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MEN IN SEARCH OF SHELTER: THE PLIGHT OF REFUGEES

Abdul Ashik Mubarak Rawoother¹ & Sana Rahmani Gaur²

ABSTRACT

The situation of refugees and internally displaced people become a major international issue during humanitarian disasters. This abstract examines the difficulties that people who are forcibly uprooted from their homes because of natural catastrophes, conflict, or persecution experience, emphasizing how important it is to protect their fundamental rights. The study explores the moral and legal issues of protecting the safety, dignity, and well-being of refugees and internally displaced people in times of emergency.

The first section traces the development of international laws and treaties meant to protect the rights of refugees while examining the historical background of displacement. The document provides an overview of the legal framework governing the protection and treatment of displaced populations, spanning from the 1951 Refugee Convention to subsequent protocols.

The obstacles that refugees and other displaced people now confront in times of crisis are examined in the second section. Various factors are addressed, including substandard living conditions, restricted access to healthcare and education, and the susceptibility of women and children. It is examined how these difficulties affect the physical and emotional health of displaced people, highlighting the necessity of a comprehensive and rights-based strategy.

The third segment looks into how governments, non-governmental groups, and international organizations handle the rights of refugees in times of crisis. It evaluates the efficiency of current systems and promotes closer cooperation between stakeholders to guarantee prompt and thorough answers to the needs of displaced people.

The crucial relevance of protecting the rights of refugees and internally displaced people as a shared global obligation is emphasized in the abstract's conclusion. To address the complex issues encountered by persons compelled to escape their homes, it advocates for greater

¹The author is an Asst Professor at Al Ameen College of law, Bangalore.

²The co author is an Asst Professor at Al Ameen College of law, Bangalore.

awareness, coherent legislation, and creative solutions. The international community may aid in developing a more equitable and humane approach to the intricate problems pertaining to refugees and internally displaced people during times of crisis by taking a human rights perspective.

Key Words: - Refugees, Citizenship, Displaced, Rights, Violation

INTRODUCTION

The cornerstone of contemporary international refugee protection is the 1951 United Nations Convention relating to the Status of Refugees, which is based on Article 14 of the 1948 Universal Declaration of Human Rights, which affirms the right of individuals to seek asylum from persecution in other nations.³ After the 1951 Convention's geographic and temporal limitations were eliminated in the 1967 Protocol, the Convention came into effect on April 22, 1954, and it has only undergone one modification since then.⁴ The 1951 Convention was first restricted to individuals escaping events that took place before January 1, 1951, and within the borders of Europe. It was a post-World War II device. The 1967 Protocol eliminated these restrictions, granting the Convention global applicability. Since then, refugee and auxiliary protection regimes have been added to it in a number of areas.⁵ as well as via the progressive development of international human rights law. The 1951 Convention is the most complete international codification of refugee rights, combining earlier refugee-related international treaties into one cohesive document. Unlike past international agreements pertaining to refugees, which were particular to groups of refugees, Article 1 of the 1951 Convention

³ United Nations General Assembly resolution 429(V) of 14 December 1950, available at <http://www.unhcr.org/refworld/docid/3b00f08a27.html>

⁴ The Convention enabled States to make a declaration when becoming party, according to which the words “events occurring before 1 January 1951” are understood to mean “events occurring in Europe” prior to that date. This geographical limitation has been maintained by a very limited number of States, and with the adoption of the 1967 Protocol, has lost much of its significance. The Protocol of 1967 is attached to United Nations General Assembly resolution 2198 (XXI) of 16 December 1967, available at <http://www.unhcr.org/refworld/docid/3b00f1cc50.html>.

⁵ See, for example, the Organization of African Unity (now African Union) Convention governing the Specific Aspects of Refugee Problems in Africa 1969, adopted in Addis Adaba, 10 September 1969; the European Union Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Official Journal L 304 , 30/09/2004 P. 0012 – 0023. The Cartagena Declaration on Refugees, adopted at a colloquium held at Cartagena, Colombia, 19-22 November 1984, while non-binding, also sets out regional standards for refugees in Central America, Mexico and Panama.

supports a single definition of the term "refugee." This definition places a strong emphasis on shielding people from political or other types of persecution. As defined by the Convention, a refugee is a person who, for legitimate fear of being persecuted because of their race, religion, nationality, membership in a particular social group, or political opinion, is unable or unwilling to return to their country of origin. The Convention is built on a number of essential principles, including non-discrimination, non-penalization, and non-refoulement. It is a status-based and rights-based agreement. For instance, the terms of the convention must be implemented without regard to a person's race, religion, or nation of origin. The idea that the Convention should be applied without regard to a person's sex, age, disability, sexual orientation, or any other banned ground of discrimination is further supported by developments in international human rights law. The Convention additionally states that refugees shall not be punished for their unauthorized entry or residence, with certain exceptions. This acknowledges that migrants may have to break immigration laws in order to request asylum. Penalties that are prohibited could include being accused of immigration or criminal offenses connected to the asylum request, or being held without cause just for the purpose of requesting asylum. The Convention is significant because it includes a number of protections against the deportation of refugees. There must be any exceptions or modifications to the core concept of non-refoulement. It provides that no one shall expel or return ("*refouler*") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.

Finally, the Convention lays down basic minimum standards for the treatment of refugees, without prejudice to States granting more favourable treatment. Such rights include access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in Passport form. Most States parties to the Convention issue this document, which has become as widely accepted as the former "Nansen passport", an identity document for refugees devised by the first Commissioner for Refugees, Fridtjof Nansen, in 1922.

OF THE UNITED NATIONS CONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF REFUGEES AND STATELESS PERSONS

The General Assembly of the United Nations, by Resolution 429 (V) of 14 December 1950, decided to convene in Geneva a Conference of Plenipotentiaries to complete the drafting of, and to sign, a Convention relating to the Status of Refugees and a Protocol relating to the Status of Stateless Persons. The Conference met at the European Office of the United Nations in Geneva from 2 to 25 July 1951. The Governments of the following twenty-six States were represented by delegates who all submitted satisfactory credentials or other communications of appointment authorizing them to participate in the Conference⁶ The Governments of the following two States were represented by observers: Cuba Iran. Pursuant to the request of the General Assembly, the United Nations High Commissioner for Refugees participated, without the right to vote, in the deliberations of the Conference. The Convention pertaining to the Status of Refugees was adopted by the Conference after two readings. A Style Committee was constituted prior to its second reading, with the President, representatives from Belgium, France, Israel, Italy, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, as well as the High Commissioner for Refugees, Mr. G. Warren of the United States of America, being elected as its chairman. With a focus on language and consistency between the English and French versions, the Style Committee revised the text that the Conference had approved on first reading. The Convention was ratified on July 25, 1951, with 24 votes in favor and 0 against, with no abstentions. It was then available for signature at the UN European Office from July 28 to August 31, 1951. It will be available for signing once more from September 17, 1951, to December 31, 1952, at the United Nations permanent headquarters in New York.

⁶ Australia Austria Belgium Brazil Canada Colombia Denmark Egypt France Germany, Federal Republic of Greece Holy See Iraq Israel Italy Luxembourg Monaco Netherlands Norway Sweden Switzerland (the Swiss delegation also represented Liechtenstein) Turkey United Kingdom of Great Britain and Northern Ireland United States of America Venezuela Yugoslavia

MEANING OF REFUGEE:-

Understanding that unpleasant situations outside of a person's control might occasionally lead to their becoming a refugee is crucial. He or she is left with no option than to flee from social, political, and economic instability; widespread violence; civil war; ethnic conflict; and violations of human rights, all of which heighten the risk of persecution. The significance of this statement is evident when one examines the definition of the word "refugee." The term 'Refugee' has a particular meaning in international law and its legal definition is laid down in the *United Nations 1951 Convention relating to the Status of Refugees*⁷ (to be referred to as "1951 Convention") and its 1967 Protocol. ⁸Article 1 para. 2 of the 1951 Convention defines the 'refugee' as "A 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, owing to such fear, unwilling to avail himself of the protection of that country." Therefore, the need to give due importance to humanitarian and human rights aspects in dealing with refugees cannot be overstressed.

It may be restated for purposes of clarity and understanding that a refugee⁹ is defined as one who is outside the country of nationality (or even country of habitual residence) due to one of the five grounds, namely, a well-founded fear of persecution on the basis of religion, race, nationality or membership of a political or social group. In some countries, a person who flees his home country because of armed conflicts or wars or other generalised violation of human rights and who may not be targeted on account of any of the five grounds specified above, is excluded from the purview of the above definition of 'refugee'. In many countries a difference is sought to be made between persecution effected by State agents and the one effected by non-state agents as may be the case in places where 'rebel' 'terrorist' and such other groups are active. Under such circumstances it is only those who are affected by the action of the State agents who are held to fulfil the definition of 'refugee' and not the latter. Even though India has been the home for a large number and variety of refugees throughout the past, India has dealt with the issues of 'refugees' on a bilateral basis. India, as explained in the earlier pages, has been observing a 'refugee regime' which generally conforms to the international instruments on

⁷ J.Fitzpatrick, "Revitalising the 1951 Refugee Convention", *Harvard Human Rights Journal*, vol. 9 (1996), pp.229-53

⁸ See Goodwin Gill, note 1; Pirkko Kourula, *Broadening the Edges : Refugee Definition and International Protection Revisited* (Hague, 1997)

⁹ See Article 1(A) (2) of the 1951 Convention on Refugees

the subject without, however, giving a formal shape to the practices adopted by it in the form of a separate statute. Refugees are no doubt 'foreigners. As things stand in India, they are governed by the general and particular rules that are in place there, which apply to all foreigners even though there may be a reason to separate them from the other "foreigners." This is so because "refugees" are not covered by a distinct statute. The same rationale applies to the consideration of each case individually for refugee "status." The UNHCR frequently supports government efforts in addition to them, especially when it comes to confirming an individual's past and the general conditions existing in their place of origin. Additionally, that organization is crucial to the resettlement of refugees and other migrants.

REASONS GIVEN BY INDIA FOR NON RATIFICATION OF THE CONVENTION

Given that India welcomes refugees from all over the world, it goes without saying that here is a great deal of pressure on India to ratify the 1951 Refugee Convention or the 1967 Protocol. India has not ratified the agreement, in spite of pressure from other countries. Taking with the government about the Convention's ratification is one of UNHCR's primary responsibilities in India, but it appears that India is quite sensitive to this matter, and the talks are going nowhere. India refuses to ratify the treaty because it believes it mainly tackles post World War II refugees concerns and is centered on Europe. Many water ways have crossed beneath the bridge since then, and no changes have been made to reflect it. Despite not being a signatory¹⁰, Ratifying a worldwide refugee convention is not politically feasible in India because of its particular issues stemming from its geopolitics and turbulent past with its neighbors. Since China poses the greatest danger to India, it will negatively impact diplomatic ties, which India wishes to remain in good standing. in Asia¹¹. Furthermore, ratification will increase India's commitments to grant its refugees more rights and benefits. For an impoverished and growing nation like India, which finds it difficult to provide basic services to its own citizens, this is not feasible. Since the partition, we have been dealing with the issue of infiltration and terrorism by our neighbours, which the Western countries refuse to recognize or even accept as a concern.

¹⁰ 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. 453

¹¹ Arjun Nair, *National Refugee Law for India: Benefits and Roadblocks*. http://www.ipcs.org/pdf_file/issue/51462796IPCS-ResearchPaper11-ArjunNair.pdf (visited on 24th November, 2012)

A citizen of Sri Lanka who fled to India. The treaty makes no mention of such odd and complicated matters that jeopardize our sovereignty and national security. Additionally, it is said that because the convention and protocol were written in 1951 and 1967, respectively, most of their provisions are out of date and do not address today's issues. The load on the economy is exacerbated by the high number of individuals who move to India in quest of opportunity. So, the people who reviewed and framed the policy think that by approving the convention, the problem of migrant workers will increase ¹²as 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 ratification¹³. If it doesn't comply, everything will be open to criticism or praise from around the world, which might cause it to lose respect in that community. Since there was no representation from India throughout the drafting process, it is assumed that India is uninformed of the precise objective and purpose behind each article of the convention and the protocol, since each framer interprets and analyses the provisions according to his knowledge. India declines to ratify the convention for the often discussed grounds listed above. It is still up for debate whether or not India should ratify the Convention.

THE SITUATION OF REFUGEES IN INDIA

A quick glance at the Indian refugee issue will put the complexity of law enforcement in various situations affecting refugees in the right context. India has long been a shelter for displaced people. Since nearly the entire Zoroastrian community fled to India to escape the persecution they were later subjected to in Iran due to their religious beliefs, India has occasionally continued to receive a large number of refugees from various nations, not just its neighbours. It is important to remember that, except from the transboundary movement of individuals during the 1947 country division, there has never been a single instance of a refugee coming from Indian soil. It has, however, always been a receiving nation, expanding its multi-ethnic and multi-cultural fabric in the process. India has provided asylum to refugees from all religions and sects in accordance with its secular laws. During India's independence, refugees have come

¹² 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. 447.

¹³ *Ibid*, pp. 462.

from far-off places including Afghanistan, Iran, Iraq, Somalia, Sudan, and Uganda in addition to some of its own neighbours. This is an important point to make.

The South Asian sub-continent has often witnessed situations where refugees from one or the other neighbouring countries have crossed over to India. Considering the sensitivities of national and regional politics in the sub-continent, the problem of refugees crossing over to India cannot be totally disassociated from the overall security issues relevant locally. At the end of 1999, India had well over 2,51,400 refugees, who do not include those from countries like Afghanistan, Iran, Iraq, Somalia, Sudan and Uganda.

REFUGEE STATUS

One of the principal elements to satisfy a claim to refugee status is that the claimant must be 'genuinely at risk'. Various legal "tests" have developed which concern the standard of proof that is required to satisfy what constitutes being genuinely at risk or having a genuine well-founded fear of persecution. Some of these tests have been articulated by courts in a number of countries¹⁴. In the case of *INS vs Cardoza Fouseca*¹⁵ interpretation of the "well-founded fear" standard would indicate that "so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is not enough that persecution is a reasonable possibility..." The above standard was considered in *R vs Secretary for the Home Department*¹⁶, the case of *ex-parte Sivakumaran*¹⁷. The judgement suggested that the 'test' should consider whether there is an evidence of a "real & substantial danger of persecution". The Canadian Federal Court of Appeal considered the above and disapproved the House of Lords formulation in *Joseph Ayei vs Ministry of Employment & Immigration*¹⁸. They considered the "reasonable chance" standard. Therefore, in sum, in considering the above 'tests' what can be gleaned is a rather liberal standard which requires that if, "...there is an objective evidence to show that there is a reasonable possibility or chance of relevant prosecution in the claimant's state of origin", the claim should be adjudged well founded

¹⁴ Mary Crock, "Apart from US or to Part of US? Immigrant's Rights, Public Opinion and the Rule of Law", *International Journal of Refugee Law*, vol.10 (1998), pp.49-76.

¹⁵ 467 US Supreme Court Case, 407 (1987).

¹⁶ (1988), 1 All ER 193 (H.L)

¹⁷ *Sivakumaran*, House of Lords Decision (1988) 1 ALL ER 193.

¹⁸ Joseph Ayei, Canadian Federal Court of Appeal (1989), *Imm. L.R.* (2d) 169

INDIA'S INTERNATIONAL COMMITMENTS

India does not have on its statute book a specific and separate law to govern refugees. In the absence of such a specific law, all existing Indian laws like The Criminal Procedure Code, The Indian Penal Code, The Evidence Act etc. Apply to the refugees as well. Even though India is not a signatory to the 1951 Convention on refugees and also the 1967 Protocol, India is a signatory to a number of United Nations and World Conventions on Human Rights, refugee issues and related matters. India's obligations in regard to refugees arise out of the latter. India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995. The EXCOM is the organisation of the UN, which approves and supervises the material assistance programme of UNHCR. Membership of the EXCOM indicates particular interest and greater commitment to refugee matters. India voted affirmatively to adopt the Universal Declaration of Human Rights which affirms rights for all persons, citizens and non-citizens alike. India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967. India ratified the International Covenant on Civil and Political Rights (ICCPR)¹⁹ as well as the International Convention on Economic, Social and Cultural Rights (ICESCR)²⁰ in 1976. India ratified the UN Convention on the Rights of the Child in 1989²¹. India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²² in 1974 under which Article 1 imposes legally binding obligation. India accepted the principle of *non-refoulement* as envisaged in the Bangkok Principles, 1966, which were formulated for the guidance of member states in respect of matters concerning the status and treatment of refugees. These Principles also contain provisions relating to repatriation, right to compensation, granting asylum and the minimum standard of treatment in the state of asylum.

ARREST, DETENTION AND RELEASE

One other non-refoulement feature that is worth mentioning is this one. The idea of "International Zones," which are transit areas designated as being outside of Indian territory and the normal jurisdiction of Indian courts at airports and other points of entry, poses a serious "risk factor" for refugees because it limits their access to legal remedies. The internationally

¹⁹ 10 April 1979.

²⁰ 10 April 1979.

²¹ 11 December 1992

²² 9 July 1993.

recognized principle of non-refoulement is violated by this legal fiction. A Palestinian refugee who had been deported from Kathmandu to New Delhi International Airport was returned to Kathmandu via the airport's transit lounge. He was sent back to New Delhi International Airport again, this time on the grounds that he was being held in a "International Zone.". Such detention is a classic case on the above point barring legal remedies to the detained refugee. The only relief in such a case is through the administrative authorities²³.

The natural justice principles of common law systems are equally applicable in India, including to refugees, as stated in Articles 22(1), 22(2), and 25(1) of the Indian Constitution. No one, citizen or foreign, may be deprived of their life, liberty, or property without the permission of the law, according to the well-established rule of law in India. Common law principles are specifically included in the Indian Constitution, and courts have gone so far as to declare them to be unchangeable fundamental principles. There is no explicit clause requiring the state to uphold or carry out treaties and agreements in the Indian Constitution. International treaties, covenants, conventions, and agreements may only be integrated into Indian domestic law if they are expressly included in the legislation of the country, according to a comprehensive interpretation of all the provisions and a review of the relevant case law.

The Supreme Court has ruled in several cases on the matter that before an international treaty becomes internal law, it must first undergo transformation into municipal law. Courts may only apply international law when there is no conflict between it and domestic law, as well as when the proposed application of the law does not go against the spirit of the Constitution or other national laws, allowing for a harmonious construction of the law. It has also been firmly laid that if there is any such conflict, then domestic law shall prevail.

CONSTITUTIONAL PROVISION TO REFUGEES IN INDIA

Constitution of India are applicable to the refugees when they are in India. The most important Article is Article 21 which deals with Right to Life and personal liberty, it applies to everyone irrespective of whether they are a citizen of India. Many judgements have been given based on Article 21 on refugees. Article 14 guarantees the person right to equality before the law. Article

²³ Delhi High Court, Criminal Writ Petition-60/1997.

5, 6, 7, 8, 9, 10,11,12, 20, 22,25-28, 32, 226 also available for non-citizens of India including Refugees.

Treatment given to the Asylum people were divided into three heads-

- National Treatment
- Treatment that is accorded to foreigners
- Special Treatment

1. **National Treatment:** The national treatment to the asylum people is same as the citizens of India. There are certain Articles in the Constitution of India, which takes care of the Fundamental Rights of all people in India. The rights such as equal protection to law under article 14, religious freedom under article 25, the right to life and personal liberty under article 21, right to social security and educational rights are guaranteed in Part III of the Indian Constitution.

2. **Treatment that is accorded to foreigners:**– Under this head, there are rights which are related to the housing problems, movements, etc. The rights which are provided under this treatment are: right to employment or profession under article 17, freedom of residence and movement under article 26, right to housing under article 21, right to form association under article 15 and right to property under article 13 of the 1951 Refugee Convention.

3. **Special treatment:** – This treatment includes the identity and travel document under article 28, exemption from penalties under article 3(1) of the 1951 Refugee Convention.

In the case of *Louis De Raedt vs. Union of India*²⁴, the court held that the fundamental rights to life, liberty, dignity are available to non-citizens of India. In the case of *Visakha vs. State of Rajasthan*²⁵, the court has held that “International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein”.

²⁴ *Louis de Raedt vs. Union of India* 1991 AIR 1886, 1991 SCR (3) 149.

²⁵ *Visakha vs. State of Rajasthan* (1997) 6 SCC 241.

ROLE OF JUDICIARY FOR THE PROTECTION OF REFUGEES

Judiciary plays a vital role in protecting refugees, many cases gave landmark judgements regarding refugees. The judiciary has made it easy with the concepts of Social Action Litigation and Public Interest Litigation. When any of the refugees are detained or arrested by the Indian authorities, there would always be a danger of refolement, repatriate or deportation. Those refugees who are arrested for the illegal stay can be detained illegally under administrative order without charges. The Foreigners Act vests an absolute and unfettered discretion in the Central Government to expel foreigners from India. The Supreme Court of India in *Hans Muller of Nuremburg vs. Superintendent*²⁶, *Presidency* gave “absolute and unfettered” power to the Government to throw out foreigners. The said judgment was again upheld by the Supreme Court in *Louis De Raedt & Ors. Vs. Union of India*. In the same judgment, Supreme Court also held that foreigners have the right to be heard. In the judgment of *Ktaer Abbas Habib Al Qutaifi vs. Union of India*²⁷ the High Court of Gujarat held that the principle of non-refoulment avoids ejection of a displaced person where his life or freedom would be undermined by virtue of his race, religion, nationality, enrolment of a specific social gathering or political conclusion. Its application ensures life and freedom of a person irrespectively of his nationality.

Non-Refoulment and Right to refugee Status:

In *Malavika Karelkar vs. Union of India*²⁸, the deportation order issued against 21 Burmese refugees were stayed by the SC and allowed them to seek refugee status under UNHCR. The Supreme Court has taken recourse to Article 21 of the Constitution in the absence of legislation to regulate and justify the stay of refugees in India. In *NHRC vs. State of Arunachal Pradesh*²⁹, the Government of Arunachal Pradesh was asked to perform the duty of safeguarding the life, health and well-being of Chakma’s residing in the State and that their application for citizenship should be forwarded to the authorities concerned and not withheld. In various other cases, it was held that refugees should not be subjected to detention or deportation and that they are entitled to approach the U.N High Commissioner for grant of refugee status. In *P. Nedumaran vs. Union of India*³⁰ the need for voluntary nature of repatriation was emphasized upon and the Court held that the UNHCR, being a world agency, was to ascertain the voluntariness of the refugees and,

²⁶ Hans Muller of Nuremburg vs. Superintendent 1955 AIR 367, 1955 SCR (1)1284.

²⁷ *Ktaer Abbas Habib Al Qutaifi vs. Union of India* 1999 CriLJ 919.

²⁸ *Malavika Karelkar vs. Union of India Writ Petition (Criminal No) 583 of 1992*.

²⁹ *NHRC vs. State of Arunachal Pradesh* 1996 AIR 1234, 1996 SCC (1) 742.

³⁰ *P. Nedumaran vs. Union of India* 1993 (2) ALT 291, 1993 (2) ALT Cri 188.

hence, it was not upon the Court to consider whether consent was voluntary. Similarly, according to B. S. Chimni, the Supreme Court has erred in concluding in *Louis de Raedt v Union of India* that there is no provision in the Constitution fettering the absolute and unlimited power of the government to expel foreigners under the Foreigners Act of 1946. With regard to adopting international conventions in domestic laws, in *Vishakha vs. 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 really 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 also Article 42 of the same Convention permits reservations with respect to the rights of refugees which will defeat the purpose of ratifying the Convention. In the recent case where around 40,000 Refugees have come to India from Myanmar the Government on the basis of National security and treat of terrorist elements entering through this rout refused to give refugee status. The Supreme Court in *Mohammad Salimullah and others vs. Union of India and Ors*³¹ while deciding whether the Government could deport the Rohingya refugees, as minority.

India continues in receiving refugee in spite of its overpopulation where millions of people are below poverty line and are debarred from basic amenities. However, there is no uniform legal framework to protect refugee. The main authority on the refugee law is the 1951 Convention Relating to The Status of Refugee which is known as Refugee Convention which defines the word Refugee.

According to the Article 1 of 1951 Convention a refugee is a person who flees across an international border because of well-founded fear of being persecuted in his country of origin for the reasons of race, religion, nationality, membership of a particular social group and political opinion and is not willing to go back to his home state

1. Despite the fact that India is a host to diverse groups of refugees, the country has no specific laws or cohesive policy for refugees. India is not a signatory to the 1951 Refugee Convention nor to its 1967 Protocol on the Status of Refugees.

³¹ Mohammad Salimullah and others vs. Union of India and Ors. Writ Petition (Civil) No. 793/2017.

Therefore, the protection of refugees is confined to ad-hoc measures taken by the Government of India, leaving refugees with little protection for their civil and political rights and virtually no legal provisions for their safety and welfare

2 . There is the need for the protection of the rights of refugees and to improve their situation in India with a mission to assist asylum seekers, refugees and other displaced populations in realizing their basic human rights and accessing the justice system.

Foreigners are entitled to limited constitutional protection. These include protection of the equality under Article 14 of the Indian Constitution and protection of life and liberty under The Indian Constitution, Article 21. Additionally, they are entitled to the rights protection guaranteed by Articles 20, 22, 25, 28, and 32. Every one of these articles applies to citizens and non-citizens alike. Equal protection under the law and equality before it are guaranteed under Article 14. The executive treats foreigners differently depending on comprehensible differences that are related to the item and makes distinctions based on their requirements.

The preservation of life and individual liberty is covered in Article 21. A substantive due process legislation that is applied in opposition to state action has been included in the Supreme Court's interpretation of Article 21. Article 20 addresses the right against self-incrimination, the prohibition against double jeopardy, and ex post facto laws. Article 22 addresses the prohibition on arrest and incarceration. The freedom of conscience, as well as the unrestricted practice and spread of religion, are covered in Articles 25–28. Article 32 gives one the ability to petition the Supreme Court to have the aforementioned fundamental rights upheld.

According to Article 51(c) of the Indian Constitution, the government must work to ensure that organized peoples treat one another with regard for international law and treaty responsibilities. The Indian Parliament may enact laws for the whole or any portion of India's territory in accordance with Article 253 of the Constitution, in order to carry out any treaty, agreement, or convention with another nation, as well as any decision reached at any international conference, organization, or body.

CONCLUSION

The preceding lines make it clear that India still views the refugee issue from a humanitarian perspective, despite its own security concerns—especially in the last few decades—population pressure, and related economic issues. The lack of a specific law to regulate "refugees" in the nation hasn't proven to be a significant obstacle to effectively handling the massive refugee crisis facing the nation. Both judicial and executive action have, for the most part, upheld the letter and spirit of the relevant UN and international conventions. Through this, the nation has developed a workable balance between its humanitarian and human rights commitments and its security and national interests. The security and law enforcement agencies deal with daily obstacles in trying to strike a balance between these objectives, which might occasionally seem to be at odds with one another. It is crucial that this issue is given careful thought if and when the nation enacts a distinct "Refugee Law." Security and law enforcement personnel must be careful not to ignore the human and legal aspects that are intrinsic to the "refugee" scenario, particularly the latter.