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# **INTERNATIONAL REFUGEE LAWS** **GOVERNING INDIA**

AUTHORED BY - RESHMA RT

## **ABSTRACT:**

India is considered to be the safest home for many refugees. Whenever the humanitarian issue arises related to stateless refugees, India has done more than any other state can do. It also handled the national security issue more than that of the asylum seekers. However, India lacks domestic laws and administrative laws due to the threat of terrorism in the recent past makes the drafters more cautious while drafting, which led to the limitation of its powers to protect its own people. Not becoming a signatory party to the 1951 conventions, and the 1967 protocols, will not bring the solution to the problem. Thus, India needs to revisit its policy deals with refugee's draft laws against torture and seek asylum, amendment, or inclusion of the UDHR, and ICCPR under the domestic laws and municipal laws.

**KEYWORDS:** asylum seekers, refugees, terrorism, citizenship, non-refoulment, displaced persons.

## **INTRODUCTION:**

Article 1 of the United Nations Conventions related to the status of refugees defines a refugee as "a person who is outside their country of nationality or habitual residence due to the fear of persecution under this convention". More than its own people or migrated people, as per the UNHCR report, 69% of the state is filled with refugees and asylum-seekers, most of these refugees are from the neighbouring countries. Even though India has adverse diverse groups: Iranians, Syrians, Sri Lankan Tamils, Tibetans, Chakma's, and many more refugees who were forced to flee from their host country to another country. Therefore, there are rights that refugees same as Indian citizens do have:

- family reunification
- principle of non-discrimination, non - refolement, and

- against torture and slavery
- Non-expulsion
- Non- extradition
- To earn their livelihood

Although India, without a national refugee protection policy framework, still accepts the refugees of their neighbouring countries. To ensure their safety and peace, there are solutions to resolve these problems such as their identity, settlement, and repatriation: Asylum seekers can get refugee status from UNHCR if the Indian Government does not protect their status, durable solutions, and is a signatory party to the ICCPR and 1967 protocols. This paper discusses the international instrument that gives the status of refugees, and it also discusses how Indian laws such as the administrative norms will be implemented for the protection and safety of refugee life. Based on this discussion, it seeks to present an argument to adopt a separate legal framework for refugee protection in India.

### **Research methodology:**

This research paper is purely based on doctrinal research using secondary sources such as websites, books, journals, precedents, treaties, and conventions, news for a deep understanding of international instruments and to raise awareness on this topic.

### **Review of literature:**

The UDHR states that countries must uphold and protect human rights as concluded in the declaration. As stated earlier, the definition also comes from the Protocol deals with the status of refugees. The advantage of being a signatory party to the 1967 protocols, the geographical limitations have been removed so like the UDHR it will be applicable universally. The constitution of India has interpreted Article 21 in a broader sense including the status of the principle of non-refoulment<sup>1</sup>, though India is not a signatory party it provides asylum to refugees who flee from neighbouring countries such as Myanmar, Bangladesh, Pakistan, and Afghanistan, Tibet, Uzbekistan, and Lankan Tamils.

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<sup>1</sup> Maneka Gandhi v. UOI

## Role of Judiciary:

The role of Indian judiciary has played a significant role in shaping refugee law and policy by giving various judgments in high courts and supreme courts. The judiciary also played a crucial role in protecting the rights of the refugees, hence, if a refugee has been detained or arrested illegally without any charges then the threat to national security and violates the principles of non-refoulment, repatriation, or deportation.<sup>2</sup> India still treats the refugees under the Foreigners Act, of 1946 and the Citizenship Act determines the nationality of refugees. The Supreme Court also held that foreigners have the right to be heard in the case of *Louis De Raedt & Ors. Vs. Union of India*. The High Court of Gujarat states the conditions under which the displaced person cannot be expelled<sup>3</sup> in the case of *Ktaer Abbas Habib Al Qutaif*

## Challenges and issues:

Deportees in India face a plethora of challenges and issues, including legal, social, profitable, and political challenges.

**Legal Challenges:** India does not have specific domestic laws and programs for deportees. The 1951 Convention relating to the Status of Refugees defines an exile as a person who, “owing to a well-innovated fear of being bedevilled for reasons of race, religion, nationality, class or a particular social group or political opinion, is outside the country of his nation and is unfit or, owing to similar fear, is unintentional to mileage himself of the protection of that country”. Asylum seekers can get exile status from UNHCR if the Indian government does not defend the status. The principle of non-refoulment is easily affirmed under transnational law as the Indian constitution provides space for exile or asylum seekers with the right to freedom from expatriation from a home in which he or she seeks retreat or from forcible return to a country or a home where he or she faces trouble to life or freedom because of race, religion, nation. The Indian Constitution also recognizes the principle of non-refoulment as encompassed in Article 21 which guarantees the right to life Social Challenges: Refugees in India face social challenges like demarcation and rejection. They are frequently viewed as outlander and are subordinated to importunity and violence. They also face language barriers and artistic differences that make it difficult for them to integrate into society.

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<sup>2</sup> Muller of Nuremberg vs. Superintendent

<sup>3</sup> Ktaer Abbas Habib Al Qutaifi vs. Union of India 1999 CriLJ 1919

**Economic Challenges:** Refugees in India face profitable challenges, like a lack of access to education and employment openings. They frequently work in low-paying jobs with poor working conditions. They also face difficulties in penetrating introductory services similar to healthcare and housing.

**Political Challenges:** Refugees in India face political challenges, similar to a lack of representation and participation in decision-making processes. They are frequently barred from political processes and do not have access to introductory rights similar to voting, Indigenous provisions

## **Constitutional provisions:**

### *History:*

The history of refugees begins from the history of partition that took place in 1947, even though most of the refugees - by choice or forcibly - were moved to India with the same nationality. States like Delhi provide a host state for refugees to live their lives. The Indian constitution provides some absolute rights to all those who acquire citizenship or who live in the country on a temporary basis. Hence, those who flee from their original country to India can seek shelter under part 3 of the Indian constitution. Due to the acts of terrorism, the constitution also lends a hand to foreigners as well as internally displaced persons by interpreting the scope of fundamental rights.

### *Fundamental rights:*

The principle of non-refoulment and non-discrimination has been included in Part 3 of our Indian constitution - which talks about fundamental rights. There are some of the indigenous provisions that are explained below Article 21- right to life and particular liberty, 14- right to equality, 5, 6, 7, 8, 9, 20, 22, 25- 28, 32, 226. Treatment given to Asylum people can be divided into three heads-

- a) National Treatment
- b) Treatment that is accorded to foreigners
- c) Special Treatment

- a) National Treatment The public treatment of the shelter people is the same as the citizens of India. There are certain Articles in the Constitution of India, which takes protect the Fundamental Rights of all people in India. The rights similar to equal protection of the

law under Article 14; Article 25 - the right to freedom of religion, Article 21- the right to life and personal liberty, and the right to social security and the right to education, are guaranteed in Part III of the Indian Constitution.

- b) Treatment that is accorded to nonnatives - Under this head, there are rights related to housing problems, movements, etc. the rights which are delivered under this treatment are the right to employment or profession under article 17, freedom of Hearthstone, and movement under article 26, right to housing under article 21, right to form an association under article 15 and right to property under article 13 of the 1951 Refugee Convention.
- c) Special treatment - This treatment includes the identity and trip document under article 28, impunity from penalties under article 3(1) of the 1951 Refugee Convention.

### **International instruments:**

The international obligations to protect refugees, including family reunification, employment, repatriation, resettlement, non-refoulment, non-expulsion, or non-extradition, and the minimum standard of treatment are traced in customary international law as well as in international treaties. The international treaties related to the protection of refugees and asylum seekers such as the 1951 conventions, 1967 protocols, UDHR, ICCPR, ICESCR, and IRO. Despite, the fact that India is not a signatory party due to the Cold War, it has been accepting refugees from neighbouring countries. So, they adopt laws such as the UDHR, ICCPR, and 1967 protocols, the Convention on the Elimination of all Forms of Racial Discrimination CERD-1965, and the Convention Against Torture-1984.

Article 14A of the UDHR states: the right to seek asylum. Article 13 of the ICCPR of 1966 states: "An alien lawfully in the territory of a state party to the present. The Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, 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. In the Indian context, the UDHR is the principal document for part 3 of the Indian constitution, especially for refugees and asylum seekers. It was chaired by Eleanor Roosevelt & comprised representatives from various nations. It consists of 30 articles: right to seek asylum, right to form a family, right to education, right to the principle of non-discrimination, freedom from torture, freedom from slavery, equality before the law, and right to nationality, right to own property.

Under ICCPR, Article 7 - rights against torture, Article 9 - right to liberty and security of person.

It includes the rights of the non-refoulment. Non-refoulment refers to the restriction of entry in the host country. It is a customary norm that upholds all the states to oblige by this principle. Refugees also have the right to seek asylum where the states seek to provide access to the fair and effective asylum procedure. The principle of non-discrimination is the key principle to international refugee law, ensuring equal treatment to the refugees. The rights given to refugees are the right to education, the right to employment, and the right to health care. When it comes to the Indian population concept, there must be an implementation of these provisions. So, the UN organizations have innovated an agent named UNHCR - headquarters in Geneva, Switzerland, and have branches across the world to supervise and monitor them. The work of NGOs, UNHCR, and other organizations comes into play when there is an act of terrorism that takes place inside the country e.g., Manipur is the best scenario to explain it. At that time, the refugees should not be tortured, discriminated against, or should not be forced to flee to their origin country also, they should not be attacked and mentally abused or any other criminal offenses.

### **UNHCR:**

The United Nations of High Commissioner of Refugees is the UN mandate agent for refugees. UNHCR ensures and regulates the protection of refugees such as resettlement, and local integration. The states are bound to cooperate with UNHCR and other nations of the states. UNHCR protects both the displaced and internally displaced persons. The UNHCR got involved in India in the crisis of Bangladesh in 1971 and the Tibetan refugees. With the help of governmental organizations, NGOs, and refugee camps, the UNHCR helps refugees from forcibly being sent back to their own countries. UNHCR acts as a principal international organ for refugee protection from statelessness and supervises and monitors all over the states to ensure security, and safety, against slavery, torture, and peace. If India does not give the status of refugee to the asylum, they can get registered with UNHRC.

In India, the NHRC in Tamil Nadu provides healthcare facilities to Sri Lankans. A PIL was filed against the Arunachal Pradesh government in 1995 for not supporting the Chakma's. The court directed the government to provide necessary help to the group. In all forms, they helped and tried to resolve the issues of refugees in India.

### Laws related to refugees:

- Citizenship Act, 1955 (No.57 of 1955).
- Extradition Act, 1962 (No. 34 of 1962).
- Foreigners Act, 1946 (No.31 of 1946).
- Illegal Migrant (Determination by Tribunals) Act, 1983 (No.39 of 1983).
- India Penal Code Act, 1860 (No.45 of 1860)" Passport (Entry into India) Act, 1920 (No.34 of 1920) "Passport Act, 1967 (No.15 of 1967).
- Protection of Human Rights Act, 1993 (No.10 of 1994).
- Registration of Foreigners Act, 1939 (No.16 of 1939).
- Immigrants (Expulsion from Assam) Act, 1950.
- Administration of Evacuee Property Act, 1950

### Case laws of refugees in India:

Malavika Karelkar vs. Union of India <sup>4</sup>Here, the deportation order issued against 21 Burmese refugees was stayed by the SC and permitted them to seek refugee status under UNHCR.

P. Nedumaran vs. UOI <sup>5</sup>Here, it was held that refugees should not be subjected to detention or deportation and that they are entitled to approach the U.N High Commissioner for a grant of refugee status.

Vishakha vs. the State of Rajasthan, the Court observed that reliance can be placed on international laws.

Mohammad Salimullah and others vs. Union of India and Ors<sup>6</sup> The court held that whether the Government could deport the Rohingya refugees, as a minority

### Suggestions:

There is a need for greater clarity and specificity in India's domestic legislation concerning refugees, aligning it with international standards to ensure robust protection. Efforts should be made to improve access to education, healthcare, and livelihood opportunities for refugees to help

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<sup>4</sup> Malavika Karelkar vs. Union of India Writ Petition (Criminal No) 583 of 1992.

<sup>5</sup> P. Nedumaran vs. UOI, 1993(2) ALT 291, 1993 (2) ALT Cri 188.

<sup>6</sup> Mohammad Salimullah and others vs. Union of India and Ors. Writ Petition (Civil) No. 793/2017.

them integrate into Indian society. The establishment of a standardized and fair refugee status determination process would ensure equitable treatment of asylum-seekers and refugees. Special attention must be given to the protection of vulnerable groups such as women, children, and the elderly among refugee populations. Training programs should be conducted for government officials, law enforcement agencies, and judicial bodies to enhance their understanding of refugee law and rights. India should actively engage in regional discussions and cooperation frameworks to address refugee challenges collectively with neighbouring countries. Continued research and data collection on the experiences and needs of refugees in India will provide valuable insights for policy development and implementation. Collaboration with civil society organizations and NGOs can facilitate the effective delivery of services and support to refugees. Public awareness campaigns can help foster empathy and understanding of refugee issues among the general population, reducing discrimination and stigma. A periodic review of refugee policies and practices considering changing global and regional dynamics is essential to ensure they remain effective and humane.

In conclusion, addressing the complex challenges associated with refugee law in India requires a multifaceted approach involving legal reforms, policy enhancements, international cooperation, and public awareness. By prioritizing the protection of the rights and dignity of refugees, India can play a pivotal role in upholding the principles of human rights and humanitarianism on the global stage.

### **Conclusion:**

In summary, the literature review has given a comprehensive understanding of refugee law and its multifaceted impact in India. This review has illuminated the literal environment, legal framing, challenges, and counter-accusations girding the treatment of refugees within India's borders. India, as a signatory to various transnational conventions, including the 1951 Refugee Convention and the Universal Declaration of Human Rights (UDHR), is bound by principles that emphasize the protection of refugees and their mortal rights. Still, the perpetration of these principles has been complex and has led to various challenges, as stressed in the literature. The government's policies and practices have evolved over time, impacting the lives of refugees from different countries, including Bangladesh, Sri Lanka, Tibet, and others. The Indian judiciary has played a vital part in shaping refugee law and policy, establishing significant legal precedents. Moral rights associations and advocacy groups have also been necessary in advocating for the

rights of refugees in India. Despite progress, the literature has shown that refugees in India continue to face a range of challenges, including legal inscrutability, limited access to education and employment, and issues related to detention and expatriation. There are also geopolitical considerations and regional dynamics that impact India's approach to refugees.

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