

Review Note Assignment for Module F 2005

Critically analyse Peter Penz's article on "Development, displacement and International Ethics," and comment how ethical it is to displace people for reasons of development?

Barnalee Choudhury

Peter Penz in his article " *Development, Displacement and International Ethics*", makes an attempt to find out the moral obligation of the state towards the victims of development projects. His prime focus is on the question- what should be the moral obligation of foreign participants in the development process which leads to displacement. He tries to address it within the field of ethics of state sovereignty and cosmopolitan ethics.

This article mainly deals with the displacement caused by development and environmental degradation. Although some argues that displacement is required for industrialisation and economic growth, Penz opines that it is not justified as it involves coercion and makes life worse off. He agrees with M. Cernea that displacees suffer from various losses leading to their impoverishment.

After discussing the two approaches – theoretical and methodological, Penz mentions a third approach – middle level analysis. It focuses on generalisable principles, but does not commit itself to particular normative theory.

The writer discusses three perspectives- Utilitarianism, Liberalism and Egalitarianism that can be brought together by according them a role in a comprehensive approach to the ethics of development induced displacement. The right to self determination should be recognised, but at the same time development can be justified on the ground of public interest. But certain conditions must be met like compensating the displaced, minimising displacement and poverty alleviation. However, Penz has remained silent on the ambiguity of the term 'public interest'. But it is important to know who constitutes the 'public'.

The writer also discusses the responsibility of sovereign states towards the displacees since international actors have a role to play here. Now, he raises the question about the moral obligations of foreign participants in development. He mainly deals with inter state perspective to look into that matter. Within this perspective, while citizens of one country are not directly obliged to other country, the state is. So Penz views the state as the pivotal mediator between foreign actors and the state's citizens.

Discussing about international ethics, Penz says that sovereignty has a predominant position, which gives primacy to state sovereignty. However, foreign agencies can participate in the economy of another country by observing its laws. Now the question is whether observing laws of the host government should be the only moral obligations of the state. Again, both national and territorial sovereignty do not recognise the weaknesses of some states and the need to apply ethical evaluation to how states treat their own citizens. Although state's prime function is to protect its citizens and work for their development, it often fails to pursue development that really serve the public interest.

Penz is of the view that cosmopolitan approach rests on three arguments –

(i) integration of national societies, (ii) nation states often restrict the minority rights and cultures (iii) element of force in determining state borders raises serious question regarding the moral significance of such borders.

Ethics of state sovereignty treats state system as framework for articulating international ethics. Cosmopolitan approach views international ethics as conceptually prior to the state system. Within this framework, foreign actors - both business and non profit development organisations participating in the development process are responsible to the victims. The foreign participants besides observing laws and decisions of host states, are morally responsible to development and environmental displacement. However, while business organisations are responsible for direct displacement, non profit organisations should look for the benefit of all and state development assistance agencies should work for restraint of some kind. Penz warns these organisations against being misused by the state to justify any project. He also points out that the host government should see that the market operations do not harm people and the foreign assistance is used beneficially.

Comment on- is it ethical to displace people for development:

We all know that large numbers of people are displaced from their homes for setting up development projects. These development projects lead to economic development, but it often degrades the socio economic and cultural lives of one section. While one cannot deny the need of development, displacement cannot be justified on ethical ground. As a result of displacement, production system is dismantled, close-knit kinship groups are scattered, long established relationships are broken and traditional sources of employment are lost. Sense of belonging and rootedness in a place that provides the security of membership is often displaced by a sense of isolation and alienation in the new location. So, if ethics means taking care of others and thereby helping self, displacement induced by development is not ethical.

Displacement is bound to be illegal if it leads to derogation of an otherwise non derogable rights enshrined in the constitution. Prof. T.K Oommen has argued that with development deprivation is deepening. Development is often found to be biased towards the privileged section and it creates hardship for the disadvantageous section of the society. Hence, we can agree with Rajni Kothari that there is a need for an alternative development aiming at the welfare of all.

Critically analyse Peter Penz's article on "Development, displacement and International Ethics," and comment how ethical it is to displace people for reasons of development?

Idil Atak

The article of Peter Penz deals with a topical issue concerning not only less developed and developing countries, but also the industrialized ones pursuing economic reform.

Nationalisations and expropriations intended to secure the realisation of large-scale public-works schemes. These policies are problematic as they cause displacement. Basic questions raised are therefore what is owed to people displaced and the ethical conditions justifying such displacement. The ethical complexity of these questions requires deeper analysis from academics, policy makers and the civil society at large. The article of Peter Penz is an important contribution to this reflection as it emphasizes the need to go beyond simple moral arguments and outlines a framework of solution.

He rightly points out to the tension existing between public interest and poverty reduction, on one hand and self determination and individual rights protection, on the other. The solution proposed by the author are based on negotiation-consent-public interest and distributive justice considerations.

These considerations summarize responsibilities incumbent upon States governed by the rule of law. States have a duty to respect human rights enshrined in their legislation and international human rights protection instruments.

My purpose is to analyse Penz's arguments in the light of the case-law of the European Court of Human Rights^[1] which has been faced with displacement-inducing expropriation problems mainly in Turkey but also to a lesser extent, in Sweden and the UK, and has developed clear legal guidelines.

The standpoint of the Court is relevant to the ethical debate. The legal requirements it underlines are the basic conditions for the ethical justifiability of such displacements.

According to the Court, displacement caused by development-induced projects constitutes an interference with the individuals' right to the peaceful enjoyment of their possessions^[2]. It often involves a violation of one's private life or home.

A justifiable interference has therefore to be in the public interest and to satisfy some conditions in order to be ethically acceptable in a state governed by the rule of law. The case-law of the Court concentrates on the lawfulness and the proportionality of State action as well as on the individual's protection against the arbitrariness^[3].

The first requirement is the existence of a legal basis for displacement-inducing policies. The law must be both accessible and sufficiently foreseeable. This includes remedies against acts of the administration and the government. The remedies should foresee reparation for non-pecuniary damage caused by the loss of one's means of subsistence, memories and the security^[4].

Secondly, the Court underlines the necessity to measure the proportionality of government's action against its objective. It applies a « fair balance » test^[5] through which public authorities should ensure whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of fundamental rights. The State must show that the public end cannot be satisfied other than by imposing this cost on the individuals. The burden which falls on them should not be excessive and the measures not disproportionate, nor discriminatory^[6].

According to the Court, an important component of the protection against arbitrariness is the compensation. The amounts should be fixed by reference to objective standards with the possibility of representation for those deprived of property in the process. The level of compensation must be « reasonably related » to the property taken^[7]. The terms and conditions on which compensation is payable need specific attention, since the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay in the payment of compensation and in proceedings determining such compensation^[8].

The case-law of the Court offers an adequate framework on legal conditions of development-induced displacement. It nevertheless leaves some ethical aspects of the issue unanswered. One of them is the extent of margin of appreciation of States in assessing the level of compensation. Moreover, the Court is silent on the question of the consent and on the applicability of the standards of general international law for the benefit of all persons protected by the Convention. Another major problem underlined by Penz, but not handled with by the Court is indirect displacement. Environmental pollution caused by installations such as thermal power plants has been considered by the Court as bringing into play individual's right to the protection of their physical integrity^[9]. Nevertheless, the Court did not adopt a clear position on this issue.

There is need to promote the analysis and discussion of ethical challenges. Such a process enhances the formulation of normative guidelines and recommendations to public authorities. The initiative launched by the University of York^[10] under the leadership of Prof. Penz is an important step forward in this regard.

To conclude, a human rights approach seems to be the most appropriate perspective when considering the ethical issues involved. This approach should take into account both national and international obligations of States towards individuals living under their jurisdiction.

Critically analyse Peter Penz's article on "Development, displacement and International Ethics," and comment how ethical it is to displace people for reasons of development?

Kingsline Xavier

Peter Penz has explained displacement, its consequences, forces and the moral obligations of foreign participants pertaining to developmental projects. He also addresses the ethics of state sovereignty and cosmopolitan ethics and differentiates their obligations respectively.

He briefly clarifies ethical obligations within states regarding displacement induced by development and environmental degradation. He points out that displacement and forced migration are one and the same and elaborates on two distinguishable forms of displacement – direct and indirect. He clearly distinguishes the two forms of displacement and its consequences with examples. There is also another distinct category of people, environmental refugees who were displaced by environmental degradation. He has critically analysed the case of displacement of Chitagong Hill Tracts in Bangladesh and compares it with the Chakma, Mrong, Marma and other hill people who have experienced a multi-dimensional syndrome of displacement due to a variety of interacting causes. He points out that coercion in indirect displacement is not always straight forward and states that displacement is morally objectionable since it involves coercion. Penz distinguishes forced and voluntary migration as mutually exclusive categories where migration induced by development or environmental degradation as voluntary, where there is time and element of choice for the affected people.

Penz enumerates three methodological approaches in applied ethics: Theoretically committed approach, opposite methodological approach and middle level analysis in the context of questioning the methodology of applied ethics. He points the difficulty in disagreements about normative theories that are typically much greater than practical judgments and prescriptions from competing theories. Ethical judgments have to be made with reference to concrete issues rather than theoretical C11 form, where the non philosophers who are handicapped in assessing theories tend to be excluded from the discussion. The opposite methodological approach does not clearly state as to how argumentation has to proceed and criteria for resolving disagreements. Moreover when many communities are involved and even when there is substantial agreement about community values, there is always the danger which reflects domination within the community and effective silencing of the disadvantaged. Middle level analysis focuses on general principles but does not follow any particular normative theory. Peter finds the features of this theory as more suitable, effective and consistent in articulating the general principles at work in the ethical analysis.

Displacement, the State, and Moral Justification

Penz explores three perspectives in accordance with the methodology and distinguishes each of them.

- (a) The public-interest perspective of utilitarianism,
- (b) The self-determination perspective of libertarianism and
- (c) The equal-sharing perspective of egalitarianism.

He explains that these perspectives can be brought together by giving them specific roles in approaching to the ethics of development induced displacement and environmental degradation. He points out that, in the era of globalization the foreign actors in developmental projects in third world countries are no longer in national context. He explains sovereignty of states and its powers governing foreign business, aid agencies (governmental and non-governmental), that has to operate within the loss and directives of the state.

Peter elaborates on the consequences of economic globalization and its effects on families, groups, national and sub-national societies that are becoming dependent on economic decisions and developments in various parts of the world. The growth of information technology has opened the eyes of rich countries to see what is happening, thus the mobility of affluent tourists to poor countries and immigrants and refugees from poor to rich countries, which makes the cities becoming more cosmopolitan in their ethnic composition. He also points out the importance coordination of institutions such as UN, WTO and a multitude of other agencies dealing with everything. He argues that within a cosmopolitan framework, the obligations of foreign participants in the development process are to the people being affected and to those institutional agents that act on their behalf, but only in that representative capacity.

Cosmopolitanism and International Responsibilities

Penz distinguishes two kinds of foreign participants in development with respect to their functions. One is business organizations and the other is non-profit organizations. Penz states the obligations of the host states to administer these business organizations by regulating them to operate in the interest of the state.

Peter speaks on the importance of non-profit organizations and their role to pursue action and innovation beyond the state.

He points out the lacunae in the state institutions and their policies where they fail to ensure the interest of the people with reference to developmental activities. He differentiates direct and indirect displacement pertaining to evictions, where the consequences of the role of foreign agencies are very clear. He concludes that under a cosmopolitan perspective the existence of these state institutions creates considerable moral responsibility on foreign agencies that collaborate in developmental projects.

Development is essential, for every state but the question should always be raised at what cost. Developmental projects cause displacement of people, the state which has to primarily safeguard the interest of its people forcefully act against them by uprooting from their homes. The utility of the development project *vis-à-vis* the effects of displacement should be analyzed at first place. Secondly the state agencies in coordination with other non-government, foreign actors should come to a consensus

with the people in commencement of the project. After all this when the development project is in first place very useful and serves vast population, the losses of the people who are to be displaced as a consequence of this project has to be given thought.

A detailed program has to be planned and that has to be followed step by step in displacing the people with adequate compensation monetarily, as well as by other means.

The decision pertaining to the rehabilitation program for these people has to be "bottom-up approach" rather than "top-down approach" by the states. In any case the compensation will not match to the losses to their loss of land peace of mind.

Critically analyse Peter Penz's article on "Development, displacement and International Ethics," and comment how ethical it is to displace people for reasons of development?

Sudhir Choudhury

1. The article by Peter Penz "Development, Displacement and International Ethics" is an attempt to view the subject of development – induced displacement (whether direct or indirect) through the prism of ethics. Obviously the question is not a simple one and has no straightforward answers. Peter deals with the complex problem analysing it incisively, considering the various alternatives to deal with them and gives scholarly comments on the various pros and cons attached to them.

2. The article is a thought-provoking collection of illuminating ideas in myriad colours, which he holds before our eyes using his prism of ethics. This article strengthens a very important dimension to the theory and practice of development and displacement, namely the ethical dimension particularly in its international, cosmopolitan form.

3. Displacement, almost a concomitant of development, not infrequently, is of the forced kind and results in loss to the displaced person. Dealing with this aspect, Peter has dealt with this "loss", giving its various components, which are mostly "economic" in nature –thus overlooking the "emotional or psychological" aspect. In the ethicist analysis this too could have provided an important input.

4. In accordance with the methodology proposed, the justification of displacement has been explored (within the boundaries of a state) in terms of the three normative perspectives of utilitarianism, libertarianism and egalitarianism. Finally, Peter suggests that the three perspectives can be brought together to work out a more comprehensive approach including the elements of each. How exactly this can be done is, however, not elaborated. The three approaches are often competing choices. Peter has not discussed the priority or weightage to be assigned to each. This leads us towards further directions or areas for exploration and investigation, rather than merely pointing out any lacuna in Peter's approach.

5. The world is fast becoming a "globalized village". This suggests that the consequences of one's actions have implications beyond the national boundaries, implying therefore, that foreign actors involved directly or indirectly in development projects and processes abroad have the moral responsibility of evaluating them in terms of their impact on individual and groups not just countries or states, taken as monolithic entities. The idea, though laudable, in many respects is an anathema to the concept of sovereigntism. The idea of a sovereign state incorporates respect for the supreme authority of the other states within their own territories and a hands-off policy in their domestic affairs is concerned. (Most states would view with alarm any real or perceived interference in their internal affairs, terming it as an invasion). The growing inter-dependences in international relations have been recognized in the growth of organizations like the UN, WTO, EU and SAARC. A distinction should also be made between the state agencies, business organizations and non-profit voluntary organizations. The responsibility differs for different kinds of participants. How far will the exercise of "moral responsibility" by the foreign players (in domestic development projects) is permitted by the host country depends more on it rather than the will of the foreign participants themselves. Peter treats this aspect in an over-simplified model where states would grant them this privilege ungrudgingly! No serious attempt is made to dwell on the likely objections to be raised by the states and more significantly, how to deal with them. Also, if there could be fallible states, will the foreign participants themselves not be subject to any frailties. The need perhaps is to evolve dynamic structures and mechanisms in harmony with the cosmopolitan ethics and working in tandem with the sovereign states. This is easily said than done but then evolution process is always slow and sometimes painfully slow. Peter's article has successfully enlarged into full significance what had only been hazily sketched by others.

6. It is useful once again to address ourselves to the issue as to how ethical it is to displace people for reasons of development. Displacement is almost a concomitant of development, especially development in the infrastructure sector and large-scale industrial projects where direct or indirect displacement takes place. It does involve certain amount of coercion, which is apparent and straightforward in the case of direct displacement. In the case of indirect displacement, however, the element of coercion is not always straightforward but there is contraction of choice and range of options available is severely restricted. In the strict ethical sense any coercion is deplorable on the morality criterion.

7. Forced migration results in both economic and emotional hardships. Uprooting may involve loss of home, hearth, job and means of livelihood, production/sustenance. Alternative areas provided as compensation are usually poorly endowed, unfamiliar and require newer skills of earning livelihood. All these factors lead to a great hardship for the people involved.

8. These hardships can however be minimized if there is a strong will to do so and proper mechanisms are provided for

rehabilitation and monitoring of the process of rehabilitation is done at the highest level. Taking a pragmatic liberal view, displacement can under certain conditions be justified. The methodology and approaches, etc., have been discussed at length by Peter and find mention in the analysis given in foregoing paragraphs.

Critically analyse Peter Penz's article on "Development, displacement and International Ethics," and comment how ethical it is to displace people for reasons of development?

Dinusha Pathiraja

Peter Penz's article on "Development, displacement and International Ethics" is a conceptual exploration of the boundaries of morality and ethics that need to be applied in any process of displacement- direct or indirect. He primarily argues on the premise that displacement in any form by any actor is based upon coercion, as it means the movement of a group of people from a habitation to another location. Though, a counter argument to this purview may be considered 'consent', Penz argues that the manner in which consent is derived may question the real source of consent. For example, he points out that 'consent' for the people may be given by the state to the foreign actor who would be funding the activity, while informing the people of the necessity to move. This in Penz's view does not constitute 'consent' as people who are subjected to such displacement may in reality have *not choice eliminated but choice restricted*. To illustrate this Penz has brought in the example of Narmada Bachao Andolan in India.

Penz further discusses in detail, the possibilities of justification of displacement using three normative perspectives. Namely, (a) *the public-interest perspective of utilitarianism*, (b) *the self-determination perspective of libertarianism and the more communal version of it held by some communitarians*, (c) *the equal sharing perspective of egalitarianism*. While explaining the pros and cons of applicability of these perspectives, Penz does not reach a conclusion as to which perspective would be the best in justifying displacement. He uses these perspectives to build up to his next argument concerning sovereignty and international responsibilities.

While pointing out that a development induced perspective can be arrived from the three perspectives outlined above, Penz takes on a traditional approach to sovereignty. He points out that sovereignty is an entity that belongs to the state more correctly (though he has not used the term) nation-states as it is called in the modern times. This stance limits Penz's argument concerning the responsibility of actors involved in process of development that have effects of displacement. Penz recognises intra-state as well as inter-state ethics and it is in the latter that he recognises actors such as foreign governments, foreign based businesses that support development related activities as well as non-profit organisations.

In the current debate concerning sovereignty; especially as pointed out in 'The Responsibility to Protect' (ICISS, 2001), Sovereignty carries with it primary responsibilities for states to protect persons and property and to discharge the functions of government adequately within their territories. (However), sovereignty has been eroded by contemporary economic, cultural and environmental factors. Interference in what would previously have been regarded as internal affairs- by other states, the private sector and non-state actors- has become routine. The radical challenges to the notion of state sovereignty are being posed by-

- **Continuing demands for self-determination:** The sanctity of borders and illegitimacy of secession. Eg: breaking up of the Soviet Union, colonial legacy of most developing countries
- **A broad conception of international peace and security**
Eg: Acts of aggression, genocide, AIDS pandemic
- **The collapse of state security:** Incapacity of certain states to effectively exercise authority over their territories and population
- **The increasing importance of popular sovereignty:** The changing balance between states and people as a source of legitimacy and authority. The older version of the rule of the law of states is being tempered by the rule of law based on the rights of individuals- and a broader concept of sovereignty encompassing both the rights and the responsibilities of states; is now being widely advocated.

This exploration given in 'The Responsibility to Protect' brings in the perspective of human security to the displacement discourse. It must be noted here that within scholarly debate human security is viewed with great reluctance as it tends to question the standing of the state as the sole referent of object of security. While this notion of the state, as the primary objective and source of security was established with the emergence of the 1933 Montevideo Convention establishing a nation-state as an entity; sovereignty was laid as a sole entity of the state. Turning this traditional point of view on its head, human security has emerged diluting notions of sovereignty as given above and making the individual to be the referent object of security rather than the state.

Penz's argument in the latter parts of the essay covers foreign development assistance and the role of the international non-profit sector concerning the activities of both the donor countries in providing assistance to large development activities as well as providing humanitarian assistance in instances such as displacement. While this argument is clear and valid, it would be stronger if approached from a human security perspective as explained above rather than from a state sovereignty perspective.

It is in the brief conclusion provided by Penz; his standing on the justification of displacement actually comes out. He argues that ethical justification of displacement of people for reasons of development can actually be approached on a pragmatic level, taking into consideration contextual dynamics, actors, actions, process, effects etc. This view can be pointed out as the most rational stance that can be taken to issues concerning displacement owing to development activity. Although, there may be similarities in the instances of such displacement owing to development projects, mostly within the South Asian region, there are also vast dissimilarities that make a final verdict on this issue an impossibility to reach.

A critical discussion of "fear" as a factor in the displacement of vulnerable groups

Markus Mervola

In this essay I am asked to discuss, in a critical manner, "fear" as a factor in the displacement of vulnerable groups. After choosing my topic, I immediately started to play with the wording of the assignment: 'fear factor in displacement'. I think one can contemplate the given assignment in two very different ways.

Firstly, one could understand it in a best "policy-relevant" or "strategic" manner. This would mean thinking fear as an *objective* factor "pushing" people to displacement. Secondly, one can think of the assignment in a policy-analysis terms. Then the question would be something like what kind of a role the concept of "fear" plays in practices of international regime of "humanitarianism". In other words, how the fear as an objective category determines whether an asylum applicant should be granted a status of refugee or not?

This essay does not aim either of the ways. Rather, I want to group these two seemingly different ways together and then think critically about the practices of humanitarianism. The first critical comment is that in both ways – fear considered as "push factor" and as a factor in determination – fear is constituted into a measurable object. The striking consequence is that by analysing "objective" fear, it is thought, one can practice the "humanitarianism" in a just manner.

What follows, then, is that humanitarianism constitutes "fear" as an only legitimate "push factors". Other "push factors", such as poverty, appears, within this scheme, something like "illegitimate" reason for a person to emigrate. Thus this particular kind of humanitarianism authorises relevant authorities to evaluate a possibility and nature of fear in respect to individual case. The international regime of humanitarianism constitutes fear into a calculable object of knowledge upon which the particular regime acts upon. The critics of the politics of humanitarianism has, very plausibly so, pointed out the disquiet following from this.

The main problem here is not the general one is a sense that fear is deemed a factor in protection. For the critics, the problem is that fear must have been standardised in a one way or another. Furthermore, as Ranabir Samaddar points out, one has been witnessing a process of doctrinisation of humanitarian principle of care and protection. Care and protection are conditioned by a systematic application of "knowledge"; knowledge that is alleged to "uncover" the reality of fear in every single case.

The critical analysis of politics of doctrinised humanitarianism reveals how contemporary international humanitarian regime embeds a striking inequality. This inequality is not only gender-related. However, it is perhaps in relation to gender that the inequality of the regime becomes most apparent. As it stands, the current regime operates on the basis of fear that can be known as "well-grounded", and fear that is a result of, almost without exception, systematic and repressive violence of a state or state-sponsored groups. Here fear is constituted by the substantial threat of institutional (i.e. state) violence which may lead to death, significant infringement of freedom or physical violence such as torture. The very problem then is that the narrow definition of fear excludes many other situations in which the *fear of violence* is concrete, significant and tangible for the individuals in question. Most notably, perhaps, what is excluded are fear of violence that is repeatedly experienced by women, such as, Ranabir Samaddar lists, "rape, violence, mass murder, eviction, girl-sale, illegal underpaid female labour sex slavery".

In a nutshell, the international regime of humanitarianism is fascinated with *fear of violence* but it defines it in a certain way. The question to be asked now is the following: how to situate this politics of humanitarianism that deals with the issue of fear of violence in a certain way within the wider context of modern politics?

To begin, it must be said that violence is embedded firmly in the modern idea of politics. On the one hand, as it is well known, for Clausewitz, violence in the form of war was continuation of politics by other means. On the other hand, Foucault turned this Clausewitzian notion upside down by demonstrating how the modern political thought actually represents politics as continuation of war by other means. Hence violence is omnipresent in modern political thought and thus modern politics is to a large extent about violence. Politics consists of ideas on how to deal with violence, how to contain it and, of course, how to exercise it. Most interestingly, modern politics is to a large extent about effecting *a concealment violence*.

Against this background, one can establish that the history of contemporary regime of humanitarianism is about concealment of violence by politicising violence in certain way. From the start, the operation of the humanitarian regime has effected a categorisation of violence in terms of legitimate and illegitimate. Every decision to grant an asylum (or refugee status) is to judge illegitimate the institutional violence that exercised by a country a refugee come from. Given that contemporary humanitarian regime is a western creation, it is unsurprising that defectors from the communist bloc succeeded well in getting a status of political refugee.

It is not totally unjustified to speculate that the humanitarianism, as it was implicated in emerging post-World War II refugee protection regime, functioned also as attempt to *legitimate* (to conceal) the institutional violence exercised by several western countries from North Africa to Vietnam. Thus illegitimate was the violence that was seen as being systematically exercised by communist governments against their citizens, whereas legitimate was the systematic violence exercised *against* the "rogue" states of the time. In other words, Western states could act as generous defenders of liberty, democracy and human rights by protecting the victims of the fear of systematic violence while at the same time they exercise violence around the globe with brutal consequences.

One can give more contemporary example of politicisation of violence in the context of humanitarianism. By binding themselves to regime of humanitarianism, the states, particularly in the West, can profile themselves again as generous. In a recent speech, British Prime Minister Tony Blair emphasised the generosity of his country by referring to its asylum system that protects people facing a constant *fear of violence*. By referring to their commitment in this regime, the western states are able to demonstrate their concern with systematic exercise of institutional violence of some states against the citizens of these states. What becomes concealed at once is the no less systematic and no less institutional use of violence that becomes produced by their regimes of migration control. The problem is that this violence never appears as illegitimate. Or rather, it hardly is considered violence at all even though it is just that. It is managed to be kept in Weberian definition of legitimate violence. What one witnesses there is not only violent practices of forced deportations and detentions of failed asylum seekers and "illegal" immigrants. The European regime of migration control, for instance, contributes greatly to maintain the activity of human trafficking that makes individuals engaged this activity as susceptible of constant *fear of violence*.

Against this background, it is essential to think how to revise the international regime of humanitarianism. It is crucial not to abandon the principle of protection. Ranabir Samaddar is plausibly worried that since care and hospitality are not emotionally but procedurally driven, we are "seeing the last act in an opera on the death of emotions".

However, before one sees a rebirth of emotions the protection takes place only by virtue of it being doctrinised. There are certainly ethically much better ways to doctrinise the protection than the current one. As Samddar insists, it is not the worst option at all to lift the voice of those in fear of violence into centre stage.

Review relevant sections on ethics and justice in B.S. Chimni's *International Refugee Law: A Reader and comment on the importance of these two issues in rehabilitation and care of refugees.*

Vinai Kumar Singh

Prof. Chimni most important contribution is his 2000 book *International Refugee Law: A Reader*, a book rich in ideas anticipating many subsequent formal developments. His work has been wide ranging and highly influential. His work addresses the growing tension between its language of protection and the ground reality of rejection. The chapter 6 of the book analyses the three available traditional durable solutions to the refugee problem: resettlement in third countries, local integration and voluntary repatriation. The author observes that in the past, west preferred resettlement rather than repatriation as a means of durable solution. He considers resettlement as an exile bias in international refugee law advocated by the industrialized countries. Though, between two world wars, resettlement was used as the principal or partial solution for a number of refugee situations. Also he disproves the thesis of the industrialized countries that most refugees flee the poor world after the end of the cold war. Infact, author correctly observed that the principle of burden sharing had not been fully undertaken into consideration by the industrialized countries. During the adoption of the Constitution for the International Refugee Organisation, the majority and minority were in agreement on the international character of the refugee problem but differences emerged about the role and scope of international organization. The annual number of resettlement cases averaged 122,000 per year throughout the 1980's had plummeted to a mere 37,000 by 1992, or 0.2 percent of the total number of refugees in the world. The author notes that the no country is legally obliged to accept resettlement cases. The author also notes a variety of reasons why many states are reluctant to offer resettlement places. The author also correctly concludes that the by the late 1980's, resettlement- designed as an important solution and protection tool for individual refugees meeting certain very specific criteria – had itself become the chief pull factor in a mass migration movement.

During 1951-70, laws on asylum started gaining a ground in international law. Article 13(2) of Universal Declaration of Human Rights declares the right of everyone to return to his country. This period revealed the abuses of the international bias in favour of exile and established it as inhumane and disastrously inappropriate in the circumstances of the modern refugee problem. In recent years, an increasing number of western governments have called into question this traditional bias and have sought to promote a new and positive approach to prevention and voluntary repatriation. Over the years, the governments reaffirms that the assumption of external settlement as the correct durable solution to a refugee situation could not be justified on either humanitarian or political grounds. Today it is of paramount importance that international co-operation in refugee situations be directed primarily towards the prevention of refugee movements and towards return. However, the solution of voluntary repatriation also raises a host of legal and political issues which the author explores in this book. What are the minimal conditions which must be satisfied before the UNHCR should assist repatriation? What is the manner in which it should be verify the voluntary character of refugee repatriation? What should be its role in monitoring the status of returnees in the country of origin? In what ways can it intervene to ensure that the human rights of returnees are respected?

Apart from this, the author examines the different stages of the process of repatriation- decision making, preparation, departure, travel, arrival, dispersal, and integration. In recent years, the last stage integration has been considered a vital element in the refugee situations. The author outlines in this chapter the relationship between needs of returnees and the factors governing the response to those needs once refugees are back in their home country. The author gives emphasis not only on rehabilitation of refugees but also on the rehabilitation of home areas which includes zonally targeted assistance. The author argues to give higher priority to women refugees, elderly and orphaned in any repatriation plans. He strongly believes the role of international organization and NGO's in monitoring the needs of returnees and in sensitizing the authorities to those needs. He also mentions that there should be intensified dialogue among the governments of countries of origin and asylum and international organization involved in the refugee situations. In the backdrop of the various UNHCR Guidelines on Protection and Care the author in his book chapter 3 titled *Rights and Duties of Refugees* discussed in detail the future of refugee-specific

rights regime and analysed the civil, political and economic rights available in refugee conventions and protocols. In sum, his work has inspired the philosophy of ethics and care in the rehabilitation and care of the refugees. His work has been one of the builders of the formal structure of rehabilitation programmes, UNHRC 4R formula (Repatriation, Reintegration, Rehabilitation, Reconstruction) has been one of his inspiration as well as one of his key insight to reorient the planning and implementation stages of repatriation. However, the author has not attempted to address in any detail the question of programmes for returnees once back in their country of origin which he considers a subject for another chapter.

The author in 2002 wrote an article titled "*Development and Migration*" in the book *Migration and International Legal Norms* edited by T. Alexander Aleinikoff and Vincent Chetail which argues there is a soft law obligation and right based approach to address the root causes of migration flows. Though he missed here to argue the refugee rights in the context of right based approach which has become universal, inalienable and indivisible rights.

A critical discussion of "fear" as a factor in the displacement of vulnerable groups

Gandhari Dutta

The sphere of refugee studies is very narrowly defined – the growing volume of forced displacement, mass exodus, unwanted migration, illegal border crossing remain outside the domain of refugee studies, although the context of movement often is similar. Therefore, it is necessary to reconceptualize the basic definitions – who is a refugee? Who is a forced migrant? What creates a refugee movement or forced displacement? Where does the difference lie (if there is any difference at all)? Scholars' enquiry should be directed to a new horizon where the discussion can go beyond the conventional notion about the factors of forced population displacement. People are forced to leave their 'home' not only because of the immediate crisis or compulsions. The state of crisis and conflict is essentially the result of frustration due to structural failure accumulating over the years. The cross-border movement continues today between India and Bangladesh even after fifty years of partition. Where is the desire of movement rooted into? Why do people accept a great deal of risks involved in moving into another country? Finding answers in the contemporary economy, demography or politics will be an over simplification of the actual problem. The present movement is the outcome of the history of nation building in post colonial South Asia. Therefore, it is required to reconceptualize the theme of refugee. In doing so, three parameters – 'power', 'fear' and 'ethics', as aptly identified by Samaddar, have to be reviewed and rediscovered. Thus the present article speaks about "the inadequacy of refugee studies ... by addressing three issues in their connections – power, fear and ethics, to show why there is a need for refugee studies to become sensitive to the realities of power, fear and ethics, and in order to do so, it need to be reinstate in history".

Power implies the primacy of institution (state/UNHCR) in defining or determining the status of refugee, rejecting the claim of a vulnerable group or individual to receive shelter and protection as refugee. The criteria to assign or deny the status of refugee to a person or group are very much subjective and therefore, lack in universal applicability. Under International Law, refugees are persons outside their country of citizenship who are unwilling or unable to return to their country because of a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (Geneva convention, 1951). The feeling of fear is an intangible aspect and may not be always established and justified by factual proves. The question is who is causing fear and persecution and who is subjected to fear? More important question is who is in power to determine the status of refugee to a displaced individual or community. The complexity of situation surfaces when the conflict occurs between the state and its citizens. A continuously neglected and discriminated community can rebel ('as a last resort') against the tyranny and oppression of state while the state also has the right to repress the rebel on the ground of national security and national integrity. In such a situation of utter confusion how imperial will be authorized body in deciding whether there is 'a well founded fear' for a group/individual in the state A.

'Power' not only determines who is a refugee but also creates a situation that results in forced displacement. In the cold war period, when oppression, aggression, violence are organized in well-planned and systematic manner with surprising amount of instrumentality, the vulnerable groups often do not have the voice to establish their claim for justice. It becomes important who is going to be considered as refugee? On what ground? Who will provide shelter to them? These questions are important because they are related with the issues of image of a 'modern' state, geo-politics, international relations, voice of the vulnerable group. And so the process of assigning and denying refugee status to a person or community becomes politicized marginalizing the humanitarian concern.

"Ethic" is discussed in relation to the treatment of refugees, care of refugees, providing protection and shelter to them. Samaddar describes 'ethic' as care, kindness and hospitality based on pure humanitarian emotions and sentiments. The most important observation by the author is "...non-state protection is more than the state protection, refugees and immigrants get shelter more from private (clan, other affinitive ties, extended families, and what Charles Tilly calls the transplanted network) sources". A very good example of non-state protection, as cited by Samaddar, is the reception of Bangladeshi refugees by the Bengalees of West Bengal in 1970s.

Fear is a feeling of utter insecurity and helplessness. Fear can be identified in two stages - pre-movement fear and post-movement fear. It is the fear of death, persecution, abuse, violence that create a traumatized people who leave their home, their state and step into an uncertain future. A good example can be drawn from the recent racial killing in Assam. Thousands of houses have been burnt, around 80 people have been killed and many are kidnapped within a span of not even a month in the district of Karbi Anglong, Assam due to a violent conflict between two racial groups. This has resulted in abandoned villages

- the traumatized villagers have fled leaving their houses and property behind to gather in camps in search of security. So far 48 camps have sheltered 28 thousands of shelter seekers (Anandabajar Patrika, 19th October).

The post-movement fear arises from the uncertain future and crisis of identity of the moving people. "The refugee flees in fear from the induced violence of the state, private armies, systematic discriminatory institutions, environmental disasters and developmental catastrophe - but s/he flees from a state where s/he is a citizen, and lands in another state no matter where it is, and here is an international system that tries to frame the rules of the game....It is the bizarre scenario of hosting the distressed and displaced through the state by the international that has produced the alien". The indifference and hostility of the receiving society, the complexity of international law do not allow Shefali (in Marginal Nation), Samira Adamu, and Marcus Omofuma to have a safe place to live, to get a little caring shelter which can provide a healing touch to their pain and agony. Post-movement fear thus either results in loss of life further distressful and disgraceful displacement. A life once uprooted, is often, not replanted again due to institutional complexity. Where does the problem lie? "The 1951 convention did not consider the millions fleeing homes in the wake of de-colonization, partition and the emergence of new states" and therefore, it is "inadequate for negotiating the population flow in the world of today. In the age of globalization, the world has remained divided. The narrow notion of nationalism and ethnicity over emphasize the issue of national security and has compelled millions of uprooted and displaced persons to remain homeless.

Truly, "we are now seeing the last act in an opera on the death of emotions".