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A Descriptive Study On Progress Of Refugees And Their Juridical Status In India

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Abstract

Refugee crisis has been a developing and increasing challenge of the era. Can refugees be termed as victims? because nobody desires to be a refugee in his life, but some are forced to be a victim of war, threat and persecution. In recent times, world nations are flooded with refugees seeking peace, harmony and shelter in order to secure their life. Break outs of war, turmoil and the situations of chaos are the few instances of refugee crisis as on date. Though India lacks on specific legislation regarding refugee policy, it has always embraced refugees right from the independence of India. Several waves of forcible migration from the neighbouring countries are prompting the nation to adopt a refugee policy. This paper outlines the struggle of refugees and the legal status of the refugee policy in India.

Furthermore, this paper explores the refugee protection given under human rights and navigates the living conditions in depth by understanding the background of the origin of the particular refugee community. Also, the paper concludes with few recommendations for reforms and stabilize the betterment of the refugees.

Keywords: Refugees, War, Legislation, Persecution

1. Introduction

People who cross the international borders leaving behind the home for their survival and safety are called Refugees. They become refugees for the reason like war, natural disaster, oppression, tribal violence, religious violence and climate change. A refugee is someone who has been forced to flee from his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or they are afraid to do so.² Statistics reveals that nearly 73 percent of all refugees and other people in need of international protection come from just five countries: Afghanistan, Syria, Venezuela,

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² USA for UNHCR, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/#:~:text=War%20and%20ethnic%2C%20tribal%20and,%2C%20Venezuela%2C%20Ukraine%20and%20Sudan.> (last visited Feb.16, 2025, 8.52 PM)

Ukraine and Sudan.³ Right to lead a peaceful life is glorified as a fundamental right and it has been protected by the Constitution of the states and by the International Conventions despite having these armours still people are getting persecuted and ended up being a refugee, an asylum seeker and a stateless person losing his very own nationality and identity.

As far as India is concern, since independence India has accepted many refugees like partition refugees, Chakma refugees, Sri Lankan Tamil refugees and Rohingya refugees all who entered India for various reasons, recently people have entered India not because of persecution but in search of employment opportunities. Women and Children are most likely to be refugees than men. There are many reasons why people around the globe seek to rebuild their lives in a different country. Some people leave home to get a job or an education. Others are forced to flee because of persecution or human rights violations such as torture. Millions flee from armed conflicts or other crises or violence; some no longer feel safe and might have been targeted just because of who they are or what they do or believe – for example, for their ethnicity, religion, sexuality or political opinions.⁴ This paper explores the current living conditions, excruciating pain of the refugees and outlines the legal position of refugee law in India.

2. Historical Background of Refugees

The UN refugee agency known as “United Nations High Commissioner for refugees” was formed to protect forcibly displaced and stateless person. It was mandated during the 19th century after the breakout of second world war. Prior to that, Mexican revolution made people to cross the border of Mexico during 1917 to 1920. Especially the holocaust occurs in the World War II caused a serious refugee crisis only after the year 1920 after that international concerns were started for refugees. The ingress of 1951 convention along with the protocol become a cornerstone for refugees who were shattered by the fear of prosecution.

The World War I, World War II, Partition of India, Rohingya refugees, Russian invasion of Ukraine Syrian refugee crisis was some of the largest refugee crises occurred around the globe. At the end of June 2024, there were 43.7 million refugees globally. UNHCR, the UN Refugee Agency, is mandated to protect 32 million refugees and 5.8 million other people in need of international protection. A further 6 million Palestine refugees are supported by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which was set up in 1949 to care for displaced Palestinians.⁵ At the outset, the Refugee Convention, 1951 was adopted only to protect the European Refugees and it concentrated only on events occurred in Europe but after the adoption of 1967 protocol it removed all the geographical barriers and time bound limitations widely protecting all the people who is in the fear of persecution.

³ ibid

⁴ Amnesty International, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/#:~:text=A%20refugee%20is%20a%20person,rights%20violations%20and%20persecution%20there>. (last visited Feb.16, 2025, 9.25 PM)

⁵ UNHCR – The UN Refugee Agency, <https://www.unhcr.org/en-us/what-is-a-refugee.html>, (last visited Feb. 22, 2025, 6. 52 PM)

3. Objectives

1. To understand the meaning and concept of Refugees
2. To study the living condition and the legal position of refugees in India
3. To Study the international perspective of refugee law around the globe

4. Research Methodology

Doctrinal research methodology is used in this study which completely relies on the secondary source of data like legal history, statutes, judicial interpretation and committee reports. The doctrinal method of research also known as 'Pure Theoretical Research' it analyses and evaluates the available sources of data in the particular research area.

5. Meaning of Refugees

The meaning of the term 'refugee' is often confused with the term influx, migrants and internally displaced. But a refugee is a person who has fled their own country because they are at the risk of serious human rights threats, violations and persecution. The risks to their safety and life were so great that they felt they had no choice but to leave and seek safety outside their country because their own government cannot or will not protect them from those dangers. Refugees have a right to international protection.⁶

6. India and Refugees

Currently people are being persecuted for many other reasons that was addressed by the refugee convention for the reasons like civil war, environmental impact and so on. Though India is not a signatory to the refugee convention and the protocol, it had ratified some other conventions which gives protection to the refugees. Some of the conventions are Universal Declaration of Territorial Asylum, 1967, Universal Declaration of Human Rights, 1948, International Convention on Civil and Political Rights, 1976, Convention on the Elimination of all forms of Discrimination against Women, International Convention on Cultural, Economic and Social Rights, Convention against Torture and Cruel Inhuman or degrading Treatment or Punishment. Being a largest populated country, India cannot feed its own population, in that case welcoming refugees from various countries become a tiresome burden to provide them with basic amenities and livelihood. India has no specific law to protect refugees till date, refugees are being treated as foreigner⁷ as per the Foreigners Act, 1946.

⁶ Amnesty International, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/>, (last visited Feb.22, 2025, 6.26 PM)

⁷The Foreigners Act, Section.2(a) "foreigner" means a person who is not a citizen of India, No.31, 1946, (India)

6.1 Protection under Indian Constitution

Refugees are protected under Article. 21 of the Indian Constitution which provides Protection of Life and Personal Liberty, '*No person shall be deprived of his life or personal liberty except according to procedure established by law.*' It applies to everyone irrespective of whether they are citizens of India or not, it upholds the very basic human right. Though it did not undergo any textual amendment, but the judiciary have transformed and made it more alive through various judicial pronouncements. That being so, since "life" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country.⁸ The principle of non-refoulement has been a greatest protection for the refugees across the world.

7. Human Rights and Refugees

The term "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;⁹ Basically, human rights are not given to people it is a self-acquired asset achieved by birth. It is only in the year 1951 (and then through a broadening of the refugee definition in 1967) that the international community established a regime for the international protection of refugees. The Geneva Convention Related to the Status of Refugees is the main source of legal protection for refugees. IRL¹⁰ provides a specific definition of refugee, safeguards the right to seek asylum, and protects against being forcibly returned to a country where one would face persecution (non-refoulement). The UN High Commission for Refugees (UNHCR) is mandated by the UN General Assembly to provide international protection to refugees and seek permanent solutions to their plight.¹¹

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol are the core essence of the international protection system, complemented by regional treaties and declarations that also address the rights of refugees. But international refugee law does not operate in isolation. It is best understood in conjunction with international human rights law, starting with the 1948 Universal Declaration of Human Rights, and with international humanitarian law (the law of war).¹² Both the convention and the protocol remains a crucial document for the protection of refugees. The ultimate protection for the refugees is the principle of non-refoulement as it sets out the duties of refugees and States' responsibilities toward them.¹³

⁸ Chairman, Railway Board And Others v. Chandrima Das (Mrs) And Others, 2000 SCC 2 465

⁹ The Protection of Human Rights Act, Section. 2(d), No.10, 1993, (India)

¹⁰ International Refugee Law

¹¹ International Refugee Law, <https://phap.org/PHAP/PHAP/Themes/IRL.aspx>, 23.02.2025, 10.11PM

¹² A guide to international refugee protection and building state asylum systems Handbook for Parliamentarians N° 27, 2017, (last visited Feb.23, 2025, 10.15PM)

¹³ *ibid*

8. India – a Host Country for Refugees

India had witnessed refugees from different countries who find shelter on fear of persecution and emergency. But Rohingya refugees had been recorded as a greatest population in the world around an estimation of 2.8 million¹⁴. They are an ethno-religious minority Muslim people from Myanmar. Due to the mass persecution by the Military, Rohingya people have been put to violence, oppression and torment. As a result, Rohingyas have been displaced to neighbouring countries like Bangladesh, Indonesia, Thailand and India. India has been a host country for nearly 22,500¹⁵ Rohingya's who registered with United High Commissioner for Refugees.

Rohingyas are being persecuted way back from 1970. Being oppressed on regular basis, during 2017 the war between Arakan Army and Security forces made the Rohingya's exploited, scapegoated and homeless in the state of Rakhine, northwestern region in Myanmar. In the course of fighting for the autonomy the Arakan Army vowed to conquer the entire state. Even the UN had warned against this 'Genocidal violence' happened in Myanmar. Neither the central government nor Rakhine's dominant ethnic Buddhist group, known as the Rakhine, recognize the label "Rohingya," a self-identifying term that surfaced in the 1950s, which experts say provides the group with a collective political identity.¹⁶

Rohingyas become stateless as the government refuses their citizenship, the white card owned by them do not assure the full citizenship and it accords only a limited right. Even they are denied with the basic rights like education, employment, marriage, family planning and the communal tensions between the government and Rohingya made them more vulnerable. The chair of the UN panel said it found clear patterns of abuse by the military, including systematic targeting of civilians, committing sexual violence, promoting discriminatory rhetoric against minorities, and creating a climate of impunity for security forces.¹⁷

As far as India is concern, Rohingya refugees are staying in slum and camps, in the year 2024, the 'Azadi Project' and 'Refugees International' have visited the Rohingya refugees in the detention camp and have found that there was a gross violation of human rights and that India had not meet the requirements of the international conventions. Families were separated and children in the detention camp were not allowed to early education. It is condemned that India should not revictimize the refugees who had already gone through wide range of persecution in their own land and to stop the arbitrary detention. Sur¹⁸ believes a clear legal framework is necessary to distinguish between refugees and foreign immigrants. India's 2019 Citizenship Amendment Act, which expedites citizenship for persecuted religious minorities from Pakistan, Bangladesh and Afghanistan – excluding Muslims – has worsened the discrimination faced by Rohingyas while reinforcing the practice of arbitrary and indefinite detention.

¹⁴ Daniel Sullivan, Priyali Sur, And Ankita Dan, *A Lifetime in Detention, Rohingya refugees in India*, December 2024, (last visited Mar. 23, 2025, 5.38 PM)

¹⁵ *ibid*

¹⁶ Eleanor Albert and Lindsay Maizland, *The Rohingya Crisis*, <https://www.cfr.org/backgrounder/rohingya-crisis>, (last visited Feb. 25, 2025, 5.33PM)

¹⁷ *ibid*

¹⁸ The co-founder of Azadi Project

“The law needs to treat every refugee equally, irrespective of their country and religion,” Sur said. “There is a hierarchy of refugees and the Rohingya are at the bottom. They have been forgotten because they’re brown, Muslim and belong to the part of the world that no one wants to care about.”¹⁹

India have taken a stand of national security and economic concern when it comes to refugee. Refugees are not terrorist they are human, entitle to have a right to have a decent life. The very most important ingredient of Article.21 of Indian Constitution is ‘Life’ the apex court in various decisions have upheld the significance of right to life. In Francis Coralie Mullin vs The Administrator, Union Territory of Delhi & Ors²⁰, the Hon’ble Supreme Court have declared that right to life under Article. 21 is a not a mere animal existence it is something more than a physical survival.

8.1 Lack of Representation and Barriers in Providing Legal Aid

According to studies, it is learnt that there is lack of legal aid available to the refugees in the detention centre. Due to the combination of factors India is not in a position to accept refugees due to its economic, political and geographical concern. Most particularly India did not have any comprehensive refugee policy for the protection of refugees and the refugee convention 1951 was drafted in line with the European countries and it seems to be Eurocentric.

The question of deportation of Rohingyas was decided by the apex court in various rulings one which in the Interlocutory Application made in Mohammad Salimullah and Another vs Union of India²¹ and others the full bench decided on the deportation of Rohingyas to Myanmar for which the Application has been filed. Though the issues have been addressed by the International Court of Justice, the Supreme Court decided that unless the procedure prescribed for deportation is followed the refugees cannot be deported. But it did not grant any protection as an earlier similar relief was rejected by the Court.

Another instant of the hour, very recently Supreme Court rejects the plea of a Sri Lankan Tamil stating that India is not a ‘Dharmashala’ that India cannot entertain refugees from all over the world. One another Writ Petition Mohammed Ismail vs Union of India was filed in the Supreme Court alleging Indian Government had forcibly deported 43 Rohingya refugees in an inhuman manner to Myanmar the same is pending before the apex court. In addition, the Refugee and Asylum Bill, 2019 has been introduced but it is awaiting for consideration.

9. Refugees Around the World

Refugees are being persecuted around the globe for many reasons. The UNHCR data finder reveals that at the mid of 2024 around 122.6 million people were displaced for the reasons of serious persecution like violence, conflict, human rights violation etc. Due to the arduous journey of people, they are forced to cross the borders of the native land leaving behind their homeland. The number of forcibly displaced people around the world has skyrocketed over the past decade, growing from 42.7 million at the end of 2012 to 122.6 million

¹⁹ <https://www.scmp.com/week-asia/politics/article/3291104/inside-indias-inhumane-detention-camps-rohingya-refugees>, (last visited Feb. 25, 2025, 6.28PM)

²⁰ Francis Coralie Mullin vs The Administrator, Union Territory of Delhi & Ors, 1981 SCC (1) 608

²¹ Mohammad Salimullah and Another vs Union of India AIR 2021 SUPREME COURT 178

as of June 2024. Presently, approximately 1 in 67 people are forcibly displaced. Much of this displacement has been fueled by new or worsening conflicts around the world, particularly in Afghanistan, Colombia, the Democratic Republic of the Congo, Somalia, Palestine, Sudan, Syria, Ukraine, Venezuela, and Yemen.²²

As far as United States of America is concern, each year the President fixes a ceiling limit of refugees to be enter with the consultation with the congress. U.S has been constantly receiving refugees from various countries and actively working in the resettlement of refugees. The international law has made human right as a practice which can be acquired by birth. Studies reveals that, the Cartagena Declaration has made Mexico to be a successful asylum comparatively United States of America.

10. Conclusion and Recommendation

Though India is not a signatory of Refugee Convention it has upheld the non-refoulement process. Moreover, India has been a major receiver of refugees each day from neighbouring countries as because people felt India to be a safest place to live for. Some of the key recommendations are:

1. **Need for Legislation:** India should enact laws for the betterment of the refugees in order to streamline the refugee protection to people who step inside India with fond belief and hope.
2. **Resettlement:** India has enormous number of refugees, an initiative of resettlement process would result in the human right protection.
3. **Ensure sustainability:** To provide proper access to primary health care and sanitation to the refugees in the camps.
4. **Self-reliance:** By providing skill development facilities and education opportunities to refugees, they will be self-reliant and can develop an employment and take care of their livelihood.
5. **Free Legal Aid:** Free legal aid can be ensured to the refugees.

References

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2. The Protection of Human Rights Act, 1993
3. The Refugee Convention, 1951
4. The Foreigners Act, 1946

²² An Overview of U.S. Refugee Law and Policy, <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>, (last visited May. 9, 2025, 11.15 AM)