

Model Law For Refugees

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Abstract

A large number of people have sought refugee status in India ever since partition, this includes Tibetans, Sri Lankans, Afghans, Bhutanese, Iranians, Somalis, and Sudanese. But India lacks a national refugee policy and is also not a signatory to the 1951 convention relating to the status of refugees and the 1967 protocol outlining the international standards of treating and protecting people seeking refugee. In recent years India has been facing an acute refugee crisis due to instability and disruptions in neighboring countries like Myanmar and Bangladesh. Further, this problem has been escalated due to a non-uniform domestic legal framework, leading to an ad hoc approach in addressing these issues. The paper below analyses refugee laws in India, and the changes required, and proposes a model refugee law designed specifically for India considering its socio-political dynamics.

Keywords- Refugee, Asylum, UNHCR, Geneva Convention, Foreigners Act.

Introduction

India has seen a large influx of migrants, refugees, and asylum seekers since its independence. Most of the Refugees have been from neighboring countries like Pakistan, Bangladesh, Tibet, Nepal, Sri Lanka, and Myanmar. Given the large population of refugees in India, their rights and freedom become a very important issue. Currently, India has no Uniform law for refugees, instead refugees in India are governed by the general laws relating to foreigners. The general laws vary from case to case and do not guarantee safeguards as they are entitled under international refugee law, leading to more confusion and complexity around refugee rights. Even the judgments and the interpretations given by the Supreme Court and the High Court have been so far from uniform that it has become difficult to come to one conclusion. Internationally, India has signed some treaties regarding Human rights and it has been a part of the executive committee (Excom) of the United Nations High Commissioner for Refugees (UNHCR), but India is not a signatory of a framework for refugee protection such as the 1951 Convention and the 1967 protocol relating to the status of refugees. To end “ad hocism and ambiguity” in dealing with refugees and asylum seekers in the country, the formulation of national refugee law in consonance with the international framework has become a necessity.

Overview of the Refugee Situation in India

From time immemorial India has been a very welcoming place to people across faiths fleeing persecution, from Parsis centuries ago to Tibetans (from 1959), Bengalis from Bangladesh (in 1971), Sri Lankan Tamils, people from Myanmar, and also Pakistan. During the Holocaust, around 5000 persecuted Jews from Europe came to India and made it their home. However, India lacks a legal

comprehensive framework for dealing with refugees, leading to an ad hoc approach to dealing with refugee issues.

In recent times, there has been a large influx of illegal migrants in India from its neighboring countries like Myanmar and Bangladesh. People are crossing borders to escape persecution and other threats in their home country but the sudden influx has created a refugee crisis in India and the security concerns associated with large-scale refugee movements cannot be overlooked. One such case is of Rohingyas who have entered India illegally in large numbers since 2021, **UNHCR says nearly 60,000 refugees have fled to India since Myanmar's military toppled the country's democratically elected government and seized power in 2021, setting off a bloody civil war that has claimed thousands of lives.**¹ To deal with the crisis, the Indian government has taken a firm stance by announcing the deportation and detention of illegal migrants from Myanmar. In 2017, Shri Kiren Rijiju² Presented in Rajya Sabha that **as per estimate, more than 40,000 illegal Rohingya immigrants are presently staying in India.**³ There is no accurate data because most illegal immigrants tend to enter in clandestine and surreptitious ways without travel documents but the numbers must have increased since then. **On May 2, 2024, Manipur Chief Minister Nongthambam Biren Singh announced the deportation of 77 "Illegal immigrants from Myanmar" on his social media page, calling it the "first phase".**⁴ **He also said the process of deporting some 5,400 more "illegal immigrants" was underway.**⁵ Officials in Manipur have blamed refugees for igniting communal clashes over the past year. However, this process is against the Internationally acknowledged principle of 'non-refoulement' thus, the Human Rights Watch and International Commission of Jurists have shown their concern over Rohingyas' forceful deportation to Myanmar where the Civil war is still raging.⁶

¹ Nair, R. (2022). Pushbacks at borders. In *The Routledge Handbook of Refugees in India* (pp. 764-779). Routledge India.

² Minister of State in the Ministry of Home Affairs, In 2017

³ GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS RAJYA SABHA UNSTARRED QUESTION NO. 534

⁴ Singh, N. B. [@NBirenSingh]. (2024, May 2). **FIRST PHASE OF DEPORTATION OF ILLEGAL IMMIGRANTS FROM MYANMAR COMPLETED TODAY.** X.

<https://x.com/NBirenSingh/status/1785972790929088630>

⁵ Singh, N. B. [@NBirenSingh]. (2024, May 8). * 5457 ILLEGAL IMMIGRANTS DETECTED IN MANIPUR, INDIA * BIOMETRIC DATA OF 5173 OF THEM RECORDED * DEPORTATION PROCESS UNDERWAY . X. <https://x.com/NBirenSingh/status/1788205446232224003>

⁶ ICJ Appeals to India to 'Immediately Halt Forced Returns' of Myanmar Refugees. The Wire. May 10, 2024.

On the other hand, **the chin population in Mizoram is estimated to be as high as 100,000 about 20% of the total chin population**⁷. Mizoram which shares a **510 km long border with Myanmar** has proved to be a safe place for illegal immigrants from Myanmar. These people have not faced any local resistance because Mizos share ethnic and kinship ties with them. While the former Mizoram Chief Minister Zoramthanga had refused the order of the Narendra Modi government to push back the refugees, the current chief Lalduhoma has taken a similar stance. Additionally, the state government has expressed opposition to dropping the free movement regime(FMR) with Myanmar. Similarly, In July 2024, **Chief Minister Zalduhoma told Prime Minister Modi that the State would not forcibly deport Zo ethnic people from Bangladesh's Chittagong Hill Tracts, which shares ethnic ties with Mizos**⁸.

Currently, a two-track mechanism is in place for asylum seekers: Sri Lankan and Tibetan refugees are registered under the Ministry of Home Affairs, while those displaced from other countries including Myanmar and Afghanistan must register with UNHCR.

The government of India adopted the Tibetan Rehabilitation Policy (TRP) in 2014 and sanctioned Rupees 40 crores to His Holiness the Dalai Lama's Central Tibetan Relief Committee (CRTC) to meet the administrative and social welfare activities expenses of 36 Tibetan settlement offices located in different parts of the country. To extend the benefits of the central government schemes, GoI mentioned **"that it categorically wishes to clarify that the Tibetan refugees may be extended the benefits of various central development Schemes and the state governments are requested to extend all the benefits of the GOI schemes as well their schemes"**⁹

Similarly, India continues to house the Sri Lankan Tamil refugees and approved Rupees 1021 crore (approx) for the Sri Lankan refugees to provide facilities such as shelter in camps, clothing, utensils, medical care, and educational assistance. In 2021, the Tamil Nadu government announced welfare measures worth 317.40 crore for Sri Lankan Tamil refugees.

On the other hand, refugees recognized by the UNHCR are left to fend for themselves. Above stated examples show that refugees are dealt with on an ad-hoc basis, their treatment is guided by geo-political interest and vote bank politics. These cases also point towards a biased and non-uniform policy for refugees on the government's part. To distinguish between refugees fleeing persecution and economic migrants seeking better opportunities and to end ambiguity and adhocism in dealing with refugees there is a necessity of national refugee law.

⁷ Human Rights Watch (Organization). (2009). *"We are Like Forgotten People": The Chin People of Burma: Unsafe in Burma, Unprotected in India*. Human Rights Watch.

⁸ Cannot push back Bangladeshi refugees, Mizoram CM tells PM Modi, Mizoram Chief Minister urges PM Modi to understand Zo refugee situation, unable to push back Bangladeshi refugees. The Hindu. July 7, 2024

⁹ No.11/2/2014-RHS/MD. Government of India Ministry of Home Affairs FFR Division

International Legal Framework and Refugee Law

International refugee law is the branch of law that deals with the rights and protection of refugees. The main principles of refugee law are underlined in the 1951 Convention relating to the status of refugees and its 1967 proposal, which sets out the general definition of refugees and guarantees refugees several rights specific to their status. The 1951 Convention defines a refugee as someone unable or unwilling to return to their country of origin owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group, or political opinion. The convention is both a status and rights-based instrument and is underpinned by several fundamental principles, most notably non-discrimination, non-penalisation, and non-refoulement. The principle of non-refoulement is so fundamental in the sense that no reservations or derogations may be made to it. It provides that no one shall expel or return (“refoul”) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.

The 1951 Convention guarantees refugees a range of rights, freedom, and dignity that they are entitled to, these include :

- The right to seek asylum;
- The right not to be returned to a country where the refugee’s life or freedom would be in danger(non-refoulement)
- The right to non-discrimination
- The right to documentation and to access work and education; and
- The right to freedom of movement, to access courts, and to practice one’s religion.

In addition, the conclusion adopted by UNHCR ExCom gives direction about the measures that need to be taken by Excom Member states as well as the UNHCR to protect those displaced and returnee women and girls.

India’s Legal Framework

In India, there is no one specific uniform law dealing with refugees and there are so many general laws that deal with the problems of refugees and asylum seekers. At present, refugees are dealt with as foreigners according to the Foreigners and illegal migrants act.

Some of the domestic laws that deal with refugees and their problems are as follows:

- **Passport (Entry into India) Act, 1920** An act to take powers to require passports of persons entering into India.

Section 3 of this act mentions the **Power to make rules**, central government may make rules requiring that a person entering [India] shall have passports, and for all matters ancillary or incidental to that purpose.

Section 3 (2) (a) prohibits the entry into [India] or any part thereof of any person who has not in his possession a passport issued to him.

Section 3 (3) mentions that any contravention thereof or of any order issued under the authority of any such rule shall be [punishable with imprisonment for a term which may be extended to five years or with a fine which may extend to fifty thousand rupees, or with both]

Section 5 of this act sets out **Power of Removal** -the [Central Government] may, by general or specific order, direct the removal of any person from [India] who, in contravention of any rule made under section 3 prohibiting entry into [India] without a passport, has entered therein, and thereupon any officer of the government shall have all reasonable powers to enforce such directions.

Analysis: This act sets out the power of the Central government to detain and expel those entering India without valid travel or identity documents. This act does not align with the fundamental principle of ‘Non-Refoulement’ but Indian Judiciary has time and again held that Article 21 incorporates the essence of ‘non-refoulement’. **International zones, which** are transit areas at airports and other points of entry into Indian territory, which are marked as being outside Indian territory and the normal jurisdiction of Indian courts, are a major ‘risk factor’ for refugees since it reduces access to refugees to legal remedies.

Cases: In *Ktaer Abbas Habib Al Qulaifi and Anr. v Union of India*¹⁰The Gujarat High Court held that **Article 21** of the **Indian Constitution** incorporates the essence of the principle of non-refoulement. In the case of *Louis de Raedt v Union of India*¹¹, the court iterated that even non-citizens have the right to life, liberty, and dignity.

- **Passport Act, 1967** This act sets out the provision for the issuance of passports and other travel documents to citizens of India or others and regulates their departure from India. It has provision for the arrest of those who provide false information to get a passport.
- **Registration of Foreigners Act,1939** This act provides the registration of foreigners in India, it empowers the central government to make rules to require every foreigner to report

¹⁰ Ktaer Abbas Habib Al Qutaifi v. Union Of India (Uoi), (1999) Cr.L.J 919

¹¹ Louis Deraedt v. Union Of India, (1991) 3 SCC 554

his/her arrival, presence, movements, departure, proof of identity, etc. to the prescribed authority.

- **Foreigners Act, 1946** Under this act the Central government can make orders for foreigners imposing various restrictions on them. This power is so wide that they can make different orders for any particular kind of foreigners or any prescribed class of them. Moreover, the empowered authorities were provided with rights like the right to expel, the right to enforce an order of expulsion, and the right to use force, if necessary by the various provisions of this act and also upheld by the court. Hence, this legislation might bring heavy penalties on refugees and asylum seekers.
- **Foreigners Order, 1948** This order sets out the conditions for granting or refusing entry into India. When applicable to refugees, they might be deemed as illegal migrants and may be detained in transit areas.

India has vast and treacherous borders and there are gaps in the border that are left unguarded which are often used by refugees to illegally enter/exit India. If a person is caught entering illegally, the authorities might send that person back without assessing his/her refugee claims but this process is not in conformity with the much-celebrated principle of 'non-refoulement'. In the alternative scenario, the person might be interrogated and detained, at the border itself and later, he/she would be handed over to the local police. In case of illegal entry through airports and seaports, immigration authorities usually deport the refugee right away and additionally, the cost of deportation is incurred by the refugee. Often due to pending deportations, the refugee is detained at the detention cell in the immigration section where he/she has to buy his/her meal.

The Ministry of Home Affairs had circulated a "Standard Operating Procedure (SOP) w.e.f 29-12-2011 for all the concerned agencies while dealing with foreign nationals who claim to be refugees". The directions given under Standard Operating Procedure are as follows:

Any Foreign national making a refugee claim will be carefully examined, In case, it is found that prima facie the claim is justified, (on the grounds of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion) grant of Long Term Visa (LTV) to the foreign national will be considered. Initially, LTV will be granted for one year but it will be renewed every year, for a maximum of five years at the level of Foreigners Regional Registration Office/ Foreigner Registration Office (FRO), and during such period of stay in India, that person will be allowed to take up any employment in private sector or undertake studies in any academic institution.

India's standard Operating Procedure concerning the grant of the Long long-term visas (LTV) to foreign nationals who claim to be refugees is highly inadequate because it takes into account that within six years the refugee could easily return to their country of origin without any threat to their lives and the main issue is, the Standard operating procedure is seldom followed. Unless India adopts a national refugee law, there will be no clarity regarding refugees, asylum seekers, and their respective rights. The absence of any refugee law is counterproductive as some kind of national refugee law is necessary to deal with the refugee crisis and ensure national security.

Examination of Refugee Laws in other countries

Germany- In Germany, asylum is granted to everyone who flees political persecution. In addition, it is a signatory to the Geneva Convention relating to the status of refugees in 1951.

A refugee can either be an asylum seeker at the border or inside the country. The authorities then direct him or her to the closest reception facility. An in-person interview is conducted to determine whether a person is entitled to refugee status or not. Those awarded political asylum or refugee status receive a three-year residence permit. After the initial three years, a settlement permit with no time limit is issued if the Federal Office for Migration and Refugees does not object. Subsidiary protection is awarded to applicants who prove that they are threatened with serious harm in their country of origin, and are initially granted a residence permit for one year, which can be extended for two additional years. Asylum seekers who enter Germany from safe third countries have no right to asylum and are removed from the country they come from, safe third countries are European Union countries, Norway, and Switzerland. While the asylum application is pending, the asylum seeker is required to stay in the initial reception center responsible for his application for at least six weeks but no longer than six months and may not leave the area without permission.

USA- under United States law, a refugee is someone who demonstrates that they were persecuted or fear persecution due to race, religion, nationality, political opinion, or membership in a particular social group and is of special humanitarian concern to the United States. For consideration as a refugee, that person must receive a referral to the U.S. Refugee Admission Program (USRAP). If a person receives a referral, he or she will receive help filling out an application and then be interviewed abroad by a USCIS officer who will determine whether that person is eligible for refugee settlement. As a refugee, that person may legally work as soon as he or she arrives in the US. An Employment Authorization Document (EAD) is generated within one to two weeks of application approval. If a person is admitted as a refugee, he or she must apply for a green

card(permanent residency) one year after coming to the US and if wants to travel outside the United States, he or she will need to obtain a Refugee Travel document to return to the United States.

Every year, after consultations with cabinet representatives and Congress, a determination is drafted for signature by the president. The presidential Determination establishes the overall admission levels and regional allocation of all refugees for the upcoming fiscal year. Annually, processing priorities(priority 1, priority 2, and priority 3) are established to determine which of the world's refugees are of special humanitarian concern to the United States, fulfilling a processing priority enables a refugee applicant the opportunity to interview with a USCIS officer, but does not guarantee acceptance.

Major Roadblocks

common problems that could create hurdles in implementing a model refugee law in India.

- **Economic:** India is one of the most populous countries with a large section of its population living in poverty. In this scenario, it can't sustain a large number of refugees with its limited resources and if the government spends taxpayers money on refugees this might generate some resentment among citizens for the incumbent government. This resentment can be detrimental in the next elections so no government would risk their political power for refugees and their rights.
- **Security:** Hosting refugees can pose national security risks for the country. People with terrorist links disguised as refugees enter the country and look for a chance to create instability, law and order problems in the host country. In most cases, refugees are also blamed for igniting communal clashes and creating instability. Similarly, sometimes people cross the border illegally in search of better economic opportunities, and better living conditions and later, seek refugee status.
- **Social and cultural:** If the government follows a resettlement policy and provides work permits to refugees, the local population of that area might feel intimidated and may not like the division of their local resources. This is especially true for employment opportunities, given the fact there is large unemployment in India. Sometimes, refugees may also find it difficult to integrate themselves into another country and chances are they may isolate themselves, creating further distance from the local population.

Recommendations - What should the model law look like

- **Refugee Status:** Refugee status should be given to someone who has fled the country of origin due to a “well-founded fear”¹² of persecution on the grounds of race, religion, nationality, membership of a particular social group, or political opinion and is of special humanitarian concern to India.

Any person who has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion should not be given the status of refugee.

- **Refugee ceiling:** Every year, the Government should review the refugee situation, project the number of people, put a limit on the number of refugees that will be admitted, and publish a report upon the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns, grave humanitarian concerns or is otherwise in the national interest.
- **Interview and Assessment:** To determine the refugee claims, an **in-person interview** will be conducted. The applicant must provide information and proof of persecution or serious harm, including information on former residence, travel routes, time spent in other countries, and whether a refugee or asylum application has already been initiated or completed in another country or a different country.
- After an overall assessment, with an emphasis on the personal interview, the case maker may also consult other organizations for data and travel logistics like UNHCR. To conduct background security checks, casemakers may collaborate with National Security agencies like the Intelligence Bureau (IB), and Defence Intelligence Agency (DIA).
Application for refugee status can be denied for a variety of reasons including criminal histories, alleged connection to any terrorist group, past immigration violation, or communicable diseases.
- **Employment and Non-Discrimination:** A refugee may legally work after getting an Employment Authorization document from the government of India. Refugees are entitled to minimum wage laws, workplace safety regulations, and laws against discrimination.
Equal treatment will be given in other areas as well like freedom to practice religion, access to courts, and access to elementary education.

¹² The provision of ‘well-founded’ fear means there must be facts and circumstances that make the existence of such a fear reasonable.

- **Non-Refoulement and Expulsion:** India respects the principle of 'Non-Refoulement' (prohibition of expulsion or return), stated in articles 32 and 33 of the 1951 Refugee Convention. But 'the benefit of the 'Non-Refoulement' provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger in the community of the country.
- **Cessation of Refugee status:** protection will be given as long as he/she needs it, if a refugee voluntarily re-avails himself of the protection of his country of origin, becomes a citizen of India or any other country, and enjoys its protection, his/her refugee status shall cease. Further, refugee status shall end if the circumstances in connection with which a person was recognized as a refugee have ceased to exist.

Conclusion

After analyzing India's refugee laws, it can be concluded that these laws are inadequate to fulfill refugee needs and do not grant refugees the rights and protection that are mentioned in the International legal framework. A model refugee law has been suggested in this paper to end ambiguity and adhocism around refugee laws. Mainly the law setup provisions on who should be granted refugee status and who should not, thus establishing a fine balance between Human rights and national security. It puts a ceiling on the number of refugees admitted per year and provides a mechanism based on which refugee status should be granted. Further, the law mentions the fundamental rights that are granted to refugees; Refugees are allowed to work with permits and are included under minimum wage laws, and workplace safety regulations. It also mentions when and how refugee status will cease. Overall, suggested law is compatible with India's socio-cultural background and aligns with the international legal framework.

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