

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 4

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

India in 21st Century: A need for a proper Refugee Law

ARBAZ MUZAFFER¹ AND DR. RAJESH SINGH²

I. INTRODUCTION

We live in a chaotic world and this fact doesn't change when we actually give it a true look across the globe. Since the beginning of 20th century we have been witnessing wars in different ways one could have never imagined. From Nuclear weapons to Cold War, from persecution to people fleeing their homes, the world has witnessed it all. We, Human beings have always let ourselves down. We gave ourselves the Human Rights and we are the ones who are the sole violators of the same. We make laws and then we break and mold them as per our own wishes. During all this making and breaking of laws, it is the people who suffer the most. One of the worst possible scenarios that has been happening through these centuries is the people have been rendered homeless owing to wars happening inside and outside the countries all these years. The term which has been widely used to identify people who have fled to different countries as a result of these wars and the fear of being persecuted in their home country is "Refugee". International Law has a very long history of development but when it comes to the identification of Refugees, this area is relatively new and was not even considered until the World War II. Now that we have several instruments that pertain to the people who have fled their homes and are regarded as Migrants, Refugees, Internally Displaced Persons, etc., many countries have signed them and provided protection and rights to the concerned. India, on the other hand has been always termed as one of the best countries known for its hospitality but when it comes to Refugee laws, it has refrained from signing the Convention on refugees and it also does not have its own national Law for Refugees. This research paper intends to comprehend why India has not signed the Refugee Convention of 1951 and why it needs a proper Refugee Law of its own.

II. THE PROBLEM OF REFUGEES

A Refugee is a person who has had to flee from his country where from he actually originated and cannot return back as he/she is under the threat of being persecuted owing to several underlying factors such as race, religion, nationality of the said person, being a member of any

¹ Author is an Advocate at Jammu and Kashmir High Court, India.

² Author is an Associate Professor at Parul Institute of Law, Parul University, India.

distinct social group or because he/she has a different political opinion.³ Thus we can easily understand why a person is termed as a refugee and the main point which distinguishes a refugee from an ordinary person or even a normal Migrant individual is that, a Refugee is forced to leave his home and is unable to come back until and unless the situation improves and it becomes safe to come back whereas an ordinary citizen or even a migrant if chose to leave, they will be doing so out of their own will and can return whenever they wish to.

The problem of refugees is simply put by the fact that a Refugee is an alien in any country he goes other than his native country and he can not avail his last resort which is going back to his home like a normal alien would. Also, he doesn't not enjoy any protection like a normal alien does. He is not recognized by his own country or the government. Furthermore, such an alien always looked upon by others with suspicion and as a suspect and owing to being unprotected, he is vulnerable to most of the atrocities everywhere.⁴ The problem of refugees is not new but it keeps on growing every now and then. There are organizations, International Instruments, Laws but it all comes down the nations itself as to how well they implement the laws and provide for the protection of the refugees.

III. THE INTERNATIONAL LAW FOR REFUGEES

Presently in the International arena, there are only two instruments in particular which deal with the refugee protection. They are the 1951 convention and the 1967 protocol. These two instruments lay down explicitly that Persons who have been designated as Refugees deserve same treatment which is enjoyed by other foreigners or their nationals in a country where they have sought refuge. The convention of 1951 also provides for the scope of the problem of the Refugees and why International Cooperation is necessary and important to resolve the Refugee crisis around the globe.⁵

The Convention of 1951 however only provides protection for those persons who fulfill the eligibility criteria for being termed as a Refugee. There are certain classes of person who have been identified to not being deserving of the Refugee status and are thus to be excluded from any protection provided under 1951 Convention. They are persons who have committed crimes against humanity, War Crimes, Crimes against Peace or have committed any Serious Non-Political Crime outside the country where they are seeking refuge. In addition to this, it also

³ What's the difference between a refugee and an asylum seeker? *Available at* <https://www.amnesty.org.au/refugee-and-an-asylum-seeker-difference/> last visited on 24/March/2020.

⁴ Dan Stone (2018) Refugees then and now: memory, history and politics in the long twentieth century: an introduction, *Patterns of Prejudice*, 52:2-3, 101-106, DOI: 10.1080/0031322X.2018.1433004

⁵ Pg. 4, The 1951 Convention Relating to The Status of Refugees and Its 1967 Protocol, UNHCR Publications.

includes those persons who are proven guilty for the acts which are in contradiction to the principles of United Nations.⁶

There a numerous number of rights that the persons who have attained the status of refugees enjoy as per the Convention of 1951 such as:

1. The right not to be expelled, except under certain, strictly defined conditions (Article 32);
2. The right not to be punished for illegal entry into the territory of a contracting State (Article 31);
3. The right to work (Articles 17 to 19);
4. The right to housing (Article 21);
5. The right to education (Article 22);
6. The right to public relief and assistance (Article 23);
7. The right to freedom of religion (Article 4);
8. The right to access the courts (Article 16);
9. The right to freedom of movement within the territory (Article 26); and
10. The right to be issued identity and travel documents (Articles 27 and 28).⁷

The Convention of 1951 also contains a few obligations that such Refugees have towards the countries which is giving them the Refugee Status. On the other hand, the 1967 Protocol actually increases the area of applicability of the Convention of 1951. It removes the limits, geographical as well as time based which were primarily the part of 1951 Convention.⁸

However, these two instruments are not the only instruments which provide for the protection of Refugees. In addition to them, there are several regional instruments such as in Africa, Europe, Americas. There is also a very well-defined body of the International Human Rights Law which is complimentary to the rights of Refugees. The states on the other hand are also committed to protecting the human rights and other basic rights of the persons who have been regarded as refugees.

IV. INDIA AND THE REFUGEES

India is undoubtedly considered to be one of the countries wherein the guests are treated like

⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 2 April 2020]

⁷ *Ibid.*, 04.

⁸ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <https://www.refworld.org/docid/3ae6b3ae4.html> [accessed 2 April 2020]

Gods and it has always been proved time and again by India. However, the times have changed now, India had to face severe criticism when it said that Rohingyas (Refugee seekers fleeing persecution from Burmese Territory) will be deported and will not be allowed to stay in India. In addition to this, Indian Government led by Narendra Modi passed a Citizenship Amendment Bill in December, 2019 by way of which Persecuted minorities from a few neighboring countries will be allowed to attain Indian citizenship on several conditions and subject to the eligibility criteria but it did not include Muslims. Once the bill was enacted into a law, the government has had to face serious protests countrywide and this law has been very much criticized as well. It was the first time that classification of persecuted persons was done on the basis of religion. It has been argued that such kind of law is detrimental to the Indian constitution which regards secularism as a building block of the country as well as the basic feature of the Indian Constitution.

India is one of the largest centers of Refugees in the world with more than 200,000 refugees as per the reports of UNHCR.⁹ India lacks a National Legislation on Refugees and it has also not signed the Refugee treaty/Convention. It clearly lays down that India does not legally give recognition to the refugees. It does not differentiate between the Refugees and other Foreign Nationals which enter India. Now that India does not have its own Refugee Law and also it hasn't signed the International Instruments pertaining to the refugees, the treatment of all the refugees depends upon the discretion and wishes of the Political Parties in power or the Government which is functioning currently. There is no exact legal framework and the Parliament thus becomes powerful to rule on these people anytime as per the wishes of the government, thus making them even more vulnerable.¹⁰ India has thousands of refugees from Tibet¹¹ as well as from Srilanka and they have been settled in India with proper housing and government aid. Whereas on the other hand, people/refugees who have fled Muslim Majority countries such as Iraq, Iran, Afghanistan, Myanmar, Sudan, etc. have not been given any protection and instead of that, UNHCR has provided them with Identity proofs by way of which India has given them only Residence Permits that too on Temporary basis. India also has not allowed UNHCR to access the Seven North Eastern States, due to which Refugee communities such as the Christian Chin are not getting any identification or protection by either India or

⁹UNHCR Factsheet-February 2016 - India, United Nations High Commissioner for Refugees (UNHCR), available at <https://www.unhcr.org/protection/operations/50001ec69/india-fact-sheet.html> Last Visited on 28/March/2020

¹⁰Vineet Bhalla, Why India Needs a Refugee Law, available at <https://www.thinkpragati.com/opinion/4917/why-india-needs-a-refugee-law/> last visited on 01/April/2020

¹¹Claudia Artiles. Tibetan Refugees' Rights and Services in India, available at <https://www.du.edu/korbel/hrhw/researchdigest/minority/Tibetan.pdf> last visited on 28/March/2020

UNHCR.¹²

V. NEED FOR A PROPER REFUGEE LAW

Although India has never officially revealed as to why it did not sign the instruments pertaining to the Refugees but based on the practices and opinions of various scholars it can be easily comprehended that India does not accept the definition of the Refugees as is given in the Refugee Convention of 1951 as they consider it to be very much narrow. Another reason is that India takes section 35 of the Convention of 1951 as a threat to its sovereignty as it gives supervisory powers to the UNHCR.¹³ However things start to look differently when we see how different kinds of people facing persecution from different countries are treated in India as discussed earlier. India, a country which has its beliefs rooted in Peace, harmony and brotherhood must always prove to be a heaven for the refugees. It should one of the fundamental duties of the government to keep the doors open for the refugees from different countries and there must not be any discrimination arising out of any of the prevalent factors such as Religions, caste, creed, sex or ethnicity. The Problem of refugees in India is similar to that prevailing in other countries. With no proper law, we are only making the already vulnerable refugees more vulnerable to human rights violations. Undoubtedly, there is a negligible amount of laws that are protecting the refugees here in India.¹⁴

Thus, I believe that India as of now, where so many laws are enacted day in and day out on national as well as International basis, it should start to draft a clear, comprehensive and a robust mechanism to protect the rights of the refugees and make well defined regulation pertaining to the rights of refugees such as their entry into the country, their accommodation, their rights and duties. Agencies should be formulated which will exclusively take care of this refugee crisis and be responsible and accountable to an Independent authority as well. Although India is providing some protection and aid to several communities of refugees but one must not forget that the policy of India towards refugees as of now is based on their country and their religion which can be easily understood by the status of refugees in India.

I strongly recommend and believe that India, if it is not ready to sign the 1951 Convention, should instead work now towards formulating a nondiscriminatory and a proper Refugee centric law which will address the problems of Refugees. It would be beneficial for us to have

¹² Vineet Bhalla, Why India Needs a Refugee Law, Pg.4

¹³ Damini Sharma, Why India Did Not Sign the 1951 Refugee Convention available at <https://www.hg.org/legal-articles/why-india-did-not-sign-the-1951-refugee-convention-41414> , Last visited on 28/March/2020

¹⁴ Naina Mishra, Refugees in India Looming for Basic Rights: Here Is Why India Needs Refugee Law! NewsGram available at <https://www.newsgram.com/refugees-in-india-are-looming-for-basic-rights/amp/> Last visited on 29/March/2020

a national legislation on refugees before India faces crisis like the European Union had to face earlier. India needs to maintain its belief of “*Attithi Devo Bhava*” which means “The Guest is God” and provide for its guests, Refugees, the suitable and legal protection without any discrimination.
