
PROTECTION OF REFUGEES UNDER INTERNATIONAL LAW

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ABSTRACT

This article aims to explore the protection that international human rights law offers to refugees, asylum-seekers, and the forcibly displaced. The ambition of the global rights framework guarantees a defined set of rights to humans and thus moves the basis for normative entitlement to common humanity. This internationally comprehensive perspective remains formally tied to states—acting individually or collectively—in terms of creation and implementation. For the norms to enter the empirical world, there must be clarity on practical delivery responsibilities. Unsurprisingly, the expectations of the law raised by its normative reach is often resisted by the human world of instrumental politics, power, and conflict. This article intends to indicate the value and limitations of protecting refugees and asylum-seekers.

Intolerant of human rights linkages, migrants and refugees are on the periphery of effective international protection. Substantive and procedural guarantees are denied by state sovereignty and self-regarding notions of community. Recently, even non-discrimination as a fundamental principle is being questioned as the system of refugee protection. This article locates both migrants and refugees equally within the human rights context, contrasting inalienable rights with the demands of sovereignty and juxtaposing the two in a context of existing and developing international standards. Migration and refugee flows will go on, and the developed world, in particular, must address the consequences—legal, humanitarian, socioeconomic, and cultural. Racism and institutionalized denials of basic rights daily challenge the common interest. This article explains how the law must evolve to respond coherently to contemporary problems and to maintain the structure of rights and freedoms.

Keywords: international human rights law, refugees, refugee protection.

INTRODUCTION

A well formulated policy for refugees is the need of the hour, when their human rights have been violated, they too deserve to have certain protection just like any other residents of that particular country. It is one of the contemporary issues that has shook the international sphere or community in search of possible solution, be it during the time of pandemic or the time of Russian war, the world faced plethora of challenges that one could have never imagined. The current level of protection is not sufficient to suffice not only old but also the new group of refugees, The problem faced by them through persecution or any climatic condition for that matter, the convention on status of refugees 1951 has acted as an instrument in providing certain protection to the refugees.

Refugees are referred to those persons who leave their states in which they have permanent residents to escape persecution or military actions. It is clear from the above meaning of refugees which means there is some fear of persecution that is people who have serious threat to life and liberty. It can be well termed that they are political refugees as opposed to ordinary migrants those who leave their country for personal convenience. Here the term persecution is a denial of human rights, it May be said such refugees can flee for any economic reasons as well. Article 1 of the United Nations convention on refugees are the people with the fear of persecution reasons being race, nationality and religion.¹

THE PROBLEM OF REFUGEE- AN INTERNATIONAL CHARACTER

There is a well-established link between human rights and refugees, when there is any violation of human rights it can help in restoration and makes it possible to resolve any problems internationally. The problem of refugees is international in character because it involves two states or more, their problems cannot be resolved unless there is international corporation.

It can be said that international action for refugees started only during 1920s, Dr. Fridtjof Nansen of Norway his contribution creating an international machinery for protection of refugees. It was after this that league of nations came into picture, the main problem of refugees started during Hitler period and World War 2.

Article 1 of the United Nations convention on status of refugees 1951 received some sort of protection during the war time when millions of them became stateless. It can be rightly said

¹ Article 1 of the United Nations convention on status of refugees 1951

the international protection of refugee's regime earlier was Europe countries centric. The position of India when we come across as a national issue or a challenge.²

India Status on The Refugee Law in The Recent Year³

India is neither a party to the refugee's convention of 1951 nor its protocol of 1966, However India from time to time considered being a partial regime for refugee's protection, but these partial instruments are used to deal with certain individual cases in light of few circumstantial situation that arises in the country. India in the past has not enacted any domestic legislation related to refugees in the contrary to the number of refugees in India a noticeable number of refugees from country like Bangladesh, Afghanistan and Sri Lanka have taken refuge.

INTERNATIONAL INSTRUMENTS OR CONVENTIONS IN PROTECTING THE RIGHTS OF THE REFUGEES

Convention on the status of refugees 1951.

The most important international instrument relating to the problems of the refugees is the convention relating to the status of refugees of 1951, in order to widen the scope a protocol was concluded in 1967. In this convention the rights and duties of refugees and their legal status has been defined including provision such as the right to work, education social security and public assistance. Some of the main provisions are briefed below

Personal status of refugees shall be governed by the law of the country of his/her domicile or if he has no domicile then the by the law of the country of his/her residence. Movable and immovable property the contracting states shall act favorably as possible, as stated earlier the civil rights are also protected like right to work and education. The convention also states the treatment of refugees in the chapter 4 from articles 20 to 33, refugees are required to be treated as their own nationals by the state parties. They have the right to move freely within the territory and choose the place of residence. Further article 31 of the convention says that the illegal entry of refugees shall not be penalized because their entry is due to a life threat in their country of residence. No expulsion of refugees they are given reasonable time to take legal admission into another country, the refugees are also given the access to courts under article 16 of the convention. The refugee status of a person comes to an end under few conditions, once an

² HO Agarwal human rights, <https://www.unorg/en/global-issues/refugees>

³ Refugee protection in India calls for specific law- www.livemint.com

individual is considered as a refugee, he remains to be unless ceased to be under circumstances. This convention neither provides a safe net to terrorists nor protects criminal prosecution.

The 1967 protocol removes the geographical limitation of the convention.

The 1951 convention and 1967 protocol are the modern embodiment of the asylum institution. The strength remains their universal nondiscriminatory character.⁴

United Nations high commissioner for refugees (UNHCR)⁵

Its basic task is to provide international protection to the refugees within the high commissioner's mandate and provide permanent solution to their problem. The UNHCR aided refugees and displaced person in Europe after World War 2 but later effort was shifted to victims of war in Africa, parts of Asia and Latin America.

This commission replaced **IRO** international refugee organization, the general assembly on December 3, 1949 adopted this resolution but came into force in the year January 1, 1951, initially it was set up for 3 years later in 2004 continued for 5 years UNHCR is a subsidiary organ of general assembly through ECOSOC and its reports are considered separately. The headquarters is located in Geneva which has 274 subordinated offices located in 68 states. The work of UNHCR is social and non- political and humanitarian according to the statue refugee is defined as persons with fear of persecution, it may not be said that it is concerned with refugees throughout the world.

International refugee organization

The third committee of the general assembly adopted the draft and created a temporary organization called the international refugee organization, on July 1st 1947 it took over the functions and activities exercised by UNRRA on behalf of refugees and displaced persons the main objective of this organization was repatriation, also aimed at providing assistance including care and maintenance of refugee camps, vocational training and orientation for resettlements.

REGIONAL REFUGEE LAWS

⁴ Status on refugees convention 1951- HO Agarwal

⁵ Refugees a global crisis , <https://www.kaldorcentre.unsw.edu.au/publication/refugee-convention>

Though the convention on refugee aims at providing protection as wide as possible, it was important that some region had their own regional protection like the

1) organization of African unity (OAU) convention governing the specific aspects of refugee problems in Africa, this means the person fleeing due to civil disturbances or any other reasons like war are entitled to status of refugee where Africa is party to the convention, they can seek protection from both the convention that is 1951 and the OAU.

2) The Cartagena⁶

It discusses the refugee protection of Latin America which was also inspired by OAU convention, this convention again reaffirms the 1951 convention and its 1967 protocol. Although this convention is not binding in nature, most central and south American countries apply its definition

3) Arab convention on regulating status of refugee in the Arab countries

This convention was adopted by league of Arab states but it was never in force until recently, this convention protects mainly the middle east and Asia refugees, main feature is even when there is disruption in public order. It protects such refugees, inspired by OAU convention though not a binding instrument applies the definition.⁷

4) Europe

The far most reaching development of laws have come across the European unions they have few main key functions like temporary protection qualification of refugee status and the rights.

REFUGEES PROTECTION UNDER THE INTERNATIONAL LEGAL STANDARDS

Universal human rights declaration as in 1948, affirms that all human beings have right to live a life in dignity and are equal

Under the international human rights law, the few guarantees as such like the prohibition of slavery and torture, to uphold social security and public health. The convention against torture.

⁶ www.amerainternational.org/cartegena

⁷ Arab convention on regulating status of refugees in the Arab countries adopted by league of Nations www.academic.ocup.com

This convention prohibits the inhuman treatment or the ill treatment towards the refugee, further it prohibits the forced return or the refoulement, under this convention the individual can raise complaints to this committee against a state party.

The convention on the rights of the child. This convention has almost been ratified by all countries it includes the refugees as well that main aim is to protect against discrimination and support the best interest of the child, under this convention in article 22, it specifies that every child seeking refuge must be given protection and humanitarian assistance in the enjoyment of rights under this convention.

There are few more human rights instruments that protect the refugees are

The rights in the international covenant on civil and political rights these are to enjoyed beyond the non-discrimination factors it includes rights not to be tortured or ill treatment right to liberty and security.

The international covenant on economic, social and cultural rights aims at providing adequate standard of living to the highest. the convention on the elimination of discrimination against women, protects women from discrimination.

REFUGEE STATUS IN INDIA

India has one of the largest refugee populations in the world, it is home to the refugees of Afghans, Bangladesh. Although India is not a party to the 1951 refugee convention or protocol 1967, do not have a national framework for protection of the refugees. it still gives asylums to the refugees of neighboring countries. The United Nations high commissioner for refugees provides the asylum seekers the status of refugee if status is not protected by the Indian government. The universal declaration of human rights (UDHR) states has the duty to protect the dignity and worth of every human being thereby it includes the those of refugees and asylum seekers. The states who are non signatory are also not outside the purview of protecting those rights as they are the basic human rights. However, the human rights not include the rights of the political refugees but also of economic, social and cultural rights.

As a part of human rights protection, there was first the universal declaration of human rights 1948. Followed by the enforceable conventions like the international covenant on economic social and cultural rights (ICESC). Earlier ICESC was not binding in nature but now human

rights need to be interpreted with economic and social rights along with civil rights even though India has no specific legislation it has addressed the needs of the refugees who have fled from other country.

Why India needs refugee law

India does not have a domestic legislation that emphasizes on refugee rights but it has certain domestic laws that are meant for foreigners that enter voluntarily thus having two distinct rights. Though India hosts more than 2,13,000 refugees mostly from Sri Lanka, Afghanistan, China, Myanmar. India is also the center for such refugee movements, there are no domestic laws that protect such refugees.

CONSTITUTIONAL PROVISION TO REFUGEES IN INDIA

When we come across the constitutional provisions of India, related to refugee law it dates back to the migration of Hindukush maintain and pat koi range in the east post the independence, there was a major partition between India and Pakistan, where we saw millions of people migrating. India had many relief camps to meet the needs of the refugee, though India has given assistance to the refugee, it does not have a framework in municipal level to protect, not being a part of the 1951 refugee convention is not the only solution, but a legal framework is the need of the hour.

Constitution of India is applicable to the refugees when they are in India, under part 3 of the constitution. Article 21 which deals with right to life and personal liberty, it applies to everyone irrespective of their nationality. Article 14 guarantees the person right to equality before the law, Article 22 right to protection under arbitrary arrest and detention. Not only these rights but certain rights relating to the religious freedom under article 25, right to education and social security. These rights can be further classified into right to profession or employment under article 17, right to property under article 300A⁸

Case law supporting the above rights under the constitution

Louis de Raedt vs Union of India⁹ in this case the court held that right to life, liberty and dignity are available to non citizen of India.

⁸ <https://www.ijlmh.com/paper/constitutional-provision-regarding-refugee-law-in-india/>

⁹ (1993) 3 SCC 544

In the case of **National human rights commission v. state of Arunachala Pradesh, 9th Jan 1996 AIR 1234, SCC (1) 742** is a worth mentioning case where the court stated right to equality and liberty under article 14 and 21 that no person can be deprived of his right to life or liberty it shall be the duty of the state to protect the rights of people, this case being related to Chakma refugees who took refuge in Arunachala Pradesh, where the question raised was regarding the possible threat to the culture of the residents of the state wherein court intertwined and brought certain guidelines with regards to the refugees living in Arunachala Pradesh, it further stated that the court shall ensure that the life and personal liberty of Chakma refugees shall be protected, in accordance with the law the state shall not evict the Chakmas from their homes and will not be denied of domestic and comfort.

The above case is a landmark in respect to safeguarding fundamental constitutional rights of the refugees and foreigners.

LAWS FOR REFUGEES IN INDIA

Though India does not have a specific law related to the protection of the refugees, however it does have the refugee and Asylum (protection) bill of 2009. The main legislation that supports Refugees and Asylum is the foreign act of 1946.

Foreigners Act, 1946; it tackles the issue of refugee but it fails to provide proper guidance or relief Extradition act 1962 (no 34 of 1962); an extradition offence committed by any person in a foreign state shall deemed to be have committed in India such person shall be liable to be prosecuted in India

Citizenship Act, 1955 (No 57 of 1955)

Protection of human rights Act,1993 (N0.10 of 1994) Immigrants (Expulsion from assam) Act 1950

Illegal migrant (Determination by tribunals) Act, 1983(No 39 of 1983). **UNCHR AND NHCR**

National human rights commission plays significant role in protecting human rights of the refugees the commission on Suo moto investigates the petition on basis of any violation caused of rights of any person. It was established by the protection of human rights act 1993. Specific interventions have been made to regions of refugees like Tripura and Arunachala Pradesh. The

commission further examines with the help of ministry of external affairs regarding the treatment of refugees.

The role of UNHCR is an umbrella organization under the united nations development programmed, since India does not have a national law for refugees the UNHCR plays a vital role in determining the status of refugee, once determined as a refugee UNHCR gives three solutions like the voluntary repatriation, local integration and resettlement to a third country it is done with the liaison with government of India.¹⁰

Supporting refugees in India in 2021¹¹

During the time of pandemic, and to the mark the 70th year anniversary of refugee convention. India was among the host countries of UNHCR was a strong coordination in ensuring sustainable solutions. During the pandemic, several commission like National Commission for protection of child rights commission (NHRC) came together and partnered with UN agencies to provide essential service to the refugees and the citizens by providing health care facilities during the pandemic.

CURRENT REFUGEE CHALLENGES FACED BY THE WORLD

Rohingya Refugee Crisis Rohingya's are not a recognized ethnic group they are a Muslim ethnic minority group and have been denied citizenship, despite living in the country of Myanmar for generations, as stateless population their families have been denied basic rights and protection, the crisis mainly began with a massive wave of violence in the year 2017, which broke out in the state of Rakhine state of Myanmar forcing more than 700000 people half of which were children and women to seek refuge in Bangladesh. Massive human rights violation was reported. Currently they are seeking refuge in neighboring countries. The camps name kutupalong and nayapara refugee camps in Bangladesh Coxs bazar region.

Ukraine Refugee Crisis an Ongoing Challenge Faced by The World

A refugees crisis began in Europe in February 2022, when the Russian invasion took place in Ukraine, it is approximately estimated that 8 million people were displaced within the country,

¹⁰ Development topic building resilience and response un high commissioner refugee <https://www.un.org/en/global-issues/refugees>

¹¹ International report supporting refugees of India <https://data.unhcr.org/en/situations/ukraine>

that is if calculated half of Ukraine population had left their homes. The data shows more than 90% of them were women and children. The major issue faced was deportation when the Russian authorities forcibly relocated, forcible deportation is a violation of human rights and the forcible transfer of Ukraine

children for adoption is genocidal act. Sexual violation during refugee crisis

THE question arises when there is a climatic change or during the pandemic that shook the world, what was the position of the refugees?

One such instance of climate change that was faced by the Rohingya's during the time of monsoon in Bangladesh the rainy season has risks of landslides and heavy rainfall since the houses built by them was of bamboo which are flimsy and prone to having heavy winds, it is also a matter of health wherein malaria and dengue are more during the monsoon putting the camps in greater risk of catching it.

Refugees and other displaced people are the or were the most vulnerable members of the society during the pandemic since they do not have proper access to drinking water and sanitation. The UNHCR has played a vital role to provide support during the time of pandemic

The UNHCR deployed emergency response team to assess the damage and collect data to provide assistance and support, there were volunteers to provide the camps with shelter materials and health facilities.

The UNHCR has during the pandemic trained a group of health workers this group helped in spreading awareness about the health and conducting community outreach, it helped in shaping many Rohingya women as well. The initiative of providing free masks that were produced by the Rohingya refugee women. UNHCR is providing life saving support to hundreds of Rohingya refugees.¹²

The state responsibility starts with the root cause of strengthening the laws relating to refugees by providing them with basic human rights and protect the same with equity and just when the countries have agreed to the 1951 convention and 1967 protocol, they need to abide by it, each

¹² <http://www.refworld.org/docid4dd123html>

organ of the state being executive administration or judiciary all of which should play a vital role in upholding the responsibility laid upon them.

The roles and responsibilities of states whether even states that are not party to the convention or protocol bound by the principle of non-refoulement?

It is responsibility of state to protect the rights of citizens with equality and justice by giving security, the main cause starts with the fear of persecution or displacement every state needs to ensure in strengthening such laws that governs to protect the citizens. Certain states have agreed upon the 1951 refugee convention or 1967 protocol such states agree to protect refugees under its jurisdiction. Principle of non- refoulement is a norm of customary international law and is binding on all states. Hence even the states that are not signatory to the convention are applicable to this principle of non- refoulement

What obligations do refugees have under the 1951 convention

Every refugee has an obligation towards their host country has laid down in the Article 2 of the 1951 refugees convention. Article 3 to 34 enumerates the rights of the refugees. Refugees must comply with the existing laws and regulation has stated under Article 2 of the 1951 refugee convention. There are certain rights of refugees under the convention like right to association (Article 15, Article 21) housing Article 21, Article 28 travel documents.¹³

CONCLUSION

Presently, refugees are one of the most vulnerable groups before the World community. United Nations is continuously searching for more effective ways to address refugee menace. The term 'refugee' demands an assumption that the person concerned is worthy of protection and assistance. For providing effective protection, the term must be specifically defined. In ordinary meaning the term refugee may mean a person who seeks to escape his home for which he himself is not responsible. The reasons for fleeing of a person may be many, such as, fleeing from oppression, from threat to life, fleeing from persecution, from grinding poverty, fleeing from war or civil strife, fleeing from natural disasters, flood, draught, earthquake etc. Since, the refugee do not enjoy the protection of the country of origin, the international community must come forward to provide protection and assistance.

¹³ UN convention on status of refugee

The National Human Rights Commission in India has functioned effectively as a watch dog for the protection of refugees. It approached the Supreme Court under Article 32 of the Constitution and obtained protection of Chakma Refugees living in North-East, when their expulsion was threatened by an activist student's union.

The need for a refugee law is immediate. Specific legal frame work is required to provide the protection, uniform treatment, rehabilitation and repatriation of refugees. The attempt to fill the vacuum by judicial creativity is a temporary phase. Legislation alone will provide permanent solution to the refugee problem .