

Protection of refugees in india

[Sociology](#), [Immigration](#)



PROTECTION OF REFUGEES IN INDIA Deepak Shahi and Navrati Dongrey 2nd year B. A LL. B (Hons) . Rajiv Gandhi National University of Law, Patiala, Punjab ABSTRACT The development of the society and the nation brings with itself a lot of problems also. There are a lot of problems faced by India, be it gender issues, poverty, unemployment etc. one of these burning issues is the protection of refugees.

Refugees are those people who have migrated from other country seeking shelter and protection. This paper deals with the various efforts taken to protect them at the national as well as international level. The concept of protection refugees in India dates back to the partition in 1947, which brought in India millions of refugees. Then came the creation of Bangladesh which invited refugees who settled in eastern states. The lack of uniform law governing the refugees has created chaos and dealing with the problem.

The instable social, political and economic condition in the neighboring countries had led to the settlement of natives of these countries in India, as India is considered to be a very easy destination to live in illegally. There are lot of problem being faced by the government to tackle the growing number of refugees. The lack of strict vigil of the bordering states is one the reason for the settlement of refugees in India. This paper studies the protection provide by the Indian government to refuges and deals with the problem faced by them.

In the end there is the conclusion and some suggestion given by us regarding the issue of protection. INTRODUCTION India's multifariousness, constancy and relatively well established rule of law have made it a natural

terminus for people fleeing persecution, ill-treatment, imbalance and instability in their own countries. Within the South Asian region, India stands out as an exception of tolerant, liberal, democratic and secular government in a neighborhood of unstable, fickle and volatile states.

India has historically faced a legion of influxes over many millennia and the ability of these people to integrate into a multi-ethnic society and contribute peacefully to local cultures and economies has strengthened the perception of India being a country traditionally hospitable to refugees. India shares seven land borders and one sea border with countries in varied states of strife and war; and, over the years, has hosted large refugee populations not only from neighbouring countries but also from the countries outside the Indian subcontinent.

Throughout the world and over the centuries, societies have welcomed frightened, weary strangers, the victims of persecution and violence. This humanitarian tradition of offering sanctuary is often now played out on television screens across the globe as war and large-scale persecution produce millions of refugees and internally displaced persons. Yet even as people continue to flee from threats to their lives and freedom, governments are, for many reasons, finding it increasingly difficult to reconcile their humanitarian impulses and obligations with their domestic needs and political realities.

At the start of the 21st century, protecting refugees means maintaining solidarity with the world's most threatened, while finding answers to the challenges confronting the international system that was created to do just

that. [1] REFUGEE A person who is outside his or her country of nationality or habitual residence; has a well-founded fear of persecution because of his race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself or herself of the protection of that country, or to return there, for fear of persecution. [2] According to the humanitarian definition, a refugee is someone who has fled his country because he has a well-founded fear of persecution if he remains. The major obligation of refugee protection is the principle of non-refoulement, which ensures that a person is not returned to a life-threatening situation. [3] Refugees are a subgroup of the broader category of displaced persons. Refugees flee because of the threat of persecution and cannot return safely to their homes in the prevailing circumstances.

Persons, who have participated in war crimes and violations of humanitarian and human rights law including the crime of terrorism, are specifically excluded from the protection accorded to refugees. [4] Also Environmental refugees (people displaced because of environmental problems such as drought) are not included in the definition of "refugee" under international law, as well as internally displaced people. Refugees are people who have demonstrated to the Immigration and Nationality Directorate that they have a well grounded fear of being persecuted in their home country for reasons of: • Race Religion • Nationality Or membership of a particular: • Social group • Political opinion These conditions are laid down in the 1951 United Nations Convention relating to the status of refugees to which the United Kingdom is a signatory. Sometimes people cannot meet the criteria laid down in the 1951 United Nations Convention but may be allowed

to stay in the United Kingdom on humanitarian grounds for a limited period of time. Refugees have the same rights and responsibilities as any other citizen, including rights associated with;

- Familyreunion Welfare Benefits •

Work THE DEFINITION OF REFUGEES INCLUDES 1. That the person has to be outside their country of origin 2. The reason for their flight has to be a fear of persecution 3. This fear of persecution has to be well founded (i. e. they have to have experienced it or be likely to experience it if they return) 4. The persecution has to result from one or more of the five grounds listed in the definition 5. They have to be unwilling or unable to seek the protection of the authorities in their country[5]

HOW IS REFUGEE DIFFERENT FROM ASYLUM SEEKER? An asylum seeker is a person who is seeking protection as a refugee and is still waiting to have his/her claim assessed. The Refugee Convention definition is used by the Australian Government to determine whether their country has protection obligations towards asylum seekers. If an asylum seeker who has reached Australia is found to be a refugee, Australia is obliged under international law to offer protection and to ensure that the person is not sent back unwillingly to a country in which they risk being prosecuted. 6] Refugees and asylum seekers are externally displaced people and cannot return Refugees and asylum seekers share their well-founded fear of persecution with internally displaced people (IDPs) who, although they have not crossed an international border, also cannot return to their homes. WHERE DO REFUGEES COME FROM? Most of the world's recent refugees come from Afghanistan, Iraq and Colombia. Afghanistan continued to be the leading country of origin for refugees. As of the end of 2007, there were almost 3. million Afghan

refugees, or 27 per cent of the global refugee population. Even though Afghan refugees were to be found in 72 asylum countries worldwide, 96 per cent of them were located in Pakistan and the Islamic Republic of Iran alone. Iraqis were the second largest group, with 2.3 million having sought refuge mainly in neighboring countries. Afghan and Iraqi refugees account for almost half of all refugees under UNHCR's responsibility worldwide, followed by Colombians (552, 000). [7] Top countries from where the Refugees originates Afghanistan | 31, 100, 000 | | Iraq | 23, 00, 000 | | Colombia | 552, 000 | | Sudan | 523, 000 | | Somalia | 457, 000 | | Burundi | 376, 000 | | DR Congo | 370, 000 | | | Following countries takes Refugees Pakistan | 2, 033, 000 | | Syria | 1, 503, 800 | | Iran | 963, 500 | | Jordan | 578, 900 | | Germany | 500, 300 | | Tanzania | 435, 600 | | china | 301, 100 | | UK | 299, 700 | | Chad | 294, 000 | | us | 281, 200 | INDIAN CONTEXT India's diversity, stability and relatively well established rule of law have made it a natural destination for people fleeing persecution and instability in their own countries. Within the South Asian region, India stands out as an exception of tolerant, democratic and secular government in a neighborhood of unstable and volatile states.

India has historically faced numerous influxes over many millennia and the ability of these peoples to integrate into a multi-ethnic society and contribute peacefully to local cultures and economies has reinforced the perception of India being a country traditionally hospitable to refugees. India shares seven land borders and one sea border with countries in varied states of strife and war; and, over the years, has hosted large refugee populations from neighboring countries. India's status as a preferred refugee harbor is confirmed by the steady flow of refugees from many of its sub continental

neighbors 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. Indeed, the National Human Rights Commission (NHRC) has submitted numerous reports. The current 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). [8] India mostly plays host to refugees from its neighboring countries who are either forced to leave their countries of origin due to internal or external conflict, political persecution or human rights infringements.

India has offered refugee status to asylum seekers from countries like china, Nepal, Sri Lanka, Myanmar, Bangladesh, Afghanistan and Bhutan. [9] The circumstance in which the refugee's exodus from their country may vary from political persecution. However, it is clear that all these refugee populations deserve their basic human rights and the assistance that can be afforded by the Government of India. To define the word 'refugee' in Indian legal terms is theoretically not possible since neither the Foreigner's Act

(1946) nor its amendments or additions, contains or defines the term.

However, this study shall consider the definition propounded by a commission chaired by Justice P N Bhagwati in 1997,[10] whose task was to construct a uniform national law on refugees.

Although the bill was never tabled in Parliament, the term ' refugee' was adequately defined in the ' Model Law' as either. There are no authoritative statistics on the number of people who have fled persecution or violence in their countries of origin to seek safety in India. However, because of India's porous borders and accommodative policies, it was estimated that India hosted approximately 3, 30, 000 such people in 2004. [11] It is estimated that over 20 lakh Nepalis fleeing from civil conflict have entered India undetected over the open border. There are also an unknown but large number of people displaced from Bhutan because of their ethnic-Nepali origins. [12]

LEGAL SETUP FOR REFUGEE'S PROTECTION After the Second World War, the Refugee Convention was adopted with restricted geographical and temporal conditions to apply to post-War Europe In 1967, in an effort to give the Convention universal application, a Protocol Relating to the Status of Refugees that removed the restrictions of the Convention was added. Together, these two key legal documents provide the basic framework for refugee protection across the world. As of February 2006, 146 countries were States Parties to either the Convention or its Protocol or both. However, India has repeatedly declined to join either the Refugee Convention or its 1967 Protocol.

In addition, India has resisted demands for a national legislation to govern the protection of refugees. The relative success that India has had with this approach, which is guided by political instinct free from legal obligation, has led to an institutional complacency towards legal rights-enabling obligations to refugees. There has also been a hardening of attitudes about foreigners in recent years in light of heightened security concerns. This has resulted in genuine refugees paying an unfortunate price in a country that otherwise has an impressive history of protecting refugees. FOREIGNER'S ACT, 1964 India relies on the Foreigners Act, 1946 to govern the entry, stay and exit of foreigners in India. However, the Foreigners Act is a primitive legislation that was enacted as a reaction to the need of Second World War in the colonial period.

The continuity to deal with this legislation in independent India even after the independence only show the government's desire to retain absolute power to deal with foreigner[13] and thus covering all refugees within its ambit as well. CONSTITUTIONAL PROVISION Also some provision of the Indian Constitution[14] reflect that the rules of natural justice in common law systems are equally applicable in India, even to refugees. The established principle of rule of law in India is that no person, whether a citizen or an alien shall be deprived of his life, liberty or property without the authority of law. The Constitution of India expressly incorporates the common law precept and the Courts have gone further to raise it to the status of one of the basic features of the Constitution which cannot be amended.

Courts may apply international law only when there is no conflict between international law and domestic law, and also if the provisions of international law sought to be applied are not in contravention of the spirit of the Constitution and national legislation, thereby enabling a harmonious construction of laws. It has also been firmly laid that if there is any such conflict, then domestic law shall prevail. [15] RESTRICTED PROVISIONS OF THE CONSTITUTION 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 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. 16] 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 judgments, recognized 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. In the case of National Human Rights Commission v. State of Arunachal Pradesh [17]the Hon'ble Supreme Court held that refugees are a class apart from foreigners deserving of the protection of Article 21 of the Constitution.

INDIAN'S CONCERN TOWARDS REFUGEE'S PROTECTION

There have been a number of special legislative measures to deal with refugee influxes inspite of any law which makes refugees as a special class

distinct from foreigner Special laws to deal with refugees have been used primarily by the various State Governments[18] There are three main way in which the Indian government deal with refugees are refugees in mass influx situations are received in camps and accorded temporary protection by the Indian Government including, sometimes, A. A certain measure of socio-economic protection B. Asylum seekers from South Asian countries, or any other country with which the government has a sensitive relationship, apply to the government for political asylum which is usually granted without an extensive refugee status determination subject, of course, to political exigencies C. Citizens of other countries apply to the Office of the United Nations High Commissioner for Refugees (UNHCR) for individual refugee status determination in accordance with the terms of the UNHCR Statute and the Refugee Convention

The first ' foreign' influx of refugees occurred in 1959 from Tibet when the government, politically uncomfortable with China, set up transit camps, provided food and medical supplies, issued identity documents and even transferred land for exclusive Tibetan enclaves across the country for cultivation and occupation along with government provided housing, healthcare and educational facilities. The Sri Lankan Tamil refugees, having arrived in India in three waves beginning in 1983, have also been relatively well received in the geographically and ethnically contiguous State of Tamil Nadu where a large degree of local integration has occurred. In comparison, the Chakma influxes of 1964 and 1968 saw a subdued and reluctant government response. [19] The largest mass influx in post-Partition history

occurred in 1971 when approximately 16 million refugees from erstwhile East Pakistan sought safety in India.

Although most of the refugees returned within a year, the experience left the Indian government both bitter at the non responsiveness of international organizations and complacent in the confidence of being able to deal with future mass influxes. Refugees who are not extended direct assistance by the Indian Government are free to apply to the UNHCR for recognition of their asylum claims and other assistance. The ambivalence of India's refugee policy is sharply brought out in relation to its Treatment of the UNHCR. While no formal arrangement exists between the Indian government and the UNHCR, India continues to sit on the UNHCR's Executive Committee in Geneva. India has not even signed refugees convention. It is paradoxical but true that India allows UNHCR to operate it on its territory despite of being entered into any legal treaty. REFUGEES RIGHT UNDER LAW IN INDIA

Many experts in the area of refugee law believe that the more practical alternative to proposing an entirely new law is to push for changes in India's current policy regarding refugees. As stated above, no current Indian law refers directly to refugees. Refugees thus fall under the purview of the legislative framework that addresses all foreigners in India in the same way, under the Foreigners Act 1946. The Act contains broad powers of detention subject to the discretion of the executive, and makes illegal entry into the country a crime punishable by up to 5 years with no exception for refugees and asylum seekers. Also pertinent to determining the rights of refugees in

Indian law are two pre-independence enactments that enable the government to impose stringent conditions of entry and stay in India.

This body of legislation indisputably gives the Indian executive excessive powers over foreigners in India, including the power to restrict movement inside India, to mandate medical examinations, and to limit employment opportunities. This framework is problematic for refugees because the government's unrestrained power of expulsion could possibly lead to refoulement and deny refugees their basic human rights while in India - in contravention of international obligations. The Extradition Act 1962 provides some protection to refugees facing extradition by restricting the government's freedom to remove from its territory a particular category of foreigners. 20] This restriction, however, is so narrowly relevant that it does not provide any real safeguards for the majority of refugees in India whose removal from the territory is most likely to fall under the category of expulsion rather than extradition. INDIA'S INTERNATIONAL EFFORT IN THE PROTECTION OF REFUGEES Although India is not a signatory to the 1951 Refugee Convention or the 1967 Protocol, it is party to a number of international human rights instruments that create protection obligations toward refugees. Indian and other commentators from developing countries also call attention to the current state of flux in international refugee law.

In a statement to the Executive Committee of the UNHCR in October 2003, the Indian Permanent Representative pointed out that the situation of refugee and migratory movements in the world today are vastly different from what they were when the UNHCR was created and this had to be

reflected in practice to enhance the UNHCR's ability to play a meaningful role. [21] THE 1951 REFUGEE CONVENTION The 1951 refugee's convention is considered as an internationally agreed instrument and a mile stone in refugees protection, since as mentioned earlier in the definition[22]. A person becomes refugee as soon as he or she is in the situation, and not after a state has formally recognized him to be so.

He automatically becomes entitled to the protection under this definition.

The 'well found fear' is to be judged to the advantage of the claimant which should take into account the situation prevailing in his origin and his individual circumstances. 'Persecution is not defined in the convention but has been interpreted to mean 'a violation of someone's basic human right of sufficient gravity that the protection of another state is needed'. [23]

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) It recognizes the inherent dignity and of the equal and inalienable right of all member of the human family. It takes into account the Universal Declaration of Human Rights and character of the United Nation.

It binds that state to conform to the spirit of the covenant 'each party to the covenant to respect and ensure to all individual within its territory the rights herein recognized without distinction of any kind via; race, color, sex, language, political or other opinion national or social origin property birth or other status. [24] CONCLUSION AND SUGGESTION Although India's past efforts in dealing with mass influxes has been commendable, its geopolitical position in the subcontinent makes it a preferred destination for asylum seekers and migrant workers. It can be easily seen from the foregoing

paragraphs that India notwithstanding its own security concerns, particularly in the last couple of decades, and pressure of population and the attendant economic factors, continues to take a humanitarian view of the problem of refugees.

Even though the country has not enacted a special law to govern 'refugees', it has not proved to be a serious handicap in coping satisfactorily with the enormous refugee problems besetting the country. The spirit and contents of the UN and International Conventions on the subject have been, by and large, honoured through executive as well as judicial intervention. By this means, the country has evolved a practical balance between human and humanitarian obligations on the one hand and security and national interest on the other. The need for a refugee law is immediate. The uniform treatment of refugees is a must as long as India continues to accept asylum seekers across its porous borders.

The restrictions and unequal treatment imposed on the refugee population by the Indian government is discriminatory and tarnishes its human rights record, which is not outstanding in any case. India can require foreigners to reside in mandated areas, thereby barring their right of movement across the country, and providing India the ability to confine foreigners to refugee camps and conduct periodic camp inspections. One of the concerns that the host states have is the environmental degradation, which results from the activities of the refugees. The concern is real and needs to be addressed. In this regard the national law can place certain duties on the local

administration, aid agencies, and on the refugee community. Often simple measures can avoid causing harm to the environment.

For example in Bangladesh the UNHCR has distributed compressed rice husks as cooking fuel to all families in the refugee camps in order to minimize the collection of firewood and mitigate against deforestation around the camps. Since 1996, kerosene used for the ignition of the compressed rice husks is also being distributed to refugee families, to ensure that they do not need to collect firewood for this purpose. From the perspective of solutions, an important question which needs to be addressed concerns the problem of stateless persons in the region. For, among other things the problem of disputed nationality is the major obstacle in the process of repatriation. For example there are four large groups of stateless persons in the South Asian region.

Despite the widespread consensus that detention should be viewed as an exceptional measure, a problem which confronts the refugees is detention without justification. The provision of the International Human Rights Law, which offers protection against arbitrary arrest and detention should be properly implemented. A key problem in India relates to the frequent denial of access to camps to NGOs and the UNHCR. While India may have legitimate concerns that motivate NGOs and states may indulge in disinformation to embarrass it before the international Community, the problem can be handled through establishing more effective communicative channels and diplomacy. The increasing emphasis of UNHCR in the last

decade on voluntary repatriation as a solution meant that refugees are often returned against their will.

Where return has been voluntary there needs to be thought given to devising effective mechanisms to ensure that the state of origin lives up to the promises which it had made in order to persuade refugee to return. Thus the chakma refugees who returned from India to the Chittagong Hill Tracts In Bangladesh found that the Government did little to give them back their lands, or to provide them with enough resources to guarantee a minimum standard of life. [25] Without any law or protocol, the Indian government has full autonomy to decide which rights and freedoms should be conferred upon which groups. Even ' favored' communities like the Tibetan refugees have suffered due to lack of a firm policy. There is also a need for a change in the law.

The model law has not been sufficiently considered by the Union Government. For the last five years, the NHRC has been requesting the Government to provide refugee protection. Its present Chairman, A. S. Anand, has even set up a Committee to examine the law. The argument of terrorism and numbers having been met, there is no reason why the minimal protection against non-refoulement should not be enacted. This can probably be done even through rules. But the argument is not just over the Sri Lankan refugees, the Bangladeshis, the Afghans, the Bhutanese or the Myanmarese. It is whether India wants its voice on the world's most persecuted to be heard so as to mould future policy.

If India is waiting for a cue from its neighbour, China has joined the convention and enacted refugee protection legislation. African countries have got together to devise both national and regional solutions. India needs to review its ambivalent refugee law policy, evolve a regional approach and enact rules or legislation to protect persecuted refugees. This is one step towards supporting a humanitarian law for those who need it. As a refugee-prone area, South Asia requires India to take the lead to devise a regional policy consistent with the region's needs and the capacity to absorb refugees under conditions of global equity. ----- [1]Ms. Kate Jastram and Ms.

Marilyn Achiron, Refugee Protection: A Guide to International Refugee Law, http://www.ipu.org/PDF/publications/refugee_en.pdf, (29 April 2010) [2] Article 1 of 1951 Refugee convention 1951 [3] Rajeev Dhavan, Refugee Law and Policy in India (New Delhi: PILSARC, 2004), p. 156. [4] Basic Facts, http://unhcr.org.ua/main.php?article_id=5&view=full (29 April 2010) [5] Article 1A(2) of the Refugee Convention, 1951 [6]Background information of refugees and asylum seeker http://www.refugeecouncil.org.au/docs/news&events/RW_Background_Information.pdf (visited on 26th march 2010) [7]World Refugee Survey 2007, United States Committee for Refugees and Immigrants, http://www.refugees.org/WRS_Archives/2007/48-69. 27 march, 2010) [8] Rajeev Dhavan, On the Model Law for Refugees: A Response to the National Human Rights Commission (NHRC)," NHRC Annual Reports 1997- 1998, 1999-2000 (New Delhi: PILSARC, 2003). [9] Drafted under the auspices of the Regional Consultations on Refugees and Migratory Movements in South Asia initiative in 1995, with Justice P N Bhagwati as the <https://assignbuster.com/protection-of-refugees-in-india/>

Chairperson of the Drafting Committee of the India-specific version of the national law on refugee protection. [10] Florina Benoit, India: A National Refugee Law Would Equalise Protection, Refugees International, 2004. [11] Asian Development Bank, Nepal Country Strategy and Programme 2005-2009. [12] Section 2(a) of the foreigner's act, 1964 defines 'foreigner' as " a person who is not a citizen of India". [13] Article 22(1), 22(2) and 25(1) of the Indian constitution [14] T.

Ananthachari, Refugees In India: Legal Framework, Law Enforcement And Security [http://www. worldlii. org/int/journals/ISILYBIHRL/2001/7. html](http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html), (1 April 2010) [15] Articles, 14, 20 and 21 of the Indian Constitution [16] AIR 1966 SCC 742 [17] UNHCR Statistical Yearbook - India, 2003, UNHCR Geneva. [18] National Human Rights Commission (1996) 1 SCC 742 at pr. 15 [19] V. K. Dewan, The Extradition Act 1962' in Law of Citizenship Foreigners and Passports, 2nd ed, Allahabad: Orient Law House, 1987, p. 515. [20] James Hathaway, The Emerging Politics of Non-Entree, Refugees, Migration Review Vol. 91, December, pp. 40-41. [21] Article 1A(2) of the Refugee Convention,