

LEGAL FRAMEWORK GOVERNING REFUGEES IN INDIA

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Abstract

The problem of refugee is a matter of serious concern at regional level, national level as well as at international level. Like many other countries in the world, India also faces the mass influx of refugees. Refugees are never welcomed and the receiving countries often decline to receive them. The reason mostly cited for declining are threat to the internal security of the state from terrorist, lack of resources, burden on resources, policy reasons etc. In India there is no comprehensive law which can deal with the issue of refugees. India is not party to the United Nation Convention on Refugees of 1951 neither to its protocol of 1967 but has been the member of UNHCR's Executive Committee since 1996. India has ratified many other universal human right treaties and conventions which imposes obligation to provide protection to refugees. Thus, it can be concluded that the issue of refugees in India is a matter of policy rather than of law.

This paper shall attempt to understand what are the current laws and conventions which address the issue of refugees in India and analyze how India deals with this problem.

Keywords: Refugees, Asylum seekers, Internally displaced persons, Protection, Guiding Principles, Non- Refoulement, 1951- Refugee Convention, 1967- Protocol

Introduction

India continues to be the host country and receive the influx of refugees from its neighboring countries despite of having an estimated population of 1.39 billion² of which approximately 8 million³ people are living below poverty line. Currently the legal framework of India has no uniform law which can deal with the massive population of refugee, India chooses to treat the incoming of refugees based on their national origin and political consideration.

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² According to Worldometer elaboration of latest United Nations data, available at:

<https://www.worldometers.info/>

(Last visited on 20 July, 2021).

³ According to the United Nations Millennium Development Goals (MDG) Programme, available at:

<https://www.in.undp.org/content/india/en/home/post-2015/mdgoverview.htm> (Last Visited on 18 July, 2021).

Beside these factors, according to the World Refugee Survey 2009 in India⁴ conducted by United States Committee for Refugees and Immigrants, and the statistic data supported by UNHCR⁵, Currently refugees and asylum seekers in India are approximately 456,000. In India refugees mostly come from its neighbouring countries which includes people who are either forced to flee their homeland due to internal or external conflict, political or religious persecution or human rights violation. According to the World Refugee Survey of 2009, India has granted refugee status to asylum seekers from countries like-

- (i) Srilanka-120,000
- (ii) China-110,000
- (iii) Myanmar- 100,000
- (iv) Afghanistan- 30,000
- (v) Bhutan- 25,000
- (vi) Nepal- 25,000

National Human Right Commission has submitted many reports⁶ and urged for the promulgation of national laws or at least amending the archaic Foreigners Act, 1946. Foreigners Act is the current law which is being consulted by the authorities with respect to refugees and asylum seekers in India. The present law does not define the word refugee, “foreigner” word is used to cover the non citizens residing temporarily or permanently in the country.

Since the Foreigner’s Act 1946 nor any of its amendments or additions defines the term refugee. However, a commission chaired by former Justice P.N Bhagwati in 1997⁷, who were charged with the duty of constructing a uniform national law for refugees protection in India. Though the bill never tabled in parliament but the term refugee was adequately defined in the “Model Law”⁸.

⁴ United States Committee for Refugees and Immigrants, *World Refugee Survey 2009 - India*, 17 June 2009, available at: <https://www.refworld.org/docid/4a40d2a75d.html> (Last Visited on July 20, 2021).

⁵ United Nations High Commissioner for Refugees.

⁶ Rajeev Dhavan, “ On the Model Law for Refugees: A Response to the National Human Rights Commission (NHRC),” *NHRC Annual Reports 1997-1998, 1999-2000* (New Delhi : PILSARC, 2003).

⁷ Drafted under the auspices of the Regional Consultations on Refugees and Migratory Movement in South Asia initiative in 1995, with Justice P N Bhagwati as the Chairperson of the Drafting Committee of the India – specific version of the national law on refugee protection.

⁸ Article 3 of the Model National Law On Refugees defines refugee as: (a) any person who is outside his or her country of origin, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion, or, (b) any person who owing to external aggression, occupation, foreign domination, serious violation of human rights or other events seriously disrupting public order in either part or whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin.

Further, NHRC has also requested for making changes in the Foreigners Act, 1946 and also for formulating new law and policy but the government and policy makers remain obtuse upon this issue. NHRC is of view that it is important for India to frame a national law or policy in consonance with the 1951 UN Convention and to its protocol of 1967. NHRC on 2nd October 1997 initiated dialogue with the officers of MEA⁹ and requested to look into the possibility of India to become party to the UN Convention relating to the status of Refugees of 1951 and to its protocol of 1967.¹⁰ The basic reason to initiate the dialogues was that, the law which deals with the influx of migrants is through “ad-hoc” administrative decision which is based on political and security consideration rather than framing and enacting specific law which is politically more convenient and easy on the basis of India’s bilateral relations with the country of origin of the refugees in question¹¹.

In 1997, 2006, and 2015, refugee protection bill were put forward in parliament, but these bills got rejected by the government on the grounds of national security.

To have a lucid and vivid meaning, Refugees migrants and internally displaced persons must be distinguished from each other. According to the United Nation Convention relating to refugees of 1951 Article 1A(2) defines the term refugees - as a person who flees his own original country and is unwilling to return because of threat to his or her life or liberty¹².

Asylum Seekers are identified as a seekers of international protection. Some countries use this as a legal term for those who have applied for refugee status and have not received a final decision on their claim. It is not mandatory that all the asylum seekers would get the recognition of refugees. Asylum seekers claim should be examined fairly and they should not be sent back to their country of origin¹³.

⁹ Ministry of External Affairs, Government of India.

¹⁰ Rajeev Dhavan, “On the Model Law for Refugees: A Response to the National Human Rights Commission (NHRC),” *NHRC Annual Reports 1997-1998, 1999-2000* (New Delhi : PILSARC, 2003).

¹¹ Arjun Niar, “National Refugee Law for India: Benefits and Roadblocks,” *Institute of Peace and Conflict Studies*, New Delhi, India, (2007).

¹² According to Article 1A(2) of the Refugee Convention defines a refugee as a person who ... “owing to 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 or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

¹³ A Guide to International Refugee protection and building state Asylum Systems, available at : <https://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html> (Last Visited on July 20, 2021).

Thus, refugees and asylum seekers are ‘externally displaced people’ who have well founded fear of persecution in their country of origin and therefore they cannot return¹⁴.

Internally displaced persons are persons or group of persons who have not crossed international state borders but are forced to flee their habitual residence because of armed conflict, generalized violence, violation of human rights or natural or man made disasters¹⁵.

Therefore refugees and asylum seekers share well founded fear of persecution with internally displaced people, although they have not crossed international borders and also cannot go back to their homes.

On the other hand, Migrants are the persons who cross international borders not because of threat to life or liberty but in search of work for the better socio-economic condition. Migrants enjoy the protection of their own government even when they are abroad and can return¹⁶.

International position of India in terms of treatment of refugees is disputable because it is not signatory to the United Nations convention relating to the status of refugees of 1951 which came into force on 22nd April 1954 nor to its protocol which was adopted in 1967¹⁷.

But it is equally important to note that, India has ratified various other international and regional conventions and treaties such as-

- UN Declaration on Territorial Asylum, 1967
- Universal Declaration of Human rights, 1948¹⁸
- International Convention on Civil and Political rights, 1966¹⁹
- International Convention on Economic, Social and Cultural Rights, 1966
- Convention on the Elimination of Discrimination against Women, 1979

¹⁴ Bhairav Acharya, “The Law, Policy And Practice of Refugee Protection In India”, available at: <http://www.ssrn.com> (Last Visited on July 10, 2021).

¹⁵ A Guide to International Refugee protection and building state Asylum Systems, available at : <https://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html> (Last Visited on July 20, 2021).

¹⁶ *Ibid.*

¹⁷ Convention relating to the Status of Refugees Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, Entry into force: 22 April 1954, in accordance with article 43.

¹⁸ Article 14(1) of UDHR states that, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

¹⁹ Article 13 of the ICCPR provides that, “An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority”.

- Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment, 1984.²⁰

India is also a member of Executive Committee of UNHCR which has the task of approving and supervising the material assistance programmes of UNHCR. Moreover, it gives a clear impression that India has respect for its international treaties on the treatment of people and offers protection to the refugees. UNHCR as the international watchdog body has a limited and restricted role as it provides the basic reason for Indian policymakers to construct a uniform national law on refugees to meet the international criticism with respect to the condition of refugees in the country.

Refugees Under Indian Legal Framework

In India there is no specific statutory law which deals with refugees directly. In the absence of specialized framework, the primary documents which deals with the treatment of foreigners in India are- The Registration Act, 1939, The Foreigners Act, 1946 and the Foreigners Order, 1948.

The Foreigners Act, 1946 is an archaic law which was enacted by the colonial government in response to the needs of the second world war.²¹

The Registration of Foreigners Act 1939 under article 2 (a) defines the term foreigner²². The Foreigners Act 1946 also under Section 2(a) defines the same definition of foreigner. Foreigners Order of 1948 also states the same definition. Therefore covering all refugees within its ambit. Thus without having specialized law, there is no distinction between the foreigners and refugees, Mostly refugees are treated on par with foreigners and illegal migrants. It is necessary to have a clear distinction between foreigners as a general class and refugees as a special subset of that class²³.

Both the Act and the Order grants the government of India with the power to restrict the movement of foreigners in India, to limit and control the employment opportunities, to mandate medical examination, ability to refuse refugees. However, The Refugee Convention of 1951 bars all these actions.

The laws under which refugees are governed are-

- Passport (Entry into India) Act, 1920
- Passport Act, 1967

²⁰ Article 3(1) of CAT states that, “no state –party shall expel, return (‘refouler’) or would be in danger of being subjected to torture.”

²¹ See the Statement of objects and Reason of the Foreigners Act, 1946.

²² Article 2 (a) states that, “foreigner means a person who is not a Citizen of India.”

²³ *Supra* note 13 at 4.

- Registration of Foreigners Act, 1939
- Foreigners Act, 1946
- Foreigners Order, 1948

In addition, Some of the provisions of The Criminal Procedure Code, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872 are also applicable on refugees .

Under Passport (Entry into India) Act, 1920 and Passport Act, 1967 there is no distinction between refugees and other categories of foreigners like economic migrants, tourist etc. In the absence of valid passport, the refugees run into the risk of arrest by immigration authorities and illegal deportation.²⁴ Refugees leave their country in turmoil and they don't have time to get their passport issued. Article 31 of Refugee Convention states that penalty should not be imposed on refugees under such conditions. Section 20 of Passport Act, 1920 states that once the refugees enters the territory of India, they may get valid passport and identity cards if the criteria of public interest is fulfilled.

The Registration of Foreigners Act, 1939 confers central government with powers to make rules for the foreigners, where to report, whom to report, proof of identity and registration certificates. This is equally applicable on the refugees²⁵.

The entry, stay and exit of foreigners in India is governed by the Foreigners Act, 1946. Section 3 of the act confer power to the central government to issue orders to control foreigners in India . There are many orders which are in force that puts more restrictions on foreigners by restricting the movement, activity and residence of foreigners and require proof of identity and regular appearance before the police²⁶.

Section 5 of the act prevents foreigners from changing there names during stay in India.

Section 6 requires masters of ships and pilots of aircraft to maintain records of travelling foreigners.

Section7 obliges hotel keepers to maintain records of foreigners who stays. .

Section 9 places burden of proving that a person is not a foreigners is on that person.

Section 14, 14A and14B penalizes foreigners and abettors who acted in contravention of the Act and order made there under.

²⁴ Bimal N Patel, *India and international Law*, (2005 edn), Martinus Nijhoff Publishers, 2005.

²⁵ R.J.S. Tahir (eds.) Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir: *Refugees and the law*, 2edn, HRLN, 2011, pp 79.

²⁶ See, The Foreigners (Restriction on Movements) Order, 1960; Foreigners(Restriction on Activities) Order, 1962; Foreigners (Restriction on Residence) Order, 1968;Foreigners (Proof on Identity) Order, 1986 and Foreigners (Report to Police) Order, 1971.

Section 3(2)(c) of the act gives the executive wide and unlimited powers to remove any foreigners, These unfettered powers are free from judicial review generally. Also the act provides to arrest and detain any foreigner on mere suspicion for non-compliance under this act.

The unrestricted power of the executive to remove foreigner was first ever dealt by Supreme Court in 1955, where it was held that:-

“.....The foreigners Acts bestows absolute and unfettered power to the central government to remove foreigners from India. Under the Constitution of India there is no provision restricting these absolute discretion....”²⁷

Further, the executive are also not responsible to give reason for the deportation of any foreigner while exercising this vast executive discretion. Thus, the executive is also not responsible to provide hearing to the person who is to be deported.²⁸

The Foreigners Order, 1948 authorises the state government to “grant or refuse” a foreigner’s entry into the territory of India on grounds like invalid passport, unsound mind, public safety etc. The authorities may refuse to grant permission if the formalities are not fulfilled according to the Foreigners Act.

This leads to a genuine refugees paying an unfortunate price in a country that has brilliant history of protecting the refugees and providing asylum to the seekers.

Constitutional Provisions for Refugees

There are provisions in the Constitution of India that applies to the refugees in the same way as it applies to the Indian Citizens.

In India Foreigners are protected under constitutional provisions that includes protection under right to equality [Article 14] and persons shall not be deprived of his life and personal liberty except procedure established by law [Article 21].

Article 14 of the Indian Constitution provides equality before law and equal protection of law. Classification of person should be based on intelligible differentia having a nexus with the object of the act. Therefore, executive may distinguish between classes or description of foreigners and deal with differently. It follows from this that if a foreigner is discriminated by state action as against another foreigner of same class or description has a valid constitutional cause of action.²⁹

²⁷ *Hans Muller of Nuremberg* AIR 1955 SC 367 at para. 36.

²⁸ See, *Hans Muller* AIR 1955 SC 367 at para 37; *Abdul Sattar Haji Ibrahim Patel* AIR 1965 SC 810 at para 10; *Louis De Raedt* (1991) 3SCC 554 at para. 13; *Sarbadanda Sonowal* (2205) 5 SCC 665 at para. 49-52.

²⁹ See, *Vincet Ferrer* AIR 1974 AP 313 at para. 2; *Basheshar Nath* AIR 1959 SC 149 at para. 14; *Hans Muller* AIR 1955 SC 367 at para. 23-24

Under Article 21 of the Indian Constitution foreigners enjoy protection in two ways-

- (a) They are equally entitled to the right against deprivation of life and dignity.³⁰
- (b) The right against executive action sans procedural due process accrues to them.³¹

Hon'ble Supreme court has radically reinterpreted Article 21 to include substantive due process of law to be followed by any state action infringing on life and personal liberty.

In addition to these articles, foreigners are also entitled to protection recognized under Article 20.

Article 20(1) states the right against prosecution under retrospective effect, Article 20(2) provides right against double jeopardy and Article 20(3) describes right against self incrimination;

Also, Article 25 to 28 deals with the right to freedom of religion, conscience and freedom to profess, practice and propagate religion.

At last, Article 32 which prescribes right to move to the Supreme Court for enforcement of the rights above mentioned.

In *Visakha v. State of Rajasthan*³², Court upheld the harmonious construction of international law and domestic law when it is consistent with the fundamental rights. The government has given temporary protection to the refugees.

In *Louis De Raedt v. Union of India*³³, Court held the fundamental right to life, liberty and dignity is available to non citizens also.

In *U Myat Kayew and another v. State of Manipur and another*³⁴, interim bail to the Burmese refugees who were detained was granted.

In *Boghy v. Union of India*³⁵, Court gave liberal interpretation of law in the matter relating to the detention cases so that UNHCR can determine the status of refugees.

In *Majid Ahmed Abdul Majid Mohd. Jad Al- Hak v. Union of India*³⁶, Court expressed that food and medical assistance should be provided to the detainees as it is basic minimum necessity for survival.

³⁰ See, *Louis De Raedt* (1991) 3 SCC 554 at para. 13; *Chandrima Das* (2000) 2SCC 465 at paras. 28, 32, 34; *Anwar* (1971) 3 SCC 104 at Para. 4; *National Human Rights Commission* (1996) 1 SCC 742 at para. 20.

³¹ See, *P. Mohammad Khan* (1978) II APWR 408.

³² 1997(6) SCC 241, paras. 14-24.

³³ AIR 1981 SC 1886, para 12.

³⁴ Guwahati High Court 1991, (Civil Rule No. 516 of 1991).

³⁵ Civil Rule No 1847 of 1989).

³⁶ Delhi High Court 1997, Criminal Writ Petition No 60 of 1997.

It may be concluded that in most of the cases concerning refugees, Court has taken a liberal instance by lessening the gravity of punishment or by ordering the release of refugees on compassionate grounds.

Refugees Under International Legal Framework

United Nation Convention on Refugees, 1951

The 1951 Convention relating to the Status of Refugees is the basic foundation of international refugee law. After the end of Second World War, European Countries experienced massive displacement. So in the post war Europe, the convention relating to the status of refugee was adopted with restricted geographical and temporal conditions. For giving the convention the universal application, a protocol relating to the status of refugee was adopted in 1967 that removed the restrictions of the convention. Together, these two key legal documents provides the basic framework for refugees protection across the world.

The definition of refugee in the instrument is the legal basis to determine the status of refugee in context of Refugee convention of 1951. Refugee Convention considers a person as a refugee who fulfills the criteria mentioned in Article 1A (2)³⁷.

The 1951 Refugee Convention and its 1967 protocol covers three main aspects-

- The definition of refugee containing provisions for cessation of and exclusion from, refugee status.
- Giving legal status as refugees in the country of asylum, refugees should respect the laws and regulations of that country. Also, the refugee rights in the country of asylum includes protection from repatriation.
- The obligation of the state is to cooperate with UNHCR for the proper functioning and to facilitate supervision and application of convention.

Rights of Refugee under 1951 Refugee Convention:

Once the status of refugee is determined refugees are entitled to the rights mentioned in the 1951 Refugee Convention.

➤ **Right to equality and non-discrimination:**

³⁷ The definition of refugee stated under Convention includes *-well founded fear, persecution—because of race, religion, nationality, membership in a particular social group or political opinion, outside country of habitual residence ,unable or unwilling to avail protection of that country because of the fear of persecution.*

Article 3 of The Refugee Convention of 1951 incorporates the rule of non-discrimination and provides that the rights recognised by the Convention must be respected without discrimination on the basis of race, colour, sex, language, political opinion, national or social origin, property, birth or other status.

➤ **Right to free access to courts:**

Article 16 of the 1951 Refugee Convention, ensures the right of free access to the courts of law on the territory of a contracting state and to enjoy the same treatment as is granted to the national without any discrimination.

➤ **Right to work:**

The right to work is the basic economic rights. Articles 17, 18 and 19 of the 1951 Refugee Convention provides that the refugee's right to work, wage earning employment, self-employment or a liberal profession, is limited to ensuring equality of treatment with other nationals.

➤ **Right to welfare measures:**

Articles 20, 21 22 and 23 of the 1951 Refugee Convention, provides that welfare measures should be created for the refugees including the rationing system, adequate housing, education and public relief by ensuring that all state parties to the Convention are obligated to accord to the refugees the same treatment as that generally accorded to the nationals. In addition , the refugees enjoy the right to practice their religion and to impart religious education to their children.

Article 13 and 14 provides that refugees can acquire moveable and immovable property in the country of refuge and also enjoy the right to form associations.

➤ **Right to freedom of movement:**

Article 26 of the 1951 Refugee Convention envisage that, the State parties are required to accord refugees lawfully the right to choose the place of their residence and to move freely within their territory.

➤ **Right to identity papers and travel documents:**

The 1951 Refugee Convention under Article 27 states that the contracting states should issue identity papers to the refugees once the status of refugee is determined.

➤ **Right to seek Asylum:**

A person seeks asylum once it flees persecution and enters a state other than that of his origin or nationality. Thus, Asylum is the protection granted by the state on its territory to the person who comes to seek it.

➤ **Right not to be expelled:**

The 1951 Refugee Convention under Article 32 states that the state party shall not expel a refugee lawfully in their territory except under certain strictly defined conclusions.

Principle of Non- Refoulement:

The term non refoulement derives from French word “refouler” which means to drive back or to repel, as of an enemy who fails to breach one’s defences³⁸.

Article 33 of the Refugee Convention of 1951 gives expression to the principle of non-refoulement:- The country shall not deport, expel or forcefully return the refugees against his will back to his country of origin where there is threat to his life or liberty.

Through many case laws, it can be seen that India abides by the non- refoulement principle . In *Ktaer Abbas Habib Al Qutaifi v. Union of India*³⁹ , the Gujarat High Court gave decision not to deport the two Iraqi nationals to their country of origin as long as there is a fear of their life and liberty. Thus, Hon’ble court upheld the principle of non – refoulement under the ambit of Article 21 of the Indian Constitution.

In *Malvika Karlekar v. Union of India*⁴⁰ , stay order on deportation of Burmese refugees was passed by hon’ble Supreme Court on the same grounds.

Therefore, it can be concluded that, the principle comes into force when the refugees are unwilling to go back to their original country because of the fear of threat to life and liberty. India abides by the principle of non-refoulement, the non- refoulement principle being a significant part of customary international law. The principle of non – refoulement is binding on every state irrespective of the fact that whether or not that state has ratified the 1951 Convention or its 1967 Protocol.

Moreover, in most of the cases, it all depends on the whims and fancies of the government whether to keep refugees or sent them back to their countries. Sending back refugees depends on the factors like- what are the diplomatic relations between the host country and the original country, economic dependency , international relations , international pressure etc. however, this principle has less legal implication and more of a moral nature.

³⁸ See Guy S. Goodwin-Gill, *The Refugee in International Law* (Clarendon Press, Oxford, 1996) 2nd edition, P.75

³⁹ 1999 Cri LJ 919, para-3.

⁴⁰ 1992, Crl. WP No. 243 of 1992.

Indian Response Regarding Refugee Protection

According to the World Refugee Survey 2009⁴¹, India hosted 456,000 refugees among these were 96,000 Sri Lankan who were victims of liberation Tigers of Tamil Eelam and Sri Lankan armed forces. Among these refugees 73,300 were camped in Tamil Nadu state and 26,300 were outside the camps and got registered with the nearest police station. According to the report, in 2008, 28000 more refugees entered India.

The first influx of Tibetan refugees happened in 1959, with the coming of Dalai Lama and his followers who settled in Dharamshala in the North. In 1979, when china relaxed its emigration policy, a second wave of Tibetan Refugees sought asylum in India. Approximately, 110,000 Tibetans accounting to 80 % of whom lived in camps or in scattered settlements and moved freely in the country.

About 100,000 ethnic Chin from Myanmar, who were facing persecution which included forced labour and severe economic privation because they were Christian and had non – Burman ethnicity they got refuge and lived in restricted conditions in eastern states of Mizoram with few hundred living in New Delhi.

An estimate of 30,000 Afghans, only 9000 got UNHCR mandate status. 25,000 Bhutanese refugees left Nepal and resided in Indian states of West Bengal, Sikkim and Bihar .

India hosted 600 Somali refugees who fled their country after the collapse of the government in 1991 and resided in India. Also, an unknown number of Iraqi and Iranian refugees and about 200 Palestinians from Iraq resided in India.

Around 65,000 ethnic Chakmas from Bangladesh remained in the states of Arunachal Pradesh , Mizoram and Assam. Supreme court granted them Indian nationality but the naturalization process proceeded slowly.

Judicial Response for the Protection of Refugees

Courts evolved wider and humanitarian approach to protect the rights of refugees in India while interpreting the stringent legislation on foreigners without interfering with the executive powers.

In National Human Right Commission v. State of Arunachal Pradesh⁴²,

⁴¹ United States Committee for Refugees and Immigrants, *World Refugee Survey 2009 - India*, 17 June 2009, available at: <https://www.refworld.org/docid/4a40d2a75d.html> (Last Visited on July 20, 2021).

⁴² (1996) 1 SCC 742.

Supreme Court adopted the liberal interpretation of the law and recommended that refugees should be distinguished from foreigners and they should be protected under article 21 of the Indian Constitution. The Court held that-

“India is a country which is governed by the principle of Rule of Law. It is the duty of every state to protect the life and personal liberty of every human being whether they are citizen or non citizen. Also, State should prohibit any person or group of person (AAPSU) from threatening the Chakmas to leave the state where they are residing habitually.”

Hon’ble Supreme Court held that government has “absolute and unlimited” power to expel foreigners from India.⁴³

In *Mr. Louis De Raedt & ors V. Union Of India*, Supreme Court uphold the Hans Mullur of Nuremberg judgment and held that foreigners have the right to be heard⁴⁴.

In *Ktaer Abbas Habib Al Qutaifi V. Union of India* Gujarat high court held that the non-roulement principle stops the persecuted person from going back to their original country irrespective of their religion, race or nationality⁴⁵.

In *Gurunathan and others vs. Government of India* and others and in the matter of *A.C. Mohd. Siddique vs. Government of India and others*, Madras high court gave protection to the Sri Lankan refugees by not allowing them to forcibly return to Sri Lanka⁴⁶.

In *P. Nedumaran vs. Union Of India*, the Madras High Court accepted and appreciated the capability and unbiased decisions of the representatives of UNHCR⁴⁷.

In the matter of *Syed Ata Mohammadi vs. Union of India*, Bombay high court directed that the Iranian refugees should not get deported to Iran, as UNHCR has recognised them as a refugee⁴⁸. Court also allowed the refugees to travel to any place they desire. This order was in accordance with the principle of non- refoulement.

⁴³ *Hans Muller of Nurenburg V. Superintend, presidency* AIR 1955 SC 367; *Louis De Raedt & ors V. Union Of India* (1991) 3SCC 554.

⁴⁴ (1991) 3 SCC 554

⁴⁵ 1999 Cri LJ 919 (Gujarat High Court)

⁴⁶ WP No. S 6708 and 7916 of, 1992. DRJ (DB). 1998.

⁴⁷ 1993(2) ALT 291, 1993 (2) ALT Cri 188

⁴⁸ Criminal writ petition no.7504/at the Bombay High Court, 1994.

In *Maiwand's Trust of Afghan Human Freedom vs. State of Punjab*, *Malavika Karlekar vs. Union of India*, and in *N.D. Pancholi vs. State of Punjab & Others*, Apex Court gave stay orders on deportation of refugees from India⁴⁹.

In *Louis De Raedt vs. Union of India*, *State of Arunachal Pradesh vs. Khudiram Chakma* and in the matter of Chakma refugees, Apex court declared that person shall not be deprived of his life and liberty without due process of law⁵⁰.

Role of United Nation High Commissioner for Refugees in India

UNHCR was established on 1 January 1951 as a subsidiary organ of the United Nations General Assembly. Its function is to provide international protection to refugees and, together with governments, to seek solutions to their plight.

India is an executive member of UNHCR (United Nation High Commissioner for Refugee) since 1995. UNHCR plays a very significant role for the protection of uprooted and displaced people. In India, the work of UNHCR starts with the moment as soon as a refugees enters the territory. The person who enters India may apply for the refugee status and for the registration at the office of UNHCR. The deciding factor to grant status of refugee is the fear of persecution or threat to life and liberty. UNHCR mandates rescues the refugees against illegal arrest and detention. But this mandate is applicable to the refugees from outside South Asian region which gives ample room for the discrimination and exploitation of 'other' refugees. Refugees after getting the status and identity of refugees from UNHCR office avail the benefits like procuring valid passport, travel documents, ration cards, open bank accounts etc. Further, legal officer of UNHCR provide free legal aid to the recognized refugees, they also help in providing free medical treatments to the sick refugees.

Moreover, the UNHCR mandate is limited and it cannot work without the assistance, support and participation of the government. The state policies in India are administrative in nature which determines the protection of refugees that leaves very little room for UNHCR to provide protection except in cases of emergency. The displacement of Chakma tribals from Bangladesh or rehabilitation of refugees from Afghanistan or the Autonomous Region of Tibet⁵¹.

⁴⁹ Writ Petition CrI. WP of, 125-126, 1986; WP 583/1992, Supreme Court; Writ Petition CrI. No. 242 of 1998

⁵⁰ 1991 AIR 1886; 1994 AIR 1461, (1996)1 SCC 742.

⁵¹ Sarbani Sen," Paradoxes of the International Regime of Care," in Ranabir Samaddar (ed.) *Refugees and the State: Practice of Asylum and Care in India, 1947-2000* (New Delhi: Sage Publication, 2003), pp. 404-405.

In 1998, it was estimated that only 18,500 refugees have received UNHCR protection out of 300,000 refugees in India⁵². Hence, the role of UNHCR is restricted. The scope of work of UNHCR is solely determined by the government of India because India has not ratified the 1951 Refugee Convention.

Role of National Human Rights Commission

National Human Rights Commission is a statutory body that is established under the Protection of Human Rights Act, 1993 in India. NHRC is responsible for the protection and promotion of Human rights in India. Its function under section 12 is to actively inquire into the violation of human rights by Indian government or by any public servant. To study treaties and other international instruments on human rights and make recommendation for their effective implementation⁵³. State Human Rights Commission and Human rights court have also been incorporated under the 1993 Act. The courts have the power of civil court and can suo moto inquire into any petition, can interfere in judicial proceedings and protect the parties from human right abuse.

In *National Human Rights Commission v. State of Arunachal Pradesh*⁵⁴

A PIL was filed by the NHRC in 1995 on behalf of 'Chakma' refugees who came from Bangladesh in the year 1965 and are residing in Arunachal Pradesh. NHRC has found that State government and AAPSU⁵⁵ were threatening Chakmas. The Apex Court suggested that refugees are the distinct class from foreigners, they cannot be expelled, they should be protected under Article 21 of the Indian Constitution. Court directed that, the state is also under obligation for the protection of life and personal liberty of every person abiding by the principle of non-refoulement.

The NHRC repeatedly highlighted the need for an effective legal framework for refugee protection in India either by joining the Refugee Convention or by enacting a national legislation. In latest, NHRC in its tenth report continued to push Indian government for domestic legislation and chastises it for failing to meet its international law obligations.⁵⁶

⁵² HK Thames, "India's Failure to Adequately Protect Refugees," Washington College of Law 2000, [Http://www.wcl.american.edu/Hrbrief/v7i1/india.htm](http://www.wcl.american.edu/Hrbrief/v7i1/india.htm). (Last Visited on July 10, 2021).

⁵³ Section 12(f) of The Protection of Human Rights Act, 1993.

⁵⁴ 1996, AIR SCC 1234.

⁵⁵ All Arunachal Pradesh Students Union.

⁵⁶ Tenth Annual Report of the National Human Rights Commission, 2002-2003 at prs. 5.20- 5.21: "The Commission has stressed the need for a comprehensive national legislation to deal with refugee situations facing our country and to distinguish bona fide refugees from economic migrants, illegal immigrants and other foreigners. The Commission expressed the hope that the action initiated by the Central Government in this respect would be completed"

Why India is not ratifying the Refugee Convention of 1951?

Since, from the inception of the convention, policymakers have made various objections to it being Euro- centric in nature. MEA in the past has stated that, it considers the 1951 Refugee Convention and its 1967 protocol as ‘partial regime for refugees protection formulated in a Euro- centric Context’⁵⁷.

The primary objection issued by MEA was the fact that the convention does not sufficiently address the situation that are being faced by developing countries. It is primarily concerned to deal with the individual cases and not with the situations huge influx⁵⁸.

Conclusion

Refugees are the victims of human rights violation. Protection of refugee is an international issue. The geopolitical situation of India makes India a preferable destination for asylum seekers and migrant workers. In addition, the sustainable economic condition and democratic stability had also drawn the asylum seekers towards India. The efforts put up by India in managing the mass influx of refugees in the past has always been commendable. The proposed refugee law had ensured that asylum should be granted on humanitarian grounds keeping aside any political interference. In so far India has dealt with the mass influx of refugee without any refugee law. The large immigration at different times makes it difficult for government to give them uniform treatment, this tarnishes the image of government and their humanitarian treatment. Thus, as long as India continues to accept the asylum seekers through its porous border from its neighboring countries, a uniform treatment of refugee is must. Many proposals have come up for making functional and effective laws by which rehabilitation and treatment can be provided to the asylum seekers and to deal with various issues of the refugees. The Asylum Bill, 2015 which seems to come up as a protection provider with appropriate legal framework to the refugees needs to be enacted and implemented as early as possible. In the absence of a definite legal framework, refugee protection in India is based on arbitrary executive policies, supplementary legislation and judicial pronouncement. India should have a

within a clearly defined time frame and that it would be consonant with the decisions of the Supreme Court, as well as with the principal international instruments on this subject, notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. It remains the view of the Commission that greater priority should be given to this matter by the Government of India...”

⁵⁷ Arjun Niar, “National Refugee Law for India: Benefits and Roadblocks, *Institute of Peace and Conflict Studies*, New Delhi, India, (2007).

⁵⁸ UN Division, Ministry of External Affairs, Refugee (No. UI/1515/9/99).

comprehensive solution for refugees, so a uniform national law should be promulgated which would let the government to govern its large non citizen population with more accountability. India will have its better position by having its own special law for refugees and asylum seekers.