

REFUGEES RIGHTS AND LEGAL STATUS IN INDIA

AUTHOR – SMRITY MISHRA, STUDENT AT SHAMBHUNATH INSTITUTE OF LAW, JHALWA, PRAYAGRAJ

BEST CITATION – SMRITY MISHRA, REFUGEES RIGHTS AND LEGAL STATUS IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (5) OF 2026, PG. 884-890, APIS – 3920 – 0001 & ISSN – 2583-2344.

INTRODUCTION

Refugee protection is a cornerstone of international humanitarian law and human rights principles, encompassing a complex framework of legal norms, treaties, and policies at both the international and national levels. At its core, refugee protection seeks to safeguard the rights and well-being of individuals who have fled their home countries due to persecution, conflict, violence, or other threats to their safety and fundamental freedoms.

UDHR Convention provides that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”¹

Internationally, the key instrument governing refugee protection is the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. These instruments establish the legal definition of a refugee and outline the rights and obligations of both refugees and the states that host them. According to the Convention, a refugee is someone who has a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, and is unable or unwilling to return to their country of origin.

The United Nations High Commissioner for Refugees (UNHCR) plays a crucial role in coordinating international efforts to protect and assist refugees, providing support to both refugees and the countries that host them.

The 1951 Refugee Convention and the 1967 Protocol are at the cornerstone of the international legal framework for refugee protection as they establish the main principles on which refugee protection is based – such as the principle of non-refoulement and the principle of Non-discrimination. In many cases, refugees face significant challenges and barriers to accessing protection at the national level.²

Despite these challenges, many countries have made efforts to strengthen their asylum systems and enhance refugee protection.

DESCRIPTION

Refugee protection is a multifaceted issue that requires a comprehensive and coordinated response at both the international and national levels. While the international legal framework provides a basis for refugee rights and obligations, the effective implementation of these principles depends on the commitment and actions of individual states.

International conventions played a crucial role in the protection of refugees as to their freedom

to live without persecution and freedom of liberty.

2.1 Who is ‘Refugee’?

A refugee is a person who has fled their own country because they are at risk of serious human rights violations and persecution there. The risks to their safety and life were so great that they felt they had no choice but to leave and seek safety outside their country because their own government cannot or will not protect them from those dangers. Refugees have a right to

international protection.³

A refugee is someone who has been compelled to escape their country due to violence, conflict, or persecution is known as a refugee. A legitimate fear of being persecuted due to one's race, religion, nationality, political beliefs, or affiliation with a specific social group is what drives a refugee. They probably can't go home or they're terrified to.

As per the report of the **Bonyan Organization**, Globally, 89.3 million people have been forced to leave their homes. Nearly 27.1 million of them are refugees, with about half of them being under the

Age of 18.⁴

2.2 Difference between refugee and asylum seeker

Refugee is not the same as an asylum-seeker. According to the United Nations High Commissioner for Refugees (UNHCR), 'an asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated'.

2.3 The Phrase 'Persecution' means

The Act of 1951 failed to describe this phrase but the Council of the European Union has provided in the Qualification Directive a non-exhaustive list of acts which may be treated as persecution, such as:

'acts of physical or psychiatric abuse such as acts of sexual violence; legal, administrative, police, or judicial measures that are discriminatory in themselves or implemented in such way; conviction that is unfair or discriminatory; deprivation of judicial remedy that results in an unreasonable punishment; prosecution or failure to conduct military service in a war where the performance of military service would require offences or acts falling under the exclusion clauses as embodied in Article 12(2); acts of a gender-specific or child-specific nature.'⁵

Persecution may be due to acts by State officials, but may also be carried out by non-State actors, such as armed groups, terrorist or organized gangs, members of the family or of the general public, in situations when the State is unable or unable to offer defense.

2.4 Reason for 'being refuged'

There are several causes, including hostilities, violence, or fear of being persecuted. Threats against people because of their citizenship, religion, colour, political affiliation, or membership in a certain group force them to flee their home countries.

Sadly, refugees frequently find themselves needing to leave right away in order to save their lives.

Sometimes migrants are in a hurry and can only bring a few essentials with them. Moreover, visiting a foreign country might be quite difficult for many refugees.

DISCUSSION

Refugee protection is a fundamental part of international humanitarian operations, addressing the needs and rights of those fleeing persecution, conflict, or violence in their native countries. This essay examines the difficulties of refugee protection from both international and national perspectives, focusing on the roles of international organisations, legal frameworks, and individual countries in ensuring refugees' rights and well-being. These protections may include access to healthcare, education, employment, and legal assistance.

3.1 History of Refugees

Asylum seekers have existed for many years; early humans migrated in search of food, shelter, and other resources. Around AD 600, King Ethelbert of Kent formalized the right to seek sanctuary in a holy place or a church. It wasn't until the 18th century that several countries compelled people to present identification while crossing borders. The world's largest refugee problems happened during the World Wars. The First World War lasted nearly

four years. One million Belgian refugees fled to the Netherlands and were then moved to the United Kingdom and other countries. France and Germany were also.

3.1.1 History of Refugees in India

Pre-Independence: -India is one of the few countries to experience the refugee situation in the last half century. Indian history is evident by large-scale migration of people from different countries. These migrations had taken place in 2 ways: “Hindukush Mountains in the West and the Patkoi range in the East”.

Post-Independence: - the first twenty-five years of India was spent on accepting the responsibility of 20 million refugees. This was due to the partition of India and Pakistan. “At the initial stage,

160 relief camps were organized and the total expenditure incurred was Rs. 60 crores approximately.” A Huge number were displaced from India to Pakistan and vice versa and the problem was much similar to Refugees. Another instance was in 1959 when Dalai Lama and his followers approached India as refugees and India provided them a Political Asylum. The year of 1971 saw many refugees travelling from East Pakistan to India. At the end of 1992, India has hosted 2,000,000 migrants and 237,000 displaced persons. India always has some or the other refugees coming in throughout its history .

3.2 Types of Refugees

Depending on their legal status and the circumstances surrounding their displacement, refugees can be divided into many categories:

1. **War Refugees:** Individuals who leave their homes because of war, violence, or armed conflict in their own nations.
2. **Political Refugees:** People who face persecution or fear persecution because of their ethnicity, religion, political beliefs, or membership in a specific social group.
3. **Environmental Refugees:** People

compelled to flee their homes as a result of natural disasters like droughts, floods, or other ecological emergencies.

4. **Asylum seekers:** Asylum seekers are individuals who have left their country of origin and are looking for safety and asylum in another, but they have not yet been given refugee status.

5. **Internally Displaced Persons (IDPs):** People who are still inside their own nation’s boundaries but were compelled to leave their homes.

6. **Stateless Persons:** Individuals who do not possess citizenship rights or access to essential services because they are not recognized as nationals by any nation.

3.3 Protection of Refugee in International Perspective

(a) The 1951 Refugee Convention and the 1967 Protocol:

These are at the cornerstone of the international legal framework for refugee protection as they establish the main principles on which refugee protection is based – such as the principle of non- refoulement and the principle of Non-discrimination In many cases, refugees face significant challenges and barriers to accessing protection at the national level.

• **Principle Of Non-Refoulement?:** According to this principle, no country shall deport, expel or forcefully return the refugee back to his original territory against his will or if there is a reasonable threat to his life, liberty and freedom.

In the landmark case of **Ktaer Abbas Habib Al Qutaifi v Union of India**⁸, the Gujarat High Court upheld the principle of non- refoulement under the wide umbrella of Article 21 of the Indian Constitution and decided not to deport the two Iraqi nationals to their original country as long as they had a fear for their life and liberty. Instead, they were handed over to UNHCR in India.

Criticism: One critique is that the non-refoulement principle is routinely broken by western countries and gets away with it, even though it is a customary international rule of the utmost importance. Lastly, this principle has lesser legal implications and is more moral in nature. Proper “enforcement” and “implementation” is the need of the hour.

- **Principal of Non Discrimination⁹:** as per the article of this convention, Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

(b) Organization of African Unity (OAU) Convention, 1969:

The African Refugee Convention is another name for the 1969 Organization of African Unity (OAU) Convention. States in Africa adopted it to deal with concerns related to refugees on the continent. It also stressed how crucial it is for African nations to stand together in order to support and shield refugees.

(c) Universal Declaration of Human Right, 1948:

the international refugee law does not operate in isolation and must be in compliance with several basic rights guaranteed under the declaration of human rights. It specifically provides the right to seek and enjoy asylum in other countries.

(d) The Cartagena Declaration:

A group of Latin American republics met in Cartagena, Colombia, in 1984 and adopted the Cartagena Declaration on Refugees as a regional agreement. It broadens the definition of refugees beyond what is specified in the 1951 Refugee Convention to encompass people escaping things like civil unrest, widespread violence, human rights abuses, and other situations that gravely disrupt public order.

(e) Geneva Conventions of 1949 and the Additional Protocols agreed in 1977:

A large number of refugees are displaced in the midst of internal conflicts or war-like situations. The principles of the International Humanitarian Law which deal with the laws of war or armed conflict are applicable to protect them.

A major part of this law is covered in the Geneva Conventions of 1949 and Additional Protocols of 1977.

(f) The 1967 Declaration on Territorial Asylum:

It was a significant international agreement that reaffirmed the right of individuals to seek asylum from persecution in other countries. It expanded upon principles outlined in the Universal Declaration of Human Rights and the 1951 Refugee Convention.

3.4 Rights of Refugees

Refugees have certain rights under international law, primarily outlined in the 1951 Refugee Convention and its 1967 Protocol. These rights include:

- 1. Non-refoulement:** The right not to be returned to a country where they face persecution or serious threats to their life or freedom.
- 2. Right to protection:** Refugees have the right to seek asylum and receive protection from persecution.
- 3. Access to fair and efficient asylum procedures:** Refugees should have access to a fair and efficient process to determine their refugee status and seek asylum.
- 4. Access to basic rights:** This includes access to education, healthcare, and the right to work.
- 5. Freedom of movement:** Within the country they have been granted asylum in, refugees should have the right to move freely and choose their place of residence.
- 6. Documentation:** Refugees should

receive identity and travel documents, facilitating their legal status and ability to travel.

These rights are fundamental to ensuring the safety, dignity, and well-being of refugees worldwide.

Protection of Refugees in Indian Perspective

In the case of **Louis De Raedt vs. Union of India**¹⁰, the SC held that the fundamental rights to life, liberty, dignity are available to non-citizens of India. Moreover, in the case of **Visakha vs. State of Rajasthan**¹¹, the court has held that “International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Indian Constitution and the safeguards against sexual harassment implicit therein”.

3.4.1 Constitutional provision for Protection of Refugee

The constitutional provision for the protection of refugees primarily lies in Article 21 of the Constitution, which guarantees the right to life and personal liberty to all persons within the country, including refugees. Additionally, the Indian Constitution directs the state to foster respect for international law and treaty obligations, which includes commitments to protect refugees under various international conventions and protocols¹². India is a signatory to the 1951 Refugee Convention and its 1967 Protocol, which guide the treatment of refugees and asylum seekers. However, India does not have a specific domestic law addressing refugees, so their status and rights are often determined by policies and administrative practices.

It is important to know that **Article 5, 6, 7, 8, 9, 10, 11, 12, 20, 22, 25–28, 32, 226** also available for non-citizens of India including Refugees.

3.4.2 Laws for Refugees in India

There are no laws in India specifically pertaining to refugees. The 2009 Refugee and Asylum (Protection) Bill is in India, nevertheless. However, the Foreigners Act of 1946 is the

primary piece of legislation that promotes asylum and refugees.

The laws related to refugees are:

- 1) Citizenship Act, 1955 (No.57 of 1955)
- 2) Extradition Act, 1962 (No. 34 of 1962)
- 3) Foreigners Act, 1946 (No.31 of 1946)
- 4) Illegal Migrant (Determination by Tribunals) Act, 1983 (No.39 of 1983)
- 5) India Penal Code Act, 1860 (No.45 of 1860)
- 6) Passport (Entry into India) Act, 1920 (No.34 of 1920)
- 7) Passport Act, 1967 (No.15 of 1967)
- 8) Protection of Human Rights Act, 1993 (No.10 of 1994)
- 9) Registration of Foreigners Act, 1939 (No.16 of 1939)
- 10) Immigrants (Expulsion from Assam) Act, 1950
- 11) Administration of Evacuee Property Act, 1950

The laws above mentioned are the Indian statutes, currently which are dealing with the refugees and their protection and rights.

3.4.3 Role of Judiciary in Refugees Protection

Indian Judiciary plays a crucial role in refugees protection as working as watch dog over the refugee's laws and implementation of the same. Judiciary gave many landmark judgements regarding refugees.

The judiciary has made it simple with the notions of Social Action Litigation and Public Interest Litigation. When any refugee is imprisoned or arrested by Indian authorities, there is always the risk of refoulment, repatriation, or deportation. Refugees who are apprehended for illegally staying might be imprisoned under administrative orders without

being charged. The Foreigners Act gives the Central Government the authority to deport foreigners from India. The SC of India in **Hans Muller of Nuremburg vs. Superintendent, Presidency**¹³ gave “absolute and unfettered” power to the Government to throw out foreigners.

The main role of the judiciary is to ensure life and freedom of a person irrespectively of his nationality.

CONCLUSION

Protection of refugees is a critical issue both internationally and within national jurisdictions. As the world grapples with conflicts, persecution, and environmental crises, the number of displaced persons seeking refuge continues to rise, necessitating robust frameworks for their protection. This essay examines the challenges and achievements in safeguarding the rights of refugees from both international and national perspectives

At the international level, the 1951 Refugee Convention and its 1967 Protocol serve as the cornerstone of refugee protection. These legal instruments define who qualifies as a refugee and outline their rights, including non-refoulement, the right to work, access to education, and healthcare. The United Nations High Commissioner for Refugees (UNHCR) plays a central role in ensuring the implementation of these principles, coordinating humanitarian assistance, and advocating for the rights of refugees globally.

Despite the existence of these frameworks, several challenges persist. Many countries struggle with xenophobia and anti-immigrant sentiment, leading to restrictive asylum policies and inadequate protection for refugees. Additionally, the global refugee crisis has stretched humanitarian resources thin, making it difficult to provide adequate support to all those in need. Moreover, the lack of burden-sharing among countries has resulted in disproportionate responsibility falling on a few host nations, straining their capacities and

resources.

On the national level, each country has its own legal and administrative mechanisms for protecting refugees. Some nations have ratified the Refugee Convention and enacted domestic legislation aligned with its principles, while others may have their own refugee laws or policies. However, the implementation of these laws varies widely, and many refugees face challenges accessing their rights due to bureaucratic hurdles, discrimination, or insufficient support structures.

Despite these challenges, there have been notable efforts to enhance refugee protection at the national level. Some countries have adopted inclusive policies that facilitate the integration of refugees into society, including language and vocational training programs, employment initiatives, and social welfare support. Civil society organizations and grassroots movements also play a vital role in advocating for refugee rights, providing legal assistance, and fostering community support networks.

In recent years, there has been growing recognition of the importance of addressing the root causes of forced displacement, including conflict resolution, poverty alleviation, and climate change mitigation. International cooperation and multilateral initiatives are essential in addressing these complex challenges and ensuring the effective protection of refugees worldwide.

RECOMMENDATIONS

Protecting refugees involves a multi-faceted approach that requires cooperation and commitment at both the national and international levels. Here are some recommendations for enhancing refugee protection from both perspectives:

- 1. Strengthen National Asylum Systems:** States should invest in robust asylum procedures that ensure fair and efficient processing of asylum claims. This includes providing access to legal representation,

interpreters, and information about rights and obligations.

2. Combat Discrimination and Xenophobia: Promote public awareness campaigns and education initiatives to combat xenophobia, racism, and discrimination against refugees.

3. Enhance Refugee Integration: Support programs that facilitate the integration of refugees into host communities, including access to education, healthcare, employment, and language training.

4. Address Root Causes of Displacement: Address the underlying drivers of displacement, including conflict, persecution, human rights violations, and environmental degradation.

5. Strengthen International Cooperation: Enhance collaboration among states, international organizations, NGOs, and civil society to share responsibility for protecting refugees.

ENDNOTES

1 Art. 14(1) OF UDHR, 1948

2 Human Rights Careers, <https://www.humanrightscareers.com/magazine/what-is-refugee-protection/> (last visited 22 Feb, 2025)

3 Amnesty International, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/> (last visited 23 Feb, 2025)

4 Bonyan organization, <https://bonyan.ngo/displaced-and-refugees/the-different-types-of-refugees/> (last visited 23 Feb, 2025)

5 ASYLUM & THE RIGHTS OF REFUGEES, <https://ijrcenter.org/refugee-law/> (last visited 24 Feb, 2025)

6 International Journal of Law Management & Humanities, <https://ijlmh.com/paper/constitutional-provision-regarding-refugee-law-in-india/> (last visited 25 Feb, 2025)

7 Art. 33 of Refugee Convention, 1951

8 Ktaer Abbas Habib Al Qutaifi v Union of India, 1999 Cri LJ 919.

9 Art. 3 of Refugee Convention, 1951

10 Louis De Raedt vs. Union of India, 1991 SCR (3) 149

11 Visakha vs. State of Rajasthan, AIR 1997 SC 3011

12 INDIA CONST. art. 51, cl. (c)

13 Hans Muller of Nuremburg vs. Superintendent, Presidency, 1955 SCR (1)1284