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## Sri Lanka: Refugees of Indian Origin in Tamil Nadu- Landmark Judgement

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By Prof. V. Suryanarayan

Justice G. R. Swaminathan of the Madurai Bench of Madras High Court delivered a welcome judgment on June 17, 2019 which will have far reaching repercussions on the future of nearly 29,500 refugees of Indian Tamil origin, who are staying in refugee camps scattered throughout Tamil Nadu. In this significant judgment the Honourable Judge has instructed the Government of India to consider the applications for conferment of Indian citizenship on these refugees.

The 65 applicants are living in Kottapattu camp in Tiruchi district. They had submitted applications for Indian citizenship to the local authorities. These applications were not forwarded to New Delhi because it was New Delhi's policy not to confer citizenship on refugees. New Delhi subscribed to the view that when normalcy returns the refugees will return to their homeland.

An anomalous situation should be highlighted. India has not so far enacted a national refugee law and, therefore, the term refugee has not been defined. At the same time, when there was mass exodus of Tamils from Sri Lanka to Tamil Nadu after the communal holocaust in July 1983 refugee status was spontaneously conferred on them. They were accommodated in refugee camps, they were provided with food, medicines, shelter, education and financial doles. In addition they were also permitted to work outside the camps to supplement their income. But the sad fact remains, the Tamil refugees are considered as "illegal immigrants" and therefore "they are not eligible for registration under Section 5 or for naturalization or under Section 6 of the Indian Citizenship Act, 1955". It was also the Government's contention that "even if the writ petitioners fulfill all the eligibility criteria, they cannot demand citizenship as a matter of right". In a communication dated November 7, 2007 to the Special Commissioner for Rehabilitation Secretary to the Government of Tamil Nadu mentioned that there are clear instructions from the Government of India "not to entertain applications of Sri Lankan refugees for the grant of

Indian citizenship”.

A silver lining in an otherwise gloomy situation should be pointed out. Following the assassination of Rajiv Gandhi, then Chief Minister Jayalalitha was determined to send back the refugees to Sri Lanka. Considerable pressure was exerted on the refugees to sign forms to the effect that they were willing to go back to Sri Lanka. Human Rights Organisations rightly pointed out that India was violating the basic principle of Humanitarian Refugee Law – *non-refoulement* – which means that a refugee should not be sent to another country against his/her wishes. In order to save embarrassment, Prime Minister Narasimha Rao, on the advice given by Foreign Secretary Muchkund Dubey, permitted the UNHCR to open an office in Chennai with the mandate that it should certify the “voluntariness” of repatriation.

Fearing that they will again be compelled to return to Sri Lanka the refugees approached the High Court for judicial remedy. In 1994 the Madras High Court delivered a judgment stating that the petitioners “will not be compulsorily sent back to Sri Lanka”

Few facts about the petitioners should be underlined. They are the descendants of the Indian Tamil labourers who migrated to Ceylon in the 19<sup>th</sup> century for the development of the plantation economy. It was their sweat and labour which converted the malaria infested forests of Sri Lanka into a green paradise. The export of tea became the backbone of the Sri Lankan economy.

By the time of independence in 1948 most of the Indian Tamil labourers had become permanent settlers and they wanted to take up Ceylon citizenship. Unfortunately the first legislative enactment of independent Ceylon was to render them stateless. The problem of these stateless Tamils became a thorny issue in India-Ceylon relations. By two inhuman agreements, the Sirimavo-Shastri Pact, 1964 and Sirimavo-Indira Gandhi Agreement, 1974 New Delhi decided to confer Indian citizenship on large number of Indian labourers. Their views were not ascertained and, what is more, the early repatriates, who came to Tamil Nadu, underwent lot of suffering. Adding insult to injury the local people referred to the repatriates as Sri Lankans, a position they never got in Sri Lanka even after many years of residence.

Another aspect of Tamils of Indian origin deserves mention. The tea country is in the central part of Sri Lanka and the plantations are surrounded by Sinhalese villages. This geographical location has made them realize that an independent state of Tamil Eelam will not lead to their political salvation. Their future will depend on amicable relations with the Sinhalese. Their representative organisation, Ceylon Workers Congress, joined the Government in 1978 and extended crucial support to the United National Party (UNP) during elections. However, disassociation from the demand for Tamil Eelam did not mean peace and security; on the contrary they became defenceless victims in times of communal conflict, 1977, 1981 and 1983.

The petitioners are those who came to Tamil Nadu as refugees after 1983. They have sold all their belongings and came to Tamil Nadu hoping they can become Indian citizens. Over the years their children have married local people. Educationally they are more advanced than their counterparts of Sri Lanka. In my conversation with the inmates of the Kottapattu camp they repeatedly asserted, “Come what may, we will not go back to Sri Lanka”.

The judgment has come at a time when the Government of India is reviewing its refugee policy. New Delhi has introduced the Citizenship Amendment Bill, 2016 which will enable refugees to take up Indian citizenship. It owes its genesis to the assurance given by Prime Minister Narendra Modi that the Hindus from Pakistan, Bangladesh and Afghanistan who have come to India as refugees will be conferred Indian citizenship. But since singling out Hindus alone for conferment of citizenship may be interpreted as discriminatory the bill has extended the right of acquiring citizenship too all non-Muslim minorities. But the most unfortunate part of the amendment bill is the fact that it does not apply to the Tamils of Indian origin from Sri Lanka who have come to Tamil Nadu as refugees. And, as pointed out earlier, they fulfill the qualifications for the acquisition of Indian citizenship under the Citizenship Act of 1955.

The significant judgment of the Madurai Bench of the Madras High Court unfortunately does not make a reference to the proposed amendment to the Citizenship Act. The Amendment makes it abundantly clear that non-Muslim refugees from Bangladesh, Pakistan and Afghanistan will no longer be treated as illegal immigrants, on the contrary they can apply for Indian citizenship. It will be a good idea if the petitioners can make a submission to the High Court to instruct the Central Government to include Sri Lanka also among the countries to be covered by the Citizenship Amendment Bill. Will the Prime Minister and Home Minister positively respond to the “voice of the voiceless” refugees of Indian Tamil origin from Sri Lanka who are today living between “fear and hope”.

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