



REFUGEE PROTECTION IN INDIA: INTERNATIONAL OBLIGATIONS AND NEED FOR LEGISLATION

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ABSTRACT

India remains one of the few liberal democracies who is still not a signatory to the 1951 Refugee Convention and the Protocol of 1967 and it does not have a municipal framework for the protection of refugees. Nevertheless, it has abided by the principle of non-refoulement and has granted asylum to a large number of refugees since right after its independence in 1947. Without a specific law, India has brought the chapter of protection of refugees under the umbrella of Article 21 of its Constitution. It refers to the refugees as 'aliens', a term recurring in its Constitution, in its Code of Civil Procedure and also in its Citizenship Act of 1955. It has, to date, provided protection to more than 5.5 lakh refugees from countries all over the world, including Bangladesh, Pakistan, Tibet, Myanmar, Nepal, Sri Lanka, Afghanistan, and Sudan. The numerous refugee groups have specific needs and problems, including the lack of basic amenities, proper shelter, discrimination and human right abuses. The most prominent question that has hovered upon the refugee crisis is how and in accordance of what principles does India regulate its refugee influx? Even though India does not oblige itself under the refugee convention, its obligations spring from the numerous United Nations and World Conventions it is a signatory to, which includes its obligations under the UDHR. The recent surge in the terrorist trespass under the guise of asylum

seekers has made it imperative for the country to have a set of guidelines in place that are non-discriminatory and in consonance with the international human rights framework, while also keeping in line with the national security interests. The Citizenship Amendment Act, 2019, as the first and closest to an attempt to a specific refugee legislation, failed to consider the ground reality and was a million miles away from the refugee policy India needs right now. This paper explicitly states the authors' viewpoints on the extent of India's obligation to protect the refugees in the absence of a law for the same. Peeking into the problems with its ad hoc administrative policy and the roles of UNHCR which has a presence in some parts of the country, and the national judicial framework, which has played a significant role in changing the outlook towards the refugees, in guiding such national approach. The authors have tried to highlight the necessity for enacting a definite regulation in light of national security on one hand and refugee protection on the other. A stress has been laid on India's need for a specific municipal law, if not to ratify the 1951 Convention, so that international norms can be incorporated in the working legal framework that the country has. All of which is an attempt to bring to light the plight of refugees seeking asylum in the country, whose fate is left to the discretion of the executive and their ad hoc administrative policies bereft of any sensitivity towards the problem and the expertise required to combat it.

I. INTRODUCTION

The 20th century witnessed human suffering like never before. The world was at internal war and people were at a quest for political identity. Persecution on the basis of religion,



ideology, regionalism, and ethnicity was widespread. People were coerced to leave their homes and take refuge elsewhere. This went on for the longest period of time and is still affecting people. The international arena, in the mid-20th century, led by the UN, laid down the first refugee convention to protect people against suffering from violations of human rights, generalized violence, ethnic strife, socio-economic and political insecurity, and civil wars¹.

Under Article 1, para 2 of the Convention, the term ‘refugee’ has been defined² as a person who, owing to 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, unwilling to avail himself of the protection of that country. Hence, a refugee is a person whose life is under any form of a constant threat,³ even beyond the threats enlisted in the definition under the Convention.

India remains one of the few liberal democracies who is not a party to the 1951 Refugee Convention and it does not possess a national framework for the protection of refugees. The reason for the former, at that time, was to not get caught up in the Cold War conflict. However, things have taken turn for the better since then. India has granted asylum to a number of refugees from neighbouring states, majorly from Afghanistan and Myanmar, as well as from countries located really far away. The nation saw its biggest refugee crisis at the time of partition in 1947, and then again in 1971, and

since then it has witnessed a continuous influx of refugees. While the Indian government has different sets of rules for dealing with various refugee groups, it respects *non-refoulement* in general for the holders of documentation, which are made mandatory by the United Nations High Commissioner for Refugees (UNHCR). They are even provided temporary residence permits.

The policies concerning the refugees inside Indian territory are laid down by the Union government, as the international relations and borders are under their exclusive purview via the Indian Constitution. But it is the states who have to bear the refugee burden in actuality. The refugee status is not governed by a codified model rather by political and administrative decisions. Since the approach is not uniform, the varied treatment leads to such disparity that where one group enjoys full range of benefits, the others are denied basic resources.

For some time now, India’s security concerns have had a restrictive impact on the country’s asylum space. A lot of this has to do with the concerns raised by its neighbours and the considerations of national security have come to influence an utterly humanitarian matter, like the refugee crisis. A balancing approach is sought from the authorities and since law and order is the work of the states in India and they have to ensure that these refugees are being treated on humanitarian grounds, the pressure is on the local level to create that balance. This conflict can only be resolved by a uniform code for the union as well as the states.

¹ UNHCR, Convention and Protocol relating to the Status of Refugees, <https://www.unhcr.org/3b66c2aa10>

² id.

³ Nimrat Kaur, Protection of Refugees in India: A Critical Analysis, SSRN Elec. J., (2013).



II. REFUGEE- THE STATE OF AFFAIRS

A person ends up a refugee as a consequence of reasons beyond his control and this has to be bore in mind while dealing with them. Over the years, certain tests have been developed by the decisions in a number of cases around the world to determine the interpretations and applicability of the terms used in the definition of a refugee in the 1951 Convention. This has been done to do away with the confusion relating to whether or not a person meets the description of the term. For instance, in the case of INS v. Cardoza Fouseca⁴, it was held in regard to ‘well-founded fear’ that so long as an objective situation is established by evidence, it need not be shown that the situation will probably result in persecution, but it is not enough that persecution is a reasonable possibility. Similarly, in the case of R v. Secretary for the Home Department⁵, the judgment suggested that the ‘test’ of granting the refugee status should consider whether there is an evidence of a ‘real and substantial danger of persecution’.

The refugee status cases in India are considered on a case-by-case basis and the inclusion of people under the term refugee is done on the merits and circumstances of the case. The documents that the refugees must provide to claim refugee status, supporting the grounds of persecution or fear, which thereof resulted in flight from the country of

origin, are an essential factor to the claim. These evidences and documents are, most of the times, all that a refugee has to provide for their consideration as refugees. What lacks in the treatment of cases is a strong human rights mechanism in India, which to a large extent determines the handling of refugee crisis, their treatment and rights⁶.

III. THE PROTECTION ARENA

India has had a paradoxical approach to refugees. This is attributable to its relations to different countries, the response of the locals, the ethnicity of the refugees, the pressure on the government and other factors which may influence its own sustainability. It has accepted refugees throughout history and its response in mass refugee crisis has been commendable. The Tibetan, Tamil, Kenyan, Nepalese and Bhutanese refugees were all given protection by the country, even the people after partition were granted citizenship. But with time, India’s policy towards refugees took a backseat due to its foreign policies and it became an opportunist. We have tried to present a picture by bringing out the varied approach and the causes it has on the refugees.

Tibetan Refugees. The Chinese invasion in Tibet in 1949 and the atrocities and oppression that followed the land lead to the fleeing of Dalai Lama, followed by a large number of Tibetans. The ones who fled to India were accorded refugee status. With more than 1.5 lakh⁷ Tibetan refugees living

⁴ 480 U.S. 421 (SC: 1987).

⁵ R v. Secretary of State for the Home Department, AC 958 (1988) (ex parte Sivakumaran and Conjoined Appeals, UN High Commissioner for Refugees Intervening).

⁶ Gizachew Admassu, Refugee Law (2009), <https://chilot.files.wordpress.com/2011/06/refugee-law.pdf>

⁷ Human Rights Law Network (HRLN), Report of Refugee Populations in India (November 2007), [http://www.hrln.org/admin/issue/subpdf/Refugee population in India.pdf](http://www.hrln.org/admin/issue/subpdf/Refugee%20population%20in%20India.pdf)



in India today, the government has restricted the grant of status but their status is still better than a lot of other groups. They are scattered in a lot of states and co-exist with locals peacefully.

Nepali-Bhutanese Refugees. The crisis in Bhutan was purely a cultural war between the Bhutanese people and the Nepali population. The former, threatened by the rising numbers of the latter, enacted citizenship legislation rendering Nepali people illegal residents overnight. Expulsions began and protests against these broke out throughout the country, which were met with raids and bombings and many Nepalis were forced to cross Indian borders through Assam and West Bengal. India did not accept the expelled Nepali Bhutanese due to a friendship agreement with Bhutan and obtaining refugee recognition still remains impossible for them.

Burmese Refugees. The fight for democracy in Burma led to all kinds of atrocities and persecution of the people. They enter India through North East and are protected. The ones who enter Delhi are under the UNHCR and daily life is a hardship for them. They are, however, granted resident permits.

Palestinian Refugees. The Palestinians have been migrating from one place to another since they flee from home in 1948. In India, they experience severe hardships and most of them are under the UNHCR.

Sri Lankan Refugees. The conflict in Sri Lanka since 1983, between the Lankan army and the Liberation Tigers of Tamil Eelam (LTTE) fighting for Tamil minority

independence, caused the deaths of a large number of people and displaced many. People had to flee their country because of regular air strikes, bomb blasts and landmines near their houses and also because of continuous torture and rape at the hands of the army. These people have entered India by sea reaching Tamil Nadu, where they are enquired by the police about their identities, as the LTTE is an illegal organization in India. Many Sri Lankans who have been deemed to be threat to security are detained, the rest are still protected as refugees. More than one lakh refugees⁸ occupy Tamil Nadu in refugee camps or otherwise, working unskilled labour, provided with medical care and education; but the condition of these camps is deplorable to say the least.

Somalian Refugees. The civil war in Somalia has killed many and rendered many displaced. More than 4 lakh Somalis⁹ have fled persecution and the country is facing what is called by the UN as the worst humanitarian crisis. They're the largest African community in India with almost 500 people, under the UNHCR, but they are not provided resident permits by the government. They face housing, medical, health and education problems more than the other groups. They suffer lingual and racial discrimination.

Pakistani Refugees. The tense inter-communal relations between India and Pakistan the two wars between the countries, and a number of events after that have roughly displaced 1.2 lakhs¹⁰ of Hindu Pakistanis to states of Rajasthan and Gujarat. India does not recognize them as refugees,

⁸ id.

⁹ id.

¹⁰ id.



which leaves them for exploitation and meagre means to support themselves.

Afghani Refugees. The civil war in Afghanistan between the Taliban and the government and the oppressive rule of the former led many Afghans to flee the country. The Indian government does not recognize the Afghans as refugees, but they are protected by the UNHCR and are provided residence permits¹¹.

As is evident, there is no single line of policy that governs India's approach to refugees. This creates discrimination among the groups and the refugees who are discriminated against suffer great hardships for basic rights. In cases of recognition, there is minimal interference by the government. But there are instances where even after recognition and identification, these refugees are prosecuted for illegal entry or over stay. Like in the case of Tamil refugees from Sri Lanka, whose cause has been taken up by the National Human Rights Commission (NHRC). The Rohigyas are probably the worst-affected group of refugees present on the Indian territory. If India decides to let them go, they will be at a risk of persecution again, failing the purpose of refugee policy altogether.

IV. THE PRESENT LEGAL FRAMEWORK

India generally conforms to the international instruments relating to the refugees without giving a statutory shape to the practices adopted by it. The mix migration flow complicates the identification and protection of refugees. A model refugee law was framed by some eminent South Asians led by Justice Bhagwati, in 1999, which was not adopted by

the Indian government. And since then, there has been very little to no effort in regard to regulating the existing framework. The set of rules, as followed by the government, respond differently to different sets of refugees. Some are provided assistance by the government and others by the UNHCR. In the last decade, the influx of refugees has increased drastically. This has led to innumerable problems for the incoming people, the locals as well as the State. The refugees suffer poverty and exploitation at the hands of the others. They are often bereft of basic rights and are at a high risk of violence. The UNHCR, along with the government, has strived to fight all these evils. It has even tried to narrow the gap of protection provided between refugees and asylum seekers.

Currently, India deals with refugees in accordance with its national laws which are otherwise applicable to *foreigners*. However, there is a difference between foreigners and refugees that it needs to take into consideration for its policy framework for the latter. While all the people who are not citizens of India are foreigners, and it includes the refugees; the refugees are different from other categories of foreigners. Unless the distinction becomes clear, the misunderstanding about the refugees in India will never allow the locals to have a sensitive approach to their issue. Refugees, are the particular group of people, as defined in the beginning of the paper and are not included in temporary residents, illegal economic migrants, tourists, criminals, travellers, spies, internally displaced persons, infiltrators or militants, etc.

¹¹ id.



The principal Indian laws that are relevant to refugees are the Foreigners Act 1946 (Sections 3, 3A, 7 & 14), the Registration of Foreigners Act, 1939 (Sections 3 & 6), Passport (Entry into India) Act, 1920, Passport Act, 1967 and the Extradition Act, 1962¹². The entry of foreigners into India is regulated by the Passports Act of 1920 and 1967 and the Foreigners Act of 1946, which make natural citizenship for illegal migrants impossible. These acts, including the Citizenship Act of 2019, do not distinguish between refugees fleeing persecution and foreigners, and they apply to non-citizens equally. Deportation and detention are the measures sought to under these acts for people who are found without documentation, which are extreme, to say the least. Except the Foreigner Regional Registration Offices (FRRO) under the Bureau of Immigration India, India has no central government body to deal with the refugees. And since there is no provisions in place to govern the situation, the FRRO officials deal with refugees and asylum seekers on the basis of the ad hoc policies¹³.

a. Constitutional Provisions

A refugee is governed by law on his entry into the territory of India. Once admitted, he is subject to the laws of the country. The Indian Constitution includes certain provisions which apply to a refugee and a citizen alike. Contrary to the acts discussed above, that have a negative approach, the Constitution provides the refugees with basic rights. Article 21, which provides for right to life and personal liberty, for instance, applies

to citizens and aliens alike, as time and again has been stressed by the Supreme Court in cases like Louis De Raedt v. Union of India¹⁴ and Khudiram Chakma v. State of Arunachal Pradesh¹⁵. In the case of the *Chakma* refugees, the Supreme Court referred to UDHR and stated that Article 14 of the Declaration (right to enjoy asylum) shall be interpreted in light of the instrument as a whole. It gave the Article a kind of a moral authority. However, the Indian Constitution does not include any provision obliging the state to enforce any treaties or conventions. They can only become a part of the national law if they are incorporated by the means of legislation. This makes the need of a refugee legislation in India all the more necessary. The Supreme Court has laid stress on this mandatory transformation for any international law into a part of municipal law through multiple decisions on the matter in the cases of Gramophone Company of India Ltd. v. Birendra Bahadur Pandey¹⁶, Civil Rights Vigilance Committee, SLRC College of Law, Bangalore v. Union of India¹⁷ and Jolly George Verghese v. Bank of Cochin¹⁸. The judiciary has also extended the protection of Article 14 to the refugees. The foreigners are also entitled to the protection of rights provided under Articles 20, 22, 25 to 28 and 32¹⁹.

b. The UNHCR

For assistance in these matters, the UNHCR has a presence in India. It is based in New Delhi, the nation's capital. The problems faced by the government in relation to the refugees are, to some extent, sorted by the

¹² S. Mohan, India, UNHCR and Refugees: An Analytical Study, Int. J. Peace Stud., 2003.

¹³ id.

¹⁴ 3 SCC 554 (SC: 1991).

¹⁵ Supp. (1) SCC 615 (SC: 1994).

¹⁶ AIR 667 (SC: 1984).

¹⁷ AIR Kant 85 (Kar HC: 1983).

¹⁸ AIR 470 (SC: 1980).

¹⁹ Bhairav Acharya, The Law, Policy and Practice of Refugee Protection in India, SSRN Elec. J., (2004).



UNHCR. It undertakes the task of determination of refugee status for asylum seekers from non-neighbouring countries. It identifies the large number of stateless people present in India. Once recognized, the Afghan, Palestinian, Burmese and Somali refugees receive protection under it²⁰. A small monthly allowance, and other services, to these refugees is provided by its implementing partners. The Young Men's Christian Association (YMCA) provides accommodation and education facilities, Don Bosco provides psychological assistance and vocational training and the Socio-Legal Information Center (SLIC) provides legal aid. Despite their assistance, majority of refugees in India face great hardships. According to the UNHCR itself²¹, there is a need for a fair protection process when it comes to refugees and asylum seekers.

c. The Citizenship Amendment Act (CAA), 2019, the First Refugee Law

The recent most legislation, the Citizenship Amendment Act (CAA), 2019 has stirred up refugee discrimination in India. It has been remarked as a constitutional travesty that violates cooperative federalism. It added to the already existing xenophobia, particularly in Muslims as a large number of them face the risk of being stateless due to the CAA-NRC effect which is a big humanitarian problem. The migrant influx in the North East, specially Assam, has made the state aggressive and hostile towards refugees as they see them as a treat to their culture and also, the electoral balance. The CAA, being

India's first and the closest attempt to a refugee legislation, even if not in line with the provisions of the Refugee Conventions since India is not a signatory to it, shall still be harmonious with the human rights treaties which India is very much a part to. What is needed is a non-discriminatory refugee law and policy²².

d. Role of Judiciary

The Indian judiciary has played an instrumental role in revolutionizing any and all problems faced by the country. The refugee crisis is no different. The courts have coordinated with the UNHCR in the protection of refugees. It was laid down in the case of UNHCR v. State of Arunachal Pradesh²³ that undocumented migrants claiming refugee status will not be denied certain procedural and substantive rights. They have a right to be considered as a persecuted refugee, to not be deported during consideration of their case, to asylum if the case is proved, to move to a country offering refuge, and to fair treatment throughout this process. They have also been given the right to have their refugee status determined by the UNHCR. Basic amenities are made a mandatory provision for destitute refugees, especially children and women by the Gujarat High Court in the case of Ktaer Abbas v. Union of India²⁴. The various High Courts have time and again tried to apply the rules of natural justice to the refugees alike, especially the Hon'ble High Court of Guwahati, with the large refugee presence in the State of Assam. The Sri Lankan refugees

²⁰ Supra 4.

²¹ UNHCR, India, Global Appeal 2011 Update (2011), <https://www.unhcr.org/publications/fundraising/4cd96e919/unhcr-global-appeal-2011-update-india.html>.

²² Rajeev Dhavan, India Needs a Proper Refugee Law, Not a CAA Suffused With Discriminatory Intent (20

Dec 2019), <https://thewire.in/law/india-needs-a-proper-refugee-law-not-a-cao-suffused-with-discriminatory-intent>.

²³ 1 SCC 742 (SC: 1996) (Writ Petition (C) No. 720 of 1995).

²⁴ CriLJ 919 (Guj HC: 1999).



have been protected against deportation by the Madras High Court in the cases of Gurunathan and others v. Government of India²⁵ and A.C. Mohd. Siddique v. Government of India and others²⁶. Even the Supreme Court has stayed the deportation of a number of refugees in cases such as Mailwand's Trust of Afghan Human Freedom v. State of Punjab²⁷, N. D. Pancholi v. State of Punjab²⁸ and Malavika Karlekar v. Union of India²⁹. The courts have also observed and upheld the principle of *non-refoulement*, like in the cases of Syed Ata Mohammadi v. Union of India³⁰.

V. INTERNATIONAL OBLIGATIONS

India is a party to many United Nations and World Conventions on Human Rights. It had voted affirmatively to adopt the Universal Declaration of Human Rights (UDHR), which affirms rights for all persons, citizens or not. Article 13 of UDHR grants the right to freedom of movement to all persons, Article 14 allows the right to seek and enjoy asylum and Article 15 grants right to nationality. It is also a party to the International Covenant on Civil and Political Rights (ICCPR). Article 12 of the Covenant grants freedom to leave any country, including the person's own and Article 13 prohibits expulsion of aliens except by due process of law. India is also a party to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Article 1 of the Convention imposes legally binding obligation on state parties to not discriminate against women in any circumstances. Another convention to which India is a party is the Convention on the Rights of the Child, Article 2A of which

directs states to ensure the rights of each child within its jurisdiction without discrimination of any kind, Article 3 considers of the best interest of the child as primary, in all actions concerning children, Article 24 grants right to health, Article 28 allows right to education, and Article 37 provides for juvenile justice. Moreover, India is a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 3 of CAT contains the *non-refoulement* principle, which binds the signatory states.

India became a member of the Executive Committee of the National Security Council (EXCOM) in 1955. EXCOM approves and supervises material assistance programme of the UNHCR. Its membership shows India's interest and commitment to refugee matters. It also accepted the principle of *non-refoulement* in the Bangkok Principles in 1966, concerning status and treatment of refugees, including right to compensation, minimum standard of treatment in the state of asylum, repatriation, and grant of asylum. Some other Conventions that India is a party to includes the Convention relating to Status of Stateless Persons, the International Convention on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Reduction of Statelessness, and the UN Declaration of Territorial Asylum, all of which speak for refugee protection and contain important rights accruing to refugees, which must guide a country's treatment of refugees. Hence, its obligations to protect the

²⁵ WP No. 6708 (Mad HC: 1992).

²⁶ 47 DRJ DB 74 (1998).

²⁷ WP (CrI.) No. 125 and 126 (SC: 1986).

²⁸ WP (CrI.) No. 243 (SC: 1988) (for Prel. Hearing).

²⁹ WP (CrI.) No. 583 (SC: 1992).

³⁰ WP (CrI.) No. 7504 (Bom HC: 1994).



refugees spring out despite not being a part of the Refugee Convention.

Steps to Fulfil the Obligations

The Chairman of India's NHRC, Justice J.S. Verma pointed out that the provisions of the 1951 Refugee Convention and its Protocol can be relied on, provided that there is no conflict with any of the prevalent municipal law provisions³¹. Amidst the growing security concerns, India tries to have a liberal approach to the refugee crisis keeping in consonance with the international principles of protection and *non-refoulement*. Refugees are granted residence permits, which also assist in finding employment. Also, refugees are largely allowed freedom of movement, practice of religion and residence³².

VI. THE NEED FOR A SPECIFIC REFUGEE LEGISLATION

To provide effective refugee protection, India must develop a national framework. There is an immediate need for refugee law.

First, there is a dire need to increase the knowledge among the general public, the lack of which at the moment causes them to be hostile towards the refugee population. The tolerance for any foreign element in the local population is very low, owing to Indian history of colonialism. The country is always at a guard in this regard.

Second, India has also been a victim of transnational terrorism which largely affects the cross-border movement of people³³. The panic that the situation in the last decades has

created has left the refugee situation in splits. A proper filter channel needs to be in the working to combat the increase in terrorism and cope with the security concerns that loom over the Indian territory. The patchy legislations in place, which have a largely generalized approach are not sufficient to meet the needs of the hour. The absence of specific legislation is one of the reasons for the threat of terrorism faced by the country. *Third*, illegal migration causes problems for the local community, create employment issues and also impact the socio-demographic profile of the receiving state. India's deportation policy is also ineffective in dealing with the issue properly. What is needed is a better check and surveillance of the borders and strict guidelines in place for that, so that people don't have to be uprooted and can find refuge elsewhere instead. It's impossible to man all the Indian borders completely. The border security personnel like the BSF and the ITBPF have the first encounter with the refugees coming through land. When dealing with illegal immigrants, they either return them to their place of origin or detain them to be handed over to the local police. They are then dealt in accordance with India's Code of Criminal Procedure. The investigation for possible *mala fides* is then done and further steps are taken accordingly. In the case of seaports and airports, Immigration and Custom officials do this work. Even for the procedure undertaken by these authorities for dealing with such cases, is not coded or uniform in any manner which leads to exploitation and inhuman treatment of these people most of the times.

³¹ B.C. Nirmal, Refugees and Human Rights, ISIL Year Book Int. Hum. Ref. Law, 2001.

³² T. Ananthachari, Refugees in India: Legal Framework, Law Enforcement and Security, ISIL Year Book Int. Hum. Ref. Law, 2001.

³³ Binod Khadria, Perveen Kumar, Shantanu Sarkar and Rashmi Sharma, International Migration Policy: Issues and Perspectives for India, IMDS Work. Pap. Ser., Dec 2008.



Fourth, since India is a non-signatory to the 1951 Convention, the principles of impediment to expulsion and *non-refoulement* do not apply on it. The international treaties as well as their principles do not automatically form part of India's municipal law and have to be adopted into the legal system by the parliament for their effect³⁴. The large-scale acceptance of refugees in India is the very reason for the nation to adopt a legislation on how these refugees shall be treated. There has to be a uniform treatment for all the refugee groups throughout the country. The discriminatory treatment meted out to the refugees by the Indian government tarnishes its repute with respect to its human rights record. It has, so far, dealt with the refugee influx without a legislation, but with a rapid increase in the numbers, it needs to take steps to make the whole process more efficient. It will increase the liability and accountability of the government³⁵.

Fifth, in the absence of a policy framework, employment opportunities for refugees are exploiting and unintegrated³⁶.

Lastly, the lack of a national legislation also restricts the judiciary in taking decisions on such matters. In turn, it has to apply laws which are applicable to foreigners and aliens on refugees and asylum seekers instead.

VII. THE WORK IN PROGRESS

India's refugee statistics for 2018 was 195,891, which was a 0.62% decline from 2017, as it has been declining since 2015³⁷. This decline is attributed to a lot of factors, including the non-uniform policy adopted by it. All of the world saw a rapid increase in trans-border movement in that year due to events happening worldwide. Countries were not prepared to take in such huge numbers of refugees but still tried to open their territories to asylum as much as possible³⁸. Since then, however, things have taken a steady pace and although the refugee influx is decreasing, the treatment of the ones already granted asylum is under scrutiny. Under the operations for the present year, the UNHCR plans to get 1700 refugee children enrolled in accelerated learning programs, to give multiple cash grants to 1500 vulnerable people and to make provisions for 358 refugees to participate in entrepreneurship and business training. There are still 11, 357 asylum seekers wanting for refugee status in India. While India has endorsed the UNHCR's Global Compact for refugees, they are still expected to receive exit orders, be at the risk of detention and may face return to their countries. UNCHR plans to increase dialogue and coordination with the government, Resident Coordinator and UN Country Team, and use a whole-body society approach, to combat this problem³⁹.

³⁴ S.K. Agarwal, Implementation of International Law in India: Role of Judiciary, SSRN Elec. J. (2010).

³⁵ Joseph Xavier and Apoorva Sharma. Legal Rights of Refugees in India. (Indian Social Institute, Jesuit Refugee Service, 2015).

³⁶ Dipankar De Sarkar, Why India won't sign Refugee Treaty (Sep 2015), <https://www.livemint.com/Opinion/bePZQScFIq1wEwV9Tqt4QO/Why-India-wont-sign-Refugee-Treaty.html>

³⁷ Macrotrends, India Refugee Statistics 1990-2020 (2020),

<https://www.macrotrends.net/countries/IND/india/refugee-statistics>

³⁸ Supra 31.

³⁹ UNHCR, Global Focus: UNHCR Operations Worldwide (2020), <http://reporting.unhcr.org/>.



VIII. CONCLUSION

One of the main reasons for India not signing the refugee convention, after the end of the cold war, has been security-related. Making things international level official can create a mass movement of people through its borders which will have a strain on the infrastructure as well as the resources. India, being the largest democracy and still in the developing phase, can only take so much pressure to sustain and not mess up its demographic balance. Besides, India has been in the good books when it comes to refugee intake and already does what it can do best so the need for ratification to the convention is chalked out when viewed from this perspective. But on the other hand, refugee crisis has become a humanitarian issue, which every State has to commit to, giving importance to its humanitarian and human rights aspect.

This can be done by improving and maintaining standards of registration and profiling, strengthening the services provided for people with special needs, better access to education for children, better health services for one and all, etc. Since *non-refoulement* is not a part of India's legal statutes, a refugee entering illegally faces the prospect of being arrested and prosecuted accordingly. What can be done by the authorities of the first encounter is investigation and satisfaction as to what purpose does the refugee has for entering the state. A step on that basis shall be taken with further investigation of the identity of the person, with the help of the concerned authorities and UNHCR. An FIR should be the very first step, before they're put through any kind of investigation. A state should take into consideration the trauma and

the mental state of the refugee before taking steps like detention. Legal aid cells and NGOs can be made a provision for these refugees so that they feel protected and proceed with trust. Women and children refugees shall be provided assistance of any kind required. The government shall apply durable solutions to these problems and the refugee scenario altogether either by either voluntary return or local integration.

Moreover, since India follows a dualist approach in the implementation of international law, the incorporation of principles like the *non-refoulement* into the municipal laws is important for their implementation and adherence thereto⁴⁰. All the policies that govern the refugee approach today are largely biased and discriminatory, which goes against the fundamental tenets of law like the right to equality. The argument that the 1951 Convention has been incorporated into the Indian law by the means of Article 21 of the Constitution⁴¹ is not entirely true. The Indian judiciary's role in protecting the refugees has been undoubtedly commendable, but the country still requires a legislative stand by the government to instil a sense of belongingness in the refugees, and provide them with a direct procedure and binding norms to claim a status.

A legislation will solve many problems starting from the arbitrariness that exists with respect to varied treatment mechanisms, all ad hoc, which the country adheres to; the inefficient and slow process of status determination; the inhumane treatment; the lack of rights; and the implementation of international principles via municipal incorporation. All of which shall be the

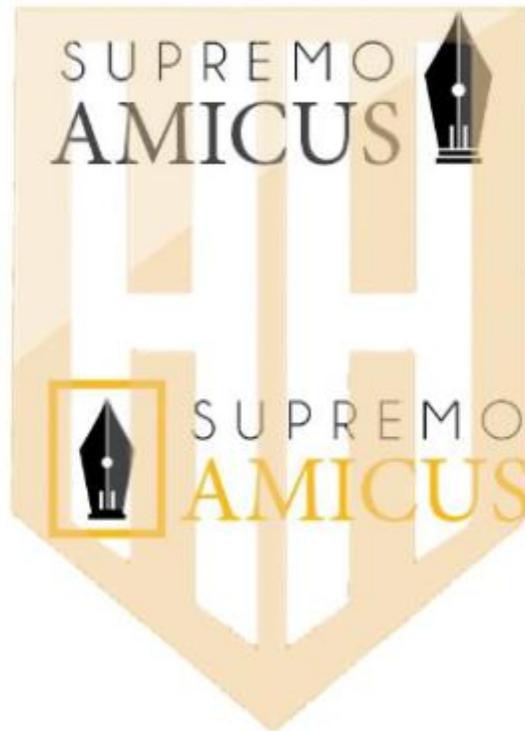
⁴⁰ Shuvro Prosun Sarker, Protection of Refugees in India: Quest for National Refugee Law, RLI Wor. Pap. (2014).

⁴¹ id.



elements and guiding principles of the proposed legislation.

The truth of the matter remains that in the absence of a rational policy, uncertainty prevails. The current policies stand for a strict procedure and do not help in formalising the status of refugees⁴². The obligations setting in from all the other Conventions are not comprehensive enough to manage all the aspects of refugees. The need for an exclusive law is immediate and humanitarian, one that will be a hallmark for India nationally as well as internationally.



⁴² Wanted, a law for refugees (Aug, 2012), <https://www.thehindu.com/opinion/editorial/wanted-a-law-for-refugees/article3812816.ece>