

REFUGEE PROTECTION: ROLE OF UNHCR IN INDIA

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Abstract: UNHCR plays a very comprehensive role for protection of uprooted and displaced people. India has been an executive member of the UNHCR since 1995 and has been availing the benefits since then. Their work starts the moment, a refugee enters India. Such person may apply for refugee status and registration at the UNHCR office. A legal officer is appointed to interview such refugees and procure all the relevant information. If there are inconsistencies in the interview, they should be handled with care and caution as the background and the mental state of the refugee should be considered. Many a times, there are language barriers and all the information cannot be collected. This is not a reason for declining the refugee status by the UNHCR. The main object for deciding the status is the fear of persecution or threat to life. The UNHCR mandate helps in protecting refugees against illegal arrest and detention and rescues the person if they are already under arrest. But a mandate is issued only to refugees from outside South Asian region. This leaves ample room for discrimination and exploitation of “other” refugees.

The UNHCR provides several amenities which the Indian government fails to do in most cases. Because their status and identity is well established by the UNHCR office, they can procure a valid passport, travel documents authorizing them to travel abroad, ration cards or open a bank account. The legal officers of UNHCR provide free legal aid to the recognized refugees.

The organization has formal agreements with other NGOs to provide financial assistance to the poor and needy across the globe including India. Furthermore, they provide free medical

treatment to the sick refugees in government hospitals with special emphasis on women and child health care. The UNHCR has an army of volunteers and interns who assist in providing vocational training which makes them self-reliant, primary education and counselling to the distressed refugees with the assistance of other NGOs who have an expertise in these fields.

Introduction:

Who is refugee? There are many definitions which defines the word refugee. The 'refugee' is a word which is use to describe the person who is force to flee or run away from his own home country to the other country, for this there may be any reason behind it, either this flee may be by the civil war, public disorder, earthquake or any other natural or environmental degradation. But in the International law the refugee is the person who is force to leave from his own home country to another country for any certain reason from his own origin and does not have its protection to his life or property. In the twentieth century several attempts have been made to define the term 'refugee'. The word refugee is derived from the *refugiea* French word which means to flee for safety.

Article 13(2) of the Universal Declaration of Human Rights (1948) defines:

That every one has the right to leave any nation including his own, and to return to his nation.

Article 14 of UDHR defines:

1. That everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to purposes and principles of the United Nations.

After that the article 12(2) of the International Covenant on Civil and Political Rights, 1966 provides that everyone shall be free to leave any nation, including his own nation. Article 12(3) defines that this right shall not be subject to any restrictions except those are necessary to protect national security, public order, public health or morals or the rights and freedoms of other and are consistent with the other rights recognized in the present covenant.

The protection of refugee right against the refoulement is set out in the 1951 Convention relating to the status of refugees:

“No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.¹”

The term refugee is not defined by the Customary International Law and they treat them as a aliens. Mainly the term refugee is denoted to those persons who flee from their nation in which they permanent lives to escape military action. The convention of 1951 on refugees defines refugees under Article 1 as:

“The any person who owing to 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 unwilling to avail protection of that country, or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear; is unwilling to return to it.”²

This definition does not include the contemporary problems relating to the refugee protection and these are lacunae in this definition. And this definition also fails to include the person seeking refuge due to environment disaster, internal disturbance, civil wars and persons displaced internally due to hostility.

The only persons should be refugees who has the serious threat to their life and liberty by the above definition. The persons who left their nation for reason for purely personal convenience as opposed to economic refugees are said to be a political refugee. The term fear and persecuted are not define by the convention, torture, discrimination of race, religion, color, nationality, language and the membership in a social group and other reasons may be regarded as cause of persecution. Only people who those fleeing political persecution can only effectively qualify for the status of refugee because persecution is a denial of human rights. A person left or flee from his nation because as a result of persecution he is denied

1. Article 33(1)

2. Article 1 of the Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa of September 10, 1969 and Cartagena Declaration in Latin America.

the enjoyment of his basic human rights. If the economic considerations are interwoven with political considerations of his nation, then on these certain occasions a person fleeing on economic reasons may also know as refugee.

In some recent years the fleeing of the people from one nation to another nation is increasing. In this movement from one nation to another nation the reason of the majority is to establish or to create the new livelihoods, for their improvement of standard of living or for the better educational opportunities. Many jurists and a colloquium of Latin American government representatives in 1984 adopted the Cartagena Declaration. In this declaration it is defined that "Persons who flee their countries because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

Refugees and other Migrants:

The difference between refugees and other migrants are that the refugees are the person who are forced to leave their nation and there is no hope to return to their home nation they cannot plan their travel and they are not free to return to their nation. But in case of the other migrants they leave their nation to seek a good life in any nation they are not forced to leave their nation. The other migrants before leaving their nation they can seek the information about their new home, and they can study the language and they can also explore employment opportunities in the other nation.

The other migrants can plan their travels but the refugees cannot plan their travels, they are forced to leave their nation either by the government of their nation or by the civil war. The other migrants can say goodbye to their relatives or the other important people in their lives and they can take their belongings with them and they are free to return to their home nation any time to visit family members and friends, but the refugees leave behind their homes, and their belongings (most of all) and they left behind their people such as their relatives, friends and some of family members also.

The journey of the refugees is also not safe they put their lives at risk to flee from their nation to another in search of protection. They cannot come back or return to their nation unless the situation which forced them to leave improves. The some of the refugees are

force to leave their nation with no warning and many have experienced significant trauma or been tortured or otherwise ill-treated. The concerns of the refugees are the human rights and safety, not economic advantage. The refugees are the victims of the gross human rights violation and they are the person who leave their nation because they are denied their enjoyment of their basic human rights.

Migrants who left their nation for the non-refugee related reason cannot take or get the international protection during the period of residence in another nation. For example: another national student or the worker may come under the definition of refugee when there is a violent change of regime in the nation of student or the worker by any civil war, or any other natural or environmental degradation. In such contexts the UNHCR will ensure those people to get the benefits of the refugee.

Refugee protection at National and International level:

The protection of refugees is the primary duty of the state. At the international level the protection of refugees there are many Conventions are formed for the protection of the refugees. First, the question comes in the mind, that why do refugees need protection? For this the Universal Declaration of Human Rights states that “everyone has the right to a nationality”, that every person has the right to enjoy all human rights stated by UDHR. every state government must make certain provisions that everyone holds and enjoy their nationality. Despite this and other provisions of international human rights law, most of the people never get or are deprived of their nationality. Where some of the people remain excluded, their statelessness leaves them vulnerable, because their lack of relation with any nation, the refugees need special attention and protection to ensure that they can enjoy their basic rights.

The states primarily responsibility is to protect the refugees. It is about 66 years history that the United Nations High Commissioner for Refugees (UNHCR) is working closely with the governments as partners in refugee protection. Governments is generously granting asylum to refugees and allow them to remain until conditions have been conducive for the refugees to return to their home nation in safety and with dignity from every region of the world. By funding UNHCR’s protection and assistance operations and through their own domestic’s

refugee programs the governments had allow the UNHCR to operate on their territories and had given financial assistance to the refugees.

The number of nation are increasing in the world who are inviting the refugees for settle permanently within their boundaries. The governments of the asylum country offering naturalization, providing land and/or permitting legal employment to the refugees. The solution to the problems of those refugees who could not assure the protection in their home nation or in their nation of first asylum by the both nation (asylum nation and resettlement nations).

On 28th July 1951 theUnited Nations Convention relating to the Status of Refugees was originally adopted and this convention was to deal with the aftermath of the second world war and the cold war set in. TheArticle 33 set out the most basic right for the refugees is the right not to be subject to refoulement.

The Universal Declaration of Human Rights stated the human rights and most of them crucial to refugee protection such as:

- Right to life, liberty and security of person
- Right to seek and enjoy asylum
- Freedom from torture, or cruel, inhuman or degrading treatment or punishment
- Freedom from slavery or servitude
- Recognition as a person before the law
- Freedom of thought, conscience, and religion
- Freedom from arbitrary arrest and detention
- Freedom from arbitrary interference in privacy, home and family
- Freedom of opinion and expression
- Right to beeducated Right to participate in the cultural life of a community.

Conventions dealing with Refugees:

- The four Geneva Conventions providing, inter alia, standards of humane treatment for prisonersand civilians in time of armed conflict (1949) and the two Additional

Protocols relating to the protection of victims of international and non-international armed conflict (1977).

- Convention relating to the Status of Refugees (1951) and Protocol (1967)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990, not yet in force)
- UN Declaration on Territorial Asylum 1967
- Universal Declaration of Human Right 1948,
- International Convention on Civil and Political Rights,
- Convention on the Elimination of Discrimination against Women (CEDAW),
- International Convention on economic Social and Cultural Rights (ICESCR)
- Convention against Torture and Cruel Inhuman or degrading Treatment or Punishment.

African Charter on Human and Peoples' Rights:

every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment, shall be prohibited .³

every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained .⁴

every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts violating his fundamental rights .⁵

3. Article 5 African Charter on Human and Peoples' Rights.

4. Article 6 African Charter on Human and Peoples' Rights.

American Convention on Human Rights:

No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person .⁶

Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons .⁷

Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors .⁸

1. "Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States

5. Article 7(1) African Charter on Human and Peoples' Rights.

6. Article 5(2) American Convention on Human Rights.

7. Article 5(4) American Convention on Human Rights.

8. Article 5(5) American Convention on Human Rights.

Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies .⁹

7. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
8. The exercise of the right shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: respect for the rights or reputations of others; or the protection of national security, public order, or public health or morals.
9. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
10. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law .

Inter-American Convention to Prevent and Punish Torture:

The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest. The States Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment .

9. Article 7 of American Convention on Human Rights.

European Convention for the Protection of Human Rights and Fundamental Freedoms: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".¹⁰

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
3. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation .¹¹

Universal Declaration of Human Rights:

No one shall be subjected to arbitrary interference with his privacy, family, home. everyone has the right to the protection of the law against such interference.¹²

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state .¹³

International Covenant on Civil and Political Rights:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home.
2. Everyone has the right to protection of the law against such interference ¹⁴.

10. Article 3 of Inter-American Convention to Prevent and Punish Torture.

11. Article 5 of Inter-American Convention to Prevent and Punish Torture.

12. Article 12 of Universal Declaration of Human Rights.

13. Article 16 of Universal Declaration of Human Rights.

- 1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
- 2) The right of men and women of marriageable age to marry and to found a family shall be recognized.
- 3) No marriage shall be entered into without the free and full consent of the intending spouses.
- 4) States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children .¹⁵

International Covenant on Economic, Social and Cultural Rights:

The State Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions .¹⁶

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent .¹⁷

14. Article 17 of International Covenant on Civil and Political Rights.

15. Article 23 of International Covenant on Civil and Political Rights.

16. Article 10 of International Covenant on economic, Social and Cultural Rights.

17. Article 11(1) of International Covenant on economic, Social and Cultural Rights.

Protection of Refugees in India:

It is needless to mention that there is a lot of criticism and pressure on India to ratify the Refugee Convention, 1951 or the 1967 Protocol since India hosts refugees from everywhere. Despite the international pressure, India continues to be a non-signatory. One of the main functions of UNHCR in India is also to discuss the ratification of the Convention with the govt. but it seems like India is extremely sensitive to this issue and the discussions are leading to nowhere. India's reluctance to sign the convention stems from the reasoning that it is eurocentric and addresses only the refugee issues that existed post Second World War. Since then a lot of water has passed under the bridge and there has been no amendment to that effect.¹⁸

It is India's belief that every refugee is given "some" relief despite it being a non-signatory country, but that is no justification as we are also the biggest violators of refugee rights. India has its unique problems due to its geo-politics and colourful history with neighbouring nations, therefore ratification of a universal refugee convention is not politically viable. It will hamper diplomatic relations and India wants to maintain healthy relations with China because it is the biggest threat to India in Asia. Moreover, ratification will mean greater obligations imposed on India to provide more rights and privileges to its refugees. This is not possible for a poor and a developing country like India which struggles to provide basic amenities to its own population. We have been facing the problem of infiltration and terrorism from our neighbours ever since partition which the Western nations fail to acknowledge or even consider as a problem. The policy makers believe that if India ratifies the convention, this problem will increase manifold and there will be no legal mechanism to distinguish between an infiltrator and a genuine refugee. This argument stems from the assassination of P.M Rajiv Gandhi by a Sri Lankan national who came to India as a refugee. Such peculiar and complex issues are not discussed anywhere in the convention which threaten our national security and sovereignty. It is also contended that the convention was drafted way back in 1951 and the protocol in 1967, most of the provisions are outdated as they fail to accommodate the contemporary challenges. Many people migrate to India in search of opportunities which

18. Arjun Nair, National Refugee Law for India: Benefits and Roadblocks.

http://www.ipcs.org/pdf_file/issue/51462796IPCS-ResearchPaper11-ArjunNair.pdf (visited on 24th April, 2018).

increase the burden on the economy. Thus, the policy reviewers and framers believe that by ratifying the convention, the problem of migrant workers will increase as they will try to misuse the convention and try to wrongfully avail the status of refugees for better opportunities. There is also “fear of the unknown” which means that India is unaware of the consequences that will follow post ratification. In case of noncompliance, it may lose its respect in the International community because everything will then be subjected to international acclaim or criticism. Since every framer interprets the provisions and analyses them as per his understanding, it is believed that India is unaware of the exact intention and purpose behind each article of the convention and the protocol because there was no representation from India at the time of drafting. Due to these reasons, which have been debated repeatedly, India does not agree to ratify the convention. Whether India should ratify the Convention or not is still a contentious issue.

Indian Constitution Providing Protection for Refugees:

India has ratified several International human right treaties which obliges India to provide protection to refugees on humanitarian grounds. Some of the principles like the “right to seek asylum from persecution” are a part of Customary International Law which is binding on all states including India and specific laws ensuring the same can be enforced. In *Visakha v. State of Rajasthan*¹⁹, the court upheld harmonious construction of international law and domestic law when it is consistent with fundamental rights. The Government gives temporary protection to refugees. Some fundamental rights are guaranteed to non-citizens under the Constitution. The foremost provision is the right to approach courts for issuance of writs in case of infringement/enforcement of fundamental rights²⁰ which is usually done by filing PILs to ensure enforcement of refugee rights. Some of the rights are given in Art. 14, 21, 22, 25-28, 32 and 226 of the Constitution. The most important of them all is the equality of law and equal protection under law which guarantees fair and just treatment for all refugees. This is however subjected to reasonable classification and intelligible differentia which differentiates between citizens and refugees²¹. Refugees also have the right to life²² and

19. 1997(6) SCC 241, paras. 14-24.

20. Article 32 and 226 of the Indian Constitution.

21. Article 14 and 253 of the Indian Constitution.

22. Article 21 of the Indian Constitution

dignity and this does not connote drudgery or mere animal existence. Their cases should be dealt in accordance with the due process of law. In *Louis De Raedt v. Union of India*²³, the court held that even non-citizens have the fundamental right to life, liberty and dignity. This right of life is followed by right against arrest and detention²⁴. In one case²⁵, the Guwahati High Court ordered for interim bail for Burmese refugees who were detained and the court was considerate in not insisting on local sureties.

Similarly, the courts have given liberal interpretation in detention cases so that the UNHCR can determine the status of the refugee²⁶. In another case of *Majid Ahmed Abdul Majid Mohd. Jad Al-Hak v. Union of India*²⁷, the Court upheld that food and medical care should be provided to detainees as they are the bare minimum essentials for survival. Apart from the above-mentioned rights, the refugees are given rights to practice and profess their own religion subject to reasonable restrictions that are applicable to everyone including aliens. They are given the right to establish educational institutions and form peaceful assemblies. Rights guaranteed under the Constitution cannot be made a reality because refugees have no right to self-employment or access to work permits. At the most, they can be employed in informal sector or as casual labour. This reduces their status to mere puppets in the hands of the State who have no means of livelihood. The case laws and the Constitutional provisions give us an impression that there is an intention to protect refugees but the situation is vague and exists only for records because the real practices are arbitrary in nature. Even between citizens and refugees, disparity and clashes exist. For instance, the Tibetan refugees have been granted land across the country to build their own villages, have access to school and colleges, protect and profess their own religion and culture and on the other hand many Indians are living in abject poverty without access to shelter, clothing and food. While the court continues to decide cases favouring refugee protection, the situation is not getting any better because they are not being applied unanimously in all matters concerning refugees.

23. AIR 1981 SC 1886.

24. Article 22 of the Indian Constitution.

25. *U Myat Kayew and another v. State of Manipur and another*, Guwahati High Court 1991, (Civil Rule No. 516 of 1991).

26. *Mr Boghy v. Union of India* (Civil Rule No 1847 of 1989).

27. Delhi High Court 1997, Criminal Writ Petition No 60 of 1997.

Laws Governing Refugees in India:

We have several domestic legislations in force to deal with refugees. India draws no distinction between a “foreigner” and a “refugee”. And this gives rise to a plethora of problems which will be highlighted subsequently. The laws are

- Passport (entry into India) Act, 1920.
- Passport Act, 1967.
- Registration of Foreigners Act, 1939.
- Foreigners Act, 1946.
- Foreigners Order, 1948.

The Passport (entry into India) Act, 1920 and the Passport Act, 1967 makes no distinction between genuine refugees and other categories of foreigners like economic migrants, tourists and students. Thus, the refugees run a big risk of arrest by immigration authorities and illegal deportation in the absence of a valid passport²⁸. Penalty should not be imposed on refugees²⁹ because they may leave in turmoil not have the time to get a passport issued. In most of the countries, access to passport offices may not be possible due to distance and lack of infrastructure.

The Registration of Foreigners Act, 1939 empowers the Central Government to make rules for foreigners. Where and whom to report, provide proof of identity and registration certificate³⁰. This law should not be applicable to refugees as they have already suffered at the hands of their Government and these burdensome technicalities add to their agony. Furthermore, the power of Central government is used in an arbitrary manner to harass genuine refugees and there are no checks to curb this power. The Foreigners Act, 1946 places some more restrictions on refugees like defining whom to meet and the routes only through which they can enter the country. One of the biggest criticisms of this act is that the authorities have “unlimited power” to arrest and detain any foreigner on mere suspicion for non-compliance under this act.

28. Bimal N Patel, *India and International Law*, (2005 edn), Martinus Nijhoff Publishers, 2005.

29. Article 31 of the Refugee Convention.

30. R. J .S. Tahir (eds.) Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir: *Refugees and the Law*, 2edn, HRLN, 2011, pp 78.

Role of UNHCR at International and National Level:

“Human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of Asylum”.

United Nations High Commissioner for Refugees.

The UN General Assembly select UNHCR for the task of support states to protect refugees and to resolve the refugees situations not only because refugees problems sometime overlap, but also to protect the refugees requires in many ways, which deals with refugees.

The role of UNHCR at International level starts from the 1951 Convention. In 1951 Convention, the UNHCR and the non-governmental organizations plays the very important role in protection of refugees. For promoting human rights and in the provision of solutions and protection for refugees, in ensuring the security and related interests of states, sharing responsibilities are the main important part for protecting refugees. In Geneva, the government of Switzerland and the Ministerial Meetings of the state parties to mark the 50th and 60th anniversaries of the Convention in December 2001 and December 2011, expressly acknowledged, “the continuing resilience and relevance of the International regime of the rights and the principles” and the Convention of 1951 and the Protocol 1967 had enduring value and relevance are the foundation of the international refugee protection of the 21st century.

For the determination for the status of refugees had established the important legal bonding between refugee status and protection by the many nations judicial and administrative procedures which helps to consolidate the fundamental principal of non-refoulement. The 1951 Convention had inspired both doctrine and practice in which the language of refugee rights is entirely appropriate which initially taken as an agreement between states for the better treatment of refugees.

Role of UNHCR in India:

UNHCR plays a very comprehensive role for protection of uprooted and displaced people. India has been an executive member of the UNHCR since 1995 and has been availing the benefits since then. Their work starts the moment, a refugee enters India. Such person may apply for refugee status and registration at the UNHCR office. A legal officer is appointed to interview such refugees and procure all the relevant information. If there are inconsistencies in the interview, they should be handled with care and caution as the background and the mental state of the refugee, should be considered³¹. Many a times, there are language barriers and all the information cannot be collected. This is not a reason for declining the refugee status by the UNHCR. The main object for deciding the status is the fear of persecution or threat to life. The UNHCR mandate helps in protecting refugees against illegal arrest and detention and rescues the person if they are already under arrest. But a mandate is issued only to refugees from outside South Asian region. This leaves ample room for discrimination and exploitation of “other” refugees.

The UNHCR provides several amenities which the Indian government fails to do in most cases. Because their status and identity is well established by the UNHCR office, they can procure a valid passport, travel documents authorizing them to travel abroad, ration cards or open a bank account. The legal officers of UNHCR provide free legal aid to the recognized refugees. The organization has formal agreements with other NGOs to provide financial assistance to the poor and needy across the globe including India. Furthermore, they provide free medical treatment to the sick refugees in government hospitals with special emphasis on women and child health care³². The UNHCR has an army of volunteers and interns who assist in providing vocational training which makes them self-reliant, primary education and counselling to the distressed refugees with the assistance of other NGOs who have an expertise in these fields.

Most of the work is centred around finding durable solutions for mitigating the suffering of refugees at the hands of the host nation. UNHCR works hand in hand with the Central

31. R. J. S. Tahir (eds.) Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir: Refugees and the Law, 2edn,

HRLN, 2011, pp. 183.

32. <http://news.rediff.com/report/2009/oct/19/home-ministrys-refugee-bill-worries-security-agencies.htm> (visited on 29th April 2018).

government. This clearly proves that a refugee having the UNHCR certificate is better protected and has more than a normal refugee. But whatever is done is not sufficient because the mandate of UNHCR is limited and it cannot work without the support and participation of the country. Whenever there is mass influx of refugees, UNHCR depends on its NGOs to provide information about the crises. This causes problems because most of the NGOs in India are not updated with the exact number of refugees and they have limited manpower, finances and know-how of technology. India being the largest receiver of refugees in Asia, it is next to impossible to regulate movement and update information of every refugee going in and out of the country. Moreover, in India, the State policies which are administrative in nature determine the protection of refugees which leaves very little ground for UNHCR to provide protection. Thus, only some refugees who are not from South Asia get UNHCR recognition and protection and not all refugees are treated in the same manner. This process of deciding the status claim is criticized because it is arbitrary and there is no higher official to regulate this practice. The very existence of UNHCR depends on the whim of the Central Government as India has not ratified the refugee convention. Its fate and scope of work is solely determined by the Indian government. In most cases, the members are denied access to refugee camps which makes it impossible to grant them refugee status. The office of UNHCR receives most of its funds through donations by international organizations and NGOs³³. In such circumstances, it may face a financial crunch and may not be able to give protection to the refugees. In 1992, the UNHCR denied subsistence allowance in an arbitrary manner to Afghan refugees which proved burdensome for several families³⁴. Hence, the Government should give more powers to UNHCR so that the identities of all refugees coming to India can be recorded. This will reduce cases of false documents and ultimately minimize refugee arrests regarding the same.

Another suggestion that will ease the agony of refugees seeking UNHCR certificate to set aside a part of the annual budget for UNHCR so that more and more refugees can be rehabilitated in India and a balance of refugee and citizen rights can be built.

33. <http://www.unhcr.org/pages/49c3646c119.html> (visited on 26th April, 2018).

34. Ranabir Samaddar (ed.), *Refugees and the State. Practices of Asylum and care in India 1947-2000*, (2003 edn.)

SAGE publications, UK, 2003. BS Chimni, "Status of Refugees in India, pp. 460.

National Human Rights Commission, State Human Rights Commissions and Human Rights Courts have been established in India under the Protection of Human rights Act, 1993. As per this act, they have the powers of a civil court and can suo moto inquire into any petition; interfere in the judicial proceedings protecting the party from human right abuse, study treaties and prepare reports³⁵. They have been actively involved in the protection of refugees since inception. In 1994, the NHRC gave directions to the Govt. of Tamil Nadu to provide immediate medical treatment to Sri Lankan refugees who were put in camps. But how far did the refugees receive medical aid is a debatable issue as most of it is just on paper. In the year 1995, a PIL was filed by the NHRC on behalf of the “Chakma” refugees who hailed from Bangladesh way back in 1965 and were residing in Arunachal Pradesh. The NHRC found that the State Government is acting in accordance with the AAPSU (All Arunachal Pradesh Students Union) and threatening Chakmas. The Supreme Court intervened with the liberal interpretation of law to suggest that refugees are the “class apart” from foreigners and they are to be protected under Article 21 of the Indian Constitution and they cannot be evicted from their domestic households. The court emphasised that the State is under an obligation to protect the life and personal liberty of every human being thus abiding the principle of non-refoulement.³⁶ This case also highlights the issue of local agitation.

India has been a witness to many clashes between the refugees and the locals. The main contention of the local population is that refugees have more facilities despite being outsiders. They have better access to amenities like medical facilities, food, water, education, financial assistance and protection than the local population of that State. After the Rajiv Gandhi assassination, India became hostile to Sri Lankan refugees and atrocities were committed upon them despite their protected status. The government was also responsible for forceful repatriations thus violating the principles of non-refoulement. NHRC proposed a model law for refugees under the guidance of Justice PN Bhagwati in 2000 but unfortunately that has not seen light till this date. It also proposed changes in the outdated Foreigners Act, 1946 which deprives refugee's rights as guaranteed under the Geneva convention, refugee

35. Article 12 and 13 of the Protection of Human Rights Act, 1993.

36. National Human Right Commission v State of Arunachal Pradesh, Supreme Court of India 1996, AIR 1996 SCC 1234.

convention and additional protocol of 1967³⁷. Currently we only have the Refugee and Asylum (Protection) Bill, 2009³⁸. The model law clearly defined the rights and duties of refugees and protection to be given to them by the State. India can thus be considered in a paradoxical state- on one hand it refuses to ratify the already existing Refugee Convention and on the other hand, it does not pass its own independent legislation. To top it all, it continues to allow large influx of refugees from across the globe to enter India.

Limitation of UNHCR in India:

The refugee problem is complex. A knowledge of international human rights law can assist UNHCR staff in tackling many protection problems faced by refugees, but it does not provide answers for every situation. Similarly, this body of law is itself complex and a full examination of its many provisions and institutions would require several textbooks.

Therefore, the module only covers some of the problems faced by refugees, and only describes some of the ways in which international human rights law can assist UNHCR staff in solving those problems. In choosing which problems the module deals with we have tried to address problems which are real rather than theoretical. Also, the module is geared towards issues that arise in countries of asylum. The module does not cover issues arising in countries of origin such as UNHCR's "preventive" work, or work on behalf of the internally displaced. While these are important issues, and human rights law is certainly relevant to such issues, it was felt that they deserved separate treatment.

UNHCR's responsibility to seek permanent solutions for the problem of refugees is commonly translated into a preferential hierarchy, with voluntary repatriation as a priority, followed by local asylum and resettlement in a third state.

The ultimate purpose of protection is not to ensure that refugees remain refugees for ever, and voluntary repatriation reflects the right of the individual to return to his or her country of citizenship. No universal instrument deals with this, but the 'right to return' is widely accepted as an inalienable incident of nationality. In the 1969 OAU Convention, Article 5(1) of which emphasizes that the 'essentially voluntary character of repatriation shall be

37. Rajeev Dhawan, On model law for refugees: A response to the National Human Rights Commission, NHRC Annual Reports 1997-2000, New Delhi, 2003.

38. <http://news.rediff.com/report/2009/oct/19/home-ministrys-refugee-bill-worries-security-agencies.htm> (visited on 25th April 2018).

respected in all cases and no refugee shall be repatriated against his will'. On several occasions, the UNHCR executive Committee has proposed standards and guidelines for voluntary repatriation operations. The general rule is that refugees should return voluntarily and in conditions of security, and the international community has a legal interest in the follow-up to any repatriation movement; the security of those returning and the implementation of amnesties and other guarantees are rightly considered matters of international concern, and therefore subject to monitoring against relevant legal standards.

International law has accepted and defined refugees as a special class of aliens. Does this acceptance by International law import any legal consequence on the Indian Government in the absence of any legislation on the subject?

It is true that India has not ratified the 1951 Convention and the 1967 Protocol to it, however, it acceded to various Human Rights treaties and conventions that contain provisions relating to protection of refugees. As a party to these treaties India is under a legal obligation to protect the human rights of refugees by taking appropriate legislative and administrative measures under Article 51(c) and Article 253 and under the same laws it is under the obligation to uphold the principle of non-refoulement. India is a member of the executive Committee of the office of United Nations High Commissioner for Refugees which puts a moral, if not legal obligation, on it to build a constructive partnership with UNHCR by following the provisions of the 1951 Refugee Convention.

About adopting international conventions in domestic laws, in *Vishaka v. State of Rajasthan*, the Court observed that reliance can be placed in international laws. Therefore, the question that arises is whether India can refer to the 1951 Convention in interpreting the domestic legislation and whether it is necessary to ratify these conventions. It is to be noted that merely ratifying the 1951 Convention does not ensure that the asylum seekers will not be kept out and Article 42 of the same Convention permits reservations with respect to the rights of refugees which will defeat the purpose of ratifying the Convention.

How can International Human Rights Law Assist UNHCR in Protecting Refugees?

There are four main aspects to bear in mind:

1. Human rights law can reinforce existing refugee law

The most basic right for refugees is the right not to be subject to refoulement, which is set out in Article 33 of the 1951 Convention. But the 1951 Convention is not the only

international treaty which provides protection against refoulement. See Chapter 9 in Part II on Specific Issues. Similarly, other rights provided for by refugee law, such as non-discrimination, are found in international human rights instruments.

Moreover, many refugee protection standards are set out in non-binding conclusions of UNHCR's executive Committee. While states should follow executive Committee conclusions, it is difficult to argue that they are legally obliged to do so. Yet, many of the standards set out in executive Committee conclusions are also found in inter-national human rights treaties which do create legal obligations for states which are party to them.

For example:

Most of the protection standards set out in protection of asylum-seekers in situations of large-scale influx – a basic reference point for protection work – are included in international human rights treaties as binding legal obligations on states parties.

- a. “not be subjected to restrictions on their movements....”³⁹
- b. “not be subjected to cruel, inhuman or degrading treatment”⁴⁰
- c. “no discrimination on the grounds of race, religion...”⁴¹
- d. “to be considered persons before the law...”⁴²
- e. “family unity should be respected”⁴³

The United Nations High Commissioner for Refugees (UNHCR) plays many different roles to effect refugee protection in nations around the world.

In Canada, the UNHCR has a comparatively passive role beside the multi-tiered system that the federal government has instituted to accomplish the task of determining refugee status. The Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board was created under national legislation pursuant to Canada's obligations as a state party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. The CRDD is an administrative tribunal independent of the Canadian government.

39. Covenant on Civil and Political Rights, Art. 9 and 12.

40. Convention Against Torture, Art. 2 and 16.

41. Universal Declaration of Human Rights, Art. 2 and 7.

42. Convention Against Torture, Art. 13.

43. Convention on the Rights of the Child, Art. 9 and 10.

None of the countries in the region of South Asia is a signatory to the 1951 Refugee Convention or the 1967 Protocol. Neither do these countries address the problem of refugees through domestic legislation or procedures.

Thus, in India, the UNHCR is very active, playing one of two roles, depending on the refugee population in question. The Indian government has undertaken to assist the refugees of Tibet and Sri Lanka under its own auspices. With respect to these populations then, the UNHCR plays only a 'watch-dog' role, monitoring conditions and ensuring that when refugees return to their home country, their repatriation is voluntary.

UNHCR deals almost exclusively with the remaining refugee populations in India, comprising displaced nationals of Afghanistan, Ethiopia, Iran, Iraq, Liberia, Myanmar, Somalia, and Sudan. With respect to these populations, UNHCR performs the function of refugee status determination in addition to providing medical, educational, vocational and financial assistance to those recognized as refugees. Ultimately however, it is the Indian government that must provide for these refugees a suitable environment for asylum.

UNHCR works throughout the region of South Asia to increase public awareness of refugee issues and to encourage governments to address both the root causes and the consequences of refugee migration. UNHCR has been instrumental in organizing a series of regional consultations on the problem of refugees. The most recent consultations, held in Dhaka in November 1997, focussed on developing and adopting a Model National Law on Refugees. The participants, including eminent jurists and former politicians from Bangladesh, India, Nepal, Pakistan and Sri Lanka, raised some interesting rationales for their respective countries' failure to sign the 1951 Refugee Convention.

Conclusion and Recommendation:

There have been endless debates and discussions over which is better- passing a domestic legislation or framing a refugee convention specifically for South-east Asia. According to me both should peacefully co-exist so that in case there is lacuna in domestic law, it is covered in the Asian Convention and vice versa. The various recommendations are-

Need for a Domestic Law:

- A domestic law is needed in India to ensure that all refugees are given basic protection. Without that, refugee rights are not rights in the real sense, they are simply privileges at the hands of the administration.

A domestic law should also define refugees to include “internally displaced people” due to natural calamities, terrorist activities. For instance, the Kashmiris were forced to flee Kashmir due to the militant activities.

Housing and employment can be ensured to refugees so that they can become self-reliant.

1. Several civil society organizations should work in collaboration with the Govt. under this Act to improve their living conditions.
2. A domestic legislation will overrule all the existing acts like the Passport act and the foreigner act and will reduce the suffering of refugees by specifically dealing with their problems.
3. A domestic legislation will make the procedure of granting refugee status simple, fair and transparent. It will also call for greater accountability and checks on the power of the officials.
4. It will abolish discrimination which currently exists among refugees of different nationalities.
5. Special provisions guaranteeing protection to women and children should be made because in the Indian society, crimes against women (rape) and children (child trafficking) is at its peak.

This will also be in consonance with India’s obligations under CeDAW and UNCRC.

Need for a South Asian Refugee Convention

1. India is a superpower in Asia, so it tends to “dominate” over other nations. In such a case drafting a South Asian Refugee convention will be of great significance to ensure refugee protection.
2. The convention can be drafted by experts from all countries highlighting their specific issues relating to the refugees based on the understanding of each nation. In this way, the convention will reflect the background of every country.
3. The definition of refugee should be broadened to incorporate people displaced due to environmental disasters, socially ostracized because of admitting openly of a

different sexualorientation and people fleeing because of threat caused by crimes against women and children.

This can ensure that there is no western intervention incase of dealing with refugees and at the

same time, maximum protection can be given.

- The convention will book the violators of refugee rights for crimes against humanity. It can alsoformulate a regional tribunal to handle cases of refugees- their rights, duties, trials andrepatiation.
- This will reduce tension between neighbouring countries and improve diplomatic relations. Itcan be worded as, “providing refuge is a humanitarian act and shall not be interpreted asinfringement to the Sovereignty of the nation”. It may also state that the Convention willnot hold any state guilty as its only purpose is providing safe refuge to the people seeking it.
- When both the Convention and the municipal law are in order, there is no scope for deviation. Itwill be able to address all the problems and issues associated with refugees in the most efficientmanner. There will be lesser arbitrariness in procedures and still if some official tries to deviatefrom his duty to give protection to the refugees, he will be held liable. It is high time that wehave a definite refugee mechanism here because refugees will never stop coming to India for thereasons discussed above.