

## Human Rights of Refugees in Indian Legal Regime: A Thematic Review

Sanchita Hazra\*

Assistant Professor of Political Science, Deshabandhu Mahavidyalaya, Chittaranjan, Paschim Barddhaman, West Bengal, India

**\*Corresponding author**

Sanchita Hazra

**Article History**

Received: 02.03.2018

Accepted: 06.03.2018

Published: 30.03.2018



**Abstract:** An effort has been made in this paper to make a review on the provision of human rights of refugees and legal provision thereof in India. Although there are international institutions for the protection of refugees, still ultimately the protection of refugees depends on individual sovereign states which have to follow their respective national legislation. States have the responsibility to protect refugees by reason of their accession to international instruments, by reason of their own legislation, by reason of their political and moral commitments, or by reason of customary international law. In its ninth session in 1954, the United Nations General Assembly recognized that ‘the ultimate responsibility for the refugees within the mandate of the High Commissioner fall in fact upon the countries of residence’. Government of India has enacted the Protection of Human Rights Act 1993. The Act provided for the constitution of a National Human Rights Commission (NHRC) State Human Rights Commissions (SHRC) and Human Rights Courts (HRC) for better protection of human rights and for matters connected or incidental thereto. These recommendatory bodies have powers to inquire into the violation of human rights or abetment thereof. The Commission is not restricted to investigating issues of concerns to citizens only and in fact it also considers the matters relating to all human beings including the rights of refugees in India. The National Human Rights Commission (NHRC) which was established by the Protection of Human Rights Act, 1993 is the main body entrusted with promoting and protecting human rights. The Human Rights Act vests the NHRC with a broad mandate but it only has the power to issue recommendations and does not have any effective enforcement mechanism at its disposal. NHRC has functioned effectively for the protection of refugee’s human rights in India. It is true that a declaration of Fundamental Human Rights is meaningless unless there is effective machinery for the enforcement of these rights. India has been quite in the line of respecting and enforcing the concepts which stand for human rights. Constitution of India has given all people including non-citizens found on Indian territories the ‘freedom of religion’. ‘Personal liberty’ and ‘the right of equality’ etc. further the right to enforce these fundamental rights, itself has been made a fundamental right. The Supreme Court of India has described this unique provision in the Constitution as “the corner stone of the democratic edifice” and “the protector and guarantor of fundamental rights”. In Indian Constitution the law enforcement provisions ensure the full protection of the rights of refugees. So any person, refugee or asylum seeker cannot be discriminated against because of their non-citizens status. A person whose right have been violated has right to directly approach the High Court under Article 226 and the Supreme Court under Article 32 for judicial rectification, redressal of grievances and enforcement of fundamental rights. Government has also constituted a statutory NHRC, which acts like a watch dog for any complaints of Human Rights violations, vide protection of Human Rights Act, 1993. In acts sue motto also for the protection of Human Rights.

**Keywords:** Human rights, refugees, legal provision, enactment of laws, India.

### INTRODUCTION

Although there are international institutions for the protection of refugees, still ultimately the protection of refugees depends on individual sovereign states which have to follow their respective national legislation. States have the responsibility to protect refugees by reason of their accession to international

instruments, by reason of their own legislation, by reason of their political and moral commitments, or by reason of customary international law [1]. In its ninth session in 1954, the United Nations General Assembly recognized that ‘the ultimate responsibility for the refugees within the mandate of the High Commissioner fall in fact upon the countries of residence’ [1].

India mostly plays host to refugees from its neighbouring countries who are either forced to leave their countries of origin due to internal or external conflict, political persecution or human rights infringements. Tamil refugees from Sri Lanka, Jumma people from Bangladesh, Tibetan refugees from Tibet and Chin and other tribal refugees from Burma, Afghanistan, Iran and even Sudan today comprise the bulk of India's refugee population [2]. In modern times, the movement of the refugees and displaced persons has seriously affected India and other South Asian countries. The statistics indicate that India has one of the largest refugee populations in the world because of India's porous borders and accommodative policies. It is estimated that India hosted approximately 456,000 refugees in 2008 [3], including about 96,000 Sri Lankans, about 73,300 stay in more than a hundred camps but registered with the nearest police stations. About 2,800 more entered in 2008 [3]. Some 110,000 Tibetans, about 80 percent of whom lived in camps or scattered settlements, lived more freely in the country [3]. About 100,000 ethnic Chin from Myanmar lived under the most restricted conditions in the eastern state of Mizoram with a few hundred in New Delhi [3]. An estimated 30,000 Afghans remained although only about 9,000 held UNHCR mandate status. Around 25,000 Bhutanese refugees also resided in India as more

left Nepal for Indian states of West Bengal, Sikkim, and Bihar and about 25,000 Nepalis remained in fear of Maoists now in the Government of Nepal [3]. India also hosted some 600 Somali refugees, who began fleeing their country after collapse of the government in 1991 and an unknown number of Iraqi and Iranian refugees and about 200 Palestinians from Iraq also resided in India. Some 65,000 ethnic Chakmas from Bangladesh remained mostly in the states of Arunachal Pradesh, Mizoram and Assam [3]. The Supreme Court established their Indian nationality but the actual naturalization process proceeded slowly.

India hosted around 456,000 refugees, including about 96,000 Sri Lankans, mostly Tamils fleeing fighting between the Liberation Tigers of Tamil Eelam and Sri Lankan armed forces. About 73,300 stay in more than a hundred camps in Tamil Nadu State and 26,300 outside the camps but registered with the nearest police stations. About 2,800 more entered in 2008.

Some 110,000 Tibetans, about 80 percent of whom lived in camps or scattered settlements, lived more freely in the country. Beginning in 1959, Tibetans followed the Dalai Lama to India, settling in Dharamsala in the north. A second wave occurred in 1979 after China relaxed its emigration policy.

**Table-1: World refugee survey: Statistics for India**

Particulars	2009
Refugees and Asylum Seekers	411,000
Sri Lanka	120,000
China	110,000
Myanmar	100,000
Afghanistan	30,000
Bhutan	25,900
Nepal	25,200
New Asylum Seekers	3,300
1951 Convention	No
1967 Protocol	No
UNHCR Executive Committee	Yes
Population	1.2 billion
GDP \$	1.2 million
GDP per Capita \$	1,050

Source: World Refugee Survey, 2008

About 100,000 ethnic Chin from Myanmar lived under the most restricted conditions in the eastern state of Mizoram with a few hundred in New Delhi. They were fleeing persecution, including forced labor and severe economic privation, because of their Christian faith and non-Burman ethnicity.

An estimated 30,000 Afghans remained although only about 9,000 held UNHCR mandate status. Around 25,000 Bhutanese refugees also resided in India as more left Nepal for the Indian States of West Bengal, Sikkim, and Bihar and about 25,000 Nepalis

remained in fear of Maoists now in the Government of Nepal.

India also hosted some 600 Somali refugees, who began fleeing their country after the collapse of the government in 1991 and an unknown number of Iraqi and Iranian refugees and about 200 Palestinians from Iraq also resided in India. The Government deported some, ignored others, and issued others residence permits.

Some 65,000 ethnic Chakmas from Bangladesh remained mostly in the states of Arunachal

Pradesh, Mizoram, and Assam. The Supreme Court established their Indian nationality but the actual naturalization process proceeded slowly.

### Legal Status of Refugees in India

In India there is no national legislation concerning refugees, their legal status and rights. They are treated as aliens. In the absence of clear cut guidelines, refugees thus fall under the purview of the legislative framework that addresses all foreigners in India. Further India's refugee policy is governed by certain administrative regulations. There are three sets of laws that deal with foreigners in India. They are: The Registration of Foreigners Act, 1939, dealing with all the foreigners, the foreigners Act, 1946, empowering the state of regulates the entry, the presence and departure of aliens in India and the foreigner's order 1948. Under Section 2 of the Registration of Foreigners Act, the term foreigner is defined as "a person who is not a citizen of India", which can refer to aliens of any kind including immigrants, refugees and tourists. The Foreigners Act of 1946 and the foreigners' order of 1948 also uses this definition of a foreigner [4].

The Indian government has the power to restrict movement inside India, limit employment opportunities, and control the opportunity to associate and the right to return refugees to the country they have fled from. Further Government has the power to either grant or refuse entry if a person does not possess a valid passport (The Government may also order that any non-citizen of India "shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed". India's citizenship Amendment Act of 2003 defines all non-citizens who entered without visas as illegal migrants, with no exception of refugees or asylum seekers). The governments can refuel refugees at the border.

No current Indian law refers directly to refugees. The current position is that they are dealt with under the existing Indian Laws, both general and special, which are otherwise applicable to all foreigners. In the absence of a legal process, India's treatment of asylum seekers has always been a political decision, a direct result of the country's relation with the refugee's country of origin [5] hence the government of India handles refugee matters administratively, according to internal domestic and bilateral political and humanitarian consideration.

### India is not a signatory to the 1951 convention relating to the status of refugees or the 1967 protocol

India has never been a member of the 1951 International Convention for Refugees and its 1967 Protocol, and even though it is member of the UN High Commissioner for Refugees (UNHCR) Executive Committee since 1996, but it does not officially recognizes the work of the UN body in its territory.

India's reluctance to sign the Convention stems from its position that it is Eurocentric, tailored to fit the refugee movements after World War II and has not responded well to mass migration. Another reason of not signing the UN convention protecting refugees is that the signing convention meant to be obligated to accept massive flows of refugees from politically unstable neighbours'. As mentioned earlier India has a huge population over a billion people with at least six hundred million living in poverty. Thus our own people are living like refugees with limited access to basic necessities. Signing convention implies taking on the obligation to provide employment, food, housing, medical care, education etc., to refugees. Despite not signing up, our record to giving shelter has been very good.

### India's International Commitments

India does not have on its statute book a specific and separate law to govern refugees. In the absence of such a specific law, all existing Indian laws like *The Criminal Procedure Code*, *The Indian Penal Code*, and *The Evidence Act etc.*, apply to the refugees as well. Even though India is not a signatory to the 1951 convention of Refugees and also the 1967 Protocol, India is a signatory to a number of United Nations and World Conventions on Human Rights, refugee issues and related matters. India's obligations in regard to refugees arise out of the later. India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995. Membership of the EXCOM indicates particular interest and greater commitment to refugees matters. India voted affirmatively to adopt the UN Declaration of Human Rights which affirms rights for all persons, citizens and non-citizens alike. India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967 and also ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. India ratified the UN Convention on the Rights of the Child in 1989. India ratified the Convention on the Elimination of All Forms of Discrimination against Women (2001CEDAW) in 1974. Further India accepted the principle of non-refoulement as envisaged in the Bangkok-Principles, 1966, which were formulated for the guidance of member states in respect of matters concerning the status and treatment of refugees. These principles also contain provisions relating to the repatriation, right to compensation, granting asylum and the minimum standard of treatment in the state of asylum.

A general survey of the law and policies of the India shows that the country has followed most of the provisions of International Convention on Refugees in practice. Taking this into account, it is clear that India respects international treaties on the treatment of refugees residing within its territory; but it chooses to

maintain its own administrative arrangement of dealing with temporarily or permanent settled refugee's communities.

### **Indian Practice Regarding Refugee Protection**

The practice of the Indian Government has been to deal with refugees in three main ways;

- Refugees in mass influx situations are received in camps and accorded temporary protection by the Indian Government including, sometimes, a certain measures of socio-economic protection.
- Asylum seekers from South Asian countries or any other country with which the government has a sensitive relationship, apply to the government for political asylum which is usually granted without an extensive refugee status determination subject, of course, to political exigencies;
- Citizens of other countries apply to the office of the United Nations High Commissioner for Refugees (UNHCR) for individual refugee status determination in accordance with the terms of the UNHCR statute and the Refugee Convention.

Indian Government has established fairly well experienced bureaucratic machinery conversant with the problems of refugee administration. India has a three pronged strategy to deal with refugee problem:

- The Home Ministry deals with the formulation of policies of rehabilitation and settlement of refugees.
- The Ministry of External Affairs is empowered with the responsibility of bilateral negotiation and to deal with the issues internationally.
- The State Governments are entrusted with the responsibility of protection and maintenance of the refugee camps at the local level.

On the other hand, National Human Rights Commission, Minority Commission and State Human Rights Commission etc., are entrusted for ensuring overall human rights, fundamental freedom and equal opportunity to all, at national level in their areas.

### **Role of judiciary in the protection of human rights of refugees in India**

India is home to one of the largest refugee populations in the world. Although the Indian government claim that its policies conform to international standards, no Indian law refers directly to refugees. The result is that refugees are treated under the law applicable to aliens. The Indian government deals with the refugees at both the political and administrative levels. Refugees encounter the Indian legal system on two counts. There are laws which regulate their entry into and stay in India. Once they are within the Indian Territory, they are then liable to be subjected to the provisions of the Indian penal laws for various commissions and omissions under a variety of circumstances. There are various constitutional and

legal provisions with which refugees may be concerned under varying circumstances.

Only an impartial and independent judiciary can protect the rights of the individual and provide equal justice without fear or favoured. Every constitution institutionalizes the judiciary as the principle instrumentality for enforcement of human rights when invaded by the state or by any authority under the state or by an individual. The status of human rights is fairly high under the India constitution which makes provision for fundamental rights and empowers the judiciary to enforce these rights, and the judiciary in India has done matchless service in protecting the people's human rights. In the exercise of its jurisdiction and power the judiciary has devised new strategies, forged new tools and broadly interpreted the letter of law to ensure the protection of human rights to the people. As a fearless watchdog of the fundamental rights, the superior courts in India have vigorously upheld the value of a liberal democracy and acted as a catalytic agent of social control and successfully hammered out human rights jurisprudence in the light of the philosophy envisaged in our national charter, judiciary has made their task easy by evolving the concept of Social Action Litigation or Public Interest Litigation.

In the absence of specific law on refugees, the Indian judiciary has played a very constructive role in protecting the interest of the refugees. Courts orders have filled legislative gaps and in many cases have provided a humanitarian solution to the problems of refugees. Moreover, Indian courts have allowed refugees and intervening non-governmental organizations (NGOs) to file cases before them. Furthermore, the courts have interpreted provisions of the Indian constitution, existing laws and, in the absence of municipal law, provisions of international law to offer protection to refugees and asylum seekers.

The judicial opinion is that rules of international law and municipal law should be cordial and harmonious, and only when there is an inevitable conflict between these two laws the municipal law should prevail over international law. Against this backdrop when one examines the binding force of international refugee law on and its relations with Indian municipal law, one can conclude that as long as international refugees law does not come in conflict with Indian legislations or policies on the protection of refugees, international refugee law is a part of the municipal law. Courts in India have always adopted a liberal approach in taking into account the international covenants, while interpreting the statute law. Indian courts, while generally strictly interpreting the stringent legislation on foreigners by refusing to interfere with the powers of the executive, have on occasion, evolved a wider and more humane approach to protect the rights of refugees in India. In 1996, the Supreme Court in

N.H.R.C. Vs state of Arunachal Pradesh intervened with a liberal interpretation of the law to suggest that refugees are a class apart from foreigner deserving of protection of article 21 of the constitution.

Despite the fact that the Indian government has not signed the Convention relating to the status of refugee, 1951 and the Protocol of 1967, India cannot refuse asylum to bonafide seekers of shelter from other countries, consistent with India's commitment to human rights. The Indian judiciary has consistently recognized the importance of human rights and has been giving effect to the provisions of the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights, 1966. The Convention on the Rights of the Child, 1989, The Convention on the Elimination of all forms of Discrimination against Women, 1981, etc. Which government of India has been ratified, in addition, the Indian judiciary has generally giving effect to principles of international law.

India's Supreme Court has gone so far as to extend the application of article 14 (right to equality) and article 21 (right to life and liberty) to everyone, including migrant and refugees residing within the territory of India, and also basic human rights as defined by the UN have been conferred upon the refugees. In addition, India also affirms the principal of non-refoulement which is integral to any law on refugee. The judiciary has sought to fulfil the void created by the absence of domestic legislation by its landmark judgments in the area of refugee protection. Refugees may not be citizen but they are certainly persons, and hence, they too are entitled to the protection of their basic human rights. There are several decisions of the Supreme Court of India and High Courts where refugees have given protection by invoking article 14 and article 21 of the constitution. While the executive branch of the government of India does not recognize refugees as such the positive and humanitarian steps initiated by the Indian judiciary has bridged the gap to a considerable extent.

## CONCLUSION

India has so far dealt with situations of mass influx without a refugee law but with a continuously enlarging population of refugees and asylum seekers, a large section of who may not be repatriated in the near future, a uniform law would allow the government to maintain its huge non-citizen population with more accountability and order, apart from allowing them to enjoy uniform rights and privileges. No doubt India has done appreciable work concerning refugees, but a lot more still required to be done for realization and enforcement of human rights of refugees. Although international legal regime have been accepted by Indian Legal System to provide people better laws on human rights. These norms are reflected in many decision of

Indian Courts, further India has ratified several international treaties on Human Rights.

Also appreciable is the role of Indian Judiciary, for interpreting constitution of India with the principles of international law and Human rights in protecting the basic rights of refugees. Further United Nations High Commissioner for Refugees, being the main agency to tackle the refugee matters has played a significant role in the protection of refugees in India. The current watch dog of India's refugee policy, the NHRC, has made numerous recommendations advising the formulation of such a law, in accordance with the articles of the convention, but with an Indo centric nature and content so a national legislation on refugees, combining the humanitarian needs of the refugees with the security interests of the state, should be enacted.

## REFERENCES

1. Khan R. As quoted in Manik Charkraborty, *Human Rights and Refugees-Problems, Law and Practices*; 2001.
2. Nair, A. (2007). National refugee law for India: Benefits and roadblocks. *IPCS Research Papers, 11*.
3. World Refugee Survey-India. 2008. <http://www.worldrefugeesurvey.org> visited on 16.02.2018.
4. Bose TK. India: Policies and Law's towards Refugees, *Asian Human Rights Commission - Human Rights Solidarity*, Vol. No. 10 Oct, 2000. <http://www.hrsolidarity.net> visited on 17.02.2018.
5. Mitra D. India takes first steps to define refugee, April 29<sup>th</sup> P. 6; 2008. <http://www.thaindian.com> visited on 14.02.2018.