

Refugees in India: A Socio Legal Study

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CHAPTER - 1

1.1 INTRODUCTION

“The world will not be destroyed by those who do evil, but by those who watch them without doing anything.”

-Albert Einstein

India is a country having a long literal tradition of greeting deportees from all over the world. Because of India's unique geography and multi ethnic society, India has attracted a large number of refugees. Most of the refugees in India are from the neighbouring countries where people are either exiled due to civil wars or foreign invasion or oppressed due to political differences or persecuted on the basis of caste, religion, colour etc. India currently hosts a diverse range of refugees including Tamil refugees from Sri Lanka, Chakma and hajong tribe from Bangladesh, Tibetans from Tibet, Rohingya from Myanmar, and furthermore Bhutanese, Afghanis, Iranians, and even Sudanians.

For the sake of knowledge and understanding, the term refugee can be defined as a person who is living outside his or her country, due to one of the five grounds, namely, a well-founded fear of persecution on the basis of religion, race, nationality or membership of a political or social group. Some countries exclude individuals fleeing from their own country owing to armed conflicts, wars or violation of human rights from the definition of “Refugee”, even if they do not fall under one of the five reasons. A large number of countries are making efforts to distinguish between persecution which is made by state agents and persecution which is made by non-state agents as the cases are also there where the rebels and terrorists are also present.

In these cases, only the people who are affected by the steps of state agents falls in the definition of ‘Refugee’.

1.2 RESEARCH METHODOLOGY

This research paper is based on Doctrinal Research. Secondary sources are used to carry out the research.

1.3 RESEARCH OBJECTIVES

The purpose of this study is to:

- To enquire, assess, & evaluate the present state of situations, conditions, issues, and challenges that refugees face in India with respect to their rights.
- To examine government norms, policy execution, and compliance with UNHCR.
- To understand the condition of Rohingya people.

1.4 RESEARCH QUESTION

What sociolegal obstacles do refugees in India have to overcome, and how do these obstacles affect the way they integrate into Indian society?

1.5 LITERATURE REVIEW

1. Refugee Crisis in India: An inquest on Rohingya Debacle, Kanchan Meena, Mekal Insights, Vol.

- V, Issue 1&2¹ - This paper talks about the crisis that Rohingya people are facing. The paper talk about the Indian laws and examine with the global world. This paper outlines the history of Rohingya and how this situation aroused at that time. It talks about the discrimination which Rohingya people has faced. The paper also talks about different convention for the protection of refugees and talks about the need to formulate a legislation for refugees in India.
2. **International Human Rights Law and the Protection of Refugees in the Modern World, Joe Nkrumah, 2 Dec 2023, Journal of Modern Law and Policy²** - This paper talks about the Human Rights at International level and the refugee rights. This paper also talks about the rights of LGBTQ and children which are to be protected and has shown various statistical data of different countries. This paper talks about the perspective that different countries are doing to save refugees rights and for their protection.
3. **Global migration trends and asylum, Susan F. Martin, April 2001, Georgetown University³** - This paper talks about the international migrants and differentiated them in voluntary and forced migrants and have further elaborated it. Author also talked about various organisations and global trends and principles which affect international migration. This paper also talked about economic and geo-political globalisation and implications for refugee protection.
- [9.pdf](#)
[International_Human_Rights_Law_and_the_Protection_.pdf](#)
[refugees.pdf](#)
4. **Need for a National Legislation on Refugees in India at 75, Abhinav Mehrotra, Chhaya Bhardwaj First, April 4, 2022, India Quarterly – A Journal of International Affairs⁴** -This paper talks about the need of refugee laws in India. Author emphasis that even after 75 years of independence, there is no specific law to protect refugees in India. Author has stated various reasons to convince that there is an urgent need for a legislation. Author has also talked about the procedure of refugee status determination. This paper also includes all the former Bills and Laws which were made concerning refugees in India.

CHAPTER - 2

2.1 REFUGEE AND INDIAN LAW

In Indian legal system, Refugees are held in two counts. The laws of India which regulate the entry and stay of refugees in India are there with a lot many issues. As long as the Refugees are in Indian border, they are inclined to follow the laws of India like Indian Penal Laws, Constitutional laws for their various acts whether good or bad.

2.2 CONSTITUTIONAL PROVISIONS APPLICABLE TO REFUGEES IN INDIA:

Constitution of India are only applied to refugees when they are in Indian Territory. Main Right of every person is their Right to Life⁵ and Liberty which is applicable on both Citizens and non-citizens. Numerous verdicts have also given on this Article 21 in the context of refugees. Article 14 guarantees the person right to equality before the law. Article 5, 9, 20, 22, 25- 28, 32, 226 and others are also available for non-citizens of India including Deportees. As UNHCR plays a very important role in the recognition of refugees, Indian High Courts have also given numerous verdicts on the Refugees issue by applying jus cogens. High Court of Guwahati has also allowed the issues of Refugees and told them to visit UNHCR for their status and other issues.

2.3 LAWS FOR REFUGEES IN INDIA

For Refugees, there is as such no specific law which governs all the refugees who are in India. And as there is no statute like others, Indian Judicial System is forced to apply the rules which

⁴ [Need for a National Legislation on Refugees in India at 75 .pdf](#)

⁵ Harshit Rai and Vaibhav Dwivedi, International Journal of Law Management and Humanities, Volume 4, Issue 3, Page 261 – 272, <https://ijlmh.com/paper/constitutional-provision-regarding-refugee-law-in-india/>

are applied to Foreigners i.e. ‘The Foreigners Act, 1946’. But exceptions lie, for Tibetan Refugees special law has been passed. To address the issue of large-scale Refugees which was during the partition of India and Pakistan, laws were also enacted to resolve that issue. All these acts which were made were there to help compensate the Refugees and to give space for their living. The concept of Refugee is way too old and is growing from time to time.

Laws which came into effect after the partition of India and prior to the formulation of Indian Constitution are as follows:

- East Punjab Evacuees (Administration of Property) Act, 1947
- UP Land Acquisition (Rehabilitation of Refugees) Act, 1948
- East Punjab Refugees (Registration of Land Claims) Act, 1948
- Mysore Administration of Evacuee Property (Emergency) Act, 1949
- Mysore Administration of Evacuee Property (Second Emergency) Act, 1949

After the Indian Constitution was formulated, there was need of the laws for the displaced individuals and Refugees. So, the following Acts were formulated at that time.

- Immigrants (Expulsion from Assam) Act, 1950
- Administration of Evacuee Property Act, 1950
- Evacuee Interest (Separation) Act, 1951
- Foreigners Law (Application & Amendment) Act, 1962
- Goa, Daman & Diu Administration of Evacuee Property Act, 1969
- Refugee Relief Taxes (Abolition) Act, 1973 According to Article

51, - “The State shall endeavour to⁶ —

- promote international peace and security;
- maintain just and honourable relations between nations;
- foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- encourage settlement of international disputes by arbitration”.

⁶ India Consti. Art. 51.

The Directive Principles of State Policy, found in Article 51 of the Constitution, show the spirit in which India approaches her international relations and obligations.

“Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”⁷ refers Article 253 of the Indian Constitution. “Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries”⁸ stated in Entry 14 of the Union List of the seventh schedule. Parliament has the right

to trespass on the State List to make it possible for the Union to apply the Treaty in it as it is a special power conferred to Parliament under Article 253 read with Entry 14. Because it contains provisions pertaining to the state subjects, any rule or regulation adopted for wellbeing with conformity with this Article will not be deemed as invalid that implements an international agreement.

The Indian Supreme Court in the case of “**Hans Muller of Nuremburg vs. Superintendent⁹, Presidency**” provided with the extreme powers to the government of India which let them to throw out foreigners on their behalf. This verdict was again upheld in the case in “**Louis De Raedt & Ors. vs. Union of India¹⁰**” where court that foreigners are entitled to a hearing.

CHAPTER - 3

3.1 INDIA’S RESPONSIBILITY UNDER INTERNATIONAL LAW

“While every refugee’s story is different and their anguish personal, they all share a common thread of uncommon courage – the courage not only to survive but to persevere and rebuild their shattered lives.”

- Antonio Guterres

The 1967 Protocol and 1951 Refugee Convention has not been ratified by India. As India welcomes the Refugees from across the Globe, current scenarios relating to discrimination

⁷ India Consti. Art. 253.

⁸ Seventh sch. Union list Entry 14.

⁹ *Hans Muller of Nuremburg vs. Superintendent* 1955 AIR 367, 1955 SCR (1)1284

¹⁰ *Louis De Raedt & Ors. vs. Union of India Writ Petition (Civil) No. 1372 of 1987*

which the refugees are facing in India and the denial which refugees are facing currently in India has spark a question among all about the protection of Refugees and laws for them through which they can be regulated. Disinclination to ratify the 1967 Protocol and 1951 convention has been more worsened as there is also absence of Indian Laws. In the end, Asylum seekers also are suspected and they also do not get the legal protection.

Due to this reason, as India is a non-signatory to the 1967 Protocol and 1951 Convention, India have used this reason for their protection in many places. The main query then is if the Refugee Convention and its Protocol are the only legal necessity that apply in India for the protection of Refugees. The concept of non-Refoulment results in the answer to this query including jus cogens.

1. Non-refoulement

1951 Refugee Convention contains a provision which restricts non-refoulement or return of a refugee. States that are parties to the 1951 Convention must abide by this principle since it is incorporated into Article 33. Although it is essential to refugee protection states to abide by this rule but who are not signatory to the Convention are not bound by the provision. Finding the principle in other sources of international law is essential to making it enforceable even against the countries who have not ratified to the 1951 Convention. Accordingly, the UNHCR in the 1951 Conventions, Article 33 states which forbids returning refugees is a rule in customary international law that satisfies State practice and opinio juris requirements. UNHCR has also been showing the practice of non-signatory governments who are keeping the Refugees in the large amount in order to praise and boost their confidence. We all know that India in not a signatory to the Convention, still India has the highest number of welcoming the Refugees from all over the World and it also shows that India not being a signatory has also contributed to the prohibition given in the Article of Non-Refoulment becoming the practice and maintaining standards of

the traditional international law.

India focuses that the jus cogens as a standard has three of the main sources such as Customs, Treaties and general legal principles.

2. Child Refugee

The child refugee who wants to seek a status must get the apt protection and proper guidance to give them their rights according to the rule provided in the convention whether they are alone or with their parents in accordance with the context of refugee. If the case is that the state is not a signatory to the refugee Convention but is a party to the Child Refugee Convention, then the state is not on the responsibility to offer any child with the protection and medical aids. Article 22(2) provides that the state should help the UN or any Non-Governmental Organisation with the monetary and others measures in protecting and guiding such a child and help the child to reach to his family back.

3.2 PROVISIONS AS OF UNHCR AND NHRA

As there is growing number of cases of Refugees Day by day in India, UNHCR plays active role particularly in India. After being a Refugee in India for a period of time, if a refugee flees back to his home country, then the UNHCR¹¹ keep an eye on whether the return was his own choice or not. It provides the function of determining refugee status and giving assistance to all the refugee. In the issue of Tibetan refugees and the Bangladesh crisis in 1971, UNHCR was also involved. The UNHCR office of Delhi works with non-governmental organisations to help refugees become self-sufficient through support and giving work through which they can earn and live a better life.

The main feature of UNHCR is to keep an eye on the refugees that they are not forced to flee back to their home country till the problem is resolved and situation is normal. There are also various judgements like in the year 1994, Tamil Nadu government was ordered by the National Human Rights Commission (NHRC) to provide for the medical aids and protection to the Sri Lankan refugees. NHRC also filed a Public Interest Litigation in 1995 against the Arunachal Pradesh government for not providing guidance to Chakmas, and the court ruled in its favour, directing the people to provide the organisation with the guidance it required. It becomes involved in all refugee concerns in India and gives assistance as needed.

CHAPTER - 4

4.1 ROHINGYA REFUGEE CRISIS:

In today's world, the most persecuted minority people are Rohingya¹² community people and it is for a reason. They are group of Muslim Minority from Rakhine state in Burma. Rohingyas have been denied protection and recognition by the Burmese government. In 2012, a communal conflict broke out between Myanmar's Rohingya Muslims and Rakhine Buddhists, and the Rohingyas have been persecuted ever since. They are also subjected to state-sponsored

¹¹ <https://www.unhcr.org/in/>

¹² Kanchan Meena, Shubhendu Mishra, Refugee Crisis in India: An Inquest on the Rohingya Debacle, Department of Law, University of Allahabad, Mekal Insights, Vol. V, Issue 1 & 2.

violence and forced displacement, prompting many to migrate to adjacent nations. They were officially called as “non-national” or “foreign residents” due to the discriminatory citizenship law of 1982. Rohingyas are now homeless without land as a result of discrimination. The Rohingyas are currently living in subhuman conditions, and their future is uncertain. Due to the mass violence, large scale persecution occurred which was the outcome of political, socio- economic and cultural discriminations,

they ran to save their lives in the nearby countries like Bangladesh or to any land who will help them to save their lives and gives protection and other support. During this people also ran to the border of India for the help and assistance to save them.

Refugees then get settles in the small temporary houses in different areas of India like Hyderabad, Jammu, Haryana and Western Uttar Pradesh which were not sufficient for them as in summers they get to bear the sun, in monsoon their houses leak due to rainfall and in winters they get freeze due to severe cold. As if they did not run at that time, then they would have died due to the worsen situation. Refugees lacks the basic facilities, education facilities for their children, things for survival as well as sanitation and hygiene.

4.2 DIFFICULTIES FACED BY REFUGEES

By passing refugee laws founded on universally accepted principles, several nations safeguard their refugees. There is a process in place in the nations that have ratified the convention for identifying the people who are refugees and dealing with their medical and protection concerns. India being a non-signatory to Convention, is also offering refugee protection. "But there is still a lack of consistency in the process for identifying refugees." As there is no standard code of conduct for defining the status of refugees in India, an official organisation must be there that handles the details of all the refugees. After managing the Refugee policy for last many years there are a lot number of holes today also and this is only because of the absence of the Refugee law by the Government. And if we see from the total count of refugees, 46% are women whereas 36% are children.

And this trend of increasing number of refugees is growing day by day and this is only because of the absence of basic necessities, assistance, fights and disasters etc.

1. Health

People suffer from various diseases which differ from one person to another person. So as the refugees have different health needs different from the host country people. War and persecution can have bad effect on some people's mental health and others have on physical health. Some suffers from depression by seeing to war situations. Persons who are physically disabled suffers more health and mental issues are compared to normal people. Sexual violence and gender Discrimination both can be a major issue for both women and girls. Absence of facilities make it more worsen to survive in a human situation.

2. Employment

As refugee being a non-citizen, they face the major problem when it comes to surviving as no one will give work to them and without work they cannot survive. As no money no food which affect them mentally and physically both. As they are also restricted by many things, they find it difficult to survive with less or no health care services.

3. Housing

The refugees are not permanent people of the country so they lack the permanent house or a kind of shelter for them. Due to this, they face many struggles and not able to life a full life. Women suffers the most when it comes to absence of shelter as crime rates are increasing so there is always a fear of getting raped or exploited.

4. Language

Refugees have different language as they are from different country and find it very difficult to communicate with the host country people as they both do not know each other's language. Like for example, if the persons are moving from Myanmar to Bangladesh do not know their language. It

becomes quite a difficult task for them to understand the language and it takes time to learn a new language.

CHAPTER-5 CRITICAL ANALYSIS

Refugees in India are increasing at a very high rate every year. Refugees are the people mostly coming from the countries such as Myanmar, Afghanistan, Sri Lanka, Bangladesh, Nepal and Tibet.

As the number of refugees grows, problems also grow simultaneously. States will find it challenging to deal with the people and their needs like protection of women, children as crime rates are increasing day by day and their medical aids, giving them assistance, helping them to provide a work for their earning to live a self-sufficient life. And to fulfil all these things, need to make the laws and policies regarding Refugees becomes the priority.

This problem of refugees which is going from past many years cannot be dealt in a temporary manner and a specific law is therefore needed so that rules and regulations are prescribed for the refugees in a simple and arranged manner and the local people also not get disturbed.

They be provided with good assistance and protection especially for women and children who are very sensitive and so that exploitation can also be reduced.

India has its own many reasons for not ratifying the 1951 Convention and 1967 Protocol but India did comply with many provisions and rules provided in the Convention. Due to the absence of the law of Refugees, system has become very discretionary where only the Ministry of Home Affairs has the right to analyse or decide as to which person is to be called or given as a refugee status in the country. Concept of non-refoulment have also been shown in many verdicts which means prohibiting refugees to go back to their home country without the issue is resolved and giving them the rights and protection. But these verdicts do not hold for long and for large scale refugees and have to rely on the temporary judgements which is made by Ministry of Home Affairs as their decision is final.

Other main thing is that as refugees settle in India, they came with major challenges and security issues for the country also. As we see today many people enter into the country border by naming themselves as refugees but they are later considered as terrorists. Refugees also disrupt the national economy and resources as they were for the people of the nation. And as there are limited resources, people of the nation also get difficulty as they face problem in their daily routine as their economy hampers. While Rohingya migrants were coming to the India, two terrorists also entered Indian border by naming themselves as refugees. Those were two persons naming Lashkar-e-Taiba and Jaish-e-Mohammed in J&K.

Due to their social and economic instability, these migrants are easily able to connect with such terrorist organisations.

Therefore, it is obvious that India needs better refugee laws immediately.

CHAPTER - 6

SUGGESTIONS AND RECOMMENDATIONS:

1. Law on Refugees is a necessity in India to confirm that the refugees are provided with easy safety. With out that, refugee rights aren't rights inside the actual experience, they'll be definitely privileges on the fingers of the control.
2. A home regulation ought to additionally define the refugees which consist of “internally displaced people” due to disasters, terrorist sports.

3. Housing work and other activity can be given to refugees to live a life sufficient to them.
4. Some Concepts of the 1951 UN Refugee Convention must be acquired by the legislation.
5. They must be provided with the temporary cards with will act as an identity for them so that they can be recognised easily.
6. Indian government must work on the policy system within the territory so that refugees can be settled.
7. Women and children must be provided with the safety and security protection and other medical aid and must understand their grief also.
8. Long term Visas and cards to identify them is necessary which help them secure their protection in the country so that no one can throw them out of country.

CHAPTER - 7

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