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Human Rights of Refugees and Asylum Seekers in India: Issues and Challenges

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India has no well-defined domestic law for refugee rehabilitation, yet it is the home of lakhs of refugees. These people live in poverty and lack access to necessities. In the absence of uniform refugee laws in India and considering political tactics, there is always the possibility of discrimination. The protection of refugees is limited to the Indian government's ad hoc measures, leaving them with minimal legal protection for their civil and political rights and practically no protection for their safety and welfare. To help asylum seekers, refugees, and other displaced populations realise their basic human rights and access the legal system, there is a need to defend the rights of refugees and to better their status in India. The research paper is divided into several sections, beginning with the introduction of refugees and asylum seekers in India, ascertaining the impediments in the realisation of human rights of refugees, policy, and legal framework, and ending with the recommendations.

Keywords: *refugees, asylum seekers, human rights, legal framework, international commitments.*

INTRODUCTION

On the global platform, India has built a formidable reputation as an active participant in the fulfilment of its obligations under international laws on human rights. The very essence and

spirit of the Universal Declaration of Human Rights (UDHR) is ingrained in India's constitutional principles. Since the early days of the Constitution of India, it has stood guard to protect the fundamental rights of Indian citizens as well as the basic human rights of foreigners. Indian independence had witnessed a huge influx of people into the country from the neighbouring countries, owing to the magnanimous displacement of people in the wake of the country's partition. With time, the refugee crisis in our country as well as the influx of asylum seekers into the Indian borders has only seen a steep rise. To date, India has not enacted any legislation or conclusively determined rules to regulate the status of these refugees and asylum seekers in India.

WHO ARE “REFUGEE” AND “ASYLUM SEEKERS”?

Before delving into an in-depth analysis on the instant topic, let us first distinguish and understand what the terms “refugee” and “asylum seeker” stand for. The term ‘Refugee’ has a particular meaning in international law, and its legal definition is laid down in the United Nations Convention on the Status of Refugees, 1951.¹ Article 1 of the said Convention defines the ‘refugee’ as “A person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country.”

On the other hand, an asylum-seeker is someone whose request for sanctuary has yet to be processed. An asylum-seeker is therefore an individual who says he/she is a refugee, but whose claim has not yet been evaluated. Seeking asylum is a human right as recognised by international laws. Not every asylum-seeker will ultimately be recognised as a refugee, but most refugees are initially asylum-seekers. The 1951 Convention does not have any specific procedural requirements for the refugee determination process. Therefore, States have developed differing procedures and standards.

Irrespective of this difference in meaning of these terminologies, both these classes of people, i.e., refugees and asylum seekers, flee from their respective countries and seek protection in another country to escape persecution and serious human rights violations in their country. It

¹ Convention relating to the Status of Refugees 1954

must be appreciated that a person becomes a refugee and/or an asylum seeker compelled circumstances beyond their control. They have no other alternative but to flee from human rights violations, political and socio-economic insecurity, ethnic strife, or civil war, etc., leading to well-founded grounds for fear of persecution. Thus, the issue of the rights of refugees and asylum seekers falls under the paradigm of human rights as addressed by the United Nations. The bulk of the population of refugees and asylum seekers in India originates from Sri Lanka, Tibet, Myanmar, and Afghanistan. However, only Tibetan and Sri Lankan refugees are recognised as such by the government. Although, since time immemorial, India has continued and will continue to host those in distress, irrespective of where they come from.

To seek shelter, the problem at hand has three dimensions to it. Firstly, India, being a developing country, is yet to achieve the goal of ensuring each of its own citizens has access to the basic amenities, and the increasing population of refugees and asylum seekers strain the country's resources. Secondly, in the absence of codified law(s) or regulation(s) to regulate the status and entry into the country or to ensure their rights and rehabilitation, the government deals with these issues on an ad-hoc basis. Thirdly, the existing laws. Give refugees the same status as that of foreigners, which results in numerous abuses of human rights. The Influx of refugees and asylum seekers is one of the oldest crises that the country continues to face. The instant paper makes a humble attempt to critically analyse how India deals with its population of refugees and asylum seekers, their rights in the country and explore the issues and challenges further.

SCOPE

The instant paper seeks to critically analyse the current situation of refugees and asylum seekers. Seekers in India, with the primary focus being on their rights and status in the country. Besides this, the paper shall endeavour to look into the international laws which seek to ensure and protect the human rights of refugees and asylum seekers, India's adherence to them, the existing laws in India and the dilemma the country is going through. For the case study aspect of the research project, the authors have constricted themselves to a sample of 20 people from the Rohingya refugee camp on the outskirts of New Delhi. The Research paper addresses the issue of migration of refugees and asylum seekers in India while scrutinising the need for policies in our country. The discussion of the present research will be limited to the refugee situation in India and its response to the same.

HYPOTHESIS

H1: Having policies for refugees creates pressure on local resources and conflict with local people.

H2: In the absence of specific laws regulating the status and situation of refugees and asylum seekers in India, the existing laws give refugees the same status as that of foreigners, which results in numerous abuses of human rights.

H3: Although the refugees and asylum seekers comprise a weaker section of the community, yet in India there are no stringent laws addressing issues relating to education, health and housing

RESEARCH METHODOLOGY

A mixed approach has been used for the collection of information, i.e., both primary and secondary data. This study is based upon observations, generating research questions, interviews, and surveys that result in a qualitative study.

To analyse the problems of the refugees and their livelihood options and strategies in India, the study used primary data collected through a field survey conducted on 26th June, 2022.

To analyse the problems of the refugees and their livelihood options and strategies in India. The study used primary data collected through a field survey conducted on 26th June, 2022. The field survey comprised 20 sample households from the Rohingya Refugee Camp located on the outskirts of Shaheen Bagh, New Delhi. We, therefore, decided to meet some of the refugees who were willing to reveal their life story. The camp leader and the refugees provided the appropriate information for the study of their own volition.

To address the issue of refugee migration in India, and the various rehabilitation mechanisms and government expenditure on them, this paper has gathered secondary data from various verified and reputable journals, news websites, and web data of myriad governmental agencies.

RESEARCH OBJECTIVES

The aim of this study is:

1. To investigate, examine and analyse the current situation, circumstances, problems, and difficulties encountered by refugees and asylum seekers in India with regard to human rights.
2. To analyse regulation and implementation of policies by the government and adherence to UNHCR and UNIDO.
3. To examine how COVID-19 has affected employment, housing, health and education of refugees and asylum seekers.
4. To create a three-dimensional well-being model that takes into account the following factors with respect to assistance given by the UNHCR and the Indian government.
 - Political and legal aspects
 - Socio-economic aspects
 - Psychological aspects
5. To analyse data collected by the researcher by way of case study and survey.
6. To investigate loopholes and provide suitable recommendations to determine the way forward.

RESEARCH QUESTIONS

1. Does the inability of refugees and asylum seekers to access adequate infrastructure, security, and sleep negatively impact these rights?
2. Whether the barriers to accessing a better and more dignified life result from linguistic gaps, discrimination, lack of education, access to electricity and water, poor health, and squalor.
3. Does India's lack of a national refugee protection system have repercussions for refugees and asylum seekers?
4. Documentation will be the first step towards establishing the identity of refugees and asylum seekers as well as giving several other benefits offered by the government.

LITERATURE REVIEW

The research paper titled India needs a refugee law is authored by Saurabh Bhattacharjee and explores the fundamental aspects of refugee treatment under Indian law and administrative practice, as well as the implications of India's existing ad hoc legal structure that controls refugees. It addresses India's levels of commitment to refugee protection, judicial efforts to

broaden it, and administrative policies that control a refugee's existence. It has been incorporated in this paper to offer an argument for the development of a distinct legislative framework that describes the legal status of refugees in India based on this discussion,

Book: Refugees and the Law, by Ragini Trakroo Zutshi, Jayshree Satpute and Md.

Saood Tahir: This book holistically analyses refugee law, both at the Indian and international level. It also analyses the relationship between the domestic laws in India and refugee protection. The book concentrates on linking the question of refugees with human rights law as well as other international laws. The need for national legislation in India has been elaborated upon in this Work. This book ultimately suggests some possible steps that can be adopted to transform the miserable lives of migrants and asylum seekers.

Research Paper: The Legal Framework: The Convention Relating to the Status of Refugees and the Development of Law Half a Century Later by T. Ananthachari:

This journal has analysed how India has always permitted refugees into the country with the feeling of brotherhood, manifesting its great heritage and culture from centuries. The author, T. Ananthachari, examined the Indian legal framework regarding refugees through various judgements of Courts where justice is upheld despite having no refugee laws. The author describes that India is a hospitable country for refugees, which always prioritises fundamental rights and human rights. Finally, the author sheds light on the disadvantages of the lack of a law to deal with refugees and how it has become a drawback that the current existing laws do not differentiate between immigrants and refugees.

Research Paper: Creating Legal Space for Refugees in India: The Milestones Crossed and the Roadmap for the Future by Prabodh Saxena: This journal has examined refugee care in India pre- and post-independence, the idea behind not signing CSR, how India helps the refugees and India's international commitments. The journey emphasised India's socio-economic conditions.

Report: UNHCR Global Appeal 2011 by UNHCR: This report presents the working environment for refugees and asylum seekers in India. With data analysis of the organisations and financial information in India for Refugees and asylum seekers in India. UNHCR also provides its main objectives and targets for the refugees in India.

Blog: What challenges do refugees and migrants face by Mohommad Malim: In the blog titled ‘What challenges do refugees and migrants face,’ Mohommad Malim discusses instances of various challenges and barriers that the refugees face. The blog reveals how language barriers, communication gaps, and difficulty in getting a job make the life of a Refugee miserable. The author explores how housing becomes expensive for the group of people. He further discusses how cultural barriers and their insufficient access to health services pose multiple sorts of hardships and struggles for them in the process. Towards the end, the author focuses on taking immediate actions to alleviate these very challenges.

INDIAN SCENARIO

India has emerged as the top refugee country for many refugees from numerous nations due to its geographic location, democratic governance, religious tolerance, and friendliness. In addition to its size and population, India holds the top spot because of its geopolitical, strategic, and economic capacity to shape events on the subcontinent. Article 1 of the United Nations Human Rights Commission’s (UNHRC) stipulates that the High Commissioner's primary responsibilities are to protect refugees and create long-lasting solutions. This is accomplished by offering support to governments to encourage the voluntary return of refugees or their integration into host-nation populations.

Physical and cultural impediments, political and legal frameworks, and notions of nationalism, ethnicity, and roots all come into focus when analysing the nature or primary causes of relocation. People frequently take the identity of someone “in transit” because of displacement. People would leave their homes as a result, either legitimately or illegally, or they would relocate to refugee camps.

POLITICAL DIMENSION

The socio-economic exclusion of Sikh Afghan, Christian Afghan, and Rohingya refugees in Delhi, as well as the emergence of a bureaucratically “violent” management of their rights and entitlements, are both a result of historically contingent identity politics, state-making, and urbanisation processes. In the post-Partition state, ideas of citizenship and “who counts” a citizen have taken on a communal tint as Muslim refugees and migrants have been subject to a politics of exclusion. Also, the status of refugees in India is governed by numerous political and

administrative choices, which have led to the provision of various types of aid to various refugee groups. As an illustration, while certain refugee groups receive full legal advantages, others are criminalised and denied access to essential services,

LEGAL DIMENSION

The Indian Constitution contains some provisions that apply to refugees in the same manner as they do to Indian citizens. The Fundamental Right Article 21 of the Indian Constitution², which protects everyone's right to life and personal liberty, has been upheld by the Supreme Court of India on numerous occasions. Given that the United Nations High Commissioner for Refugees (UNHCR) is crucial to the protection of refugees, the various High Courts in India have embraced the principles of natural justice in refugee concerns. By delaying the deportation orders, the Hon'ble High Court of Guwahati recognised the concerns of refugees and allowed them to contact the UNHCR to ascertain their status,

The High Court of Madras stated its unwillingness to compel Sri Lankan refugees to return to their homeland against their choice in the case of *Gurunathan & Ors. v Government of India & Ors.* And in *A.C. Mohd. Siddique v Government of India & Ors.*

In *P. Nedumaran v Union of India*³, Sri Lankan refugees had asked the Madras High Court for a writ of mandamus ordering the Union of India and the State of Tamil Nadu to permit UNHCR officials to assess the refugees' willingness to return to Sri Lanka and to permit the refugees to remain in the camps in India who do not want to return. As the UNHCR is involved in determining whether refugees returning to Sri Lanka are voluntary, the Hon'ble Court affirmed that "the Court is not required to assess whether the consent is voluntary or not."

The Court also recognised the representatives of the UNHCR for their objectivity and skill. The Bombay High Court ruled that "there is no question of expelling the Iranian refugee to Iran, as he is recognised as a refugee by the UNHCR." In conformity with the internationally recognised norms of "non-refoulement" of refugees to their place of origin, the Hon'ble Court also gave the refugee permission to travel to the country of his choosing.

² Constitution of India 1950, art 21

³ *P Nedumaran v Union of India and Anr* (1993) 2 ALT 291

The Supreme Court halted the deportation of Andaman Island Burmese refugees in *Malavika Karlekar v Union of India 1992*⁴ because “their claim for status of refugee was pending for adjudication. And is also a prima facie case filed for grant of refugee status. According to the Supreme Court’s ruling in the Chakma refugee case, no one’s life or freedom can be taken away from them without following the proper legal procedures.

Socio-economic Dimension: In their new communities, refugees and asylum seekers are exposed to novel social and living situations. Their native environment is in distress, which drives them to urban centres. The greatest difficulty they encounter in their new location is the difference between their income and spending. The expenses of socio-economic protection may be the reason for the resistance to establishing a refugee regime, but that does not explain why there is no territorial asylum framework in place to at the very least uphold the principle of non-refoulement while safeguarding state interests. Finally, the socio-economic situation is another reason why the country has not ratified the 1951 Refugee Convention, as planners are deeply concerned about the financial costs associated with CSR obligations when the country cannot meet the socioeconomic needs of its own millions of citizens. However, empirical evidence suggests that refugees can contribute economically to their host countries.

PSYCHOLOGICAL – MENTAL HEALTH DIMENSIONS

The psychological aspect explains how extended camp life contributes to the emergence of despair, social isolation, and family dissolution. In Lucknow, 9.6% of the migrated refugee population (who moved to India after partition) had mental disabilities, compared to only 4.2% of the non-migrant natives. Most migratory refugees with psychiatric illnesses (psychoneurosis, depression, and enuresis) are elderly and have been ill for more than ten years.”

When compared to non-migrants, Kashmiri migrants at Jammu’s Muthi camp had higher rates of psychiatric illness (mostly depression, post-traumatic stress disorder, and Generalized anxiety disorders) (33.66%). The study’s key finding is the necessity of raising the socioeconomic standing of migrants and offering them efficient psychiatric services. Long-lasting somatic and neurotic problems are common among migrant quarry workers. They have very poor help-seeking behaviours as well as very low awareness of their mental health.

⁴ *Malavika Karlekar v Union of India and Anr* (1992) WP (Cr) No 583/1992

ISSUES FACED BY THE REFUGEES AND ASYLUM SEEKERS

As of 31 January 2022, more than 46,000 refugees and asylum-seekers are registered with UNHCR India. The number of people on the move is expected to grow due to poverty, lack of security, lack of access to basic services, conflict, environmental degradation, and disasters. Refugees and asylum-seekers in India primarily live in urban settings alongside host communities. 46% of the refugees are women and girls, and 36% are children.

Health: Refugees and asylum seekers are a diverse group and have a variety of health needs, which may differ from those of the host populations. Compared to the general population, far higher numbers of refugees suffer from depression, PTSD, or schizophrenia, due to traumatic experiences of war and systematic persecution. Barriers are even greater for people with disabilities. Women and girls may find difficulty in accessing sexual and gender-based violence protection and response services. Refugee and migrant children, especially unaccompanied minors, are more likely to experience traumatic events and stressful situations, such as exploitation and abuse, and may struggle to access health care. The ability to access health services in humanitarian settings is usually compromised and complicated by shortages of medicines and lack of healthcare facilities.

Employment: Being non-citizens, the refugees and the asylum seekers face a lot of problems when it comes to their adequate access to employment in government education and health services. Restricted movements on the side of the refugees happen to be one of the major factors contributing to the refugees occupying a vulnerable status in society. Adverse effects have been witnessed in their mental health too. They have been suffering both physically and mentally.

Education: Lack of documentation on the part of the refugees and asylum seekers and the absence of authentic documents relating to their current residence act as obstacles when it comes to the enrolment of the children of refugees and asylum seekers at the higher university level education. There is a section of this very group of people who are protected by the UNHCR who are not required to give additional documentation and can acquire education at higher levels.

Housing: The refugees and asylum seekers face a serious issue of lack of permanent shelter; thus, in the long run are subjected to daily struggles and are not able to access stable livelihoods.

The women and children of the refugees and the asylum seekers happen to become the worst sufferers.

Women and Children in the Wake of the Pandemic: Refugee and asylum-seeking women lack access to maternal and sexual healthcare. For many, the lockdown also means disrupted access to psycho-social support, psychiatric care, and medications. Women refugees are inherently isolated from their traditional support systems of family, friends and community, and the lockdown further bolstered isolation from support networks, a boon to abusers. In India, community engagement is dominated by men, and refugee women find themselves alone in a foreign land without a voice. Many naturally harbour a deep mistrust of authority, arising from their precarious legal status and fear of arrest and deportation, as well as past experiences of persecution and displacement. This anxiety is aggravated by poor access to news and information in languages they understand. All these factors combine to severely limit their access to essential public services,

A refugee or an asylum seeker has additional challenges. Their kids are growing up in a completely different society. This puts them on the back foot as refugee or immigrant parents. Find it challenging to navigate through different situations. The number of shared instances keeps decreasing, and the parent-child dynamic keeps changing as time goes by. If they are being raised in an English-speaking country, the culture and mannerisms are completely alien to them, but they're normal for the children as that is what they've seen their entire life. In such cases, children receive no educational support from their refugee or migrant parents and must rely completely on schools and teachers.

Language: Daily communication, getting a job, filling out documentation, or buying food- all of these require knowledge of the English or Hindi language. For Instance, the refugees moving from Myanmar to Bangladesh do not speak their language. This makes daily tasks more difficult for refugees. Granted, one can learn a new language, but doing so is no piece of cake either. There is the question of managing it along with surviving daily and taking care of your dependents.

ASSISTANCE TO REFUGEES-NATIONALLY & INTERNATIONALLY

This section proposes to evaluate and throw light on the Assistance received by the refugees. This has been analysed from two fronts: Indian assistance and international assistance.

Indian Government: The Indian Government, despite its non-committal policies towards refugees, has proposed eight schemes which are directed towards certain refugee groups.

The following list provides the schemes:

- Central Assistance for one-time settlement of displaced families from Pak Occupied Jammu and Kashmir (PoJK) and Chhamb settled in the State of Jammu & Kashmir.
- Rehabilitation Package and up-gradation of infrastructure of the Bangladeshi Enclaves and Cooch Behar District after transfer of enclaves between India and Bangladesh under Land Boundary Agreement to benefit the 911 returnees from erstwhile Indian enclaves in Bangladesh.
- Relief assistance to Sri Lankan refugees staying in camps in Tamil Nadu and Odisha
- Grant-in-Aid to Central Tibetan Relief Committee (CTRC) for five years for administrative and social welfare expenses of Tibetan settlements.
- Grant-in-Aid to Government of Tripura for maintenance of Brus lodged in relief camps of Tripura.
- Rehabilitation of Bru/Reang families from Tripura to Mizoram.

These schemes were started in 2011, and were extended in the subsequent years, the recent extension being 2022. However, these schemes, other assistance and basic documents like driving license provided. By the Government of India could be availed only by a person possessing a Long-Term Visa. (LTV) which could be procured by producing the original and valid passport of the refugee. In fact, the AADHAAR does not require citizenship details. It merely requires documentation regarding identity, date of birth and address, which could be sufficiently met with by the LTVs. However, even if a student does not possess any of the requisite documents, he/she can open a small bank account with a maximum balance of INR 1 Lakh, keeping in mind that no foreign movement would be allowed in these accounts, according to the RBI's latest guidelines.

NGOs Based in India –

There are a few NGOs based in India that are recognised by the UNHCR and work in unison with them. Some of them are listed below:

BOSCO, Delhi: Bosco Organisation for Social Concern and Operation is a Delhi-based NGO and is a part of the Don Bosco International Organisation dedicated to the service of the poor. This organisation, along with the Don Bosco Atalaya, trains refugees by running tuition for young children, housing for the homeless, vocational training like tailoring, and helps in forming various SHGs.

SLIC Delhi: Socio-Legal Information Centre, in association with the Human Rights Law Network, helps in arranging Legal Aid for the refugees.

Rohingya, Delhi: Rohingya Human Rights Initiative conducts education programmes and mainly focuses on defending the Human rights of the Rohingya Refugees and exposing the abuses they face.

OfeRR, Chennai: Organisation for Eelam Refugees and Rehabilitation provides relief and rural development, free school shoes, spirulina training and tsunami rehabilitation to the Eelam refugees in Tamil Nadu.

Self-Help Groups: Khalsa Diwan Welfare Society is one such SHG dedicated to the support of their refugee community. KDWS is funded through membership fees, and helps other Sikh and Hindu Afghan refugees (numbering around 15,000% in Delhi) struggling to receive the assistance they need from the Indian government. It focuses on education and skills development, including teaching devotional music, language classes, stitching, and computer skills. More informally, it offers reconciliation and support for domestic disputes and grievances.

Chin refugees from Myanmar, too, have their own community support systems. A minority religious and ethnic group persecuted by the Burmese military, they have fled to India over the last four decades and settled primarily in Mizoram, Manipur, and Delhi. In Delhi they number around 4,000 and are largely clustered in the west of the city. The community has a hired floor in an apartment block where, with the support of their church and some NGOs, they run language, computer, and stitching classes, and previously, their own clinic with a Chin doctor.

Apart from these, Afghan Refugees and Somali Refugees have set up small shops. Selling traditional Afghani food in Delhi to make ends meet as well. These shops have received great support from the youth of Delhi as well.

INTERNATIONAL ASSISTANCE

UNHRC operates under the umbrella of the United Nations Development Programme (UNDP), acting as a watchdog, provides refugees with numerous safeguards pertaining to medical assistance, rehabilitation & so on & so forth. A few of them are enumerated hereinbelow-

Refugee Status Determination (RSD): The terms ‘refugees’ & ‘asylum seekers’ have their own distinct connotations. The person, upon whom the refugee status conferred by UNHCR falls in the category of a mandated refugee. UNHCR issued asylum seeker certificates to asylum seekers for availing the multiple benefits and refugee cards to recognise refugees, enabling them to establish their identity and certify their refugee status. Till 300 April 2022, 48,665 refugees and asylum-seekers are registered with UNHCR in India. Conferring the legal status of refugee, it provides its own standard. Operating procedure for the verification & disposal of applications for such status.

Health Services: The wide range of activities of UNHCR also entails medical. Assistance of multiple nature including sexual & reproductive health, HIV, sanitation, nutrition & food security to the refugees && asylum seekers without causing financial hardship. Acting as a next friend & considering the paramount importance of the right to health, the UNHCR, even during the period of Covid-19, passionately distributed the vaccines & other health care amenities to the refugees at large.

Education Assistance Programme: The cornerstone of the UNHCR policy is to allow the refugees & asylum seekers to access the basic academic resources, keeping in mind the apprehension of resorting to illegal practices. Besides this, it also provides higher education depending upon the merit of the applicant.

Self-reliant Programme: With a view to ensuring the refugees’ long-term self- sufficiency and skill building, the UNHCR focuses on helping refugees transition to recovery through a combination of livelihood responses& earning a decent standard of living.

Accommodation: UNHCR also manages to accommodate the refugees by providing them with shelter homes. In rural settings, delivering protection and humanitarian assistance through refugee camps is common.

Subsistence Allowance: A subsistence allowance is usually provided to vulnerable refugees with no other means of support. It is intended to cover basic expenses such as food, shelter, and transportation. The subsistence allowance is provided for a limited period of time.

Legal Assistance: Ensuring access to justice, the UNHCR widely promotes & works for providing legal aid to the refugees & asylum seekers. Detained arbitrarily or subjected to malicious & unlawful prosecutions. A large share of the refugee population is unable to access such services due to the associated costs, language barriers and other administrative and procedural difficulties.

Ending Statelessness: UNHCR is also carrying out several programmes, including the identification of refugees for the purpose of conferring nationality.

Cash Assistance: On numerous occasions, owing to the inevitable calamities or unwarranted persecutions of different nature, people are forced to flee empty-handed. Apropos these issues, the UNHCR aims to furnish cash-based intervention to the refugees, requiring the fulfilment of certain criteria.

EXPLORING INDIA'S OBLIGATION UNDER INTERNATIONAL LAW

India has not yet ratified the 1951 Refugee Convention and the 1967 Protocol. While India has a notable history of welcoming refugees from all over the world, recent cases of discrimination and denial of refugee status raise concerns about its equivocal positions on the legislation on refugee protection generally. The legal uncertainty brought on by India's unwillingness to ratify the 1951 Convention and the 1967 Protocol is exacerbated by the lack of national legislation. As a result, those who seek asylum are susceptible to the geopolitical and policy considerations of the ruling government and lack access to strong legal protections.

It has also been noted that the government only occasionally employs the defence that it is exempt from international legal obligations because it is not a signatory to the 1951 Convention and the 1967 Protocol. Thus, the primary question is whether there may be additional international legal requirements that pertain to the protection of refugees in India. In addition to the Refugee Convention and its Protocol. The answer lies in the notion of non- refoulement, including its place in jus cogens and customary international law.

Non-Refoulement: “Non-refoulement”, or the prohibition on expelling or returning a refugee, is a provision of the 1951 Refugee Convention. As this idea is integrated into Article 33 of the 1951 Convention, states that are party to it are required to abide by it.⁵ The provision is vital to the protection of refugees, but it is not binding on states that have not ratified the 1951 Convention. To make the principle binding even on governments that are not party to the Refugee Convention, it is crucial to determine whether it can be found in other sources of international law.

The prohibition against returning refugees, as stated in Article 33 of the 1951 Convention and supplemented by non-refoulement obligations under international human rights law, satisfies the requirements of State practice and opinion juris and is a principle of customary international law, according to the UNHCR. It is notable that the UNHCR mentions the practice of non-signatory governments hosting large numbers of refugees, frequently in conditions of mass inflow, in support of its conclusion. The fact that the UNHCR has recognised India’s practice of taking in a sizable number of refugees despite the country not being a signatory to the Refugee Convention indicates that India’s actions helped the rule against non-refoulement become a standard of customary international law.

India’s position entails that the three sources, i.e., custom, treaties and general principles of law, play a crucial role in identifying a jus cogens norm. There is enough scholarly research to demonstrate that the jus cogens norm of non-refoulement has been attained."

UDHR, ICCPR, ICESCR: Under the UDHR, there are special provisions that concern refugee protection, such as Articles 13, 14, and 15. Given that the UDHR is now regarded as jus cogens, all State Parties uphold and uphold these rights. Aliens (including refugees) who are legally residing on the territory of a State Party may only be removed in line with a decision made in conformity with the law, according to Article 13 of the ICCPR. The refugee has the right to be allowed to offer arguments against being expelled, have the case examined, and be represented before a competent body (excluding matters of national security). The article establishes the right of non-refoulement, which protects a refugee from being sent back to the borders of a

⁵ Convention relating to the Status of Refugees 1954, art 33

country where her life or freedom would be in danger. Along with the clauses, the ICCPR also addresses the right to life and the prohibitions against torture, slavery, and arbitrary detention.

The ICESCR regime recognises a number of rights linked to work, including the right to fair working conditions, access to health care, and a minimum level of education. Article 1's right to self-determination, which is arguably one of the most significant rights it protects (1). This would mean that in the context of refugees, the country of asylum must permit people living on its territory to practice their own cultures and social customs, as well as to pursue their own education and economic endeavours, while imposing only the reasonable restrictions specified in the instrument.

Child Refugee: A child seeking refugee status (whether unaccompanied or with companions) shall receive appropriate protection and humanitarian assistance to appreciate the rights outlined in the Child Rights Convention, which is specific to the refugee context. In other words, a State that is a party to the CRC but has not signed any refugee-related instruments and has not passed any national law on the matter is nonetheless required to offer the refugee child adequate protection and aid. In accordance with Article 22(2), the State Party shall help the UN or any other related organisation in protecting and assisting such a child and in facilitating family reunion

United Nations Declaration on Territorial Asylum: On December 14, 1967, India accepted the United Nations Declaration on Territorial Asylum through the General Assembly, strengthening her commitments to protection, asylum, and non-refoulement.⁶ When India endorsed the Bangkok Principles in 1966, she specifically acknowledged the non-refoulement commitment. The Asian-African Legal Consultative Organization's 8th Session made suggestions for member states addressing the status and treatment of refugees, which are included in the Bangkok Principles. The principles include clauses addressing repatriation, the right to reparation, granting refuge, and minimal treatment requirements in an asylum-granting state. The International Labour Organisation's Convention No. 118, which offers social security to refugees and Stateless people in addition to other people on the territory of the signatory State, is another agreement that India is a party to. India has moreover been a part of ExCom since

⁶ UNGA Declaration on Territorial Asylum 1967

1995. ExCom, a group with 79 members, provides fiscal oversight for UNHCR and counsels the Commissioner on refugee protection,

INDIA'S DOMESTIC LAWS

India does not have any specific legislation dealing with the problem of refugees and asylum seekers. At present, refugees are treated as par with foreigners, and all laws applied to foreigners were also applied to them. Indian Judiciary determines the legal status of refugees and asylum seekers according to some domestic laws that deal with foreigners and illegal migrants. Some of those are:

- Passport (Entry into India) Act 1920
- Passport Act 1967
- Registration of Foreigners Act 1939
- Foreigners Act 1946
- Foreigners Order 1948

Passport (Entry into India) Act 1920:⁷ This Act governs the people entering and leaving the country and requires the people entering India to have a passport. It empowers the Central government to frame rules for the same, using which the Central government framed Passport (Entry into India) Rules 1950. A person who is not in possession of a passport is prohibited from entering India. But this rule would not apply to refugees because of the principle of 'non-refoulement'. In the case of *Nandita Haksar v State of Manipur*,⁸ it was held that Article 21 of the Constitution encompasses the principle of 'non-refoulement'. Hence, they cannot be sent back to their country in the absence of some travel documents, nor can they be prohibited from entering India to seek protection. It was also held by the Court that imposing domestic violence on these people who need protection of their life is palpably inhuman.

Passport Act 1967:⁹ This Act provides for the issuance of passports and other travel documents to citizens of India or others and regulates their departure from India. It defines various types of passports issued to different kinds of people. It also sets out the provision for

⁷ Passport (Entry into India) Act 1920

⁸ *Nandita Haksar v State of Manipur* (2021) WP (Crl) No 6/2021

⁹ Passports Act 1967

arrest of those who try to provide false information to get a passport. Article 20 of the Act empowers the Central government to issue passports to non-citizens of India if it is necessary to do so in the public interest. This provision allows the government to issue passports to refugees and asylum seekers in the public interest, so that they can travel abroad without any trouble.

Registration of Foreigners Act 1939:¹⁰ This Act provides for the registration of foreigners in India. It empowers the Central government to make rules requiring every foreigner to report his/her arrival, presence, movements, departure, proof of identity, etc. to the prescribed authority. Moreover, it also requires persons who are often in touch with foreigners to report about their activities. Section 4 of the Act shifts the burden of proof to such a person, who is in question whether he/she is a foreigner or not. This is the most troublesome section of this Act when it is applied in the case of refugees and asylum seekers. These document requirements and onus of proof tend to add more troubles for them. It was on the prescribed authorities to verify the credibility of the applicants like refugees and asylum seekers, in consideration of their conditions.

Foreigners Act 1946:¹¹ This Act empowers the Central government in respect of foreigners. The Central government can make orders for foreigners imposing various restrictions on them. This power is so wide that they can make different orders for any kind of foreigners or any prescribed class of them. Moreover, the empowered authorities were also given unlimited power to even 'force' compliance needed for such provisions and, in the case of non-compliance, their arrest and detention. The authorities were provided with rights like the right to expel, the right to enforce an order of expulsion and the right to use force, if necessary, by the various provisions of this Act and upheld by the Court. Hence, this legislation sometimes brings heavy penalties and durations. Refugees and asylum seekers or they might be detained for long periods

Foreigners Order 1948:¹² This order was passed by the Central Government in exercise of powers conferred by Section 3 of the Foreigners Act 1946. It specifies the conditions for granting or refusing entry into India. When applicable to refugees, they might be deemed as illegal

¹⁰ Registration of Foreigners Act 1939

¹¹ Foreigners Act 1946

¹² Foreigners Order 1948

migrants and may be detained at transit areas. Authorities need to consider their situation on compassionate grounds as their conditions were different.

RECOMMENDATIONS

Based on the findings of the paper, the following recommendations are set forth:

- Policy of voluntary repatriation must be encouraged both by the UNHCR & the Government of India on a bilateral basis with the country of origin. (As exponential growth is witnessed in the number of refugees repatriated to their native country).
- The government can make some provision through some statute or policy that would provide them with temporary identity cards by the Government, which enable them basic facilities like health, rations, temporary tenancy, etc.
- Labour formulations should be modified by the government that would benefit the vulnerable section and work for all-round development of the refugees largely.
- Legal protection must be provided to the refugees & asylum seekers, keeping in mind the pathetic condition of vulnerable refugee women & children.
- The financial costs associated with CSR obligations should be reduced through international cooperation.
- Creation of a distinct statutory body by introducing a law, intended to deal with matters only about the refugees holistically.
- The refugees must be allowed to take employment in the formal sector, or a separate mechanism must be introduced ensuring their right to work & livelihood.
- An effective policy system may be developed for resettlement of refugees within the specific territory of India.
- Though it's an arduous task, efforts could be made for the social integration of the refugees with the host community.
- There must be an increase in opportunities in higher education programmes conducted by UNHCR since, at present, a minimal percentage of the population is allowed to take on that.
- Asylum seekers must be afforded the protection to a certain extent in cases of dismissal of their application for Refugee Status Determination (RSD).

- The government may encourage NGOs to step in to assist the refugees by providing incentives or benefits of a similar nature to the refugees.
- Natives of the host country must be sensitised towards the grief of the refugees & asylum seekers to protect the women & children, particularly from exploitation and abuse by locals and authoritarianism.

CONCLUSION

Despite its burgeoning population where millions of people continue to be below the poverty line, India continues to entertain refugees from several countries on humanitarian grounds. The subject concerning the protection of refugees needs some serious and genuine contemplation by the policy-makers. It has become imperative for India to govern the refugees and what part our nation can play in facilitating long-standing solutions to the refugee crisis. As an analyst has rightly argued, the problem with India's Refugees' approach "is not that it is placing security over humanitarian but that it is doing so in a way that is imprudent and likely to be self-defeating."

The case study throws light on the plight of Rohingyas and India's approach in handling the Rohingya crisis. India has been incessantly questioned about the refugee inflow, particularly concerning Rohingyas' status, in the UN, and now that matter is sub judice in the Supreme Court; any attempt to deport such refugees will be complicated. Our case study and findings show that cent per cent of the refugees would like to return to their homeland if the space is safe enough for their families and loved ones.

India has every right to prioritise its national security and fortify its national boundaries, but it also needs to consider the comprehensive long-term consequences. India has had a history of welcoming refugees and sheltering them. It has time and again demonstrated that it is not driven by shallow political interests.

The only question that remains is how India can effectively facilitate their safe return, play an active role in mitigating any potential terror-related activities involving these refugees and play a role in finding a resolution to such conflicts and crises.