
A GAPING HOLE IN PROTECTION: WHY INDIA NEEDS REFUGEE LAWS

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ABSTRACT:

Regardless of the fact that India caters to a wide range of refugees, including Syrians, Afghans, Palestinians, Persians, Ethiopians, and Christians, etc. India does not have any convention protecting these refugees.¹ There are no domestic laws provided for refugees and only the international laws stand good for refugees. In the *Rehabilitation Financial Administration Act of 1948* is the legal status of these displaced individuals once the concept of displaced persons is defined. The term "refugee" was first established in a 1951 treaty on refugee status. There is no domestic law in India to support the refugees. This is quite tragic. Over generations has passed and yet there is no legislation for them. Merely the international law and the *The Foreigners Act of 1946* protects the interests of refugees. Despite India being the country to provide asylums to over millions of refugees over a century, there is no domestic law which supports their rights and duties. The work permit, the freedom of movement, detention, residentship, taxation and other aspects have been viewed upon.

Keywords: Refugees, Rehabilitation Financial Administration Act of 1948, international law, The Foreigners Act of 1946.

¹ Legal Status of Refugees, iPleaders.

1. INTRODUCTION:

Persons outside their countries of origin who require international protection due to a severe threat to their life, physical integrity, or freedom in their country of origin due to persecution, armed conflict, violence, or severe public disorder are defined as refugees under international law.² It might be the difference between life and death for an asylum seeker. Any person belonging to another country who is forced to flee due to war, famine and other drastic external environmental situations could be termed as a refugee. The United Nations 1951 Convention relating to the Status of Refugees defines a refugee as a person who, “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 or, owing to such fear, is unwilling to avail himself of the protection of that country.”³ A person who is persecuted for reasons such as race, color, religion, etc and their state is unwilling to protect their interests and rights are referred to as refugees according to **Article 1 of Refugees of 1951 Convention.**⁴

India has one of the world's largest refugee populations.⁵ Regardless of the fact that India caters to a wide range of refugees, including Syrians, Afghans, Palestinians, Persians, Ethiopians, and Christians, etc. India does not have any convention protecting these refugees.⁶ There are no domestic laws provided for refugees and only the international laws stand good for refugees. Although India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol and lacks a national refugee protection system, it continues to accept refugees from neighbouring nations.⁷ If the Indian government does not maintain the status of a refugee, asylum seekers can apply to the UNHCR for refugee status. Refugees come under the term ‘Foreigners’

2. RESEARCH PROBLEM:

Refugees do not have a specific law for them. Their interests and rights are not entirely protected and furthermore, their duties and responsibilities are very vivid. There is still a lack

² The refugee concept under international law, Global compact for safe, orderly and regular migration, UNHCR

³ Definition of refugee, The United Nations 1951 Convention.

⁴ Article 1 of Refugees of 1951 Convention.

⁵ Status of Refugees: How to get asylum in India?

⁶ Supra 1 .

⁷ Asylum in India - The Legal Framework - B&B Associates LLP.

of uniformity in the system of Indian legislature for deciding someone is a refugee.

3. BODY:

Large-scale migration of individuals from many nations may be seen throughout Indian history. These migrations took place in two ways: in the west, through the Hindukush Mountains, and in the east, through the Patkoi Range. After India got independence, it spent around twenty five years taking in twenty million refugees. This was due to India's and Pakistan's divisions. As a result, India was faced with the challenge of giving help to the displaced people in West Pakistan. The Indian government has made a number of initiatives to address the refugee crisis. The *Rehabilitation Financial Administration Act of 1948* was the most significant measure taken by the government. The question that emerges in this Act is the legal status of these displaced individuals once the concept of displaced persons is defined. The term "refugee" was first established in a 1951 treaty on refugee status. After studying the conditions of displaced individuals traveling from India to Pakistan and vice versa, it became evident that the displaced persons' position was similar to that of refugees.⁸

In the following years, India took in more refugees. 1951 Dalai Lama and his followers fled to India, where the government provided a political asylum, 1971 from East Pakistan. Over ten million refugees fled, and on the grounds of humanitarianism, India provided asylum for them. In 1983, India had to take in refugees from Sri Lanka and Bangladesh.

Digging into the work permit of refugees, there is no system of work permits in India, yet refugees who are given residency permits can find work in the informal sector without running afoul of the authorities. Tibetan refugees have been given loans and other self-employment opportunities. Similarly, the majority of Sri Lankan Tamils have been given freedom of movement within the camps, allowing them to perform casual labor. Again, Chakma and Afghan refugees have worked, albeit in limited capacities.

Due to India's legal statutes not yet including the concept of non-refoulement, the individual in question risks being detained and prosecuted according to the laws of the country. However, this should not be used as a reason to deny entrance to a refugee automatically. As a result, rather than preemptively barring entry, the agency that first comes into touch with

⁸ Legal service, Refugee law.

the refugee will have to convince itself of the intended refugee's bonafide. Suppose the individual seeking asylum does not have legal travel documentation. In that case, the goals of justice will be served if they are detained and brought before a court of law for appropriate judicial action.

A refugee may travel on a wholly counterfeit document, a legitimate document with crucial information changed, or an actual document obtained through deception. Regrettably, concerned state authorities frequently fail to evaluate the compelling causes that may have prompted the refugee's arrival in India. In many cases, the urgency of the situation forces the refugee to get a counterfeit passport or visa in order to enter India. On the other hand, her nation may not have been willing to furnish her with actual documents, or she may not have had the time to secure them.

4. LAWS INVOLVED:

These refugees are given protection in three broad categories. First is the National treatment, where the fundamental rights of citizens of India are shared with the asylum people as well. Rights such as Article 14, the right to equality, Article 25 the right to practice their religion, Article 21, the right to life and personal liberty, the right to social security and educational rights are guaranteed in Part III of the Indian Constitution.⁹ Furthermore, as refugees are classified under the term 'foreigners' in India, they have the right to employment or profession (Article 17), freedom of residence and movement (Article 26), right to housing (Article 21), right to form an association (Article 15) and right to property (Article 13 of the 1951 Refugee Convention).¹⁰ Lastly, Article 28 provides for identification and travel documents, as well as a waiver of fines under **Article 3(1) of the 1951 Refugee Convention**.

The Foreigners Act of 1946 regulates foreigners' admission, stay, and exit from India. The act's section 3(1) authorizes the central government to adopt provisions forbidding, controlling, or restricting foreigners' admission into India, their exit from India, or their stay or continuous presence in India.¹¹ The sorts of limits that can be imposed on a foreigner's stay in India are outlined in Section 3(2).¹² Unless the central government specifies

⁹ Supra 1

¹⁰ Supra 1

¹¹ Foreigners Act of 1946

¹² ibid

otherwise, these orders apply to both refugees and non-refugees. Section 12, 13 and 14 of the *Foreigners Act of 1946* further provides power and penalties for Foreigners including refugees.

The Protection of Human Rights Act of 1993 establishes a National Human Rights Commission, State Human Rights Commissions, and Human Rights Courts to defend human rights across the country. The National Human Rights Commission (NHRC), which is now situated in Delhi, is dealt with under Section 3 of this legislation. On one occasion, the commission, acting on a petition from Chakma refugees in Arunachal Pradesh who claimed that they had been threatened to leave the country by the All Arunachal Pradesh Student Union, petitioned the Supreme Court, stating that there was prima facie evidence to support the refugees. After hearing the evidence, the court ordered that the Chakmas be safeguarded by the state government and that all individuals who are qualified and interested in seeking for Indian citizenship be treated in accordance with the applicable laws.

5. CASE LAWS:

There is always a risk of refoulement, repatriation, or deportation if any refugees are apprehended or arrested by Indian authorities. Those refugees known for unlawfully being in the country might be held indefinitely under administrative orders without being charged. *Hans Muller of Nuremberg vs Superintendent, Presidency* allowed “absolute and unfettered” to the government. It had the power to expel and make the foreigners leave. There are a few precedents which have upheld this judgment.¹³ In the case of *Mr. Louis De Raedt & Ors vs Union of India*, the court stated that foreigners have the right to be heard.¹⁴ *Union of India v. Ktaer Abbas Habib Al Qutaifi*, The Gujarat High Court, ruled that the principle of non-refoulement prevents a displaced person from being ejected if his life or freedom would be jeopardized as a result of his race, religion, nationality, membership in a specific social group, or political viewpoint.¹⁵ Its implementation secures a person's life and liberty, regardless of country.¹⁶

¹³ Hans Muller of Nuremberg vs Superintendent, Presidency

¹⁴ Mr. Louis De Raedt & Ors vs Union of India

¹⁵ Supra 1

¹⁶ Union of India v. Ktaer Abbas Habib Al Qutaifi

6. SUGGESTIONS AND CONCLUSION:

Even though India has not ratified the treaty, it protects refugees. No central authority works with refugees in India since there is no standard code for defining refugee status. Even after so many years, dealing with the refugee policy has several flaws. This is due to the government's failure to pass a refugee statute. The legal status of refugees is tragic. I believe that the judiciary has to enforce legislation for the refugees alone. Furthermore the Citizenship Amendment Act should inculcate refugees who have resided here for several generations. Even for tax purposes, **The Income Tax Act** should amend the definition of 'persons' and include refugees and asylum seekers.

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