



REFUGEE LAW AND THE HUMANITARIAN OBLIGATIONS - THE INDIAN PERSPECTIVES

Dr. Narayan Chandra Patnaik*

1. Introduction:

The Indian state has treated a few refugee communities reasonably well but has not formulated a well-defined refugee law and judicial interventions have been case specific. The absence of clearly defined statutory standards subjects refugees and asylum seekers to inconsistent and arbitrary government policies.² In the popular understanding, any person who has left his or her home fearing for life and liberty or due to lack of subsistence is regarded as a refugee. However, international law defines refugees, subject to minor variations across different illegal instruments, as persons who have been forced to flee the country of their origin and are unable or unwilling to return there due to the fear of persecution on account of their race, religion, ethnicity, political beliefs, etc. Refugees form a special class of persons different from other migrants or aliens – legal or illegal who voluntarily leave their home country for a host of reasons. India's status as a preferred refugee haven is confirmed by the steady flow of refugees from many of its sub-continental neighbours as also from elsewhere. India continues to receive them despite its own over-a-billion population with at least six hundred million living in poverty with limited access to basic amenities. However, the Indian legal framework has no uniform law to deal with its huge refugee population, and has not made any progress towards evolving one either; until then, it chooses to treat incoming refugees based on their national origin and political considerations, questioning the uniformity of rights and privileges granted to refugee communities.

India is one of the few countries in the world which has experienced refugee situation, time and again, and that too on a gigantic scale in the last less than half-a-century.³ History of India is marked by large scale migrations of people from other countries and continents. These migrations had principally taken place across the two gateways - Hindukush Mountains in the West and the Patkoi range in the East. Indeed, the National Human Rights Commission (NHRC) has submitted numerous reports urging the promulgation of a national law, or at least, making changes or amendments to the outdated Foreigners Act (1946), which is the current law consulted by authorities with regard to refugees and asylum seekers. The primary and most significant lacuna in this law is that it does not contain the term 'refugee'; consequently under Indian Law, the term

* Principal, Lingaraj Law College, Engineering School Road, Berhampur, Odisha-760010

² Saurabh Bhattacharjee, India Needs a Refugee Law, *Economic and Political Weekly*, Vol. 43, Issue No. 09, 01 Mar, 2008

³ Prof. J.N. Saxena, "Legal Status of Refugees : Indian Position", *Indian Journal of Int. Law*, Vol. 26, No. 3 & 4, 1986 at 501



‘foreigner’ is used to cover aliens temporarily or permanently residing in the country.⁴ Despite these factors, the Declaration of Independence in 1947 resulting in the creation of India and Pakistan, caused the world’s largest uprooting and movement of population in recent history in the Indian sub-continent estimated number of refugees and asylum seekers in India stands at approximately 435,900 according to the World Refugee Survey 2007 conducted by the United States Committee for Refugees and Immigrants (USCRI), and supported by the latest figures from the United Nations High Commissioner of Refugees (UNHCR).⁵ India has offered refugee status to asylum seekers from countries like:⁶

1. **China:** Refugees and asylum seekers from Tibet number around 110,000.
2. **Nepal:** Excluding migrant workers, the population stands at 100,000 refugees. However this number is not usually considered because of the Indo-Nepal Friendship Treaty.
3. **Sri Lanka:** Total strength of conflict induced refugees of Tamil origin stands at 99,600.
4. **Myanmar:** Currently 50,000 refugees and asylum seekers.
5. **Bangladesh:** The mass exodus following the 1971 war has come down to 35,000, following repatriation of refugees.
6. **Afghanistan:** 30,400 refugees and asylum seekers comprised mainly of Hindus and Sikhs.
7. **Bhutan:** The ethnic Nepalese population settled in India amounts to 10,000 refugees and asylum seekers.

2. History of the Indian Refugees:

India is one of the few countries to experience the refugee situation in the last half century.⁷ Indian history is evident by large-scale migration of people from different countries. After 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. As a result, India had to confront a task by providing relief to the displaced persons from West Pakistan. At the initial stage, 160 relief camps were organized and the total expenditure incurred was Rs. 60 crore approximately.⁸ There were many steps taken by the government of India to overcome with the refugee problem. The most important step that had been passed by the government was the Rehabilitation Financial Administration Act, 1948. The term refugee was defined in 1951 convention relating to the status of refugees. After observing the situations of displaced persons

⁴ Arjun Nair, National Refugee Law for India: Benefits and Roadblocks, IPCS, New Delhi., Dec, 2007 at 1

⁵ Ibid at 1

⁶ Id at 1

⁷ http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/68492/10/10_chapter%204.pdf

⁸ Ibid



from India to Pakistan and vice versa, it was clear that the situation of displaced person was not different from that of refugees. India had to face another refugee influx in 1959 when Dalai Lama along with his followers fled and reached India. The government of India provided Dalai Lama and his followers a political asylum. Another refugee influx which our country had to face was in 1971 when 10 million refugees fled from East Pakistan to India. For this asylum, India was forced by the humanitarian obligation to give shelter to the refugees. After some gap, India was again affected by the influx of refugees from Sri Lanka and Bangladesh in 1983 and 1986. As per the World Refugee Report, India hosted approximately 400,000 refugees along with at least 2,000,000 refugees and some 237,000 internally displaced persons.⁹

3. Legal Status of Refugees in India:

India has one of the largest refugee population in the world. Regardless of the fact that India serves to the diverse group of refugees, example: – Syrians, Afghans, Palestinians, Persians, Ethiopians and Christians, etc., the country do not have specific domestic laws and policies for the refugees. The United Nations 1951 Convention relating to the Status of Refugees (Refugee Convention) defines a refugee as a person who, “owing to a 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, is unwilling to avail himself of the protection of that country.”¹⁰ In international law, refugees are defined as persons who have been forced to flee their country of their origin and are unable or unwilling to return due to the fear of persecution on account of their race, religion, ethnicity, political beliefs, etc. International obligations to protect refugees and grant them minimum standard of care are expressed in the United Nation’s Convention relating to the Status of Refugees, 1951 along with the Protocol of 1967, signed and ratified by 145 UN members.¹¹ The 1951 Convention establishes three standards of treatment as regards specific rights of refugees:

- (1) National treatment, i.e., the same treatment as is accorded to nationals of the contracting state concerned;
- (2) Most favoured nations treatment, i.e. the most favourable treatment accorded to nationals of a foreign country, and
- (3) Treatment as favourable as possible, and in any event not less favourable than that accorded to aliens generally in the same circumstances.

⁹ Supra note 7

¹⁰ Available at <https://www.wcl.american.edu/hrbrief/v7i1/india.htm> (Last visited on 15.04.2019)

¹¹ Vineet Bhalla, Opinion, Why India Needs a Refugee Law, 25 Jun, 2018



States have been granting protection to individuals and groups fleeing persecution for centuries; however, the modern refugee regime is largely the product of the second half of the twentieth century. Like international human rights law, modern refugee law has its origins in the aftermath of World War II as well as the refugee crises of the interwar years that preceded it. Article 14(1) of the Universal Declaration of Human Rights (UDHR), which was adopted in 1948, guarantees the right to seek and enjoy asylum in other countries. Subsequent regional human rights instruments have elaborated on this right, guaranteeing the “right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions”. American Convention on Human Rights, Article 22(7); African (Banjul) Charter on Human and Peoples’ Rights, Article 12(3). The controlling international convention on refugee law is the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Optional Protocol relating to the Status of Refugees (1967 Optional Protocol).¹² Although India is not the party to the 1951 Refugee Convention or its 1967 protocol, even do not have a national refugee protection framework, but still it continues to give asylums to refugees of the neighbouring countries. Asylum seekers can get the refugee status from UNHCR if the status is not protected by the Indian Government. Under Indian law, the term “foreigner” is the only reference to aliens of any kind; this places refugees, immigrants, and tourists in the same broad category.¹³ After the adoption of the convention, there has been no official response from the government of India on its refusal to ratify the convention except for a statement by the external affairs minister in Parliament which indicated that the government was studying the implications of ratifying it.¹⁴ Several spectators have argued that the reason for India’s refusal to sign the convention was that it was very Euro- centric and India viewed it and the United Nations High Commission for Refugees (UNHCR) as instruments of the cold war. India is party to the Universal Declaration on Human Rights (UDHR), 1948 and has joined the International Convention on Civil and Political Rights (ICCPR-1966) and the International Convention on Economic, Social and Cultural Rights (ICESCR-1966) since 1979. It is also a signatory to the Convention on the Elimination of all forms of Racial Discrimination (CERD-1965) and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Torture Convention-1984). Article 14-A of the UDHR states

: Everyone has the right to seek and enjoy in other countries asylum from persecution. Article 13 of the ICCPR-1966 states: “An alien lawfully in the territory of a state party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with

¹² International Justice Resource Centre available at <http://ijrcenter.org> (Last visited on 15.04.2019)

¹³ <http://www.alnap.org/pool/files/protection-of-refugees-a-humanitarian-crisis-in-india.pdf> (Last visited on 15.04. 2019)

¹⁴ Supra note 2



law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority. Article 3 of the Torture Convention, 1984 states: "No state party shall expel, return (refouler) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture". Reading together these provisions indicates that India is obligated to secure to refugees a right to status determination, a due process for such determination and a right against return to the country of origin.¹⁵ Thus there have been no defined standards for implementing the judicial and constitutional directives on refugee protection. India has chosen to deal with refugees at political and administrative levels. It has therefore only ad hoc mechanisms in place to deal with their status and problems and there is no separate law defining refugees and their entitlements. The legal status of the refugees is thus no different from those ordinary aliens whose presence is regulated essentially by the Foreigners Act of 1946.

4. Constitutional Rights:

When any of the refugees are detained or arrested by the Indian authorities, there would always be a danger of refoulement, repatriate or deportation. Those refugees who are arrested for the illegal stay can be detained illegally under administrative order without charges.¹⁶ The Foreigners Act vests an absolute and unfettered discretion in the Central Government to expel foreigners from India. There are a few Articles of the Indian Constitution which are equally applicable to refugees on the Indian soil in the same way as they are applicable to the Indian Citizens. The objective of immigration is gaining citizenship or nationality in a different country. In India, the provisions of the Constitution mainly govern the law relating to citizenship or nationality. The Constitution of India provides for single citizenship for the entire country. The provisions relating to citizenship are contained in Articles 5 to 11 in Part-II of the Constitution of India. Article 5 states that at the commencement of this Constitution, every person belonging to the following categories, who has his domicile in the territory of India, shall be a citizen of India:¹⁷

1. Who was born in the territory of India; or
2. Either of whose parents was born in the territory of India; or
3. Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement.

¹⁵ Supra note 2

¹⁶ <https://sites.google.com/site/tibetanpoliticalreview/articles/refugeerightsissueofdeportationunderindianlegalsystem>

¹⁷ Supra note 2



The Indian Constitution guarantees certain fundamental freedoms to all persons and not just to Indian citizens. Hence, persons who flee their country of origin and seek asylum in India have the protection of those fundamental rights, independent of the need for any recognition by the government of India or by any other international body like the UNHCR. The fundamental rights that all persons, including asylum-seekers and refugees enjoy under the Constitution include: ‘

Right to Equality before Law (Article 14): The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This right entails that there shall not be any discrimination between people or classes of people without reasonable classification by the legislature between different classes thus discriminated and the basis of this discrimination should have nexus with the objective classification.¹⁸

Protection of Life and Liberty (Article 21): No person shall be deprived of his life or personal liberty except according to due procedure established by law. The scope and ambit of this provision has been significantly expanded. While till 1978, Article 21 was construed narrowly as a mere guarantee against executive action unsupported by law, it is now well-established by a series of decisions starting from *Maneka Gandhi v. Union of India*¹⁹ that it imposes a limitation upon law insofar as that the procedure stipulated therein must be just, fair and reasonable. Therefore in the specific context of refugee protection, it means that while earlier, the courts merely had to consider whether the decision to deport complied with the procedure laid down in the Foreigners Act, it had now to consider whether the procedure was fair, just and reasonable.

Right to Fair Trial: It has been recognised by the Supreme Court as a component of the right to protection of life and liberty. This also entails the right to be produced before a magistrate within 24-hours of arrest. These rights put a refugee and a citizen of India on the same pedestal as far as liberty is concerned.

Practice and Propagate Own Religion: Article 25 provides that subject to public order, morality and health and other fundamental rights, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate their religion.

5. Role of Judiciary for the Protection of Refugee:

The judiciary has played a very important role in protecting refugees. Court orders have filled legislative gaps and in many cases have provided humanitarian protection to refugees. Moreover, Indian courts have allowed refugees and intervening non- governmental organisations

¹⁸ A.S.Iyer v. Baiaasubramaniam AIR 1980 SC 452

¹⁹ AIR 1978 SC 597



(NGOs) to file cases before them. Furthermore, the courts have interpreted provisions of the Constitution, existing laws and, in the absence of municipal law, provisions of international law to offer protection to refugees and asylum seekers. The Supreme Court of India has consistently held that the Fundamental Right enshrined under Article 21 of the Indian Constitution regarding the Right to life and personal liberty, applies to all irrespective of the fact whether they are citizens of India or aliens. The various High Courts in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the United Nations High Commissioner for Refugees (UNHCR) as playing an important role in the protection of refugees. The Hon'ble High Court of Guwahati has in various judgements, recognised the refugee issue and permitted refugees to approach the UNHCR for determination of their refugee status, while staying the deportation orders issued by the district court or the administration.

The Supreme Court of India in "*Hans Muller of Nuremburg v. Superintendent, Presidency*"²⁰ gave "absolute and unfettered" power to the Government to throw out foreigners. The said judgment was again upheld by the Supreme Court in "*Mr. Louis De Raedt & Ors v. Union of India*."²¹ In the same judgment, Supreme Court also held that foreigners have the right to be heard. In the judgment of "*Ktaer Abbas Habib Al Qutaifi v. Union of India*"²² the High Court of Gujarat held that the principle of non-refoulement avoids ejection of a displaced person where his life or freedom would be undermined by virtue of his race, religion, nationality, enrolment of a specific social gathering or political conclusion. Its application ensures life and freedom of a person irrespectively of his nationality.²³ In the matter of *Gurunathan and others v. Government of India*²⁴ and others and in the matter of *A.C.Mohd.Siddique v. Government of India and others*²⁵, the High Court of Madras expressed its unwillingness to let any Sri Lankan refugees to be forced to return to Sri Lanka against their will. In the case of *P.Nedumaran v. Union Of India*²⁶ before the Madras High Court, Sri Lankan refugees had prayed for a writ of mandamus directing the Union of India and the State of Tamil Nadu to permit UNHCR officials to check the voluntariness of the refugees in going back to Sri Lanka, and to permit those refugees who did not want to return to continue to stay in the camps in India. The Bombay High Court in the matter of *Syed Ata Mohammadi v. Union of India*,²⁷ was pleased to direct that "there is no question of deporting the

²⁰ 1955 SCR (1)1284

²¹ 1991 SCR (3) 149

²² 1999 CriLJ 919

²³ Supra note 16

²⁴ WP No.S 6708 and 7916 of 1992

²⁵ 1998(47)DRJ(DB) at 74

²⁶ The case is pending before the National Human Rights Commission of India, 13 August 1997

²⁷ Syed Ata Mohammadi v. State, Criminal writ petition no.7504/1994 at the Bombay High Court



Iranian refugee to Iran, since he has been recognised as a refugee by the UNHCR.” The Hon’ble Court further permitted the refugee to travel to whichever country he desired. The Supreme Court of India has in a number of cases stayed deportation of refugees such as *Maiwand’s Trust of Afghan Human Freedom v. State of Punjab*²⁸; and, *N.D.Pancholi v. State of Punjab & Other.*²⁹ In the matter of *Malavika Karlekar v. Union of India*,³⁰ the Supreme Court directed stay of deportation of the Andaman Island Burmese refugees, since “their claim for refugee status was pending determination and a *prima facie* case is made out for grant of refugee status.” In *Luis de Readt v. Union of India*³¹ and *State of Arunachal Pradesh v. Khudiram Chakma*,³² the Supreme Court held that Article 21 of the Constitution, which protects the life and liberty of Indian citizens, is extended to all, including aliens and the state is bound to protect the life and liberty of every human being. In the case of *National Human Rights Commission v. State of Arunachal Pradesh*³³ the SC restrained the forcible expulsion of Chakma refugees from the state. In its interim order on November 2, 1995, it directed the state government to ensure that the Chakmas situated in its territory are not ousted by any coercive action not in accordance with the law.³⁴ In a number of cases, Indian courts have protected the rights of refugees to non-refoulement³⁵ and have protected them where there are substantial grounds to believe that their life would be in danger by allowing them to be granted refugee status by the UNHCR. In *Zothansangpuri v. State of Manipur*,³⁶ the Imphal bench of the Gauhati High Court ruled that refugees have the right not to be deported if their life was in danger. In *Dr Malvika Karlekar v. Union of India*,³⁷ the Supreme Court held that authorities should consider whether refugee status should be granted; and until this decision was made, the petitioner should not be deported.³⁸ In *Bogyi v. Union of India*³⁹, the Gauhati High Court not only ordered the temporary release of a Burmese man from detention but also approved his stay for two months so that he could apply to UNHCR for refugee status. The Gauhati High Court issued a landmark ruling in the case of *U Myat Kayew and Nayzan v. State of Manipur*.⁴⁰ It

²⁸ CrI. WP No.125 & 126 of 1986

²⁹ N.D. Pancholi v. State of Punjab & Others [WP (civil) No. 1294 of 1987, unreported]

³⁰ CrI. WP No.243 of 1988.

³¹ (1991) 3SCC 544

³² 1994 Supp. (1) SCC 615

³³ (1996) 1 SCC 742

³⁴ Civil W P No 720; (1996) 1 SCC 295

³⁵ P Nendumarani v. Union of India, W P No 12298 and 12313 of 1992, Gurunathan v. Union of India WP 6708 and 79168 of 1992, A C Mohd Siddique v. Government of India and others 1998(47)DRJ(DB), Syed Ata Mohammadi v. Union of India Criminal Writ Petition no 7504/1994 at the Bombay High Court and *Maiwand’s Trust of Afghan Human Freedom v. State of Punjab* CrI WP No 125 and 126 of 1986

³⁶ Civil Rule No 981 of 1989

³⁷ (Criminal) 583 of 1992 in writ petition

³⁸ N D Pancholi v. State of Punjab, Supreme Court (W P No 243/88)

³⁹ Civil Rule No 981 of 1989

⁴⁰ Civil Rule No 516 of 1991



involved eight Burmese, aged 12 to 58, who were detained in the Manipur central jail in Imphal for illegal entry. These pro-democracy activists in Burma had voluntarily surrendered to the Indian authorities and were taken into custody. They were charged under section 14 of the Foreigners Act for illegal entry into India. They filed a petition for their release, however, to enable them to seek refugee status with UNHCR in New Delhi. The Gauhati High Court, under Article 21, ruled that asylum seekers who enter India, even if illegally, should be permitted to approach the office of the UN high commissioner to seek refugee status. In addition to the courts, the National Human Rights Commission has also functioned very vigilantly and effectively as a watchdog for the protection of refugees. The commission has approached the Supreme Court under Article 32 of the Constitution and obtained protection of the Chakma refugees from the Chittagong Hills tribal areas of Bangladesh when their life and security were threatened by local politicians and youth leaders in the state of Arunachal Pradesh. Relief was granted by the SC on the basis of the rights of aliens under Articles 14 and 21. The judiciary has also upheld a refugee's right to leave the country.

In *Nuang Maung Mye Nyant v. Government of India*⁴¹ and *Shar Aung v. government of India*,⁴² the courts ruled that even those refugees against whom cases were pending for illegal entry should be provided exit permits to enable them to leave the country for third country resettlement.⁴³ However, judicial interventions, by definition, are case-specific and as a result, every case of innovation has been matched by parallel tales of indifference and non-interference. Thus, it follows from the aforesaid discussion that the legal framework for protection of refugees in India has been characterised by an eclectic interplay of administrative ad holism and judicial assertion of constitutional rights. The Constitution provides certain fundamental rights to all persons and thus, they inhere in refugees as well. These constitutional precepts have also been supplemented by expansive judicial interpretation. However, as the subsequent part of this paper argues, the enjoyment of these rights has remained a pipe dream for the refugee community due to inconsistent and arbitrary government policies dictated more by political exigencies than by legal imperatives.⁴⁴

6. Administrative Practice:⁴⁵

Although there are international institutions for the protection of refugees, still, ultimately the protection of refugees depends on individual sovereign states who have to follow their respective national legislation. Essentially, the refugee has no nationality so that he has no national

⁴¹ Supra note 2

⁴² CWP No 5120/94

⁴³ Union of India v. Mauns Mauns.

⁴⁴ Supra note 2

⁴⁵ Ibid



protection and therefore needs international protection. The legal basis for this international protection may either be customary international law or conventional international law, but the problem here is how to translate this international law to national legislation. Along with the tentative and imperfect judicial response, the other major cause for this distressing repudiation of judicial and constitutional mandate is the conspicuous absence of any defined statutory framework or even a policy on refugees. Hence, the distinction between refugees and asylum seekers, on one hand and migrants and other aliens, on the other have been conflated. Refugees and asylum seekers are externally displaced persons forced out or forced to leave their countries and who cannot return because they have a well-founded fear of persecution.⁴⁶ They are not bereft of ideas of social and economic betterment – an expectation to which they are entitled like anyone else. But, they are distinct from migrants who come to India voluntarily seeking a better life.

The Foreigners Act, 1946 deals with the matters of “entry of foreigners in India, their presence therein and their departure therefrom”. Paragraph 3(1) of the Foreigners Order, 1948 lays down the power to grant or refuse permission to a foreigner to enter India. It stipulates a general obligation that no foreigner should enter India without the authorisation of the authority having jurisdiction over such entry points. It is mainly intended to deal with illegal entrants and infiltrators. In case of persons who do not fulfil certain conditions of entry, sub-para 2 of the para 3 of the order authorises the civil authority to refuse the leave to enter India. The main condition is that unless exempted, every foreigner should be in possession of a valid passport or visa to enter India. If refugees contravene any of these provisions they are liable to prosecution and thereby to the deportation proceedings just like any other foreigner or illegal alien. Thus, there is no clearly defined category of refugees under Indian law. Foreigners generally are a classified category which can be further sub-divided as per the Foreigners Act regime, but no such sub-classification has been made for refugees. As such, refugees, like other foreigners, are generally subject to deportation with minimal due process. Therefore, the status of refugees is presently determined by the extent of protection they receive from the government of India which in turn has been influenced more by political equations than by humanitarian or legal obligations.⁴⁷ There are certain refugee communities like Tamil refugees from Sri Lanka, Jumma and Chakma refugees and Tibetan refugees who have received (at least normatively) full protection according to the standards set by the government of India. Apart from security screening, no formal status-determination procedures exist for these groups of refugees and there is a prima facie recognition.

⁴⁶ There are a host of definition of the term “refugees” provided by numerous international legal instruments like the United Nations Convention Relating to Rights of Refugees, 1951, Cartagena Declaration, OAU Convention, etc, that speak of “inability or unwillingness to return due to the fear of persecution.

⁴⁷ South Asia Human Rights Documentation Centre (SAHRDC),



Asylum policies have been generous as far as these groups are concerned. They are accorded legal stay indefinitely through executive discretion exercised under the Foreigners Act.

There are few other communities like the Burmese, Afghan, Iranian, Somalian, Sudanese and Iraqi refugees whose presence in Indian Territory is acknowledged only by the UNHCR and there is no protection from the government of India except those under the principle of non-refoulement. The home office has created a flexible (though unpredictable) procedure to enable resettlement. It has entered into an arrangement with the UNHCR under which the UNHCR determines the status of a refugee and gives a certificate to that effect. But such certification is only persuasive and provides no protection. They remain as foreigners and on the basis of UNHCR refugee certificates are issued temporary residence-permits under the Foreigners Act pending durable solutions. However, the condition of such communities is precarious. They do not have any work permit and are not able to eke out a subsistence for themselves. A small number of refugees who have been able to gain employment in the informal sector are subjected to persistent harassment and abuse from their employers and the police. The subsistence allowance that the UNHCR provides is meagre and entirely inadequate for survival. To make their survival more difficult, the UNHCR has arbitrarily started terminating payment of this subsistence allowance. There are also other refugees like the Chin refugees in Mizoram who have entered India and have assimilated into local communities or have not been recognised by the UNHCR. Neither the Indian government nor the UNHCR acknowledges their presence. The government has also denied UNHCR access to the seven states of the north-east including Mizoram where the vast majority of Burmese refugees are sheltered. Thus, these refugees receive no official acknowledgement whatsoever. As such, they have been consistently subjected to harassment and periodic eviction drives by sections of civil society in Mizoram and other parts of the north-east.

7. Protection Granted to the Asylum People in India:

Treatment given to the asylum people were divided into three heads viz. (a) National treatment; (b) Treatment that is accorded to foreigners; and (c) Special treatment.

(a). National Treatment: The national treatment to the asylum people is same as the citizens of India. There are certain Articles in the Constitution of India, which takes care of the Fundamental Rights of all people in India. The rights such as equal protection to law under Article 14, religious freedom under Article 25, the right to life and personal liberty under Article 21, right to social security and educational rights are guaranteed in Part III of the Indian Constitution.

(b). Treatment that is accorded to foreigners: – Under this head, there are rights which are related to the housing problems, movements, etc. the rights which are



provided under this treatment are: right to employment or profession under Article 17, freedom of residence and movement under Article 26, right to housing under Article 21, right to form association under Article 15 and right to property under Article 13 of the 1951 Refugee Convention.

(c). Special treatment: – This treatment includes the identity and travel document under Article 28, exemption from penalties under Article 3(1) of the 1951 Refugee Convention.

8. Law for Refugees and Displaced People:

India has been the home for several refugees. For these refugees, numerous legislative measures were passed and issued under Seventh Schedule of the Indian Constitution. But some of the measures have lost their importance in the current context. There were certain legislation that was enacted following the partition of India and before the Indian Constitution came into effect which are given below:⁴⁸

- East Punjab Evacuees (Administration of Property) Act, 1947
 - UP Land Acquisition (Rehabilitation of Refugees) Act, 1948
 - East Punjab Refugees (Registration of Land Claims) Act, 1948
 - Mysore Administration of Evacuee Property (Emergency) Act, 1949
 - Mysore Administration of Evacuee Property (Second Emergency) Act, 1949
- After the commencement of the Constitution of India, the following acts were passed

relating to refugees, evacuees and displaced persons:

- Immigrants (Expulsion from Assam) Act, 1950
- Administration of Evacuee Property Act, 1950
- Evacuee Interest (Separation) Act, 1951
- Displaced Persons (Debts Adjustment) Act, 1951
- Influx from Pakistan (Control) Repelling Act, 1952
- Displaced Persons (Claims) Supplementary Act, 1954
- Displaced Persons (Compensation & Rehabilitation) Act, 1954
- Transfer of Evacuee Deposits Act, 1954
- Foreigners Law (Application & Amendment) Act, 1962
- Goa, Daman & Diu Administration of Evacuee Property Act, 1969
- Refugee Relief Taxes (Abolition) Act, 1973⁴⁹

⁴⁸ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129225

⁴⁹ Ibid



Article 51 states that the state shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another.⁵⁰ Article 51 of the Constitution is the Directive Principles of State Policy demonstrating the spirit in which India approaches her international relations and obligations.⁵¹ Article 253 of the Indian Constitution states that “Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, or convention with any country or countries or any decision made at any international conference, association or other body.”⁵² Further Entry 14 of the Union List of the seventh schedule states that “*Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.*”⁵³ Article 253 read with Entry 14 makes it clear that the power conferred by Parliament to enter into treaties carries the right to encroach on the state list to enable the union to implement a treaty with it.⁵⁴ Therefore, any law made in accordance with this Article that gives effect to an international convention shall not be invalidated on the ground that it contains provisions relating to the state subjects.

9. Problems faced by Refugees in India:

Various countries protect their refugees by enacting refugee legislation based on international recognized principle. The countries that have signed the convention have a procedure for identifying the refugees and addressing their protection issue. Although India has not signed the convention but are providing protection to the refugees. However, consistency in the procedure for determining refugees is still lacking. Since India has no uniform code for determining refugee status, there is no central body that deals with the refugees. After so many years also, there are various gaps that exist in the mechanism for dealing with refugee's policy. This is because the government has not enacted a law for refugees. Due to the several problems faced by the refugees and no proper legislation has not been passed the legal status of the refugees is miserable. It is clear that there are more pressing obstacles on the government and policymakers than human rights infringements perpetrated by their own authorities. One of the reasons behind the hesitancy to move forward with the law is that the current arrangement of managing the influx of migrants and asylum seekers through ‘ad hoc’ administrative decisions, based on political and security considerations, rather than specific legislative enactments is politically more convenient on the basis of India's bilateral relations with the country of origin of the refugees in question. Since India

⁵⁰ Supra note 48

⁵¹ Ibid

⁵² Id

⁵³ [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(35\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(35).pdf)

⁵⁴ Supra note 48



has different treaties with its neighbouring countries, a uniform law to deal with the refugee groups would not be politically or practically viable.⁵⁵

10. Conclusions:⁵⁶

The status of refugees in India, although measured by humanitarian relief and political recognition, has very little to do with these two factors. Minority politics is an important factor that can be used to explain the reluctance of India's lawmakers to move towards resolving the issue. It is a fact that illegal immigrants have been used by vote-seeking parties to secure a majority in the central and the state legislatures. The above discussion clearly establishes that Indian law and practice provides a distorted and incomplete protection to refugees. Indian law even fails to recognise refugees as a distinct category of persons and treats them at par with all other foreigners. Thus, it fails to appreciate the special circumstances under which a refugee leaves his or her country of origin and the consequent incongruity in applying the requirements of valid travel that the general Foreigners Act regime mandates. The absence of a special law on protection, rights and entitlements of refugees has resulted in the denial of basic protection to the large number of refugees. This denial runs against the spirit of India's human rights commitment under the international law and its own Constitution. As discussed, the absence of a special legal regime on the status of refugees does not however mean that no protection and assistance is offered to refugees. The judiciary and allied institutions like the NHRC have tried to respond to the refugee question with innovative judicial interpretation to establish several procedural rights and in many cases, have prevented forced deportation.

However, such interventions have been limited to specific cases and the judicial pronouncements have not been implemented across a wide spectrum. This has been occasioned due to the absence of a definite refugee law. This absence has certainly meant that arbitrary executive action and acts of discrimination are not easily remedied. This further means that the decision to treat a person or a group of persons as refugees or not is taken on the merits and circumstances of the cases coming before it as they are overshadowed by political considerations. The recent legal tussle in the Supreme Court of India between the Union Government and human rights activists over the former's announcement to deport 40,000 Rohingya Muslim refugees back to Myanmar has brought to the fore the glaring absence of a standard legal regime to deal with refugees in our country. The merits of the Rohingya episode notwithstanding, the need for a legal framework that codifies the standard procedure for entry and exit of refugees is pertinent, given the fact that the lack of it awards the Parliament powers that can be easily abused to meet the short-

⁵⁵ Supra note 4 at 3



sighted ends of the government at the time. At the risk of being used as an instrument of populist appeasement, the rule of law must be invoked here to keep the Parliament accountable and transparent.⁵⁷ India does not have a national refugee law, and it is not a signatory to the UN's refugee treaty. India does not distinguish between refugees and other foreigners entering the country. India need to develop a rational policy to deal with refugees.

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⁵⁷ Supra note 11