



International Journal of Humanities & Social Science Studies (IJHSSS)

A Peer-Reviewed Bi-monthly Bi-lingual Research Journal

ISSN: 2349-6959 (Online), ISSN: 2349-6711 (Print)

ISJN: A4372-3142 (Online) ISJN: A4372-3143 (Print)

Volume-VII, Issue-V, September 2021, Page No. 139-147

Published by Scholar Publications, Karimganj, Assam, India, 788711

Website: <http://www.ijhsss.com>

DOI: 10.29032/ijhsss.v7.i5.2021.139-147

A Study on Problem of Refugees in India and Need for Legislations to Overcome Refugee Issues

Kumar Ajith K.

Research Scholar, Srinivas University, Mangaluru, Karnataka, India

Abstract

As from Independence itself India never had internal law for refugee recuperation, still India is a home to millions of refugees. Our constitution has guaranteed fundamental rights to citizens and non-citizens but, is that enough for a country which has porous boundaries with enormous infiltration from golden crescent (North west region) and golden triangle (North east region). The human right activists argue, India is party on several international human right covenants and cannot elude from non-refoulement code. It is difficult to create a permanent settlement of refugee issues with available constitutional rights. Recently cases with violation of Article 21 are abundantly filing in Supreme Court of India. In response to this, government has to provide strong and discernible proof to counter in order to substantiate the reality of situation. Now it is too late to formulate laws for refugees originating from neighboring countries and non-neighboring countries. This article gives brief description of refugee definition and at present the way by which India is managing refugee rehabilitation. The author also provides a brief outlook of existing legal provisions in India and recommended solutions to end the problem of unauthorized immigrants and refugees from neighboring countries.

Key words – Refugees, Non-refoulement, Refugee laws, Covenants, UNHCR, domestic laws

1. Introduction: The crisis of refugee is never ending since our independence and as the year goes it is going to be more and more tumultuous. India faced a heavy exodus of refugees at various timeline after Independence. The major is: -

- *Partition of India and Pakistan in 1947* – This was the black tragedy in the history of India, Mass movement of people from either countries and consequent violence resulting in millions of homicides and atrocities. The nascent government formed was in dilemma in handling the crisis. Several became homeless and many brutally killed. It was a deepest agony making an indelible scar in the mind of millions.
- *Tibetan Refugees in 1959* – Dalai Lama along with his 1 lakh followers fled to India owing to religious torture kindled by Chinese communist government.

- *Bangladesh War* – In 1971 during Independence of East Pakistan millions migrated to India.
- *Sri Lankan Civil War* – Tamil and Sinhalese civil war resulted in exodus of thousands of Indian origin Sri Lankan Tamils to India
- *Afghan Refugees* – According to UNHCR report more than 2,00,000 Afghan refugees are in India.
- *Rohingya Refugees* – Ethnic conflict in Myanmar resulted in mass entry of Rohingya refugees into India.

The ruling governments from time to time never ever made any clear-cut laws to manage refugee crisis in humanitarian perception till now. The Geneva Protocol of 1951, which is an agreement to handle refugees between European nations, is never ratified by India. India has one of the biggest refugee populations in south-Asia, in addition to actual refugees or asylum seekers, there are illegal migrants for casual jobs, war criminals, spies and camouflaged terrorists who challenges the national security. Another problem arises is, unbalancing demographic constitution of India. India government never ratified both 1951 Geneva declaration and 1967 protocol in order to avoid any undue intrusion in the domestic matters of countries., Besides India doesn't have clear law book or enactment to manage refugees, but with certain guidelines reserved in Constitution and policies of government oversee the matter from time to time. During any contradictory and legally impounding activities the refugees are reprimanded and deported or detained as per the backgrounds. Such an instance invites a PIL in SCI leading to consider matter on humanitarian grounds or principles of fundamental rights. Since there is no suitable parliamentary enactment or leading principles on refugees the court relies on antecedents to settle cases in legal interpretation. So, our law makers should be aware of the fact and act according to the gravity of the problem that is facing today and which aggravates in the coming future. The question is what type of statute, should it provide any retrospective validity and separate provisions for neighboring and non-neighboring refugees etc. should be considered in the process. As India needs to fulfill the goals of Agenda 2030 of development integrated with inclusive growth, reduce poverty and malnutrition, minimize income inequality. population growth stabilizing and foremost national security immediate intervention is invited in refugee crisis settlements.

2. Related Works: India's decision to accord refugee status to the Tibetans fleeing China in 1959 and their continued presence even after 40 years is another example for South Asia's contribution to refugee protection. Again, the movement of 10 million refugees from erstwhile East Pakistan into India, the largest refugee influx the world has seen so far, met with the same positive approach to the sufferings of the people (Vijayakumar Veerabhadran 2001).

Sectional politics is a significant factor that explicitly reveal the hesitancy of India's policymakers to permanently settle issue. A genuine reason is illegal immigrants have been used by vote-seeking political parties to shelter a majority in the central and the state elections. The manipulators in political parties promise these illegal immigrants a

permanent stay in Indian territory and provide formidable earning resort to election profiteering (Nair Arjun 2007).

India should also create a mechanism for effectively enforcing the law for refugees. The law should be adopted in such a way that it addresses the legal void in the refugee system while also preventing the breeding of refugees in and around India. Individual countries, particularly host countries such as India, may attempt enacting their own descriptive statutory legislation to address refugee issues precise to their national and regional milieu (Thavamani Johnson Sampathkumar,2015).

The existing regulations managing the refugees in India involves the political controls in deciding the curative measures to the refugees. But the reason for not administering a uniform framework for the refugees is that India is having specific treaties with its neighboring countries and hence a single codified process will not be applicable to refugees from different neighboring nations. According to Specific Adoption Theory when an international law to be implemented under its domestic laws it requires the acceptance of its principles through an appropriate legislation enacted by the Parliament of India. (Sindhuza & Pandiaraj 2018).

In the absence of a distinct lawful context, refugee asylum in India has conventionally been based on subjective executive policies, corresponding legislation and judicial statements. Till very recently, the only legislation suitable to international persons was the Foreigners Act of 1946 and the Passports Act of 1967, which oversee the entry, stay and exit of foreigners. Unfortunately, these laws give vivid powers to detain and deport foreigners for illegal entry and stay, and sanctioned no differential treatment for refugees, thereby making them, too, susceptible to confinement and extradition (Shanker Roshni & Vijayaraghavan 2020).

Since India is a prominent power in South Asia, its paramountcy can bring effect in formulating a regional MoU in treating refugees effectively. When a regional understanding and domestic law is prevalent there will negligible chance of misconception. All problems of refugees will be addressed in inclusive manner and lesser will be chance of uncertainty in dealings and any deviation will be sued by court (Kaur Nimrat 2013).

In Indian context, treatment of refugee communities is sometimes flexible and otherwise in rigid manner. The different refugee communities have been subjected to varying standards of protection.

3. Objectives:

- I) To Identify refugee status and International governing laws.
- II) To Identify Constitutional and legislative provisions in India.
- III) To assess the problem of refugees in India
- IV) To suggest various provisions in making law of refugees.

4. Refugee Status and International Governing Laws:

4.1 Who is Refugee?

A Refugee is somebody who has been forced to escape his or her nation because of torture, conflict or violence. Mostly hesitate to return home or feared to do so. It is identified by UNHCR that 68 percent of expatriates all over the world come from five countries namely Syria, Venezuela, and Afghanistan. South Sudan and Myanmar. According to UN nearly 79.5 million displaced people are therein all over world.

4.2 Refugee Status Determination (RSD)

UN High Commission for Refugees has made classification of displaced people in different categories

Asylum seekers– Displaced people from non-neighboring countries seeking international protection but claim for refugee not detected.

Refugees – Recognized under Geneva Convention of 1951(Article 1(A)(2))

Others of Concern– Persons from boundary sharing countries who are fled by any reason. Another group of classification is

Internally Displaced Persons (IDP) – They are forced to flee their home owing to civil war, famine, calamity, climate change etc., but they are located within the country.

4.3 International Refugee Laws

International refugee laws are based under the bulwark of Universal Declaration of Human Rights on 1948 and with International Humanitarian law. In association with these covenants laws and standards were determined on status of refugees.

A) 1951 Convention relating to status of Refugees

After the end of second world war a large number people across Europe displaced and made homeless and country less. Hence in order to accommodate the displaced and persons in distress European nations convention held in Geneva in 1951 and determined the status of refugees and their protection in asylum seeking country.

B) 1967 protocol

The former convention declaration pertains to European region. As the year passed internal strife and natural calamities, ethnic violence in African continent, Asiatic nations created numerous refugees and asylum seekers from all over the world resulting in the extension of refugee status internationally.

C) Cartagena Declaration on Refugees 1984

It is considered as principal document on refugees in Latin America. The protocol provide protection to seekers and maintain a prescriptive standards and regional quality for guidelines for actions in this area, thus, being a foundation of Refugee Law in the region

4.4 Principle of Non-Refoulement

Article 33 (1) of the 1951 Convention, which states: “*No party State shall eject or return (‘refouler’) a refugee in any condition whatever to the boundaries of territories where his/her life or liberty would be endangered on behalf of his race, religion, nationality, association with a particular social group or have different political belief.*”

5. Constitutional And Legislative Provisions In India:

There are no specific refugee laws in India. Only A) *The Passports Act, 1967* and B) *The Foreigners Act of 1946* are considered for Immigrants and Citizenship provision.

Art.5 to11 – Guidelines for citizenship

Art-14 – *Equality before law* - The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India

Art 21 – *Protection of life and personal liberty* – Any person shall not be deprived of his/ her life or personal liberty except according to procedure established by law, which is pertinent to non-citizen also.

Art-51(c) – Show respect for international law and agreements uphold vigor in dealings

6. Problems of Refugees in India: India has large population of stateless people. India is abode to various groups of refugees, extending from Buddhist Chakma from Bangladesh, Bhutanese from Nepal, Rohingyas from Myanmar, a minor portion from Somalia, Sudan, Sub-African countries and persons belonging to ‘others of concern’ from Afghanistan, Tibet, Sri Lanka, Myanmar. But India neither signed both treaties nor ratified the terms. India is one of the major refugees tolerating countries in the world. It is wondered how without any domestic legal provisions or international obligations, India can dwell huge refugees, it is nothing but through the glory of constitutional provisions and India's high-minded open-door policy to sufferers.

India faced bitter experiences in handling refugee protection and rehabilitation twice. One of it was Indo-Sino war as a result of enmity fermented on Dalai Lama issue and other assassination of former PM Rajiv Gandhi who involved in Sri Lankan LTTE insurgency with deploying Indian Peace Keeping Force (IPKF) in Sri Lanka.

Although India not signed 1951 Geneva Convention and 1967 Protocol, Principle of refoulement (Compulsory return (refoule)) or deport a person to another state where there are considerable grounds for believing that he/she would be in threat of being exposed to torture is not obligatory. But series of human rights protection international agreement are signed, namely

- ✓ Convention on the reduction of statelessness Territorial Asylum 1967
- ✓ Universal declaration of human rights (Art-14)
- ✓ International Convention on Civil and Political Rights (ICCPR)
- ✓ Convention on Elimination of all Discriminations Against Women (CEDAW)
- ✓ International Convention on Economic, Social and Cultural Rights (ICESCR)
- ✓ Convention on the Rights of Child
- ✓ Convention against Torture of 1984

International experts have opinion that the above covenants have several provisions which protect basic human rights for any people within the country or from other country seeking asylum. The complexity is that weather refugee's crisis can be addressed with other International human rights protection agreements. Since there is no specific law, refugees and immigrants are treated unresponsively, but constitutional provisions of India bring a level of protection.

6.1 Refugees vs. Illegal Immigrants

Illegitimate Immigrants are those people staying in India but do not have any legal visa or valid Indian Citizenship. They are subjected to the Foreigners Act 1946. These people are to be extradited back to their own country. Many people from neighboring countries are migrated without any travel documents or formalities for better economic living condition and job prospects. But these illegal Immigrants and Refugees are bunched and there is no option to identify. In addition to this, local politicians with vested interests and vote bank politics hindered every possible way to filter the actual and any measures will end in series of oppression that delay the process. Since there is no specific legislation regarding refugees and immigrants, it results in biased or political reasons to provide protection and resulting in illegitimate action and violation of human rights.

6.2 Why can't India tolerate anymore

India needs to rethink its policies and crucial factors, which are geo-political, economic and internal security.

- ➔ Widespread abject poverty and deprivation is the onset of refugee movement. Since India is a emerging nation cannot afford incoming millions, and also UNHCR has no specific policy to check such a type of movement of refugees.
- ➔ Threat to Sovereignty- Art-35 of Geneva Convention vests supervisory and decision-making authority of refugee problem is UNHCR, which is reprobating India's concern.
- ➔ Illegal Immigrants is a matter to be settled through bilateral talks not through multilateral dialogue and mediating effort is further intrincating the tasks.
- ➔ Porous border, uncontrolled exodus will be a threat to internal security.
- ➔ Being a second largest populous country in the world India cannot afford uncontrolled immigration.
- ➔ Refugees may seek casual employment, contributing to the country's high unemployment and poverty rates.

6.3 Major court decisions about refugee matter

National Human Rights Commission vs State of Arunachal Pradesh & Anr on 9 January, 1996

The threats posed by AAPSU against Chakmas Buddhist refugee from Bangladesh Supreme court has clear view that *'No State Government worth the name can endure such threats by one set of persons to another group of persons; it is obligation to protect the susceptible group from such attacks. If it fails, it will also fail to accomplish its Constitutional as well as legislative obligations. Those giving such fears would be legally responsible to be dealt with in accordance of law. The State Government must act neutrally and perform its legal obligations to protect the life, security and welfare of Chakmas staying in the State without being repressed by local politics'*.

Ktaer Abbas Habib Al Qutaifi and vs Union of India (Uoi) And Ors. on 12 October, 1998

Here the petitioners (1) Mr. Ktaer Abbas Habib AI Qutaifi and (2) Taer Al Mansoori, aged 16 and 17 years respectively of Iraq Origin, prayed in Gujrat High Court for direction to release them from imprisonment at the Joint Interrogation Centre, Bhuj, Dist. Kutch, Volume-VII, Issue-V

State of Gujarat and instead of deporting them to Iraq, they may be handed over to United Nations, High Commissioner for Refugees known as UNHCR on the base of principle of 'non-refoulement'. Gujrat High court in this case weighed the humanitarian aspect *'Thus, in devoid of appropriate material and contemplation by the concerned authorities, the only order which can be given in the present case is to ask the said authorities to consider the petitioners' case in right outlook from the humanitarian point of view'*.

Mohammed Salimullah & ANR (2021) Vs UoI and Ors

Supreme court of India opined that *"No doubt that the State courts can draw stimulation from International conventions/treaties, so long as they are not in conflict with the Municipal (State) Law"*. So, in deporting, none of the constitutional provisions are binding unless there is a specific refugee law in vogue. Another finding by SCI was that sovereignty and internal security is prime importance.

7. Suggestions:

Some of the ideas to remembered while enacting law other prioritized procedure to followed by India.

- Laws should be inclusive of regional as well as local geographical and demographical settings.
- Before enactment sufficient awareness measures among politicians, NGO's and other stake holders should be ensured.
- It should be in concomitant with UNHCR criterion and International Human Rights covenants that India is agreed to co-operate with.
- Law should clearly demarcate the term, Refugees, Temporary migrant workers, Illegal immigrants and should consider according the gravity of the situation.
- The laws should be included with clear and unbiased provisions during deportation procedures or detention regulations.
- India being a largest democratic country has stronghold in UN refugee managing process and should adopt a correctional and consultative involvement in South Asian countries congregation.
- There should be a serious dialogue in SAARC head of government meet and mutual settlement between member nations.
- Refugee crisis is a barrier to the sustainable and inclusive development of the region, a sincere and progressive outlook is expected in national policies of member nations in South Asian region.
- Another prospective is that UN and other Regional Forum should render a watchdog service and subdue any form of autocratic and dictatorial suppression in the region.
- There should be unbiased identification of illegal migrants, War criminals, Spies and Refugees because they can be identified after the entry.
- If needed a tribunal should be created to expeditiously settle disputes and authentication.

If both UN Refugee convention and domestic law come into existence there is no scope for violation and lesser ambiguity in the part of law enforcement agencies. So, India needs a

definite and clear Refugee law because national security is primary concern, India a democratic nation, with liberal provisions in human right protection envisaged in Constitution lead to many PIL with vested interests. Similarly, the central government needs to curb unbiased decisions in determining refugee status. India's concern is about Illegal immigrants and asylum seekers. There should be clear criteria and transparent manner in dealing the population of above-mentioned group, otherwise the issue will be non-ending process. The changing government will have their own justifications and legislative impediments in formulating statutory law thus making it herculean task to implement. The recently passed CAA has neither any clear guidelines nor it is intended to refugee protection, moreover it is discriminatory in world view.

Constitutional rights and basic structure theory should be validated in every law-making process, any personal law or law pertaining infringement of personal rights will be tested by Art.32 or Art 226 of Indian Constitution.

8. Conclusion: India a country of diverse religion and culture accepted the policy of 'vasudeva kudumbakam' from the time immemorial. But in this era of Industry 4.0, artificial thinking and competition, India cannot afford to run behind in marathon. Without tampering the secular fabric of Indian culture, a permanent settlement is to be initiated from the legislators. Citizenship provision and Refugee protection should deal with utmost importance and priority. Since India is inching towards 5 trillion economies there are teeming millions who are below poverty. So, India needs a policy that will not hamper the needs of own citizen for the sake of refugee rehabilitation.

References:

- 1 (Abbas & Al, 1999)Abbas, K., & Al, H. (1999). *Ktaer Abbas Habib Al Qutaifi And ... vs Union Of India (Uoi) And Ors. on 12 October, 1998.* 1–10.
2. Arabia, S. (1951). *HISTORY ' S BIGGEST REFUGEE PROBLEM.*
3. Chakraborty, T. (2020). " 'Proxy Women' or Empowered Politicians: Democratic Decentralization & Panchayati Raj Institutions in Rural India." *May.*
4. Chimni, B. S. (2009). The birth of a "discipline": From refugee to forced migration studies. *Journal of Refugee Studies*, 22(1), 11–29. <https://doi.org/10.1093/jrs/fen051>
5. Kaur, N. (n.d.). *PROTECTION OF REFUGEES IN INDIA : A CRITICAL ANALYSIS PROTECTION OF REFUGEES IN INDIA : A CRITICAL.* 1–18.
6. Kumar, C. (2014). *MIGRATION AND REFUGEE ISSUE BETWEEN INDIA AND BANGLADESH more MIGRATION AND REFUGEE ISSUE BETWEEN INDIA AND.* 1(1), 1–14.
7. Management, L. (2021). *INTERNATIONAL JOURNAL OF LAW Constitutional Provision Regarding Refugee Law in India.* 261–272.
8. *National Refugee Law for India: Benefits and Roadblocks Arjun Nair Institute of Peace and Conflict Studies - i, INDI A New De - lih.* (2007). *December.*
9. Nicholson, F., & Kumin, J. (2017). A Guide to International Refugee Protection and Building State Asylum System. Handbook for Parliamentaries No 27, 2017. In *Inter-*

Parliamentary Union and the United Nations High Commissioner for Refugees (Issue 27). <https://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>

- 10 SCC. (1996). *National Human Rights Commission v. State of Arunachal Pradesh*. 1 SCC(10), 742.
11. Supreme, R., Of, C., Jurisdiction, O., Application, I., No, I. A., Petition, W., Reforms, D., & Cause, C. (2021). *in the Supreme Court of India Civil Original Jurisdiction Interlocutory Application No . 183625 of 2019 Interlocutory Application No . 36653 of 2021*. 183625, 1–20.
- 12 Vijayakumar., V. (2001). Critical Analysis of Refugee Protection in South Asia. *Refuge: Canada's Journal on Refugees*, 19(January), 6–16. <https://doi.org/10.25071/1920-7336.22073>
13. Weekly, P., & Mode, E. R. (2021). *India Needs a Refugee Law (/ journal / 2008 / 09 / notes / india-needs-refugee-*. 1–16.
14. Constitution of India with bare acts available in pdf
- 15.. Convention on refugees 1951(Geneva protocol)
- 16.. Convention on refugees 1967 protocol