



AN ANALYSIS OF HUMAN RIGHTS AND REFUGEE PROTECTION REGIME

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ABSTRACT:

This paper aims to establish the status of refugee and the rights and protections available under international and national laws. The human rights of refugees are one of the greatest problems in the world. According to Article 1 of the United Nations Convention on the Status of Refugees, refugees are those who "have a reasonable fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or your opinion are outside your country of citizenship and are unable or unwilling to avail themselves of the protection of this country because of this fear. Your life is under constant threat for various reasons and is not perfect for your healthy survival. Many countries in the world have adequate regulations for the refugees living in their country and the protection they should be given, but India does not have a single legal framework. India is a country where there are many groups of refugees from different countries, mainly from its neighboring countries. It has no refugee rule of its own and is not a signatory to the 1951 UN Convention or the 1967 Protocol on the Status of Refugees¹. Adopted binding regional instruments to protect refugees, but there is no instrument to protect refugees from Asia. India has had an ad hoc policy on refugee settlements since independence.

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<https://www.unhcr.org/publications/legal/3d4aba564/>

There are large numbers of refugees in India due to its geographic location, religious society, and great culture. Some of the main refugee groups in India come from Iran, Tibet, Bangladesh, Pakistan, Afghanistan, Sri Lanka, and Myanmar. Problem since ancient times, Tribesmen emigrated in search of food, water, and resources, now refugees are emigrating for security and other reasons. There are 15.2 million refugees worldwide and 1 million are waiting for their asylum applications to be approved. Problems in India and around the world.

INTRODUCTION:

Refugee story India is one of the few countries that has experienced the refugee situation over the past half-century. The history of India can be seen in the widespread migration of people from different countries. These walks took place in two ways: "Hindukush Mountains in the west and Patkoi Mountains in the east". After independence, India's first 25 years were spent taking responsibility for 20 million refugees. This was due to the division of India and Pakistan. As a result, India faced the task of helping displaced people from West Pakistan. The Indian government has taken many steps to overcome the refugee problem. The most important step that had been approved by the government was the Financial Management for Rehabilitation Act of 1948, the term refugee was included in the 1951 Convention on the Status When examining the situation of displaced persons from India to Pakistan and vice versa, it became clear that the situation of displaced persons is no different from that of refugees. History of Refugees in India Indi is a populous country and one of the countries

<refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>



refugees have been experiencing lately. Past migrations have been to the Hindukush Mountains in the west and the Patkoi areas in the east. Pakistan caused large numbers of people to migrate. Almost 20 million came to India after India gained independence. He had to set up many relief camps to take care of many refugees. The people were from Bangladesh, Pakistan. Treasury Administration Act of 1948 to address these funding issues. They were expelled from India. In 1971, many refugees from East Pakistan travelled to India. In 1983 and 1986, India had refugees from Sri Lanka and Bangladesh, respectively. At the end of 1992, India had taken in 2,000,000 migrants and 237,000 displaced persons. India always has some or other refugees full of history.

PROTECTION FOR ASYLUM SEEKERS IN INDIA:

The treatment of asylum seekers has been divided into three categories: (a) National treatment (b) Foreign treatment (c) Special treatment.

National treatment: The national treatment of asylum seekers is the same as that of citizens of India. There are certain articles in the Constitution of India that deal with the fundamental rights of all people in India².

Under the law under Article 14, religious freedom under Article 25, the right to life and personal freedom under Article 21, the right to social security and educational rights are guaranteed in Part III of the Constitution of India. Are there any rights related to housing, movement, etc. issues? The rights granted under this treatment are the right to employment or occupation under Article 17, right of residence and freedom of movement

under Article 26, right to housing under Article 21, the right to form an association under Article 15 and the right to property under Article 13 of the 1951 Refugee Convention³.

Special treatment This treatment includes the identity card and the travel document according to Article 28, exemption from sanctions according to Article 3 paragraph 1 of the 1951 Refugee Convention.

ROLE OF THE JUDICIARY IN PROTECTING REFUGEES:

If any of the refugees are arrested or detained by the Indian authorities, there is always a risk of waste, repatriation, or deportation. Refugees arrested for illegal residence can be illegally detained by order of the administration. The Aliens Act gives the central government absolute and unrestricted discretion to exclude foreigners from India.

The Supreme Court of India in "Hans Müller de Nurenburg vs Superintendent, Presidency" gave the government the "absolute and unrestricted" power to expel foreigners. This decision was again upheld by the Supreme Court in the syndicate of Louis De Raedt & Ors vs from India. In the same ruling, the Supreme Court also ruled that foreigners have the right to be heard. In the decision of the Ktaer Abbas Habib Union of Al Qutaifivs of In India, the Gujarat Supreme Court ruled that the principle of non-refoulment precludes the expulsion of a displaced person whose life or freedom would be undermined. e, religion, nationality, affiliation to a specific social gathering or political celebration; Their application

² <https://immigrationforum.org/article/fact-sheet-international-refugee-protection-system/>

³ <https://www.unhcr.org/4cd96e919.pdf>

⁴ 1991 AIR (SC) 1886



ensures the life and freedom of a person regardless of their nationality.

CONSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF REFUGEES:

The Constitution of India guarantees refugees certain fundamental rights, namely the right to equality (Article 14), the right to life and personal freedom (Article 21), the right to protection in the event of arbitrary arrest (Article 14) 22), the right to protection concerning conviction for a crime (Article 20), freedom of religion (Article 25) and the right to go to the Supreme Court to enforce fundamental rights (Article 32) are available to both non-nationals including refugees and Constitutional rights protect the human rights of refugees to live in dignity. The liberal interpretation given to Article 21 now includes the right to solitary confinement, the right to violence in custody, the right to medical care and housing.

The Supreme Court has resorted to Article 21 of the Constitution due to the lack of legislation that regulates and justifies the residence of refugees. In the National Human Rights Commission against the State of Arunachal Pradesh, the government of Arunachal Pradesh was asked to fulfil its duty to protect the life, health, and well-being of the Chakmas⁵ living in the state and to apply for citizenship. Several other cases have argued that refugees should not be detained or deported and that they have the right to turn to the United Nations High Commissioner for Refugee Status. Union of India stressed the need for the voluntary nature of repatriation and the Court ruled that UNHCR, a global agency, had to determine the voluntary nature of the refugees, so it was not for the Court to determine whether

consent was voluntary. Similarly, according to B. Chimni, in *Louis de Raedt vs Union of India*'s⁶ judgment, the Supreme Court wrongly found that no provision in the constitution gives the government absolute and unqualified power to expel foreigners due to the alien Act of 1946. Indeed, Article 21 of the Constitution of India contains certain restrictions: any act of the state that deprives a foreigner of his life and personal freedom without a legal procedure would be violated, and such a measure would certainly include the return of refugees, which is why the draftsman felt that the Court should have reviewed the validity of the Aliens Act against Article 21.

LAWS IN INDIA:

The Refugee and Asylum (Protection) Act 2009, there are no specific laws regarding refugees in India, but the main law that supports it is the Aliens Act 1946. In contrast to foreigners and refugees, it represents stronger persecution of the refugee.

Aliens Registration Act of 1939 (No. 16 of 1939).

Refugees are considered "foreigners" in India. Constitution of India (Article 22),

Section 83 of the Indian Code of Civil Procedure, Section 3 (2) (b) of the Indian Citizenship Act of 1955, as well as various other laws. Most laws are more complicated for refugees:

The Aliens Act of 1946 gives civil servants the power to arrest or arrest foreigners if only one suspect's non-compliance. The laws in force in India are insufficient to protect them. According to the principle of non-refoulement, no country can deport, deport, or forcibly deport the refugee to his area of origin against his will or, if his life is at stake. or freedom is threatened.

⁵ 1994 AIR 1461 1993 SCR (3) 401 1994 SCC

⁶ (1991) 3 SCC 554



INDIA'S POSITION ON THE 1951 CONVENTION:

There are 144 signatories to the 1951 Convention on Refugees and India is not one of them. The Refugee Convention deals with the rights of people who have fled to other countries and the duties of the host country. the pressure of international organizations not to be signatories of the Refugee Convention. Considering this, political, economic, and ethical factors prevent India from joining the 1951 Refugee Convention. India is a developing country, and it would be a burden for it to respect the convention and become a signatory and influence India's security laws. He considered that the convention was not related to the problems occurring in India but applied some articles. India believes that even if it is not a signatory, it would offer minimal needs to a refugee. India has many problems with countries sharing borders and made that decision. As you become a signatory, you will have to give more and more resources and other things to the refugees⁷. After 1991, following the execution of Rajiv Gandhi by a refugee from Sri Lanka, India supported his position for the same reason⁸. So does the Indian economy as many come to India in search of opportunities. He fears that people might come to country names as refugees for various reasons and abuse the convention for better opportunities. Whether India signed the Refugee Convention, or its protocol is still a matter of pros and cons.

⁷ <https://www.unhcr.org/4cd96e919.pdf>

⁸ <https://theprint.in/opinion/why-india-is-home-to-millions-of-refugees-but-doesnt-have-a-policy-for-them/341301/>

INTERPRETATION OF HUMAN RIGHTS LAW, REFUGEE LAW AND HUMANITARIAN LAW

Interpretation of human rights law, refugee law and humanitarian law Both refugee law and human rights law often co-exist in several areas and overlap. The protection of one person from abusive power and the other concerns the conduct of the parties to an armed conflict in the case of the protection of the person in power of one party, both under humanitarian and human rights law humanitarian law deals with conflict, and while refugee law deals with people fleeing because of conflict, the two go hand in describing the principle of non-refoulement that prohibits forced return⁹. In general, none of the laws works independently but goes hand in hand. Some of the principles or ideas are also borrowed from or adapted from one another.

CONCLUSION:

Although there are several conventions and laws regulating refugees, refugees around the world continue to face problems. If a country as big as India does not have a refugee law; we can understand that many countries have the same face and are in the same boat. If UNHCR and NHRC work together, there will be much more development in the refugee field Law: India needs to enact a law on refugees as there may be many more problems in the future for various reasons. Whenever UNHCR tries to act against refugees, NGOs must actively help them. Anchored in various articles of the constitution, a uniform law is needed that grants all refugees the same rights. Refugees

⁹ <https://www.icrc.org/en/document/what-difference-between-ihl-and-human-rights-law>



Given security concerns for which India has
no signatory.

