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Dr. Sridevi Krishna
*Assistant Professor,
Vidyavardhaka Law College, Mysuru*

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Beyond Borders, Beyond Protection: The Plight of Refugees in India

ABSTRACT

Historically, India has protected people fleeing persecution, political instability and conflict. A host of refugees who are Tibetans, the Tamils from Sri Lanka, Afghans and Rohingyas have found their place in India, yet there is no comprehensive legal framework governing their protection. India, is not the signatory to the Refugee Convention 1951 and its Protocol 1967, yet addresses these issues through ad hoc administrative measures and general immigration laws. Because of the legal uncertainty present refugee communities receive varying levels of protection based on political and strategic considerations. Many are even vulnerable to detention, deportation and socio-economic exclusion. Though not a party to the refugee Convention, India has signed the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). These two treaties explicitly prohibit the return of those who face danger to their life or freedom, often called as principal of non-refoulement which has reached the status of jus cogens. Thus, despite not signing the Refugee Convention, India still provide protection to those fleeing persecution. This paper examines the challenges faced by refugees in India from legal and humanitarian perspective and evaluates constitutional and international obligations of India towards refugee protection. In the light of providing protection to the refugee community the paper suggests to adopt a comprehensive legal regime for refugee protection.

KEYWORDS

Refugees, Human Rights, Non-Refoulement, UNHCR, Humanitarian Protection

INTRODUCTION

The 21st Century has witnessed huge humanitarian challenges including the forced migration. The period of COVID-19 posed a challenge to the refugee settlement and social integration. According to the United Nations High Commissioner for Refugees (UNHCR), Global Trends Report 2025 about 123.2 million people were forcibly displaced worldwide by the end of 2024. This includes refugees, asylum-seekers, internally displaced persons (IDPs), and others in need of international protection. Refugees are those individuals who cross international

borders seeking protection because they are unable or unwilling to return to their countries of origin owing to a well-founded fear of persecution.¹ India, owing to its geographical location and historical traditions of hospitality, has long served as a refuge for displaced populations from neighbouring countries. Tibetan refugees fleeing Chinese control, Sri Lankan Tamils escaping civil war, Afghans seeking safety from decades of conflict, and Rohingya refugees escaping persecution in Myanmar have all sought sanctuary in India. Yet, crossing a border does not always guarantee protection. Many refugees in India remain vulnerable to legal uncertainty, economic hardship, social exclusion, and the threat of deportation. While they may have escaped persecution in their home countries, they often continue to live on the margins of society. Their plight reflects the paradox of being physically safe yet legally insecure.

UNDERSTANDING THE STATUS OF REFUGEES

A refugee is a person who has been forced to leave his or her country of origin due to a well-founded fear of persecution, armed conflict, violence, or serious human rights violations and is unable or unwilling to return home. Refugee status is a legal recognition that distinguishes refugees from other categories of migrants and entitles them to international protection.

The Convention Relating to the Status of Refugees, 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, unwilling to avail himself of the protection of that country."*²

This definition highlights several essential elements. First, the individual must be outside the country of nationality or habitual residence. Second, the fear of persecution must be genuine and objectively justified. Third, the persecution must be linked to one or more protected grounds such as race, religion, nationality, political opinion, or membership in a particular social group. Refugees differ from economic migrants, who voluntarily move to another country in search of better employment or living conditions. While migrants may choose to return to their home country, refugees often cannot do so safely because of the risks they face.

Refugee Status Determination (RSD) is the process through which a government or the United Nations High Commissioner for Refugees (UNHCR) assesses whether an individual qualifies as a refugee under international law. Once recognized, refugees become eligible for various

¹ UNHCR, 1951.

² Article 1(A)(2).

forms of protection and assistance. Even the International law guarantees several rights to refugees. The United Nations Convention Relating to the Status of Refugees, happens to be the first international convention with multiple state parties that were bound by the principles of the Universal Declaration of Human Rights, 1948.³ Article 33 of the Convention withholds refoulement of refugees to their homeland in case where a perpetual threat to their lives and persecution persists (non-refoulement).⁴ Apart from this the convention ensures Access to courts and legal remedies, Freedom of religion, Access to education and healthcare, the right to work, subject to national laws and Protection from discrimination and arbitrary detention. The Convention under and Article II of the Protocol also deal with and demand cooperation from the High Contracting Parties in providing an active aid to the office of the UNHCR in exercising its functions and ensuring protection of rights of refugees.⁵

EXISTING LEGAL FRAMEWORK FOR PROTECTION OF REFUGEES IN INDIA

India does not have a national legislation pertaining to refugees. It deals with the issue on an ad hoc basis. The Registration of Foreigners Act, 1939⁶; the Foreigners Act, 1946⁷ and the Passport Act, 1920⁸ etc. regulates the entry, presence and departure of aliens. The 'deportation-orientated laws'⁹ do not provide for a discernible distinction between foreigners, fugitives, migrants and refugees; which fails to serve the purpose of specific legislation to suit the individual needs of these groups. The Registration of Foreigners Act was enacted to provide for the registration of foreigners entering, residing, or staying in India. It provided that foreigners staying in India for specified periods must Register with the Foreigners Regional Registration Office (FRRO) or Foreigners Registration Office (FRO), Provide information regarding nationality, address, purpose of stay, and duration of stay. Failure to comply with

³ James C. Hathaway et al., THE LAW OF REFUGEE STATUS 86-125 (Cambridge University Press 2014).

⁴ Bill Koyama, For Refugees, the Road to Employment in the United States Is Paved With Workable Uncertainties and Controversies, 32(3) SOCIOLOGICAL FORUM 501, 501- 521 (2017) available at:

<https://www.jstor.org/stable/pdf/26626042.pdf?refreqid=excelsior%3A49543d883ae326f8>

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⁵ Jai S. Singh, Refugee Law and Policy in India: Efforts of Indian Courts, 9 ISIL Y.B. INT'L HUMAN & REFUGEE LAW 211, 213-220 (2009).

⁶ The Registration of Foreigners Act, 1939, No. 16, Acts of Parliament, 1939 (India).

⁷ The Foreigners Act, 1946, No. 31, Acts of Parliament, 1946 (India).

⁸ The Passport Act, 1920, No. 34, Acts of Parliament, 1920 (India).

⁹ Hans Muller of Nuremberg v. Superintendent of Presidency Jail, Calcutta, 1955 SCR (1) 1284.

registration requirements may result in Fines, Imprisonment and even deportation. Though the act enables refugees to obtain some form of official documentation and helps authorities identify and monitor refugee populations, it does not define “refugee” or “asylum seeker” and Treats refugees as ordinary foreigners and do not ensure any special protection against deportation.

The Foreigner’s Act is the principal legislation governing the entry, presence, movement, and departure of foreigners in India. A common definition to foreigner is given which means “A person who is not a citizen of India” and includes Refugees, Asylum seekers,

Tourists, Students and Illegal migrants. There is no distinction in these categories. The act empowers Central Government to pass any order Prohibition of entry, movement, Mandatory residence in specified places, reporting to authorities and Deportation.¹⁰ The burden lies on the person concerned to prove that he or she is not a foreigner.¹¹ This provision often affects undocumented refugees who may struggle to prove their identity or nationality. Though the Act

allows the Government to grant exemptions or long-term visas on humanitarian grounds and enables executive protection to specific refugee groups, yet there is no legal recognition of refugee status specifically. Sometimes Refugees are treated as illegal migrants, government holds broad deportation powers and there is no statutory incorporation of the principle of non-refoulement.

The Passport Act, regulates the entry of persons into India through passport requirements. The Central Government may make rules requiring valid passports, travel documents, entry permits. The rules prescribe types of travel documents, conditions for entry and exemptions for certain classes of foreigners.¹² Though a comprehensive protection is provided under the act, most refugees flee persecution suddenly and often do not possess Passports, Visas and Travel permits. Consequently, their entry may technically violate the Act. Despite legal violations, India has often tolerated refugee inflows, Long-term visas have been granted to some refugee groups and certain recognized refugees under UNHCR have received temporary protection. However, such protection is discretionary rather than statutory.

The Citizenship (Amendment) Act, 2019 (CAA), has majorly been viewed as a symbol of status, identity and the access to the bundle of rights that come associated, across the globe. It introduced amended

¹⁰ Section 3(2).

¹¹ Section 9.

¹² Section 3.

provisions for facilitating the acquisition of citizenship, exclusively for individuals from the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian communities originating from Afghanistan, Bangladesh, or Pakistan. Previously, the amendment to the Citizenship Act in 2003 introduced the term 'illegal migrants. It provided citizenship by registration for individuals of Indian descent and stipulated that only those 'individuals not classified as illegal migrants are eligible for citizenship' through this Registration.¹³ It regulated citizenship by naturalisation, which was also revised to exclude illegal migrants. Consequently, individuals deemed illegal migrants were precluded from citizenship by naturalisation, regardless of their duration of stay in India.¹⁴ These modifications narrowed the pathways for illegal migrants and their progeny to acquire Indian citizenship by natural means. However, the 2019 amendment revised the definition of 'illegal migrants' by excluding a specific category of individuals through an additional proviso to Section 2(1)(b), emanating from particular religious origins and particular geographic locations.¹⁵ This means they are protected from Detention as illegal entrants, deportation proceedings and criminal prosecution for illegal entry under certain immigration laws. The Act provides a legal route to acquire Indian citizenship, enabling beneficiaries to enjoy political rights, economic opportunities, social welfare benefits and security of residence. But CAA does not provide definition of refugee or establish any specific

asylum procedures. It does not create a refugee status determination system and do not recognize the principle of non-refoulement. The Act applies only to persons who entered India on or before 31 December 2014.¹⁶ Individuals arriving after that date do not receive benefits under the Act. By exempting these groups from the category of illegal migrants, the Act protects them from detention and deportation and facilitates their integration into Indian society. However, because it does not create a comprehensive asylum system, define refugees, or protect all persecuted persons equally, the CAA cannot be regarded as a complete framework for refugee protection in India. A dedicated refugee law would still be necessary to address the broader challenges faced by refugees and asylum seekers in the country.

JUDICIAL APPROACH FOR ENSURING PROTECTION FOR REFUGEES IN INDIA

India is not a party to the 1951 Refugee Convention or the 1967 Protocol

¹³ Section 5.

¹⁴ Section 6.

¹⁵ Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016 (January, 2019), at 11. (Para. 1.6).

¹⁶ <https://www.scobserver.in/cases/constitutionality-of-the-citizenship-amendment-act-2019-caa/>.

and does not have a dedicated refugee law. Consequently, refugee status is not formally recognized under Indian legislation. Refugees are generally treated as foreigners under laws such as the Foreigners Act, 1946. However, certain refugee groups receive protection through executive policies, judicial intervention, and the assistance of UNHCR.

Indian courts have relied on Articles 14 and 21 of the Constitution to extend basic human rights protections to refugees, emphasizing that the right to life and dignity applies to all persons, irrespective of nationality. In *National Human Rights Commission v. State of Arunachal Pradesh (1996)*¹⁷ The Government of India settled many Chakma families in the North-Eastern states, including Arunachal Pradesh. Over time, local groups in Arunachal Pradesh opposed their continued presence and demanded their expulsion. The National Human Rights Commission (NHRC) approached the Supreme Court under Article 32 of the Constitution, alleging violations of the Chakmas' fundamental human rights and seeking protection for them. They contended that that forcible eviction violated lives and personal liberty and that the State was under a constitutional obligation to protect them. The Court held that Article 21 (Right to Life and Personal Liberty) applies to all persons, including refugees and foreigners. It declared that no person could be deprived of life or liberty except according to a procedure established by law. Therefore, Chakmas could not be forcibly expelled by private groups or state authorities without legal process.

The Court directed authorities to process pending citizenship applications of eligible Chakmas according to law. In *Dongh Lian Kham v. Union of India*¹⁸, the petitioner, Dongh Lian Kham, was a national of Myanmar who had entered India and was recognized as a refugee by the United Nations High Commissioner for Refugees (UNHCR). She feared persecution if returned to Myanmar and sought protection against deportation. She approached the Delhi High Court seeking protection from deportation and recognition of her refugee status. The Court adopted a humanitarian approach and emphasized the importance of protecting refugees from persecution. The Court reiterated that the Right to Life and Personal Liberty under Article 21 is available to all persons, including foreigners and refugees and held that before deporting an individual claiming refugee status, authorities must consider whether such deportation would expose the person to persecution, threats to life, or serious human rights violations. The Court recognized the relevance of the principle of non-refoulement, which prohibits returning a person to a country where they face persecution or serious danger through India is not a party to refugee convention. In *Zothansangpuri v. State of*

¹⁷ (1996) 1 SCC 742.

¹⁸ 2016 SCC OnLine Del 6586.

*Manipur*¹⁹, the Guwahati High Court has held that the refugees cannot be subjected to refoulement if their lives are prone to an imminent threat in their homelands.

It is an indubitable fact that the Indian Courts along with the National Human Rights Tribunal have actively sought and catered to the protection of the refugees in the widest possible ways. What remains insidious is the perpetual entry of refugees where all such cases before these courts are decided individually while the executive is charged with all the ground powers to deprave from the established legal precedents and work their mind out⁵⁸ and undoubtedly, not all refugees have the legal patience to battle their way out to seek an opportunity to be retained in India. In *Mohammad Salimullah v. Union of India*²⁰ several Rohingya refugees had entered India and were residing in different parts of the country, including Jammu and Kashmir. In 2021, authorities detained a number of Rohingyas in Jammu with a view to identifying and deporting them to Myanmar. The petitioners, led by Mohammad Salimullah, approached the Supreme Court seeking protection against deportation. They argued that returning the Rohingyas to Myanmar would expose them to persecution, violence, and serious threats to life and liberty. The Union Government argued that Rohingyas are foreign nationals and many had entered India illegally and the Union Government possesses sovereign power to regulate the entry and exit of foreigners. The Supreme Court refused to grant an interim stay on the deportation of Rohingya refugees.

The Court reaffirmed that Article 21 extends to all persons, including non-citizens. “*The rights guaranteed under Articles 14 and 21 are available to all persons who may or may not be citizens.*” However, the Court observed that the right to reside and settle in India under Article 19 is available only to citizens and held that the Government has statutory authority under the Foreigners Act, 1946 to regulate the presence and deportation of foreign nationals. The Supreme Court declined to stay the deportation process, allowed the Government to proceed in accordance with law and directed that deportation could take place only after following due procedure and obtaining confirmation from Myanmar regarding the nationality of the persons concerned.

SUGGESTIONS AND CONCLUSION

The lack of designated refugee laws in India has translated to arbitrary procedures of granting/non-granting ‘refugee’ status to migrants, which in turn affects their protection, rehabilitation/deportation criteria. Recognizing a forced migrant as a refugee is important, for it means

¹⁹ 2021 SCC OnLine Mani 18.

²⁰ (2021) SCC OnLine SC 296.

being granted a long-term visa (LTV) by the Government, using which a person can apply for employment opportunities or enrol oneself in an educational institution. Since this certifying power lies with the executive branch of the Government, no concrete policy on refugees means a wide ambit of powers for the executive to decide whether a refugee shall be granted protection or not; often influenced by political whims as well. Statistics have shown how religious discrimination hides behind the 'calculated kindnesses'²¹ of Tibetans being the largest beneficiaries of LTV; while the Afghan community remains the smallest.²² There is no proper reasoning to explain why even among the Afghan community, Hindus and Sikhs are integrated much faster than others.²³

In the Indian context, unless the covenants and human rights instruments are ratified and incorporated within the scope of domestic law through legislations, Indian Courts lack the legal authority to enforce them. Unfortunately, the signatures and promises to incorporate the above-mentioned provisions have largely been ignored since, the Parliament is not obligated to pass laws to give effect to a Treaty, and in the absence of such a legislation, it is impossible for the judiciary to compel the executive branch into complying with the treaty's obligations. While each state has a duty to align its domestic laws in line with the treaties it is signatory to, in good faith, non-compliance or omission of the legislative conduct is an excuse defying international law's global reach.

Thus, India should adopt a dedicated refugee protection law that defines the terms refugee, asylum seeker, and stateless person. It should establish a transparent refugee status determination procedure and clearly distinguish refugees from illegal migrants. Only legal safeguards against arbitrary detention and deportation and a statutory framework would ensure consistency and predictability in refugee protection. It should also formally recognize the principle of non-refoulement, which prohibits the return of refugees to countries where they face persecution, violence, torture, or threats to life and liberty. This would strengthen humanitarian protection and align domestic practice with international human rights standards. A separate independent authority to process asylum applications, determine refugee status, coordinate rehabilitation

²¹ B.S. Chimni, INTERNATIONAL REFUGEE LAW: A READER 147-165 (Sage Publications, 2000).

²² Ashish Bose, Afghan Refugees in India, 39 (43) EPW 4698, 4698- 4701 (2004), available at:

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²³ Sitara Noor, The Taliban's Ascendance in Afghanistan: Implications for Pakistan, 13(4) COUNTER TERRORIST TRENDS AND ANALYSES 14, 15-16 (2021).

measures and monitor refugee welfare and rights should be established. Such an institution would reduce dependence on ad hoc executive decisions. Refugees should be provided with temporary identity cards, residence permits, work authorization documents. proper documentation reduces the risk of exploitation and facilitates access to essential services. Education is crucial for integration and long-term self-reliance. Governments should permit refugee children to enrol in schools without excessive documentation requirements, provide language and bridge courses where necessary and offer scholarships and vocational training programs. Healthcare access promotes both humanitarian welfare and public health objectives. Refugees should have access to Primary healthcare services and access to public health programmes. Refugees should be allowed to engage in lawful employment and self-employment, subject to reasonable regulations. Measures like Skill development programs and Vocational training should be introduced to make them self-sufficient. It is also important to consider that “improved living conditions contribute to human dignity and social stability”. Authorities should ensure safe and dignified shelter and provide basic infrastructure in refugee settlements. Planning collaboration with United Nations High Commissioner for Refugees (UNHCR), Non-governmental organizations (NGOs) and Human rights institutions, can help in refugee registration, legal assistance, rehabilitation, and protection programs. Community engagement programs can help refugees integrate while preserving social harmony. Developing regional cooperation and working with international organization can help in sharing responsibility for refugee protection, address root causes of displacement, facilitate voluntary repatriation when conditions permit and support durable solutions through resettlement and integration. Thus, protection of refugees should coexist with legitimate security concerns through Proper registration and verification mechanisms, Security screening procedures and Monitoring systems that respect human rights. This ensures both national security and humanitarian protection. A need for a balanced approach that combines humanitarian values with national security considerations can enable refugees to live with dignity while contributing positively to society is the need of the hour.

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