

The basic thrust of the module F is meant to bring to light the different components of humanitarian task of protection, which include rights, law and ethics. The background reading material recommended has amply covered the issues related to moral basis of international human rights laws, contradiction within the international humanitarian system and structure; and the practical moral issues linked with the task of protection, settlement and compensation of displaced people.

Ranabir's lecture titled 'Power, Fear, Ethics' has been helpful immensely as it throws light on issues concerning the module while recommended pages from International Refugee Law: A Reader and KC Saha's paper on 'The Genocide of 1971 and the Refugee Influx in the East' further substantiated the issues of concern regarding evolution of refugee protection and a case study of refugee management and repatriation, respectively.

Ranabir's lecture critically analyzes the issue of ethics and politics in the context of legal regimes for refugees and displaced. In the course of his analysis he has raised numerous issues concerning refugee protection by the states and non-state institutions and actors. Besides that gaps and lacunae in the existing law and procedures has also been pointed out in a cogent manner. However, his emphasis has been more and more on ethical aspect with reference to refugee management by asserting on values of care, kindness, hospitality and responsibility.

Given the stiff measure being taken by the developed countries, in the post cold war era to check and discourage refugee, seeking asylum in their countries, has seriously jeopardize the refugee protection regimes. The establishment of transit camps outside Europe in order to separate economic migrant from genuine asylum seekers is one such step. Increasing obsession with security concerns following the 9/11 has further curtailed the prospects for asylum seekers. As a result states and the international system continued to become un-friendly towards shelter seeking people. The complex process of determination of a refugee status has always been tilted against claimants and thus excluding them from international protection. In this way the international system (the UNHCR) and the states have become more dominant in the determination process whereas the person seeking refuge has no voice at all. Therefore there has to be a fair hearing on the part of claimant during the course of determination process. While deploying the gender lens, the existing systems and procedures do not contain gender specific items. Ranabir has rightly pointed that the humanitarian law is almost a male agency. Besides that woman refugees are always portrayed in media or otherwise as hapless victims and programmes launched for them in a refugee situation are restricted to welfare activities. Though a number of studies have proved that women become more liberated and empowered by taking on different roles in a conflict situation.

Relevance of 1951 Convention in the emerging political scenario is a critical issue. Though the Convention withstand different pressing situation incorporating varying emerging needs to address. Continued tinkering with the Convention has also kept it relevant to some extent by formulating Additional Protocol or through administrative measures. However, following the post cold war era and ever since war on terror launched, the Convention has not been able to address issues of refugee protection. It has to be more holistic, integrated and gender sensitive in terms of offering solutions to contemporary problems of asylum and refuge. Since the Convention was drafted in a certain political context in the aftermath of World War II, it no longer holds compatibility in terms of redressing rising problems in the world of today. Judge Geoffrey Care quoted in the paper says "the peculiar nature of the Convention leaves a tremendous burden on jurisprudence and enormous freedom to the state" is a clear indication of inability of the convention to deal with existing complex problems. Since other states including European Union has come up with their treaties and conventions, it has become absolutely imperative to revise or replace the Convention.

It is an established fact and norm that displaced people are provided shelter by relatives, kin, neighbors, friends or extended families. Non-state protection has always been more than provided by the state. Therefore the ethics and norms become a key component in refugee protection. This observation has been documented adequately in the Genocide of 1971 and the Refugee Influx in the East where local residents extend help to refugees from East Pakistan. Likewise in the case of Afghan refugees or for that matter IDPs, communities always provide much needed support in terms of shelter and food. Though care, kindness and hospitality are the key components of ethics with reference to refugee management. However the key issue has been as to how to apply ethics to law and how these values can be incorporated into systems and procedure. Hence refugee studies may have to review the importance of ethics with regard to displaced people and host communities.

Concluding the note the greatest challenge for the international humanitarian system and states is to integrate the rights, law and ethics within protection regimes. Particularly the values of care, kindness and hospitality have to be incorporated

within regimes and structures. Apart from that the gender dimension is a critical component and the laws, procedures and structures should clearly reflect those dimensions. Further debate on this discourse needs to be continued for broader consensus and advocacy.