

WHO PROTECTS THE UNPROTECTED INTERNATIONAL AND INDIA'S DE FACTO LEGAL AND POLITICAL FRAMEWORKS OF REFUGEES THROUGH THE LENS OF HUMAN RIGHTS

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INTRODUCTION

"No one puts their children in a boat unless the water is safer than the land."

The world has been the witness of massive disruption for multiple times. Whenever we scrutinize the tensed events, wars and agonizing incidents of our history, we only see the one side of coin which conveys the winners and losers of the circumstance. But another side of coin shows the loss of humanity, homicide. No one wins or lose the war but war wins over the humanity. To acquire the humanism in modern era one body have set the milestone, UDHR (united declaration of human rights) the declaration ensures the human rights, the rights which are inalienable from humans. Humans have right to life and when this right gets infringe the human flee for the protection, called refugees. The air of animosity among the nations can't take away the rights of humans and this is what the International convention of 1951 ensures, 1st International refugee convention. India was "non-signatory" to the convention, despite of not being the member of convention India performs significant legal and political role in the matter of Refugees. This article explores the intersection of international refugee law, human rights frameworks, and India's de facto approach to refugee protection.

Foundation of Human Rights, UDHR (united declaration of human rights)

One of the significant political consequence of World War 2. ¹⁰⁰⁸United declaration of human rights" (herein after as 'UDHR') arises as assurance of human rights. It ensures ¹⁰⁰⁹the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The concept of human rights have been emerged from the enlightenment age but it got the political and legal backing from UDHR. Article 1 of the declaration ¹⁰¹⁰"All human beings are born free and equal in dignity and rights." Reflects the reality

that every human born free, it means that no one has right over other's life, no one can scratch the rights of human from human. Article 3 of the declaration ensures the "right to life, liberty and security of the person." Article 14 of UDHR ¹⁰¹¹"Everyone has the right to seek and to enjoy in other countries asylum from persecution." Which explicitly recognises the right of individuals to seek asylum from persecution in other countries.

The roots of refugee law is rooted in human rights. Under Article 3 of UDHR, the humans have right to protect themselves which allows or legalize the concept of refugees, ¹⁰¹²It provided the **moral and philosophical groundwork** upon which the **1951 Refugee Convention** was later build. Article 21 of

¹⁰⁰⁸ United declaration of human rights by united nation general assembly adopted on December 10, 1948.

¹⁰⁰⁹ Preamble of united declaration of human rights adopted on December 10, 1948.

¹⁰¹⁰ Article 1 of UDHR adopted on December 10, 1948.

¹⁰¹¹ Article 4 of UDHR adopted on December 10, 1948.

¹⁰¹² Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007)

Indian constitution ensures the 'Right of life and personal liberty' inspired by Article 3 of UDHR. The UDHR's legacy lies in this universality, **human rights are not confined by borders**, and the right to seek protection is as fundamental as the right to live with dignity.

The 1951 Convention, International Refugee Law

Human rights are assigned to humans within the birth itself so what new has been done by UDHR? Here is the answer, UDHR provides shield to human rights and assigning the accountability to the nations for the protection of their rights but what about the one who have been fleeing for the protection? The Refugees. In 1951 the convention took place for the refugees for the first time in Paris. The preamble of the convention ensures ¹⁰¹³"Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination." Explicitly ensuring the protection of human rights of refugees, convention defines refugees under Article 1(a) of convention someone who, due to events **before 1 January 1951**, has a **well-founded fear of persecution** based on race, religion, nationality, social group, or political opinion, and is **unable or unwilling to seek protection** from their home country. This definition also includes stateless individuals facing similar threats.

The core principle of convention was enshrined in Article 33 ¹⁰¹⁴"Prohibition of expulsion or return "Refoulement ". This means that no state shall expel or return a refugee to a country where their life or freedom would be threatened. This principle is now widely regarded as part of customary international law, binding even on states that are not parties to the Convention. The convention was not unbounded by the geographical and temporal restrictions

because it was originally applied to those only displaced by events occurring before 1 January 1951 and primarily in Europe, but the **Protocol of 1967** removed this restrictions. India was not a signatory member of the convention and do not even hold any specific rule for refugees still India performs the provisions of convention and plays vital role in matter of refugees through its diplomacy.

India's De Facto refugee Framework.

India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol. However, despite the absence of a dedicated refugee law, India has evolved a de facto refugee protection framework rooted in constitutional guarantees, judicial interpretations, and humanitarian policy.

¹⁰¹⁵Article 21 of Indian Constitution enshrines the Right to life and Personal Liberty to all persons. The rights under Article 21 of Indian Constitution assigned to all persons not only to her citizens which shows the execution of the core provisions of UDHR and 1951 convention.

Indian courts have played a pivotal role in shaping refugee jurisprudence. ¹⁰¹⁶In *NHRC v State of Arunachal Pradesh*, the Supreme Court restrained state officials from expelling Chakma refugees, emphasizing that even non-citizens are entitled to constitutional protections. ¹⁰¹⁷In *Ktaer Abbas Habib Al Qutaifi v Union of India*, the Gujarat High Court reinforced the principle of non-refoulement, holding that deporting a person to a country where they face persecution would violate Article 21. Institutions like the National Human Rights Commission (NHRC) serves as a protecting body of human rights, issuing guidelines and taking Suo Moto cognizance of human rights violations involving displaced persons and refugees In the year of 1971 in Bangladesh Liberation War against west Pakistan, India faced massive eruption of refugees from Bangladesh, over 10 million

¹⁰¹³ Preamble of Convention Relating to the Status of Refugees adopted 28 July 1951, entered into force 22 April, 1954, 189 UNTS 137.

¹⁰¹⁴ Article 33 of Convention Relating to the Status of Refugees adopted 28 July 1951, entered into force 22 April, 1954

¹⁰¹⁵ Article 21 of Indian Constitution adopted by the Constituent Assembly on November 26, 1949, and came into force on January 26, 1950

¹⁰¹⁶ *NHRC v State of Arunachal Pradesh* (1996) 1 SCC 742

¹⁰¹⁷ *Ktaer Abbas Habib Al Qutaifi v Union of India* (1999) AIR Guj 213.

people came to India which affected the Indian economy.¹⁰¹⁸ Despite of such disturbance India provided asylum to the refugees on humanitarian and geopolitical grounds.¹⁰¹⁹ In 1980s Ethnic conflict in Sri Lanka between the Sinhala-majority government and Tamil minority, particularly during the civil war, led to waves of Tamil refugees fleeing to Tamil Nadu, India. India hosted over 100,000 Tamil refugees, many of whom were housed in state-run camps, while others lived outside the camps. India also played a political role via the Indo-Sri Lanka Accord (1987). Again in the refugee matter India's approach combined asylum with diplomatic engagement. Afghan Refugees (Post-1979 to Present) Soviet invasion of Afghanistan (1979), the Taliban regime (1996–2001), and the post-2001 conflict, India received Afghan refugees, particularly minorities like Hindus and Sikhs.¹⁰²⁰ These refugees came in smaller numbers but were given Long-Term Visas (LTVs), India facilitated their resettlement with the help of the United Nations High Commissioner for Refugees (UNHCR), which operates in India even though India is not a Convention signatory. India has shown sympathy to Afghan minorities, especially after the Taliban's return to power in 2021, offering emergency e-visas to many.

India's appearance at international level in Refugee convention was blur but the appearance of India in refugee matter and their rights at domestic level holds clear picture through her constitutionalism, judicial activism and political diplomacy.

Interplay of International and Indian Legal and Political Framework through the lens of Human Rights.

¹⁰¹⁸ Navine Murshid, India's Role in Bangladesh's War of Independence: Humanitarianism or Self-interest?, Vol. 46, No. 52, published on DECEMBER 24, 2011

¹⁰¹⁹ Valatheeswarran and Irrudaya Rajan, Sri Lankan Tamil Refugees in India: Rehabilitation Mechanisms, Livelihood Strategies, and Lasting Solutions, Volume 30, Issue 2, June 2011, Pages 24–44, published on April 09, 2011.

¹⁰²⁰ Monthly Migration Movements Afghan Displacement Summary Migration to India, published on October 2017

After World War 2 globe has got many preventive and protecting bodies and the United Declaration of Human Rights (UDHR) was one of the result of World War 2. It ensures the human rights and assigns the responsibility to the nations to protect the rights but what about refugees? The infringement of human rights is the cause of refugee movements and to protect the rights of refugees, convention of 1951 took place. Isn't it foreign to you all that breach of human rights led to the formation of refugee rights which gives the same human rights, here we find the point that human rights and refugee convention interlinked to each other. Rights should be delivered. Doesn't matter through what way we are delivering it that's what the motive of human rights and refugee convention.

India is 'non-signatory' country of refugee convention but it delivers the mean, the gist of refugee convention through her constitutionalism under Article 21, through the judicial activism and through the diplomatic relations with other countries. India might not have the specification of rule in refugee sphere but it serves the mean of convention through her behaviour. The functions and features of human rights, refugee convention and Indian administer system are interlinked to each other and this reflects through their events and behaviour. The system of India and Refugee convention is rooted in Human Rights. As India don't have legally codify rule for refugees and the respond of the country relies upon the case which often leads to problem like in the case of Rohingya Refugees, who despite being stateless and persecuted, have been labelled as "illegal immigrants". India should develop the specific law pertaining to the refugees in the pursuit of the protection of refugees.

Conclusion

In the absence of a binding international commitment, India's approach to refugees remains rooted in constitutional morality and discretionary political will. While the judiciary has used Article 21 and international human



rights norms to extend limited protection, the lack of a dedicated legal framework continues to create ambiguity and inconsistency. The intersection of human rights law and refugee law underscores a clear moral imperative: that dignity, safety, and non-refoulement should not be selective privileges but guaranteed protections. In a world marked by rising displacement and fragile borders, India must now transition from ad hoc humanitarianism to a more structured and rights-based legal approach. Enacting a domestic refugee law is not merely a legal necessity but a constitutional and ethical responsibility.

