



Refugee Laws in India

Ruchi Bhardwaj

ABSTRACT

The world's refugee population is steadily increasing. A person becomes a refugee because of the situations which are out of his control such as political and religious situations or because of war. Incapability of his home country to take care of him creates fear of persecution. People flee their homeland in search of safety. Following World War II, the number of refugees grew. Refugees are the person who left their own country and came to live in some foreign country without any documentation and legal procedures. But then also it is the duty of that state in which they came to protect them and make sure that their basic Human Rights are also protected. State should make proper laws and regulations for their protection as well as ensure proper working of them than only the purpose of such laws will be fulfilled.

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Refugees are the person who left their own country and came to live in some foreign country without any documentation and legal procedures.

The 1951 Refugee Convention is a key document and defines a refugee as: -

“Someone who is unable or unwilling to return to their country of origin owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”¹

India is home to many Refugees such as persecuted minority communities like “Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from neighbouring Afghanistan, Bangladesh, and Pakistan.”²

Thousands of Refugees come to India from various neighbouring countries. An increasing number of refugees became a problem for the country as it creates an economic burden on the state, a threat to the national security and it also increases the responsibility of the state to take care of the Refugees also along with the nationals. India already has very large population and resources are comparatively less, so it comes a challenge to the state.

Growing refugee is a great area of concern with respect to protection of their Rights including their Human Rights. Human rights are the rights which are attained by a human from its birth they are not bounded by the boundaries of the nations. No matter person is citizen of which country his Human rights will be protected irrespective of his Nationality. We cannot say that the state is not responsible for the protection of such rights if they are refugees.

Indian Refugee Statistics: -

- India refugee statistics for 2020 was 195,403.00, a 0.15% increase from 2019.
- India refugee statistics for 2019 was 195,103.00, a 0.4% decline from 2018.
- India refugee statistics for 2018 was 195,887.00, a 0.64% decline from 2017.
- India refugee statistics for 2017 was 197,142.00, a 0.36% decline from 2016.³

I. RESEARCH QUESTIONS AND METHODOLOGY

In India there are 195,403.00 as per Indian Refugee statistics for 2020⁴. When refugees come from their home country to India it creates a great responsibility such as protection of them and their rights. So, for

¹Definition of Refugee, available at: <http://www.unhcr.org> (Visited on November 22,2021).

² Refugees in India, available at: <http://www.en.wikipedia.org> (Visited on November ,2021)

³India's Refugee Policy available at: <https://www.macrotrends.net/countries/IND/india/refugee-statistics> (Visited on November 24,2021)

their proper protection laws are required. It is very important that the state should take proper care of them and make new laws and policy. So, in this research paper we will research on the following questions: -

- ✓ What are the laws available to Refugees in India?
- ✓ Who is responsible for the protection of Rights of the Refugees?
- ✓ What are the challenges faced by India in its Refugee Policies?
- ✓ Whether State should make more laws for the Refugees?

The methodology used for the current study is: -Multiple research methods are used in the research paper which are as Descriptive Method as it describes the laws which are available for the Refugees in India and analytical approach as it analyse the existing laws and analyses whether more laws are required or not moreover analysis is made for the challenges which are faced by the state in its refugee policies. The secondary type of data is used in the article from various books, websites, journals, surveys etc.

SCOPE AND OBJECTIVES OF THE STUDY

Scope of the study is to describe the existing laws which are available for the protection of rights of the refugees it gives insight to the reader in a summarised form About all the rules and policies which are available to the refugees and also analyse is who is responsible for the protection of rights of refugees and the challenges which are faced by the state for doing so and also whether the state should make more loans for the refugees for note. The study is conducted by using secondary source of information.

The objectives if the studies are as follows: -

- ✓ To study the laws of the refugees in India.
- ✓ To study what are the rights of refugees in India.
- ✓ To examine the challenges faced by India in its Refugee's Policy.
- ✓ To analyse whether state should make more laws for the protection of Refugees
- ✓ To analyse inadequate application of laws.

II. LITERATURE REVIEW

CHAPTER 1:- LAW OF REFUGEES IN INDIA

Laws plays an important role for protecting rights, similarly laws are also required for the refugees. The laws which are available in India for Refugees are as follows: -

❖ **India till date not yet signed the “1951 Refugee Convention” and its 1967 protocol as well.**

The Convention and protocol play a very important role for the protection of Refugees. The convention and protocol have more than 140 signatories. It is the main convention and protocol for the Refugees on an International level. India has a large population of Refugees despite that it seems India is behaving irresponsibly towards the Refugees. It also gives negative impression on international level. If India have signed these it must have created a very stable environment for the management and development of the Refugees.

The various reasons which are given by India for not being signatory to these Convention and Protocols are as follows: -

That the definition which is given by the convention only talks about the violation of one's political rights and civil rights. It does not talk about the one's economic rights. That means if the person came to some other country from his home country as refugee that should not be because of the economic problem. It completely excludes economic problem which is not practically possible. Refugee also leave their country for the economic problems also. For instance, a person who is not able to earn his livelihood and be afraid that he will starve for food and die fled to another country to learn his livelihood and survive. Excluding economic reason from, the purview of the definition is impractical and cannot be justified which can be considered as a valid reason given by India for not signing the Convention and the protocol.

❖ **“Universal Declaration of Human Rights 1948 i.e., UDHR”:-**

UDHR is an international document which is signed by 192 members⁵. It came into existence in 1945 after the World War II. It is created for the protection of Human Rights of all the human in the world. According to UDHR, the Human rights are available to all the human beings in the entire world despite of their nationality. The only requirement is of “being human” i.e we can say that the Human Rights are Universal.

India has signed the UDHR. That means it is a party to the UDHR and India is bounded to follow all the rules and regulations formed by UDHR.

The UDHR is directly connected with the refugees as the declaration talks about the universal rights so the refugee's despite of not been in their home country will enjoy all the human rights according to the declaration.

⁴ Indian Refugee Statistics, available at: <http://www.macrotrends.net> (Visited on November 24, 2021)

⁵ United Nations Declaration of Human Rights, available at :<http://www.youthforhumanrights.org> (last visited on November 26, 2021)

Indian state will be responsible to ensure that the human rights of the refugees are protected. If there will be violation of those rights actions will be taken against the state on an international level.

Practical application of UDHR rules in India: - Yes, the UDHR is practically applied in India “The constitution of India 1950” is based and drafted by incorporating UDHR . There are “fundamental rights “which are given by the Constitution which are very much like the rights given in UDHR.

India is an active participant of the UDHR and gave various contributions to it as well. Some of the few contributions are as follows: -

- ✓ To use word “Human Beings” instead of “men”.
- ✓ For the non-discrimination India inserted the words i.e., “colour” and “political opinion”.
- ✓ India inserted that there should be “just and favourable conditions of work”
- ✓ Secularism.
- ✓ Multiculturalism
- ✓ Universality of all human rights.⁶

❖ **International Convention on Civil and Political Rights (ICCPR-1966) and International Covenant on Economic, Social and Cultural Rights (ICESR)**

India is signatory to the ICCPR Convention. The conventions as the name suggests are for the protection of Civil, Political, Economic, Social, and cultural rights of all the human beings. It is all about the equality and non-discrimination of the person the basis of any ground. India signed ICCPR on 10 April 1979.⁷ ICESR signed by India on 09 Jul 1993⁸.

India has embedded the principles of these conventions in Constitutional ethics. Landmark cases have been decided by using the principles of these conventions. Some of the cases are as follows: -

Navtej Singh Johar vs. Union of India Ministry of Law Andon 6 September, 2018⁹ and Justice K.S Puttayswamy(Retd) vs Union of India on 26 September, 2018¹⁰. In these cases the court decided the cases with reference to the Article 19 of ICCPR.

Now, in 2021 there are challenges which are faced by India about the incompetency of the IT sector to the above-mentioned conventions. According to the Freedom report, India continues to be a strong democracy in terms of its electoral process and many other indicators. However, history shows that as freedom of speech dwindles, healthy democracies quickly deteriorate into elected autocracies. These Rules mark a turning point for freedom of expression in India's democratic future, as well as the UDHR and the ICCPR's future. Activists, journalists, constitutional experts, and civil society groups have urged domestic courts hearing challenges to the 2021 Rules to maintain freedom of expression and privacy rights while striking down the disproportionate elements in the Rules. If upheld and implemented in their current form, these Rules would regulate big tech in India, but at the cost of freedom of expression in the world's largest democracy.

❖ **Convention on the Elimination of all forms of Racial Discrimination (CERD-1965)**

Convention is signed by India. The Convention is binding in nature to its signatories. It gives protection against the racial discrimination. It considers all the human beings as same and eliminates the discrimination done with them on any ground e.g, their race , caste ,color , religion . etc.

❖ **Torture Convention -1965**

India is one out of those five countries who have ratified the torture convention.

Torture Convention as the name suggest is against the protection of humans from any kind of torture committed against them. As the refugees are not the citizens of India the situations may arise where they can be tortured for example extra working hours, bad working conditions, no maternity benefits, less wage pay, work on hazardous industries etc. India is a part of the Torture Convention.

Practical Application: - There is no separate act for “Torture in India”. It is incorporated in “Indian Penal Code, 1860” in Section 330&348 it gives punishment of seven years and three years respectively.

The best example of the torture are the people of Manipuris they have been treated very differently and people even don't consider them citizens of India and call them with different names. Militarisation is the main cause of all the problems of the Manipur people's problem. They should be treated with respect.

⁶ Remembering India's Contributions to the Universal Declaration of Human Rights ,available at : <https://www.thewire.in> (Last modified on December 20,2021)

⁷ Declaration/ Covenants I National Human Rights Commission of India, available at :<http://www.nhrc.nic.in>(Last visited on November 26,2021)

⁸ Ratification Status of India, available at :<http://www.tbinternet.ohchr.org> (Last visited on November 26,2021)

⁹ Navtej Singh Johar vs UOI, available at: <http://www.indiankanoon.org>(Last visited on November 26,2021)

¹⁰ Justice K.S Puttayswamy(Retd) vs Union of India, available at: <http://www.indiankanoon.org> (Last visited on November 26,2021)

Shortcomings:- There is no witness protection act in India.

❖ **ACTS**

Registration of Foreigners Act,1939

The act came before the independence came in India. The act is a pre-independence act. The act deals with the matters of the Foreigner Citizens who are there in India. The act deals with the registration of foreigners into the country. There are rules and regulations for the foreigners in the country for instance, The no of days a foreigner can stay in India with a tourist visa is one hundred and eighty days.

The act governs registration, rights, and duties as well as their liabilities.

Foreigners Act ,1946

The Foreigners act governs the coming and going out of the refugees in India. And it keeps check on the number country's no of citizens and as well refugees and illegal migrants. It controls them as well.

Passport Act, 1955

It deals with the registration of foreign people and refugees in India and upon the successful registration they will be called as citizen of India.¹¹

All the above-mentioned act is made for the registration of Refugees in India coming from various countries like Bangladesh, Afghanistan etc.

❖ **Non-Refoulment**

India follows the principle of non-Refoulment. The principle of non-refoulment have humanity roots. In simple words, it states that the person who are coming from their home country to some different country because they were not feeling safe there due to various regions the country in which they are coming that country cannot sent back them to their home country where they were facing the in-human treatment and tortures and other harms.

It is a kind of guarantee which is given to the refugees for not sending them back.¹²It is the most essential principle which gives great safety to the refugees.

The principle of Non-refoulment not yet added in the Indian statutes.

CHAPTER-2 RIGHTS OF REFUGEES IN INDIA

The rights which are given by the Indian State to the Refugees differs from category to category of Refugees. Generally, it follows the principle of “non-refoulment” for those who carries UNHCR document that is not sending back the people to their whom country where they were suffering and were not safe.

Refugees are human beings though they come to foreign country without any documentation and legal procedures the basic human rights should be provided by the state to them.

First, to get the rights of the refugee the individual's status should be clarified as refugee. The arrival of refugees can be from land, water, and air. Firstly, they will meet the initial authorities who will check their passports and various other documents, if they have not found than the further interrogation will be done, usually in the first interrogation refugee will be not able to clearly speak because of the fear in that case further interrogations will be done, and FIR will also be lodged. **The rights which are available for the refugees on arrival are as follows: -**

1.	Detention
2.	Lack of Medical Aid in Detention
3.	Detention of Women Refugees
4.	Detention of Refugee Children
5.	Tracing of Refugee after Release from Detention
6.	Filing of chargesheet on time to plead guilty
7.	Securing against re-arrest on release from detention

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❖ **Detention: -** A refugee can be detained as soon as he will enter Indian Boundaries. He will be detained by the authorities for the investigation and a case will be filed against him. Now the refugee must fight his case in the court of law, but he doesn't have any sources to that. So, the help will be provided to him by “legal-aid cell”, or the information of such refugee will be given to UNHCR, or the local NGO can also help him in representing his case.

¹¹ Citizenship Act, 1955, available at: <http://www.indiancode.nic.in> (Last Visited on November 26, 2021)

¹² The principle of non-refoulment, available at: <http://www.ohchr.org> (Last visited on November 26, 2021)

¹³ Refugees in India, available at: <http://www.worldii.org> ,(Last visited November 27, 2021)

- ❖ **Lack of Medical Aid in Detention:** - On arrival if the refugee is having any kind of injury and he is detained by the police proper medical care will be provided to him.
 - ❖ **Detention of Women Refugees:** - Women Refugees if no valid ground for keeping in detention when the trial goes on will be released on Bail.
 - ❖ **Detention of Refugee Children:** - **Refugee** children are handled very delicately all the necessities will be provided to them. They will also be permitted to meet their parents. The refugee children problem mainly arises because they have not given a separate resident permit. Their permit is included in their parent's permit. In that situation UNHCR will handle the cases.
 - ❖ **Tracing of Refugee after release from the Detention:** - **The** free from detention does not mean the ongoing case on refugee has been sorted. He may also be released on the Bail. So, a proper tracking of such refugee will be kept so that they cannot become untraceable.
 - ❖ **Filing of chargesheet on time to plead guilty:** -It is very important to file chargesheet on time. If refugee wants to plead guilty for some instances than it should be done timely.
 - ❖ **No Re-arrest:** - The refugee after the case is finished still, he is not having all the legal documents to live in India. So, in such circumstance police escort should be provided to such refugee to get his documents collected and have a valid and legal stay in India.
- The various other rights which are available to Refugees are as follows: -
- ✓ Right to work
 - ✓ Right to Education
 - ✓ Right to social security
 - ✓ Right to access in courts
 - ✓ Freedom of Religion etc.
 - ✓ Protection under Article 21 of The Indian Constitution

CHAPTER-3 RESPONSIBILITY OF PROTECTION OF RIGHTS OF THE REFUGEES

The most important question is that who will take the responsibility to protect the refugees. So, the appropriate answer to this question is the state of that state in which they came as refugees and the various international human rights protecting commissions such as UNHCR etc.

❖ **State**

State cannot deny its responsibility for the protection of Refugees. As there are international conventions on various human rights and protection of Refugees and India is signatory to those conventions cannot deny the responsibility of taking care and protecting refugees. Though the principle of non-refoulment has not been yet added in the Indian statutes but still India follows the principle and not sent back the refugees in their country of arrival where they were facing various problems such as torture, not feeling safe, not able to earn livelihood, various political and social reasons, wars etc. So, it becomes the responsibility of the state to protect them.

Various measures are taken by the government to protect them such as providing proper legal aid to refugees on their arrival, taking proper care go children refugees and handling them delicately, providing necessities to them and even referring them to UNHCR to get aid for them. State also provides police escorts to the Refugees to collect their appropriate documents which are required to reside in India so that they can reside legally with documents.

The basic human rights are provided to the Refugees and various rights also such as right to work, right to education etc. which are necessary for their survival.

❖ **UNHCR**

UNHCR is the Commission is also responsible for the protection of the Refugees. Various grave and complex matters which cannot be handled by the Indian state, the state refers those matters of the refugees to the commission.

It also provides legal aid to the Refugee for representing their case, helping in getting their documentations, etc.

CHAPTER-4 CHALLENGES FACED BY INDIA IN REFUGEE POLICIES

India's Refugee Policy: -

- ❖ India has not yet signed "1951 Refugee Convention and its 1967 Protocol".
- ❖ "Citizenship Amendment Act,2019" keeps Muslims out of its scope.
- ❖ Despite the fact that it is neither a signatory to the 1951 Refugee Convention or its 1967 Protocol, India has a strong track record when it comes to refugee protection. India has a long history of morally absorbing foreigners and their cultures.
 - Life, Dignity and Liberty of the Refugee are protected by The Constitution of India. Decided in a landmark case by Supreme Court *National Human Rights Commission vs. State of Arunachal Pradesh (1996)*

held that “while all rights are available to citizens, persons including foreign citizens are entitled to the right to equality and the right to life, among others.”¹⁴

○ Commission vs. State of Arunachal Pradesh (1996) held that “while all rights are available to citizens, persons including foreign citizens are entitled to the right to equality and the right to life, among others.”

Challenges faced by India in its Refugee Policy: -

Following are the challenges which are faced by India in its refugee Policy:-

Refugees and immigrants are mixing up with each other which makes policy application difficult: - many people from the foreign country comes to India not because they are in actual facing persecution but for the better earning opportunities in India and shows themselves as refugees when they are immigrants. So, it is very difficult to make distinction between them and there is less clarity and poor application of policies.

Framework is understood in more than one way: - The framework of the policies is confused as there is a mix-up of immigrants and refugees because immigrants are confused that they are also the refugees and they are covered under the Foreigners Act,1946.

Discriminatory CAA: - The CAA Act is discriminatory in nature as it keeps Muslims out of its purview.

CHAPTER-5 REQUIREMENT OF MAKING MORE REFUGEE LAWS IN INDIA

There are various laws in India which are governing the Refugees in India. Indian statues are also applicable to the refugees. We cannot say that India is totally governing and protecting the refugees at its best, but India is doing a great job, but noting is absolute there are various shortcomings always.

For the betterment of anything there should be continuous development required. The new laws with time should be bought, necessary amendments should be made time to time. Following are the laws which will help in the betterment of Refugee laws: -

- ❖ There should be proper statute for governing refugees.
- ❖ India should sign the 1951 Refugee Convention and its protocol.
- ❖ Proper rules and regulations for distinguishing Refugees and Immigrants.
- ❖ NGOs should also become the main role player in the Refugee policies.
- ❖ Elimination of immigrants should be done as there are limited resources available to the country and they should not be wasted irrelevantly because of which refugees also suffers from lack of resources available to them, which also creates a negative impact internationally on the treatment of Refugees in India.
- ❖ Law for the “Non-Refoulment” or it can be added in the statute governing Refugees. As India only follows the principle but its not enacted in any of the statute.

III. CONCLUSION AND SUGGESTIONS

- ❖ Refuges are already the victim of persecution faced in their country of origin and came to some foreign country for betterment of their life. So, they should be treated with humanity in the country they arrive as per the principles of Human Rights. It is also bounded by the various conventions which are signed by India.
- ❖ There is various law for governing the Refugees in India, but more laws should be made for the betterment of the laws related to Refugees.
- ❖ There are challenges faced by the Indian Government for the application of its Refugee Policies. They problem can be solved by making proper distinctions between the immigrants and the Refugees. The CAA Act is violative of Article 14 of “The Indian Constitution” as it does not include Muslims in its scope.

BIBLIOGRAPHY

The Constitution of India

Statutes Referred

- ❖ Registration of Foreigners Act,1939
- ❖ Foreigners Act ,1946
- ❖ Passport Act, 1955
- ❖ The Indian Evidence Act,1872
- ❖ The Code of Criminal procedure,1973
- ❖ The Code of Civil Procedure

Cases Referred

- ❖ Navtej Singh Johar vs UOI
- ❖ Justice K.S Puttayswamy(Retd) vs Union of India
- ❖ Commission vs. State of Arunachal Pradesh (1996)

Web Sources Referred

¹⁴India’s Refugee Policy, available at: <https://www.drishtiiias.com/> (Last Visited November,27 2021)

- ❖ <http://www.unhcr.org>
- ❖ <http://www.en.wikipedia.org>
- ❖ <https://www.macrotrends.net/countries/IND/india/refugee-statistics>
- ❖ <http://www.macrotrends.net>
- ❖ <http://www.youthforhumanrights.org>
- ❖ <https://www.thewire.in>
- ❖ <http://www.nhrc.nic.in>
- ❖ <http://www.tbinternet.ohchr.org>
- ❖ <http://www.indiankanoon.org>
- ❖ <http://www.indiankanoon.org>