



# HUMAN RIGHTS AND PROBLEMS OF REFUGEES; THE INTERNATIONAL AND NATIONAL PERSPECTIVE

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## **Abstract**

In this 21st century, the issue of refugees has gained prominence on the global arena, but it is important to understand that it is not a new problem, it has been in the society since the time when the first foundation stone was laid. The problem of refugees is a byproduct of the threat that man has created for his own species. Every refugee harbours the desire in his heart to repatriate to his homeland as no one wants to spend their whole life seeking asylum in a foreign country. Acharya Chanakya, a prominent ancient Indian philosopher, economist, and political strategist has stated, "When the homeland is in a state of turmoil, people leave, seeking safety and prosperity elsewhere." This statement by Chanakya reflects his understanding that instability, conflict, and lack of opportunities in a country can prompt individuals to seek refuge in more stable and prosperous regions. The problem of refugees is very apparent in a country like India, as in its surrounding states there has been a substantial increase in the violation of the human rights in the past few decades. There is another aspect attached to the issue of refugees i.e., terrorism, because of which states are reluctant to admit the refugees.

In this research paper, the researcher has discussed the human rights, problems of refugees, and problems that are caused by refugees with reference to the states like India, U.K., France, and Poland.

While not formally endorsing the 1951 Refugee Convention and its 1967 Protocol, India has put its signature on various international accords and conventions concerning Human Rights, matters related to refugees and broader global concerns. Consequently, the responsibilities toward refugees are derived from these latter commitments. India has also cast a favourable vote in favour of embracing the Universal Declaration of Human Rights, a

document that upholds rights for individuals universally, irrespective of citizenship distinctions. Although in India there is no specific legislation that particularly deals with the refugees.

The study delves into the multifaceted dynamics that contribute to the development of tension and misunderstanding between the two groups, i.e., refugees and the native citizens of the country.

**Key words:** *Citizenship, India, law, problem, refugee, right.*

“Refugees are neither seen nor heard, but they are everywhere. They are witnesses to the most awful things that people can do to each other, and they become storytellers simply by existing. Refugees embody misery and suffering, and they force us to confront terrible chaos and evil”

Arthur c. Helton

## **INTRODUCTION:-**

The worst Human Rights abuse in the contemporary world is forced migration of people from their native land. The growing number of refugees is amplifying the severity of the problem. Since the First World War, the refugee problem has continued unabated and the number has increased alarmingly. According to a recent United Nations High Commissioner for Refugees (UNHCR) report there are around 80 million people who have been forcibly displaced by mid-2020 out of this 26 million are Refugees, 4.2 million are Asylum seekers and the other 45.7 are internally displaced people.<sup>1</sup> Asia is the largest refugee hosting continent with 41 percent of the total refugee population of the world. In particular, South Asia hosts the fourth largest concentration of refugees in the world constituting roughly about 12 percent of the total refugee population of the world. The question arises, why these people are risking not only their own lives but the lives of their loved ones? The reasons for the flight of these plighted souls range from civil wars, political and religious upheavals, ethnic differences, construction of large-scale projects and a host of other various reasons. Therefore, causes that lead people to choose a life of a refugee are multiple and increasingly complex. In recent years, the question of root causes has assumed great significance because the large-scale movement of people within and across countries is causing social and economic stress on the governments and societies of the host countries, especially the middle- and low-income countries. The lack of resources in these States makes it impossible for refugees to get basic necessities especially when competing with the local communities. From multiple points of view India has been a home to numerous refugee inundations, haven seekers and forced migrations historically and additionally after freedom. India is one of the few developing countries which had been sheltering over 2.5 million refugees successfully during its post-independence period. In the case of refugees protection, the Constitution of India guarantees certain fundamental rights which are applicable to non-citizens namely, the Right to Equality (Article 14), the Right to Life and Personal Liberty

<sup>1</sup> available at: <https://www.unhcr.org/> last accessed on 19th september, 2023.

(Article 21) and the Freedom to Practice and Propagate their own Religion (Article 25). Any violation of these rights can be remedied through recourse to the judiciary as the Indian Supreme Court has held that refugees or asylum seekers cannot be discriminated against because of their non-citizen status.<sup>2</sup>

## 2. MEANING OF HUMAN RIGHTS:

Human beings possess certain basic rights which belong to them simply because of their very existence. These rights are the fundamental and inhere in a human being from their birth irrespective of their caste, creed, religion sex and nationality. These rights are commonly known as human rights.<sup>3</sup> Human rights do not depend for their existence on any legal or moral practices of a country they become operative with the birth of the individual and are inalienable.<sup>3</sup>

### 2.1 DEFINITION OF HUMAN RIGHTS:

**R.J Vincent:** Human rights are the rights that everyone equally has by virtue of his very humanity and also because of the reason of being grounded in an appeal to our human nature.<sup>4</sup>

**D.D Basu:** Human rights are the minimal rights which every individual possess against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration.<sup>5</sup>

Human rights are therefore rights which belong to an individual as a consequence of his very humanity. These rights are possessed by individuals every time and everywhere and cannot be deprived without a grave affront of justice.<sup>6</sup>

## 3. MEANING OF REFUGEE:

The term refugee derives from the ancient French word “*refuge*”, ‘which means “*hiding place,*” or “*shelter or protection from danger or distress*”. The term originates from the Latin word “*refugere*” says “*to flee,*” and “*refugium*” ‘which means “*taking of refuge or place to flee back to.*”<sup>7</sup>

<sup>2</sup> Sumita Das Majumder, “Refugee Management in India: Policy Introspection”,<sup>5</sup> *ISIL* 2005. <sup>3</sup> H.O Agarwal, “*International Law & Human Rights*”, 754(Central Law Publication, Allahabad, 20<sup>th</sup> edn.,2014).

<sup>3</sup> Tim Dunne, Nichols J. Wheeler, “*Introduction: Human Rights in Global Politics*”<sup>4</sup> (Press Syndicate of the University of Cambridge, United Kingdom,1994).

<sup>4</sup> R.J Vincent, “*Human rights and International relations*”, 13 (Cambridge University Press, 1986).

<sup>5</sup> D.D Basu, “*Human Rights in constitutional Law*”, 5 (Prentice Hall of India Pvt. Ltd., New Delhi, 1994).

<sup>6</sup> *Supra* 3 at 755.

<sup>7</sup> available at: [www.etyonline.com](http://www.etyonline.com) last accessed on 20th september,2023 at 04:00 PM.

Broadly speaking, a refugee is a person or an alien who finds himself outside his native place or habitual residence for the reason of persecution or violation of human rights or due to disasters whether natural or manmade.<sup>8</sup> A refugee can be a man or a woman or a child, being forced to leave his or her country of origin because of a well-founded fear of persecution on the ground of religion, race, nationality, sex or membership of a particular social group or political opinion.<sup>9</sup> However, a person fleeing criminal prosecution for breach of law in its ordinary and non-political aspect is excluded from the category of refugees.<sup>10</sup>

All refugees have in common these characteristics: - they are uprooted, they are homeless and they lack national status and protection. The refugee is an involuntary migrant, a victim of politics, war, or natural catastrophe.

### 3.1 DEFINITION OF REFUGEE:

There was and is no single definition of "refugee" suitable for all purposes. The term 'refugee' is an evolutionary as well as a contested concept. Refugee is not a concept of customary international law. Therefore, refugee has not been defined thereunder. Refugee has been the subject of treaties and other international agreements. So, it is impossible to give one single definition, which could be used in all circumstances. As Prof Goedhart rightly observed that: "A sociological definition of the term "refugee" differs from a legal one; the definition drafted for the purpose of the binding international agreement will look very different from the definition adopted by an association with a humanitarian aim."<sup>11</sup> However a more precise definition of a refugee is given as "*a person having well-founded fear of persecution on grounds of race, religion, nationality or membership of a particular 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, was unable or, owing to such fear, was unwilling to return to it.*"<sup>13</sup>

However, in general terms, a 'refugee' is usually thought of a person compelled to flee his state of origin or residence due to political troubles, persecution, famine or natural disaster.<sup>12</sup> A man's status as a refugee is determined first and foremost by the factors which led to his condition: expatriation and the breaking of the ties that bound him to the states of his nationality.<sup>13</sup> A refugee is distinguished from an ordinary alien because of the lack of normalcy of relationship between him and the authorities of his state of origin, arising from the fear of

<sup>8</sup> R.C. Chhangani, "Rights of Refugees Under Nigerian Law", 30 *JCPS* 45(1996).

<sup>9</sup> Abdulrahim P. Vijapur and Suresh Kumar, "*Perspective on Human Rights*", 333( Manak publications Pvt. Ltd. 1999).

<sup>10</sup> The New Shorter Oxford Dictionary (1993) defines a refugee as 'a person driven from his or her home to seek refuge, esp. in a foreign country from war, religious persecution, political troubles, natural disaster, etc. and 'refuge' as 'shelter from danger or trouble, protection, aid ....

<sup>11</sup> G.J.V. Hemen Goedhart - "*The Problem of Refugees*", 267 (Recueil Des Cours, 1953) <sup>13</sup>  
Article 1(2) of the Convention Relating to the status of Refugees, 1951.

<sup>12</sup> C.R. Parthsarathi "*State's Obligation Towards Refugees: Vision and Reality*", 45(Oxford University Press, 2004) .

<sup>13</sup> Jacques Vernant, "*The Refugee in the Post-war World*" 13(George Allen and Unwin Ltd., 1953).

political persecution upon his return.<sup>14</sup> The refugee is distinguished from a stateless person because he, unlike the stateless person, may still have a de jure national status. The refugee is perceived as an involuntary migrant, a victim of circumstances which force him to seek sanctuary in a foreign country.<sup>17</sup>

#### 4. INTERNATIONAL PERSPECTIVE FOR THE PROTECTION OF THE REFUGEES:

**4.1 UNIVERSAL DECLARATION FOR HUMAN RIGHTS, 1948:-** The Rights of refugees, under international law are derived from the accepted sources of International law, which are treaties, customs and general principles of international law.<sup>15</sup> Apart from these specific laws, there are general human rights documents which ensure protection for all. All States are therefore, under an obligation, to protect human rights of individuals, including those of refugees. The bill of Human Rights which includes the Universal Declaration for Human Rights, 1948 (UDHR)<sup>16</sup>; the International Covenant on Civil and Political Rights, 1966 (ICCPR)<sup>17</sup> and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)<sup>18</sup> has made human rights mandatory and non-negotiable. These rights are protected as part of customary international law and some of the rights have acquired the status of jus cogens,<sup>19</sup> like the right of an asylum seeker, to right of non-refoulement.

The rights under UDHR are inalienable and indivisible. However, it only laid down the standards of Human rights but these were not enforceable. Therefore, the UN member states adopted the enforceable International Covenant on Civil and Political Rights (ICCPR)<sup>20</sup> and International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>21</sup> Under the ICESCR, the States are permitted to enforce the provisions under the convention by signatory states progressively as they require resources.<sup>22</sup> In addition, there are also some rights under UDHR that are recognized as forming part of customary International Law.<sup>23</sup> Over a period of time, the provisions and principles in the UN Charter and UDHR were held to be guaranteeing the human rights of all and which the states are mandated to protect. The UDHR has also had a positive impact on the constitutions of countries like India,

<sup>14</sup> Atle Grahl Moolsen, *"The Status of Refugees in International Law"*, (A.W. Sijthoff, 1966). <sup>17</sup> The Shorter Oxford English Dictionary, 3rd Edition, 1977.

<sup>15</sup> The statute of International Court of Justice, 59 stat 105 1945, adopted on June 26 1945 and entered into force on October 24 1945 (ICJ Statute), article 38 (1).

<sup>16</sup> Adopted by the UN General Assembly on 10th December 1948. It is the basic document of Human Rights Law and was referred to as the Magna Carta of Human rights by Eleanor Roosevelt who chaired the UN Commission on Human Rights that drafted the document.

<sup>17</sup> available at <https://www.refworld.org>. last accessed on 20 september, 2023 at 05:00 PM.

<sup>18</sup> *ibid*.

<sup>19</sup> Article 53 of Vienna Convention on Law of Treaties, 1155 UNTS 331, done May 23, 1969, entered into force on Jan. 27, 1980 (Vienna Convention).

<sup>20</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966.

<sup>21</sup> *supra* note 20 last accessed on 21st september, 2023 at 07:00 AM.

<sup>22</sup> Article 2 para 1 of ICESCR.

<sup>23</sup> available at <https://cdn2.sph.harvard.edu> last accessed on 21 september 2023 at 07:50 A.M.

where not only the basic provisions are incorporated in the Fundamental rights but also the interpretation of national law is made on the principles laid under UDHR.

According to the UDHR, States have a duty to protect the inherent dignity and worth of every human being including those of refugees and asylum seekers. The principle of non-refoulment also ensures that lives of asylum seekers are not put in danger by pushing them back into countries where they face persecution. These rights are further protected, by the Convention on the Status of Refugees, 1951<sup>24</sup> and its Protocol on the Status of Refugees, 1967.<sup>25</sup> Even States which are not signatory to the conventions are not outside the purview which mandates to fulfil the basic rights of refugees. These rights have now acquired a customary nature. If customary law is recognized by the international body of States as *jus cogens* internationally, then it will override even treaty provisions.<sup>26</sup>

#### 4.2 UN CONVENTION ON STATUS OF REFUGEES, 1951:

The UN adopted the most important convention for protection of refugees, the Convention Relating to the Status of Refugees 1951 (herein after called the Refugee Convention) convened under the UN General Assembly resolution 429(V).<sup>27</sup> The preamble to the convention refers to the resolve, made in the UN Charter and the UDHR, to ensure enjoyment of fundamental rights and freedoms of all human beings, without any discrimination. The Refugee law establishes the status of a 'Refugee' and the protection of the rights that go with that status. The purpose of this convention was to consolidate the previous International agreements of 1926, 1928, 1933 and 1938, relating to Refugees, and, its objective is to extend the scope of protection, to people, who were in need of protection. Under this convention, a 'Refugee' is defined as, "any person who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."<sup>28</sup> The fundamental objective of the refugee convention, is to prevent contracting States from expelling a refugee from its frontiers, if his/her life or freedom will be threatened on account of belonging to a particular race, religion, nationality, or membership of a any social or political group.<sup>29</sup> The scope of the definition of 'refugee' given in Article 1(2) is limited.<sup>30</sup>

The refugee convention provides for exemption of certain persons who will not be entitled to get refugee status. If a person has committed a crime against peace, a war crime, or a crime against humanity, as defined under International Law, or if he has committed a serious non-political crime outside the country of refuge, prior to entering the State or if he is guilty of acts contrary to purposes and principles of the United Nation. The

<sup>24</sup> UN Convention Relating to the Status of Refugees signed in Geneva on 28 July 1951, 189 UNTS 150.

<sup>25</sup> *ibid.*

<sup>26</sup> Article 53 of Vienna Convention on Law of Treaties which states that a treaty which conflicts with peremptory norms on the date of conclusion will be void.

<sup>27</sup> Adopted by General Assembly Resolution 429(V) of 14 December 1950 and came into force on 22 April 1954.

<sup>28</sup> Article 1(2), Refugee Convention 1951.

<sup>29</sup> *id.*, Article 33

<sup>30</sup> Guy S. Goodwin Gill, "*The Refugee in International Law*" (Oxford University Press, 4th edn. 2021).

Convention includes a number of fundamental principles, like non-discrimination, non-penalization and non-refoulement. The Convention makes a provision for the non penalization of refugees, in case of illegal entry or stay. However, this provision is subject to certain restrictions. This implies that if the refugees seek asylum, they may breach immigration rules. The Convention contains safeguards against the expulsion of refugees in the form of inculcation of the principle of non-refoulement. It provides that a refugee shall not be expelled or returned against his or her will, to a territory, where he/she fears threats to his/her freedom or life. Most importantly, the Convention lays down minimum standards for the treatment of refugees, without any prejudice to States, granting more favourable treatment. These rights include access to work, primary education, courts and the provision for documentation, like refugee travel documents in passport form.

### **Grounds for Loss of Refugee Status:**

A person loses his refugee status if he:<sup>31</sup>

- 1) Voluntarily re-avails the protection of the country of his nationality;<sup>32</sup> or
- 2) Voluntarily re-acquires the nationality after losing it ;<sup>33</sup> or
- 3) Acquires a new nationality and enjoys the protection of the country of his new nationality;<sup>34</sup> or
- 4) Voluntarily re-establishes himself in the country which he left owing to the fear of persecution or outside which he remained owing to fear of persecution.<sup>35</sup>
- 5) Being a person with no nationality, is able to return to the country of his former habitual residence after the circumstances because of which he has been recognized as a refugee have ceased to exist.<sup>36</sup>

### **4.3 NATIONAL PERSPECTIVE RELATING TO STATUS OF REFUGEE:**

India is one of the few developing countries, which had been sheltering over 2.5 million refugees successfully during its post-Independence period (since 1947).<sup>37</sup> Moreover, India has a long history of giving asylum to various persecuted communities like the Jews and the Parsees' etc. During World War II, India was host to thousands of Polish refugees, many of whom subsequently returned to Poland or were resettled in third countries.

Post-independence, India witnessed one of the largest mass migrations in history, with more than 1.4 crore Hindus, Sikhs and Muslims displaced. In the wake of the India Pakistan partition, there was mass displacement

<sup>31</sup> Article 1(C), Refugee Convention

<sup>32</sup> *Id.*, Article 1(C)(1)

<sup>33</sup> *Id.*, Article 1(C)(2)

<sup>34</sup> *Id.*, Article 1(C)(3)

<sup>35</sup> *Id.*, Article 1(C)(4)

<sup>36</sup> *Id.*, Article 1(C)(6)

<sup>37</sup> "Refugee Population in India" UNHCR, Statistics, 1998, Overview.

of the world's largest population for which a separate Ministry for the Rehabilitation of these Refugees had to be created. Technically these people did not fall under the definition of the 1951 Convention as they had moved not due to persecution but because of an agreement between two countries. This was followed by influx of Tibetan refugees in 1959. Over 80,000 Tibetans fled to neighbouring countries between 1959 and 1962 due to religious persecution, torture, forced sterilization, destruction of families and other atrocities.<sup>38</sup> The Dalai Lama along with his followers sought refuge from Nehru who readily agreed to provide asylum based on the ground of shared culture and humanitarian concerns for the Tibetans. However, he did not recognize their Government in Exile, as a mark of solidarity towards China.<sup>42</sup> India has also provided shelter to the Afghans and the Sri Lankans. A large number of Bangladeshi refugees have come to India after its separation from Pakistan. The recent influx of Rohingya Refugees from Myanmar raised the debate relating to national security due to terrorist who may have infiltrated among the refugees. The major Refugee groups in India according to the UNHCR as of January 31, 2023 are:

#### Refugee Groups in India

S.No.	Country of Origin	Number of Refugees
1	Sri Lanka	92,072
2	Tibet	72,291
3	Myanmar	29,361
4	Afghanistan	15,053
5	Others	4,645

#### 4.3.2 LEGAL FRAMEWORK FOR REFUGEE PROTECTION IN INDIA:

As, India has not passed a refugee specific legislation which regulates the entry and status of refugees. It has chosen to deal with refugees at political and administrative levels. The result is that refugees are treated under the law applicable to aliens in India. The Registration of Foreigners Act, 1939 deals with registration of foreigners in India. Every foreigner enters in India must furnish the true particular about him or her and purpose of visit to the registration officer and obtain a certificate of registration. Foreigners Act 1946, deals with presence and departure of foreigners to and from India. The Foreigners Act provides the executive wide powers to remove foreigners from India that have generally been exercised free from judicial review. This power is given to the Central Government by Section 3(2)(c) of the Foreigners Act, 1946.<sup>39</sup> This is in addition to the power to refuse entry for non-fulfilment of entry conditions that invites instant deportation. The unrestricted power of the executive to

<sup>38</sup> International Commission of Jurists, *The Question of Tibet and the Rule of Law* (Geneva: ICJ, 1959) <sup>42</sup> Sanjay K.Roy, *Refugee and Human Rights*, (Rawat Publications, New Delhi, 2001).

<sup>39</sup> Section 3(2)(c) of the Foreigners Act reads, "In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner ... shall not remain in India, or in any prescribed area therein."



remove foreigners was first confirmed by the Supreme Court in 1955.<sup>40</sup> The unfettered discretion of the executive to remove foreigners from India has been upheld by the Supreme Court in a number of subsequent decisions.<sup>45</sup> In addition to this, Parliament as well as States enacted a considerable amount of refugee-related legislations.

#### 4.4 CONSTITUTIONAL PROTECTION:

There are few Articles of the Indian Constitution which are equally applicable to refugees on Indian soil in the same way as they are applicable to the Indian citizens. Part III of the Indian Constitution of fundamental rights also provided certain rights to 'person' which could be and have been interpreted to include refugees. The Constitution of India has the following relevant provisions which are applicable to refugees also:

- a) Part II - Citizenship: Article 5-11.
- b) Article 14: Equality before Law. The state shall not deny any person equality before the law or the laws within the territory of India.
- c) Article 20: Protection in respect of conviction of offences.
  - Article 20(1): Protection from ex post facto laws.
  - Article 20(2): Double jeopardy, No person shall be prosecuted and punished for the same offences more than once.
  - Article 20(3): Self-incrimination: No person accused of any offences shall be compelled to be a witness against himself.
- d) Article 21: Protection of life and personal liberty. No person shall be deprived of life or personal liberty except according to procedure established by law.
- e) Article 22: Protection against arrest and detention. Right to know the grounds for arrest, right to defence by legal practitioner, production before magistrate etc.
- f) Article 25(1): Freedom of conscience and free profession, practice and propagation of religion.
- g) Article 27: Freedom as to payment of taxes for promotion of any particular religion.
- h) Article 28(3): Freedom as to attendance at religious worship in educational institutions.
- i) Any law or administrative action in violation of the above rights will be null and void and can be so declared by the High Courts or the Supreme Court of India (Article 13 read with Articles 32 and 226 of the Constitution).

<sup>40</sup> Hans Muller of Nuremberg, *AIR (1955) SC 367*. <sup>45</sup>Louis De Raedt, *t (1991) 3 SCC 554*.

In all the above provisions in the Indian Constitution term 'person' is to be understood to include any alien e.g., refugees (excluding enemy aliens). Article 22(1), 22(2) and 25(1) of the Indian constitution reflect that the rules of natural justice in common law system are equally applicable in India, even to refugees.

#### 4. 5LAWS GOVERNING REFUGEES

We have a number of domestic legislations in force to deal with refugees. India draws no distinction between a “foreigner” and a “refugee”. The laws under which Refugees are dealt with are:

1. Passport (Entry into India) Act, 1920 & Passport Act, 1967.
2. Registration of Foreigners Act, 1939.
3. Foreigners Act, 1946.
4. Foreigners Order, 1948.

The Passport (Entry into India) Act, 1920 and the Passport Act, 1967 makes no distinction between genuine refugees and other categories of foreigners like economic migrants, tourists. As a result, the refugees run a big risk of arrest by immigration authorities and illegal deportation in the absence of a valid passport.<sup>41</sup> Penalty should not be imposed on refugees because they may leave in turmoil not have the time to get a passport issued. Once the refugee enters the Indian Territory, they may get valid passports and identity cards if the public interest criteria is fulfilled.<sup>42</sup> But so far only Tibetan refugees have been issued valid passports. The reason for their “privileged treatment” is that their political and spiritual leader too resides in India and they have their parliament on the Indian soil. Some scholars criticize because it hampers the sovereignty of India.<sup>43</sup> The reasoning may be that in order to protect national interest, no refugee is given the fundamental right to freedom of movement or issued an identity card. Also, it causes trouble for refugees to open bank accounts, obtain ration cards or rent accommodation because they have no identity. This is contradictory in nature because the constitution does not guarantee freedom of movement but the administration may give this right based on a case-to-case analysis imposing reasonable restrictions. This clearly violates the equality principle as all refugees should be treated alike on Indian soil.

The Registration of Foreigners Act, 1939 empowers the Central Government to make rules for foreigners. Where and whom to report, provide proof of identity and registration certificate.<sup>44</sup> This law should not be applicable to refugees as they have already suffered at the hands of their government and these burdensome technicalities add to their agony. Furthermore, the power of Central government is used in an arbitrary manner to harass genuine refugees and there are no checks to curb this power. The Foreigners Act, 1946 places some more restrictions on

<sup>41</sup> Bimal N Patel, *India and International Law*, (Martinus Nijhoff Publishers, 2005).

<sup>42</sup> Article 31 of Refugee convention.

<sup>43</sup> available at: <http://papers.ssrn.com> (last visited on September 19, 2023)

<sup>44</sup> R. J. S. Tahir (eds.) *Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir: Refugees and the Law*, 2edn, HRLN, 2011, pp 78.

<sup>50</sup> Ibid, pp 79.

refugees like defining whom to meet and the routes only through which they can enter the country.<sup>50</sup> One of the biggest criticisms of this act is that the authorities have “unlimited power” to arrest and detain any foreigner on mere suspicion for non-compliance under this act.

## 5. JUDICIAL APPROACH TO REFUGEE PROTECTION IN INDIA:

The legal status of refugees in India is that they are to be treated as foreigners under the Foreigners Act, as India does not have any specific law to deal with refugees. India is also not a signatory to the refugee convention and its protocol, and there is no separate National legislation for dealing with refugee issues therefore the Government of India adopts adhoc policies based on political exigencies and the discretion of the executive. The Constitution of India, 1950 provided for strong fundamental rights which the courts have liberally interpreted extending the protection of certain provisions even to refugees. Under right to judicial remedy many refugees have sought protection through the High Courts and the Supreme Court based on the protection given by the Constitution of India which is applicable to both citizens and non-citizens. One important provision is Article 21 of the Indian Constitution which envisages protecting the life and personal liberty of a person. Based on this provision, several petitions have been filed by asylum seekers and refugees contending that sending a person to a place where they may face persecution will violate their right to life. Courts have agreed that this provision is also applicable to refugees and therefore they cannot be sent to places where their life is threatened. This is an example how India has helped in protecting the right to non-refoulement, through constitutional interpretation by the higher courts. In the landmark decision of the Indian Supreme Court in the case of Chakma refugees from Bangladesh, the court prevented the government from sending them back as there was threat to their lives.<sup>45</sup> The Government of India in 1989 gave assistance to the 3000 refugees who came from Myanmar, ensuring that no one would be sent back even though they did not recognize them as refugees. But the same was not the case in 2015 when Government of India returned some Rohingya refugees on the grounds of national security. The government had apprehensions that there could be militants posing as refugees within their ranks. Government of India decides on taking refugees when there is a mass influx, while individual cases are handled by UNHCR. In several cases the courts have suspended deportation of refugees while their applications are pending for consideration of refugee status with UNHCR. In the landmark case of *Ktaer Abbas Habib Al Qutaifi v Union of India*<sup>52</sup>, the Gujarat High Court upheld the principle of non-refoulement under the wide umbrella of Article 21 of the Indian Constitution and decided not to deport the two Iraqi nationals to their original country as long as they had a fear for their life and liberty. Instead, they were handed over to UNHCR in India. *Louis De Raedt v. Union of India*<sup>47</sup>, the court held that even noncitizens have the fundamental right to life, liberty and dignity.

<sup>45</sup> *National Human Rights Commission v. State of Arunachal Pradesh*, 1996 SCC 742.

<sup>46</sup> CrLJ 919.

<sup>47</sup> AIR 1981 SC 1886.

## 6. SUGGESTIONS AND RECOMMENDATIONS:

There have been endless debates and discussions over which is better passing a domestic legislation or framing a refugee convention specifically for India. The various recommendations are:

### NEED FOR A DOMESTIC LAW

1. A domestic law is needed in India to ensure that all refugees are given basic protection. Without that, refugee rights are not rights in the real sense, they are simply privileges at the hands of the administration.
2. A domestic law should also define refugees to include “**internally displaced people**” due to natural calamities, terrorist activities. For instance, the Kashmiris were forced to flee Kashmir due to the militant activities.
3. Housing and employment can be ensured to refugees so that they can become self reliant.  
A number of civil society organizations should work in collaboration with the Govt. under this act to improve their living conditions.
4. A domestic legislation will overrule all the existing acts like the Passport act and the foreigner act and will reduce the suffering of refugees by specifically dealing with their problems. A domestic legislation will make the procedure of granting refugee status simple, fair and transparent. It will also call for greater accountability and checks on the power of the officials.
5. It will abolish discrimination which currently exists among refugees of different nationalities.
6. Special provisions guaranteeing protection to women and children should be made because in the Indian society, crimes against women (rape) and children (child trafficking) are at its peak. This will also be in consonance with India’s obligations under UNCRC.
7. India is a superpower in Asia, so it has a tendency to “**dominate**” over other nations. In such a case drafting a South Asian Refugee convention will be of great significance to ensure refugee protection.
8. The convention can be drafted by experts from all countries highlighting their specific issues relating to the refugees based on the understanding of each nation. In this way, the convention will reflect the background of every country.
9. The definition of refugee should be broadened to incorporate people displaced due to environmental disasters, socially ostracized because of admitting openly of a different sexual orientation and people fleeing because of threat caused by crimes against women and children. This can ensure that there is no western intervention in case of dealing with refugees and at the same time, maximum protection can be given.

**CONCLUSION:**

Thus at last it can be concluded that Protection of the Refugees in today's world is much more complex undertaking than it when the 1951 convention relating to the status of refugees was drafted. Today refugees are not only those persons who satisfy the traditional definition to the term refugees but also victims of all sorts of conflicts. The refugee problem is reaching critical proportions in almost all the parts of the world, placing the international and national governance under stress of their protection. India has important role in treatment of refugees because it shelters a large population in the world. However, India still lacks in providing clear standards for refugee treatment and is resulting in violations of the international norms for treatment of refugees. Thus, in order to protect refugees India has need to improve domestic laws, pass relevant legislations for the protection of refugees and at the same time monitoring refugee groups. Along with all these there is dire need to conform with the International Community and must accede the Refugee Conventions or Protocols.

