



# Role of humanitarian law in protecting the rights of the refugees and asylum seekers for humanitarian obligation with special reference to 'refugees policy' in Indian context in the present-day scenario

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## Abstract

One-third billion people of worldwide live outside their country, most of them are migrants. One-tenth of them, though, are refugees and asylum seekers. They are fleeing political persecution and other acute threats. Most refugees go to neighboring countries for their own, in part so that they can return home when circumstances change. The work of protecting refugees and asylum seekers is carried out by a vast array of organizations. Some are public, others private, some are global, others grassroots. The International Refugee Regime, under the guiding hand of the UN High Commissioner for Refugees (UNHCR), has proven adept at providing life-saving assistance in response to emergencies but has been challenged to provide meaningful opportunities for the long-term displaced or support the communities hosting them. Compounding the challenges, it faces is the retreat of many advanced democracies which rising anti-immigrant sentiment. Established by the 1951 convention and its 1967 protocol, the regime envisioned refugee status as a temporary one for people who fear or have suffered persecution on the basis of race, religion, nationality, membership in a social group, or political opinion and by means of a result require protection until they can return to their countries of origin, gain permanent residency in the country to which they have fled, or be resettled in a third country. The current state of the international refugee regime provides us with tried and tested tools to address them. The present article considers role of humanitarian law in protecting refugees and asylum seekers and their implications in the area of refugee protection. It also surveys the human rights of refugees in India and gives a brief account of the impact which human rights principles have made on the current programs and policies of UNHCR and the increasing involvement of human rights bodies in matters relating to refugees.

**Keywords:** refugees/asylum seekers/displaced persons, extradition, expulsion, refoulement, international humanitarian law & obligation, refugees policy, etc

## 1. Introduction

Refugees and Asylum Seekers are civilians who were no longer receive protection from their government. International Humanitarian law interprets the notion of refugees more widely, also taking into consideration population displacements caused by conflicts. Today's refugee and Asylum Seekers problem is global, we need a law which is not only a law relating to the legal status and protection of refugees but also encompasses the refugee problem as a whole, a law which is solution oriented and imposes collectivized responsibility on all states. It is believed that a humanitarian obligation perspective of the rights of refugee problem will be helpful in restructuring the present mechanisms of refugee law on these lines. In addition to this, humanitarian obligation-oriented approach may be helpful in providing the necessary legal basis for the protection of refugees in states which have not acceded to the 1951 Refugee Convention and or the 1967 Protocol. Refugees by definition are victims of human rights violations. According to Article 1(a) (2) of the United Nations Convention Relating to the Status of Refugees 1951 the term 'refugee' shall apply to "any persons 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 The Statute of the Office of the United Nations High Commissioner for Refugees 1950, extends the competence of the High Commissioner for the protection of refugees defined in Article 6(a) (1) in terms similar to Article 1(a) (2) of the 1951 Refugee Convention. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, extended the definition in the 1951 Refugee Convention to include in the term 'refugee' also every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. The Cartagena Declaration on Refugees of November, 1984 laid down that the definition of refugee could not only incorporate the elements contained in 1951 Convention and the 1967 Protocol (or the 1969 OAU Convention and General Assembly resolutions), but also cover persons who have fled their country because their lives, their safety or their liberty were threatened by a massive violation of human rights. It is clear from the foregoing discussion that it is the risk of human rights violations in their home country which compels the refugees to cross International borders and seek

protection abroad. Consequently, safeguarding human rights in countries of origin is of critical importance not only to the prevention of refugee problems but also for their solutions. "If conditions have fundamentally changed in the country of origin promoting and monitoring the safety of their voluntary return allows refugees to re-establish themselves in their own community and to enjoy their basic human rights". Respect for human rights is also essential for the protection of refugees in countries where they are integrated locally or re-settled. Although in the past human rights issues were virtually not allowed to enter the global discourse on refugees under the erroneous assumption that the refugee problem, as a humanitarian problem is quite distinct from a human rights problem, the current trend is towards integration of the human rights law and humanitarian law with refugee law. The growing realization that given the number, size and complexity of the problem of refugees the limited approach to the problem which was devised in the context of the post-second world war refugees and which placed greater reliance on safety and welfare, rather than solutions to the problem and virtually relieved the refugee-producing countries from their responsibilities towards their nationals living in asylum countries.

## 2. Objectives of the study

The refugee problem has assumed disturbing proportions because of the increase in the number of refugees throughout the world and today it has become a matter of acute international concern. Nobody can possibly fail to recognize the importance of refugee as the subject in an analysis of the policies of refugee care and protection. This importance it is said to great in tune that is grave in proportion as the analysis is less capable of analyzing policy in terms of contingency and experience. The researcher has undertaken this topic for research in view of the importance of the subject-matter with zeal to have an in-depth study on the "Role of humanitarian law in protecting refugees and asylum seekers".

The main objectives of the study are as following:

1. To study the criteria for the determination of Refugees and Asylum Seekers protection in large scale influx situations.
2. To study the strategies to combat refugee problem and the role played by the United Nations High Commissioner and India.
3. To study the unresolved legal questions as to the determination of refugee status at National as well as International legal frameworks.
4. To Suggest durable solutions which are essential and desirable for improving the existing legal framework for protection and promotion of Rights of Refugees.

## 3. Hypotheses

Hypothesis is a tentative generalization the validity of which has to be tested. It provides a direction to the inquiry, aids in establishing a link between theory and practice and delimit the field of inquiry by singling out the pertinent facts on which to concentrate. The researcher has endeavored hard to find answers to the following hypotheses:

1. Whether the existing legal framework National as well as International, governing humanitarian law and Obligations of refugees need modification in order to overcome the drawbacks and defects of rights of the refugees.
2. Whether the Human Rights violations are a major factor in causing the plight of refugees as well as an obstacle to their safe and voluntary return home.
3. Whether the Protection of rights of the refugees have progressively emerged as the new norms of customary international law.
4. Whether there is a need for more certainly, transparency and accountability in the law relating to refugees.
5. Whether India has notably adhered to the international standards of Protection of Refugees as its Humanitarian obligation in its 'Refugees Policy'.

Whether the role of Indian Judiciary in recognition and enforcement of the Humanitarian Law towards refugees has been commendable and there remains still to be done more.

## 4. Methodology

The reliability and dependability of any research problem depends upon time method that is adopted for the investigation of the problem. The research methods employed are descriptive and analytical which is otherwise known as doctnaire methods. Most of the data is collected after consultations from various primary and secondary sources; for further sifting out hard realities.

The researcher has used multipronged approach to collect as much relevant information as possible through different sources. The study is purely exploratory in nature. The details of the tool of research for collection of secondary data includes, Collection and consultation of all available records and literature in various libraries of the country, including projects, reports, decisions of the courts, because with a continuously enlarging population of refugees and asylum seekers, a large section of persons who may not be repatriated in the near future, a uniform law would allow the government to maintain its huge non-citizens population with more accountability and order apart from allowing them to enjoy uniform rights and privileges. This will be one step towards supporting a humanitarian law for those who need it.

## 5. Review of literature

The review of allied literatures as well as current research work is of paramount importance in research endeavour. Under this review of related literature an attempt has been made to review literature so as to draw some meaningful guidelines for the present research work. The study in hand deals with Rights of Refugees and Asylum-seekers for humanitarian obligation. Various aspects of rights of refugees are discussed by Manik Chakraborty, Harun ur Rashid, T. N. Giri, Anil Shrivastav, U. N. Gupta, Justice Palok Basu, B. C. Nirmal, Harpal Kaur Khera, B. Sen, Nairn Ahmed, M. Afzal Wani, Nagender Singh, Satish Kanitkar, Ranbir Samaddar, Sanjay Parikh, T. Ananthachari, Manoj Kumar, Tapan K. Bose, Anil Shrivastava, Isha Bothra, Arjun Nair, Rajeev Dhavan, V. Suryanarayan, Chanakya Sen, Rajesh Kharat, J. N. Saxena,

Michell Moussalli, Edwards Alice, Darren J.O' Byrne, Peter maciister-Smith, Joan Fitzpatrick, Brain goriick, Rogue Raymundo, Anna C. Bramwell, H. Knox Thames etc. In their writings Thus, from the review of literature, it is abundantly clear that it is informative, descriptive, theoretical and only a meager part of it constitutes critical approach. Furthermore, the study is mostly based on secondary data, and has been designed to find and trace the lacunae with regard to the plight of the refugees in different countries. It is, therefore, crystal clear from the foregoing study that refugee assistance should be undertaken in a spirit of international solidarity and international co-operation.

## **6. Rights of the refugees under protection of humanitarian law**

### **i. Right to protection against refoulement**

No State is permitted to expel or return (refouler) a refugee, in any manner whatsoever, towards the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. Hence, individuals whose requests have been dismissed may nevertheless benefit from temporary asylum since they cannot be sent back to their State of origin because of the dangers they would incur. They must also benefit from the minimum standards of protection attached to this temporary asylum when a person is compelled to flee his country of origin or nationality his immediate concern is protection against refoulement. Such protection is necessary and at times, the only means of preventing further human rights violations. As his forcible return to a country where he or she has reason to fear persecution may endanger his life, security and integrity, the international community has recognized the principle of non-refoulement. Legal basis for protection against forced return of refugees to countries where they apprehend danger to their lives, safety, security and dignity can also be found in the law relating to the prohibition of torture and cruel or inhuman treatment. Thus Article 7 of the ICCPR which prohibits torture and cruel, inhuman or degrading treatment casts a duty on state parties not to expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return 'to another country by way of their extradition, expulsion *or* refoulement'. Forcible return of an individual to a country where he or she runs the risk of violation of the right to life is prohibited by International human rights law.

### **ii. Right to seek asylum**

To ensure that a person fleeing his or her country can submit a request for asylum to the authorities of a foreign State, the 1951 Refugee Convention reaffirms certain fundamental rights of individuals whose life or freedom is threatened.

#### **a) The right to seek asylum in another country**

This reflects the fact that individuals have the right to flee their country by any means, and to enter the territory of another State, even illegally. States party to the Convention may not impose penalties on refugees on account of their illegal entry

or presence, if, having come directly from a territory where their life or freedom was threatened; they enter or are present in that State's territory without authorization. This provision applies as long as the refugees present themselves without delay to the authorities and show good cause for their illegal entry or presence (Art. 31 of Refugee Convention).

#### **b) The right to submit a request for asylum before the appropriate authorities**

States must not impede refugees' access to the competent national authorities and, in fact, facilitate this access. Furthermore, UNHCR must be allowed to assist individuals with these formalities. Hence, refugees no longer receive administrative assistance from their State of origin to validate their rights. Other States are therefore under the obligation to provide the necessary administrative services, either directly or through an international authority-namely, UNHCR. As a result, UNHCR or the State in whose territory a refugee is residing commit to delivering or ensuring the delivery of documents or certifications that would normally be delivered to aliens by or through their national authorities (Art. 25 of Refugee Convention).

#### **c) The right of refugees to have their request examined by the appropriate national authorities**

The examination of their file must be in conformity with the rules established by the Refugee Convention and must be carried out under the supervision of UNHCR (Art. 8. of UNHCR statute). Once a person fleeing persecution enters a state other than that of his origin or nationality, what he needs most is asylum. "Asylum is the protection which a state grants on its territory or in some other place under the control of certain of its organs, to a person who comes to seek it". Asylum is necessary not only for safeguarding his right to life, security and integrity but also for preventing other human rights violations. Thus, the grant of asylum in the case of refugees who constitute a unique category of human rights victims is an important aspect of human rights protection and hence should be considered in the light of the U.N. Charter as a general principle of international law and an elementary consideration of humanity.

#### **iii. Right to equality and non-discrimination**

A refugee is entitled to be treated with humanity by the state of asylum. The obligations of the State of refuge on this count are derived from the rules and principles, which enjoin respect and protection of fundamental human rights, general international law and elementary considerations of humanity and are founded on the international community's interest in and concern for refugees. Refugees under the Refugee Convention are entitled to relatively higher standards of treatment than those belonging to B status category or mandate refugees. Since as a general rule, the rights and freedoms recognized by International human rights law apply to everyone, including refugees, the latter are also entitled to respect for, and protection of their basic human rights like nationals of the state of refuge. Of crucial importance to the protection of human

rights and fundamental freedoms of refugees is the rule of non-discrimination laid down in several global and regional human rights instruments, The right to equality before the law, equal protection of the law and non-discrimination which form a cornerstone of International human rights law appear to ban discrimination against refugees based on their status as such. In addition, such provisions would prohibit discriminatory conduct based on grounds commonly related to situations of refugees, such as race, religion, national or social origin, and lack of property.

#### **iv. Right to life and personal security**

Refugees as a group are the most endangered people in the world. Most of their basic human rights are threatened during flight and upon their relocation in camps in the sanctuary state and finally during their return to their countries of origin or nationality. In the initial and most desperate phase they often lose all their belongings, their basic security, family and often their own lives. For majority of refugees, life in exile is as bad as or worse than the conditions in their own country which compelled them to flee. In view of the foregoing the provisions of human rights law guaranteeing the right to life and protection against genocide, which is a grave form of violation of the right to life, are of direct relevance and far-reaching importance to refugees. In protecting against 'arbitrary deprivation of life', State Parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. In the context of loss of life from war and other acts of violence it has been stated that "States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life". Since the right to life is a non-derogable universal right, refugees are protected from arbitrary deprivation of life. The human rights regime guaranteeing freedom from torture and cruel, inhuman or degrading treatment or punishment is of paramount importance to refugees, particularly women and girls who may be compelled to suffer violence or ill treatment during flight and upon their relocation in camps. Refugees like other persons are entitled to be treated with humanity and respect for the inherent dignity of the human person, when they are held in prisons, hospitals, detention camps or correctional institutions or elsewhere. It is the duty of the State "to afford every one protection through legislative and other measures as may be necessary against torture and cruel, inhuman or degrading treatment or punishment, whether inflicted by people acting in their official capacity or in a private capacity".

#### **v. Right to return**

Refugees need to be guaranteed the right to return voluntarily and in safety to their countries of origin or nationality. They also need protection against forced return to territories in which their lives, safety and dignity would be endangered. Human rights law recognizes the right of an individual, outside of national territory, to return to his or her country. The U.N. Security Council has also affirmed "the right of refugees and displaced persons to return to their homes. The right of a

refugee to return to his country of origin also arises from the rules of traditional international law which stress the duty of the State of origin to receive back its citizen when the latter is expelled by the admitting state and to extend its diplomatic protection to him. Besides, the social fact of attachment, together with the genuine connection between a national and his state, his sentiments, and emotional ties with his motherland give rise to the above-mentioned obligations of the State of origin.

A refugee has the right to return to his or her country and enjoy his or her basic human rights. It in turn casts an obligation on the state of origin, the state of refuge and also the international community to create conditions conducive to his voluntary and safe return to the country of origin since refugee status is a temporary state of affairs and its only objective is to deliver human rights protection for the duration of risk, it should extinguish as soon as that risk comes to an end by reason of a fundamental change of circumstances

#### **vi. The right to remain**

Recently, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has affirmed "the right of persons to remain in peace in their own homes, on their own lands and in their own countries". The Turku/Abo Declaration on Minimum Humanitarian Standards also provides in Article 7: 1 "All persons have right to remain in peace in their homes and their places of residence." Article 7 runs: "No person shall be compelled to leave their own country". This right which is also known as 'the right not to be refugees' has provided the jurisprudential basis for the concept of 'preventive protection.

#### **vii. Role of humanitarian law in protecting mechanisms to refugees of world at large extent**

Humanitarian Obligation and response is carried out more as an act of benevolence than as part of the humanitarian assignment that entails guaranteeing the rights of the Refugees to life with dignity, assistance, as well as protection and livelihood security. There is need for better cooperation between the UNHCR and the U.N. High Commissioner for Human Rights. NGOs should also be knit together more closely than in the past. In recent years UNHCR has incorporated a number of human rights principles in its working e.g. legal rehabilitation, institution building, law reform and enforcement of the rule of law, humanitarian assistance to internally displaced persons and given due importance to the establishment of increased cooperation with international and regional human rights mechanisms. Another important positive development has been the concerns expressed by the Human Rights Committee, the Committee on the Rights of the Child, and the Committee against torture over the treatment of refugees by state parties to the respective conventions. For example, in 1997, the Human Rights Committee recommended that the definition of 'persecution' be broadened to include not only state harassment but also persecution by non-state actors. It further said that a country ignored its obligations by detaining a refugee and without allowing for a regular review of the

detention. The Committee against Torture reviewed the situation of many asylum seekers and concluded that several states had threatened to return those people to their home country in violation of their international obligations. As part of the efforts to prevent refugee flows, the U.N. and others, especially NGOs are engaged in providing technical assistance to states within a general human rights framework. Since refugee protection has now come to be recognized as a part of the U.N. agenda for human rights, the possibility of the use of the current structure of international human rights treaty obligations and the mechanisms established by the Commission on Human Rights for analyzing the problems and proposing remedial action have greatly increased.

### **viii. Role of humanitarian law in protecting refugees in India**

India has one of the largest refugee populations 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 does 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.” 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 neighboring 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”. All persons who flee their homelands have invariably been provided refuge, irrespective of the reasons of their flight. Taking a broader view of the concept of ‘refugees’ which somewhat resembles the one found in the 1969 OAU Convention, rather than the narrow definition provided in 1951 Refugee Convention, the Government of India recognizes Tibetans, Chakmas, Sri Lankan Tamils and Afghans and thousands of people of other nationalities from Iran, Iraq, Somalia, Sudan and Myanmar as refugees. However, 50,000 refugees are not recognized as refugees but foreign nationals temporarily residing in India. These persons are assisted by the UNHCR and provided international protection and assistance under its mandate. Its policies are discriminatory and inequitable, even to members of the same group. Thus, it granted substantially less assistance to the Tibetan refugees arriving after 1980 than to the Tibetans arrived here to 1980. In the absence of accession to the Refugee Convention by India and any national legislation on protection of refugee the legal status of individuals recognized as refugees by the Government of India is not clear. Also not clear is the relationship between refugee statuses granted by the Government and corresponding

laws governing the entry and stay of foreigners (i.e. Foreigners Act, 1946).

### **a) Law for refugees and displaced people**

As discussed, earlier 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 was certain legislation that was enacted following the partition of India and before the Indian Constitution came into effect which are given below. Once the Constitution of India came into operation, the following acts were passed relating to refugees, evacuees and displaced persons. “Article 51 states that the state shall endeavor to foster respect for international law and treaty obligations in the dealings of organized people with one another. Article 51 of the Constitution is the Directive Principles of State Policy demonstrating the spirit in which India approaches her international relations and obligations”. 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”. 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. 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. 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.

### **b) 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.

### **c) Role of judiciary for the protection of refugees**

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. The Foreigners Act vests an absolute

and unfettered discretion in the Central Government to expel foreigners from India. The Supreme Court of India in “Hans Muller of Nurenburg vs. Superintendent, Presidency” 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 vs. Union of India.” 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 vs. Union of India” 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, enrollment of a specific social gathering or political conclusion. Its application ensures life and freedom of a person irrespectively of his nationality. As Justice J.S. Verma, former Chairman of the National Human Rights Commission observed, “the provisions of the (1951) Refugee Convention and its Protocol can be relied on when there is no conflict with any provisions in the municipal laws”. Fortunately, the judiciary has sought to fulfill the void created by the absence of domestic legislation by its landmark judgments in the area of refugee protection. It extended the guarantee of Article 14 (right to equality) and Article 21 (right to life and liberty) to non-citizens including refugees. The Madras High Court in P. Neduraman and Dr. S. Ramadoss v. Union of India and the State of Tamil Nadu (1992) emphasized the need to guarantee the voluntary character of repatriation. The National Human Rights Commission has also come to the rescue of refugees ‘approaching it with their complaints of violations of human rights.’ While India’s record with respect to protection of human rights of refugees has been generally satisfactory, the Human Rights Committee recently expressed concern at reports of forcible repatriation of asylum seekers including those from Myanmar (Chins), the Chittagong Hills and the Chakmas. It recommended that in the process of repatriation of asylum seekers or refugees, due attention be paid to the provisions of the Covenant and other applicable norms.<sup>60</sup> In this context it needs to be recognized that India is not the only country which resorting to such practices. Indeed, as already noted there are many states in the South which starve refugees out, imprison them behind barbed wire, and otherwise make their lives miserable. India has not become a party to the convention relating to the status of refugees, 1951, yet two basic principles of the convention namely (i) non-discrimination as far as possible between national and refugees and (ii) no discrimination based on race, religion or country or origin amongst refugees this conclusion is based on the provisions of Part-III of the Constitution. Once the refugee is lawfully in India, he/she gets several protections enshrined in Part-III of the Constitution. Article 14 provides that the state shall not deny to any person equality before the law or equal protection of law within the territory of India. Further Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedural established by law. Besides this, Article 22 provides protection against arrest and detention in certain cases. Article 25 (1) provides that all persons are equally entitled to freedom of consignment and right to

freely profess, practice and propagate religion. A glaring example of refugees living with honor is that of Dalai Lama and his Tibetan followers. Being oppressed from the repressive policies of China, Dalai Lama and some of his followers fled away from Tibet and sort political refugee in India. India granted asylum to Dalai Lama and his followers. In this context China resented it and made a great hue and cry over it and alleged that India was interfering in the internal affairs of China. For the protection of refuge in India and India as a Sovereign State was within her right to grant asylum to Dalai Lama and his followers. Yet another example of refugees coming to India was that of the influx of refugees from Bangladesh that is Chakma refugees, in the matter of the National Human Right Commission vs. State of Arunachal Pradesh (1996) ISSC-742, where in the Supreme Court has laid down that the state of Arunachal Pradesh was under Constitutional Obligation to protect and safe-guard the life, health, and well-being of the Chakmas. The Court directed the state to take all necessary measure for ensuring the life and personal liberty of the Chakmas. It may be noted that a large number of Chakma migrants had crossed the Bangladesh borders and entered into the Assam, Tripura and in Arunachal Pradesh<sup>61</sup>. In 2015, the Supreme Court directed the Centre to grant citizenship to Chakma and Hajongs who had migrated from Bangladesh in 1964-69. The order was passed while hearing a plea by the Committee for Citizenship Rights of the Chakmas. Following this, the Centre introduced amendments to the Citizenship Act, 1955. The Union government is keen in implementing the Supreme Court directive now since the BJP is the ruling party in both the Centre and Arunachal Pradesh. The Union Home Ministry cleared the citizenship for over one lakh Chakma-Hajongs. However, they will not have any land ownership rights in Arunachal Pradesh and will have to apply for Inner Line Permits to reside in the State.

#### **ix. India needs a new refugee policy**

Over the past year, many states have taken varying stances on providing asylum to refugees arriving from strife-ridden regimes. Influx, legal or illegal, by refugees or migrants seeking better opportunities, is not new to India. Caught off guard by millions of persecuted Syrians fleeing to safer lands, many countries react differently to the sudden influx. It is the Syrian refugees land at Indian shores to seek asylum. India has hosted refugees from Bangladesh, Sri Lanka, and Afghanistan from time to time without having a central asylum regime governing the providing of such harbor. India needs a refugee policy. The absence of such a framework in India makes it prone to inconsistent and ad-hoc reactions to refugee crises – an unsustainable solution. India’s refugee policy strikes a balance with its environmental and security-related concerns in harbouring persons on its lands, especially via the seas. A refugee policy is only successful if India has the ability to control its borders, which in turn enables it in deciding whom it provides asylum to. As India’s coastline is vast and vulnerable, the need is felt now more than ever to create a robust and centralised coastal border patrolling and securing system. Illegal and unregulated influxes via the coasts are not

only a blind spot in Indian national security but also interfere in the demographic makeup of the region. As the protection of asylum seekers is a significant additional cost to the government, the refugee policy must introduce a system by which immigrants coming to India for economic or other gains are screened from persons seeking refugees.

#### x. India's refugee policy

Recently, there has been an influx of illegal migrants into India after the military coup and subsequent crackdown in Myanmar. The current plight of the Myanmar people has been preceded by that of another group of Myanmar people, the Rohingya. The refugee issue poses a problem for the state as it puts an economic burden, may trigger demographic changes in the long term, and poses security risks as well. However, taking care of refugees is the core component of the human rights paradigm. Further, in any case, refugee flows to India are unlikely to end any time soon given the geopolitical, economic, ethnic, and religious contexts of the region. Hence, there is an urgent need today to clinically address the issue of refugee protection in India and put in place appropriate India's Refugee Policy that is.....

Legal and institutional measures

1. India lacks specific legislation to address the problem of refugees, in spite of their increasing inflow.
2. The Foreigners Act, 1946, fails to address the peculiar problems faced by refugees as a class. It also gives unbridled power to the Central government to deport any foreign citizen.
3. The Citizenship Amendment Act, 2019 excludes Muslims from its purview and seeks to provide citizenship only to Hindu, Christian, Jain, Parsi, Sikh, and Buddhist immigrants persecuted in Bangladesh, Pakistan, and Afghanistan.
4. Moreover, India is not a party to the 1951 Refugee Convention and its 1967 Protocol, the key legal documents pertaining to refugee protection.
5. In spite of not being a party to the 1951 Refugee Convention and its 1967 Protocol, India has had a stellar record on the issue of refugee protection. India has a moral tradition for assimilating foreign people and culture.
6. The constitution of India also respects the life, liberty, and dignity of human beings.

#### xi. Challenges related to refugee policy in India

##### a) Refugees vs. Immigrants

In the recent past, many people from neighboring countries tend to illegally immigrate to India, not because of state persecution but in search of better economic opportunities in India.

- While the reality is that much of the debate in the country is about illegal immigrants, not refugees, the two categories tend to get bunched together.
- Due to this, policies and remedies to deal with these issues suffer from a lack of clarity as well as policy utility.

##### b) Ambiguity in the framework

The main reason why our policies towards illegal immigrants

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and refugees are confused is that as per Indian law, both categories of people are viewed as one and the same and are covered under the Foreigners Act, 1946.

##### c) Ad-hocism

The absence of such a legal framework also leads to policy ambiguity whereby India's refugee policy is guided primarily by ad hocism.

- Ad hoc measures enable the government in office to pick and choose 'what kind' of refugees it wants to admit for whatever political or geopolitical reasons.
- This results in a discriminatory action, which tends to be a violation of human rights.

##### d) Discriminatory CAA

The Government of India has passed the Citizenship Amendment Act (CAA). CAA envisages providing citizenship to people who are religious minorities in India's neighborhood and persecuted by the state.

- However, CAA is not the answer to the refugee problem primarily because of its deeply discriminatory nature, as it doesn't include a particular religion under its ambit.
- Further, many political analysts have dubbed the CAA as an act of refugee avoidance, not refugee protection.

#### xii. Present day status of refugees in humanitarian agenda

- Perhaps best described in the words of refugee law expert, B.S. Chimini, India's asylum and refugee policy is nothing short of a "strategic ambiguity". It seems to be a policy which on the one hand embodies the principle of 'Vasudeva Kutumbakam' and welcomed Tibetan refugees and Tamil refugees from Sri Lanka, providing them with shelter and support but seems to be averse to the prospect of safety and security of those fleeing from other countries, like the Rohingya from Myanmar.
- Chimini argues for clear legislation on refugees, pointing towards the need for a rights-based approach rather than a charity-based approach. Legislation, he argues, would allow the country to prevent refoulement and arbitrary detention of refugees. Additionally, a clear law with clear definitions of a 'migrant' and a 'refugee' will also help identify actual 'illegal immigrants', ensuring the security and safety of the country without breaching international law.
- An unambiguous policy would also help establish a stronger relationship with the UNHCR in the country. Like many countries, India could take advantage of the expertise of the UNHCR with regards to Refugee Status Determination and collaboratively work on the socio-economic protection of refugees, thereby reducing the financial and administrative burden on the state's exchequers. National law may also cover refugees from South Asia, who are currently outside the ambit of the UNHCR in India.
- While the push for accession to the 1951 Refugee Convention is a critical ask in the eyes of International Refugee Law, it is without denial a very far asks. However,

in the short term, the need is for clarity and due process – which is only possible with a clear refugee policy.

- Arguments supporting the maintenance of the status quo for geopolitical or nationalistic reasons fall short in the face of the humanitarian crisis Myanmar faces today. When the world is grappling with a global pandemic that has only pushed the marginalized further into poverty, the humanitarian agenda is the only agenda that secures a seat at the table.

## 7. Conclusion

In spite of not being a party to the 1951 Refugee Convention and its 1967 Protocol, India has been one of the largest recipients of refugees in the world. However, if India had domestic legislation regarding refugees, it could have deterred any oppressive government in the neighborhood to persecute their population and make them flee to India. Understanding efforts to protect refugees and asylum seekers around the world depends on grasping many issues, from the meaning of "protection," to the complexities of aid distribution. This understanding requires thinking through the actions and motivations of governments, aid workers, academics, and the media. Complicated as they are attempts to shed light on all of these topics are vital to the hands-on work ahead, to achieving public understanding of these problems, and to formulating better policies. Now is the time for a progressive development of a global approach to the refugee problem, an approach which takes due cognizance of the basic human rights of refugees and interests of the asylum countries and the international community, and secures the cooperation of all parties in seeking a solution to the problem. Given the close link between refugees and human rights, international humanitarian rights standards are powerful ammunitions for enhancing and complementing the existing refugee protection regime and giving it proper orientation and direction. Since the refugee problem is an important aspect of human rights protection, human rights groups, humanitarian obligation organisations, the UNHCR, Governments and United Nations human rights agencies should take a hard look at their respective roles and make coordinated efforts for elimination of human rights abuses and protection of the rights of refugees and asylum seekers. This challenging and unprecedented time requires swift and immediate actions to be taken to redress the problems faced by migrants and refugees. While a lot has been done to raise awareness, we have no cause for complacency. Most displacement which had occurred in the last few decades could have been prevented in the first place if the parties respected the international humanitarian laws. Those obliged to flee would suffer less if the parties respected the displaced as civilians of their own rather than treating them as outsiders. Sadly, not much has improved in this area. Humanitarian action can bring some relief but it is up to the state parties to conflicts to respect and protect civilians.

## 8. Suggestions

### A global solution to a global refugee crisis needs following methods

- Reform must address the circumstances of all states, not just the powerful few.

- Plan for, rather than simply react to, refugee movements.
- Embrace common but differentiated state responsibility.
- Shift away from national, and towards international, administration of refugee protection.
- Protection for duration of risk, not necessarily permanent immigration.

### Emergency responsibility at the time of corona virus (COVID-19)

United Nations Agencies and NGOs have led from the front and laid down guidelines and measures that need to be followed for the protection of those peoples. The United Nations Human Rights Officials have mandated that emergency responses to the corona virus must be proportionate, necessary and non-discriminatory. Keeping in mind that the need of the people in the wake of the pandemic, the UNHCR has warned the states against any actions which deny these people an opportunity to seek International Protection. International Humanitarian Law (IHL) is the key legal framework that provides crucial safeguards to people affected by armed conflicts. It protects persons who are not participating in the hostilities and restricts the means and methods of warfare. Populations in armed conflict, weakened by years of fighting, destruction, erosion of basic services, and displacement, are particularly vulnerable to the spread of COVID 19 within the current pandemic. Many of them rely on humanitarian relief for their survival. IHL protects those people and it believes that these protections offer crucial safeguards that must continue to be respected during these testing times. Frequent outbreaks of COVID-19 have affected migrants, asylum seekers and refugees who are subjected to harsh living conditions and have restricted access to basic services as well as health care. Under IHL, displaced civilians are entitled to shelter, hygiene, health, safety and nutrition. People facing outbreaks of COVID 19 may aim to move to safety, leading to rising local populations and/or authorities to react forcefully to contain them, including by turning the refugee/migrant camps into isolated detention Centre's. IHL protects all civilians against the consequence of armed hostilities and arbitrary deprivation of liberty and advocates for their access to health care without discrimination.

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