

Protection of Refugees: Challenges and Response

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Refugees' human rights are one of the world's major issues. According to Article 1 of United Nations Convention on Status of Refugees, refugees are those who are "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country." India has one of the largest refugee population in the world. Regardless of the fact that India serves to the diverse group of refugees, example: – Syrians, Afghans, Palestinians, Persians, Ethiopians and Christians, etc., the country does not have specific domestic laws and policies for the refugees. Although India is not the party to the 1951 Refugee Convention or its 1967 protocol, even do not have a national refugee protection framework, but still, it continues to give asylums to refugees of the neighbouring countries. If the Indian government does not protect asylum seekers, UNHCR can grant them refugee status.

According to the Universal Declaration of Human Rights (UDHR) States have a duty to protect the inherent dignity and worth and dignity of every human being thereby including those of refugees and asylum seekers. The principle of non-refoulement also ensures that lives of asylum seekers are not put in danger by pushing them back into countries where they face persecution. Even States which are not signatory to the conventions are not outside the purview of the mandate to fulfil the basic rights of refugees as these rights have acquired customary nature.

At International level human rights law and fundamental freedoms connotes delimiting State sovereignty. The United Nations Convention Relating to the Status of Refugees 1951 adopted the principles of the Universal Declaration of Human Rights, 1948 into legally binding obligations. The International Law relating to human rights enacts the fundamental norms within which provisions relating to refugee law should be studied. A few human rights enacted in the United Nations Convention Relating to the Status of Refugees 1951 are also recognized in the Universal Declaration of Human Rights, 1948, i.e. the right to life, liberty and security of person; the right to freedom of movement and the right to leave and return to one's own country; the right not to be subjected to cruel, inhuman and degrading treatment or punishment.

Internally displaced persons are displaced from one area to another within the territory of their municipal State. The United Nations High Commissioner for Refugees (UNHCR) is bound to find long term durable solutions for refugee's worldwide. Now, the number of the refugees, displaced persons and internees is increasing vastly. The UNHCR takes steps for the integration or assimilation of the refugees in their host country. The UNHCR provides protection and assistance to those refugees, who want to return to their own countries. This paper will focus on international refugee protection principles. The paper suggests it may possible to re-orient the reform movement towards an alignment of refugee law with international fundamental rights.

I. MEANING OF EXPRESSION "REFUGEE":

Due to the General Assembly's resolution of 14, December, 1950, a Conference of Plenipotentiaries was held in Geneva in 1951 to consider a draft convention relating to the status of refugees and a draft protocol relating to the status of stateless persons. These draft convention and protocol were prepared by an ad-hoc Committee on Refugee and Stateless Persons. This Committee was established by the Economic and Social Council. The Convention Relating to the Status of Refugees was adopted by the Conference of Plenipotentiaries on 28 July 1951. Article 1 of the Convention Relating to the Status of Refugee, 1951 defines the expression "refugee." According to Article 1(A) (1) of the Convention of Refugee 1951 the term "refugee" applies to any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September of 1939 or the Constitution of the International Refugee Organization. The definition says that the persons who are covered under the Arrangements of 12 May 1926, and 30 June 1928 or under Conventions of 28 October, 1933 and 10 February, 1938, the Protocol of 14 September of 1939 or the Constitution of the International Refugee Organization are as under:

- (a) *Russian pre-war or Nansen refugees.* Russian pre-war or Nansen refugees are defined as "Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the USSR and who has not acquired another nationality."
- (b) *Armenian pre-war or Nansen refugees.* Armenian pre-war or Nansen refugees are defined as "Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality."
- (c) *Assyrian or Assyro-Chaldean and assimilated refugees.* Assyrian or Assyro-Chaldean and assimilated refugees are defined as "Any person of Assyrian or Assyro-Chaldean origin, and also by assimilation any person of Syrian or Kurdish origin, who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality."
- (d) *Turkish Refugees.* Turkish Refugees are defined as "Any person of Turkish origin, previously a subject of the Ottoman Empire, who under the terms of the Protocol of Lausanne of 24 July 1923, does not enjoy or no longer enjoys the protection of the Turkish Republic and who has not acquired another nationality."
- (e) *The Convention of 28 October 1933:-* This Convention talks about Spanish refugees. Spanish refugees are defined as "Persons possessing or having possessed Spanish nationality, not possessing any other nationality and with regard to whom it has been established that, in law or in fact, they do not enjoy the protection of the Spanish Government."
- (f) *The Convention of 10 February, 1938:-* This Convention deals with refugees migrating from Germany. Refugees coming from Germany. i.e., "(a) Persons assessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government." "(b) Stateless persons not covered by previous Conventions or Agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government." However "persons who leave Germany for reasons of purely personal convenience are not included in this definition."
- (g) *The Constitution of the International Refugee Organization:-* This Organization deals with the cases of refugees of Second World War and post Second World War periods.

It is submitted that only those persons shall be deemed refugees who are said to be political refugees as opposed to ordinary migrants or economic refugees or those who leave their country for reasons purely for personal convenience. Thus, only those persons fleeing political persecution can effectively qualify for refugee status because persecution is a denial of fundamental rights and basic freedoms. A person leaves his country because he is denied the enjoyment of basic human rights. On 31 January 1967, a Protocol Relating to the Status of Refugees has been added to the Convention Relating to the Status of Refugees, 1951. The Convention shall not apply to persons who are receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

II. HISTORICAL EVOLUTION OF REFUGEE LAW:

Refugees are referred to those persons who leave their States in which they have permanent residents to escape persecution or military action. Until 1920, international cooperation for refugees did not arise. Cooperation and assistance to refugees was given throughout 1920 by Dr. Fridtjof Nansen. The League of Nations established the Office of the High Commissioner for Russian Refugees on June 27, 1921. More than 50 States had adopted Nansen Passport. The League of Nations gave the task of the protection and assistance to refugees to the Nansen International Office for Refugees. The United Nations has focused its attention on the problems of refugees, displaced persons, stateless persons and returnees. Certain measures were made to protect and promote the human rights. Further, the General Assembly set up the Office of the United Nations High Commissioner for Refugees (UNHCR). The United Nations Convention Relating to the Status of Refugees was adopted by the United Nations Conference of Plenipotentiaries on the status of Refugees and Stateless Persons held at Geneva on 28 July 1951. Today the Refugee Convention is the most important document in the field of international refugee law. The Convention defines the term 'refugee.' It provides for their rights and obligations as well as States minimum standards for the treatment of refugees.

The Convention deals with the legal status of refugees. Under Article 35 of the Convention, the Contracting States has undertaken to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions. It is submitted that a close relationship has been established between the United Nations High Commissioner for Refugees and the Convention Relating the Status of Refugees. It required a widening of both the temporal and geographical application of the Refugee Convention 1951. Consequently, the General Assembly adopted a Protocol Relating to the Status Refugees. With the accession of the Protocol. States undertake to apply Articles 2 to 34 inclusive of the Refugee Convention 1951 to all persons covered by the definition of refugee without any reference to date line or geographical limitation.

III. PROTECTION OF REFUGEES UNDER THE CONVENTION

The United Nations Convention Relating to the Status of Refugees 1951 makes wide provisions regarding rights, responsibilities and protection of refugees. Nothing that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees and recognizing that the effective co-operation of measures taken to deal with this problem will depend upon the co-ordination of States with the High Commissioner. Further, the Contracting Parties to the Convention Relating to the Status of Refugees are under an obligation:

- i. to apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin;
- ii. to accord to refugees the same treatment as is accorded to aliens generally;" Nothing in this Convention shall be deemed to impair any rights and benefits granted by Contracting State refugees apart from this Convention.

A. Juridical Status of Refugees

Articles 12-16 of the Convention deals with juridical status of refugees.

- i. *Personal status*.-The personal status of a refugee is governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

- ii. *Right of association*:- Regarding non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment similar to that accorded to nationals of a foreign country.
- iii. *Access to courts*:- of the Convention provides that a refugee shall have free access to the courts of law on the territory of all contracting States.
- iv. *Wage-earning employment*:- The Contracting State are bound to accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

B. Welfare of Refugees Articles 20-24 makes provisions regarding the 'welfare' of the refugees.

- i. *Public education*:- The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
- ii. *Public relief*:- The Contracting States shall accord to refugees staying lawfully in their territory the same treatment with respect to public relief and assistance as is accorded to the nationals."
- iii. *Labour Legislation and Social Security*:-Article 24 of Convention makes provision regarding labour legislation and social security of refugees. It provides that the Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of remuneration and social security.
- iv. *Freedom of movement*:- Each Contracting States shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory.
- v. *Identity papers*:- The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.
- vi. *Expulsion*:- The Contracting States shall not expel a refugee lawful in their territory saves on grounds of national security or public order.

The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary."

In the Convention, the Contracting States have considered that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the ideals that human being shall enjoy human rights and fundamental freedoms. The States Parties to the Convention shall apply its provisions to refugees without distinction as to race, religion or country of origin.

International institutions to provide protection and assistance to refugees and displaced persons:

In order to provide protection and assistance to refugees and displaced persons, the General Assembly has set up following institutions:

- A. Office of the United Nations High Commissioner for Refugees (UNHCR).
- B. United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).
- C. The Executive Committee of the Programme of the United Nations High Commissioner for Refugees.

A. Office of the United Nations High Commissioner for Refugees (UNHCR)

The General Assembly has established Nations High Commissioner for Refugees on 3 December, 1949. It makes provisions for protection and assistance to refugees, displaced persons, stateless persons and internees. It gives protection and assistance to the refugees falling under its competence.

B. United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

The General Assembly established United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in 1949.

C. The Executive Committee of the Programme of the United Nations High Commissioner for Refugees

The Statue of the office of the United Nations High Commissioner for Refugees empowers the Economic and Social Council to establish an advisory committee on refugees". This Committee was replaced by the Executive Committee the United Nations Refugee Fund. It was reconstituted on April, 1958 as the Executive Committee of the Programme of United Nations High Commissioner for Refugees.

IV. THE POSITION OF REFUGEES IN INDIA:

India lacks a specific refugee law but offers protection via its Constitution (especially Article 21 for life/liberty) and ad-hoc policies, treating refugees somewhat like foreigners under acts like the Foreigners Act, 1946.

Protection is inconsistent, relying on judicial interpretation and political discretion, with the UNHCR playing a key role alongside initiatives like Long-Term Visas (LTVs) for some groups, though discrimination and lack of rights for many remain challenges.

India is not a party to the Convention Relating to the Status of Refugees of 1951. Consequently, the Government of India is not legally bound to give rights to refugees provided in these international instruments.

The Government of India has not enacted any national legislation relating to refugees and their legal status. The problems of refugees are treated with on an ad hoc basis.

In India, the refugees are covered under the Registration of Foreigners Act, 1939, dealing with all the foreigners. Foreigners not acquiring Indian citizenship are not entitled to fundamental right under Article 19 (1) (e). However, they are entitled to the protection of fundamental rights under Article 21 of the Constitution. In India, the fundamental right of the foreigners confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19 (1)(e), which is applicable only to the citizens of this country.

The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1) (e), which is applicable only to the citizens of this country. It is submitted that Government of India has unrestricted right to expel foreigners from India. Foreigners not acquiring Indian citizenship under Article 5 of the Constitution are not entitled to claim fundamental right under Article 19 (1) (e) of the Constitution. However, they have fundamental right under Article 21 of the Constitution.

The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19 (1) (e) which is applicable only to the citizens of this country. Rights under Article 19 (1) (d) and (e) are expressly withheld to foreigners.

The rights provided under, Articles 19 (1) (e) are not available to foreigners. The fundamental right of the foreigner is confined to Article 21 for life and liberty.

V. KEY ASPECTS OF REFUGEE PROTECTION IN INDIA:

Constitutional Safeguards: Refugees benefit from fundamental rights like equality (Article 14) and life/personal liberty (Article 21) under the Constitution, as interpreted by courts.

Lack of Specific Legislation: India isn't a signatory to the 1951 Refugee Convention and has no comprehensive national refugee law, leading to ad-hoc, case-by-case handling.

Foreigners Act, 1946: This act governs the entry/stay of foreigners, and refugees are often treated under its provisions, regulated by the Ministry of Home Affairs (MHA).

UNHCR Collaboration: The UN Refugee Agency works with India, providing support, documentation (like UNHCR cards), and legal aid, though access is challenging.

Long-Term Visa (LTV) Scheme: A policy to provide longer stays and some economic/educational access for certain refugee groups, but not universally applied.

Policy Approach: India generally offers humanitarian welcome and applies principles like non-refoulement (not sending back those fleeing persecution), but policies can be inconsistent across nationalities.

VI. CHALLENGES

Legal Ambiguity: Tenuous legal status for many, leading to limited access to services.

Discriminatory Practices: Gaps in rights, human rights violations, and lack of amenities.

Administrative Hurdles: Difficulty accessing UNHCR documentation and legal aid.

In essence, India provides refuge based on humanitarian principles and constitutional provisions, but faces ongoing challenges in creating a robust, uniform legal framework for refugee protection.

VII. INDIA STATUS ON RELIGIOUS REFUGEES

Afghanistan

The majority of the approximately 8,000 to 11,684 Afghan refugees currently living in India are Hindus and Sikhs. The Indian government has allowed the United Nations High Commissioner for Refugees (UNHCR) in India to operate a programme for them. In 2015, the Indian government granted citizenship to 4,300 Hindu and Sikh refugees. Most were from Afghanistan, and some were from Pakistan.

Bangladesh

Many people from East Bengal, mainly Hindus, migrated to West Bengal during the partition of India in 1947. The native population of West Bengal sometimes referred to these refugees as "Bengal's". The percentage of East Bengalis who identified as Hindus decreased from 30% in 1947 to 19% in 1961.

It was estimated to be 8% in 2008, down from 9.2% in 2001, when the census reported it at 10.5%. In 1991, it was down to 10.5%. The Chakmas are a group of Buddhists from Bangladesh. Chakma immigrants from Bangladesh have settled in the southern part of Mizoram because they were displaced by the construction of the Kaptai Dam on the Karnaphuli River in 1962. They fled to India from Bangladesh due to the lack of rehabilitation or compensation. In 2001, the BBC reported that many Bangladeshi Hindu families had entered India to escape repression in Bangladesh because they were members of minority religious groups.

Pakistan

Dividement of India Following the partition of India, massive population exchanges occurred between the two newly formed nations, spanning several months. A total of approximately 14.5 million people moved from one country to the other after the borders between India and Pakistan were established, seeking protection from being a member of the majority religion in their new home. Based on the 1951 census, immediately after the partition 7.226 million Muslims migrated from India to Pakistan, while 7.249 million Hindus and Sikhs moved from Pakistan to India. About 11.2 million migrants crossed the western border, making up 78% of the total migrant population. Most of them travelled through Punjab. 5.3 million Muslims moved from India to West Punjab in Pakistan, and 3.4 million Hindus and Sikhs moved from Pakistan to East Punjab in India. 1.2 million people moved to and from Sind in each direction elsewhere in the west. The initial population transfer on the east involved 3.5 million Hindus moving from East Bengal to India and only 0.7 million Muslims moving the other way.

Recently arrived In Pakistan, non-Muslims are subject to constitutional and legal discrimination. Consequently, Hindus and Sikhs from Pakistan have sought asylum in India; many have arrived in the 21st century. There are almost 400 Pakistani Hindu refugees in Indian cities.

Tibet

Tibet is home to a large number of religious refugees. The 14th Dalai Lama, a leader of the Tibetan migration movement, left Tibet for India after the 1959 Tibetan uprising. He was followed by about 80,000 Tibetan refugees. Prime Minister Jawaharlal Nehru agreed to allow Tibetan refugees to settle in India until their eventual return to Tibet. The Tibetan diaspora maintains the Central Tibetan Administration, a government-in-exile, in McLeod Ganj, a suburb of Dharamshala, Kangra district, Himachal Pradesh.

The organization oversees Tibetans' political activities in India. In 1960, the government of Mysore State (now Karnataka) allotted nearly 3,000 acres (12 km²) of land at Bylakuppe in Mysore district. In 1961, Lugsung Samdupling, the first Tibetan exile settlement in India, was formed. Another settlement, Tibetan Dickey Larsoe (TDL), was established a few years later. Three more settlements were built in Karnataka: Rabgayling in Gurupura village near Hunsur, Dhondenling at Oderapalya near Kollegal, and Doeguling at Mundgod in Uttara Kannada. The state gained the most Tibetan refugees of any Indian state thanks to the settlements. There will be 12 Tibetan-run schools in Karnataka by the year 2020. Other states have provided land for Tibetans. Bir Tibetan Colony is a settlement in Bir, Himachal Pradesh. Jeerango in Gajapati district, Odisha, has a large Tibetan community and South Asia's largest Buddhist monastery.

The government of India has built special schools for Tibetans, providing free education, healthcare, and scholarships for students who excel in school. A few medical and civil engineering seats at universities are reserved for Tibetans.

A permit for Tibetans to reside in India, the Registration Certificate (RC) must be renewed annually or every half-year, depending on the region. Every Tibetan refugee above the age of 16 must register for it, and RCs are not issued to refugees who have newly arrived. Another official document, the Indian Identity Certificate, nicknamed "Yellow Books", allows Tibetans to travel abroad. It is issued one year after an RC is given.

Rohingya

Rohingya people are also known as Arakanese Indians who are stateless people from Myanmar. They are declared by UN as the most persecuted minorities in the world. The Rohingya population was denied citizenship according to the 1982 Myanmar Nationality Law. They had to flee due to the ongoing military crackdown by the Myanmar Army. More than 6700 Rohingya's were killed in August 2017. They are numerous in various Indian cities, but the Indian government does not recognize them as refugees. The majority of those refugees are now in Bangladesh. There was a mass displacement of refugees and forced relocations. Rohingya refugees face multiple protection risks as of December 2017. Though India refused to let Rohingya refugees enter the country as it posed security threats, 40,000 refugees have taken shelter in Assam and West Bengal. Though Bangladesh has stood up to help those refugees, it falling short of resources. Concerning Dongh Lian Khan v.

Union of India, the Delhi High Court ruled that, regardless of nationality, the principle of non-refoulement is a part of the guarantee provided by Article 21 of the Indian Constitution. In the case of NHRC vs Arunachal Pradesh, the Supreme Court held that the state is bound to protect the life and liberty of every human being, citizen or otherwise. Even then India is not ready to take Rohingya refugees and help them.

VIII. CONCLUSION

Even though a number of international conventions and laws govern refugees, they continue to encounter difficulties. When a country as big as India doesn't have a Refugee Law, we can understand that many countries have the same face and are on the same boat. If UNHCR and NHRC work together, there will be much more development in the field of Refugee Law. There is definitely a need for India to set up a Law regarding Refugees, as in the future there may be many more issues due to various reasons. Whenever UNHCR tries to do something regarding refugees NGO's should actively help them. Though protection to refugees is given under various articles of the Constitution, there needs to be a uniform Law that give equal rights to all the refugees. India continues to take the humanitarian view of the problem of the refugees. Considering the security issues due to which India is not a signatory to the 1951 Convention, it should give due consideration to the same. It should also take care that the refugee law is not mistreated and mis-utilized by persons who come to seek opportunities. Many judgements in India support the refugees. India has done a very good work regarding refugees, but needs to do much more. Many Rohingya refugees living in India are receiving support, but India is planning to deport them to their territory. In the past NHRC submitted a report for the need for a Refugee law but didn't receive a reply. If UNHCR and NHRC together do the same, there may be an answer. The Refugee Convention and its Protocol of 1951 and 1967 are the Conventions that received global response with many countries signing the convention. They consider most of the reasons of refugees and tell us the rights and other provisions that they should be given. India on the whole, needs a refugee law for governing refugees entering India.

Despite accommodating so many different groups of refugees long before the international rules for refugees were developed, the absence of a specific domestic law and ad hoc asylum status management may reduce its soft power and undermine its credibility in the international arena.



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One of the most pressing issues is also the absence of a strong political will. The issue of illegal migrations becomes important during elections when political parties can take advantage of these groups. India being one of developing countries and a deserving candidate for a permanent member of the UN needs to make its laws in compliance with the International regime. This is because even without the municipal laws India is inundated with refugee influx from different countries and it has more than often dealt with the refugee issues very humanely Tibetan and Sri Lankan refugees being good examples. Migration is continuing to grow and the reasons are varied it is time India adopted laws to deal with the issues so that there is transparency in administrative action. The process of deciding who is a refugee is also unclear.

While the Indian government deals with asylum-seekers from Tibet and Sri Lanka, the office of UNHCR in New Delhi deals with asylum-seekers from other countries. There is need for greater coordination between Indian Government and UNHCR.

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