



REFUGEES IN INDIA; AN OVERVIEW

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Abstract:

This Article provides a comprehensive overview of the refugee situation in India, examining the historical, legal, and socio-political dimensions of refugee protection. The global challenge of safeguarding non-citizens, such as refugees, asylum seekers, and stateless persons, has intensified due to conflicts, ethnic persecution, and extreme poverty. India, a major host country for refugees from neighbouring states like Bangladesh, Sri Lanka, Tibet, Bhutan, and Myanmar, faces significant challenges in addressing the needs of these displaced individuals. The Article delineates the distinction between refugees, asylum seekers, and economic migrants, highlighting the unique legal and humanitarian issues faced by each group. Despite India's efforts to provide sanctuary, the lack of a formal national refugee law results in a reliance on ad hoc administrative measures, leading to inconsistent protection and support for refugees. The Article discusses the absence of a comprehensive legal framework and the reliance on the Foreigners Act of 1946, which does not adequately address the needs of refugees. India's approach is contrasted with international standards, revealing gaps in legal protection and the challenges posed by the absence of specific refugee legislation. The Article further explores India's historical waves of refugee inflows, from the partition of British India in 1947 to recent influxes from neighbouring countries. It highlights India's role as a major refugee host and its ability to integrate diverse refugee populations into its multi-ethnic society. The Article also critiques the Asylum Bill of 2015, emphasizing the need for a robust, flexible legal framework that addresses the complexities of asylum management and provides comprehensive protection for refugees. Through an analysis of India's current refugee policies and legal gaps, this Article underscores the urgent need for legislative reform to ensure effective protection and integration of refugees, aligning with international standards and humanitarian principles.

Keywords: Refugees, Asylum Seekers, India, Legal Framework, Humanitarian Protection.

INTRODUCTION

In the contemporary world, protecting the human rights of non-citizens has become one of the greatest challenges. This group, often marginalized and neglected, includes aliens, stateless persons, refugees, economic migrants, asylum seekers, and undocumented

immigrants. In India, such individuals are commonly referred to as intruders or illegal immigrants.

These non-citizen populations face severe hardships due to a variety of factors, including genocide, ethnic conflicts, and extreme poverty. These crises force many individuals and families to flee their homes in search of safety and better opportunities. However, their quest for asylum often results in arbitrary detention or denial of entry in the host countries, driven by bureaucratic indifference and a lack of adequate legal protection.

India, a major host country, faces significant challenges in addressing the needs of its refugee population. It provides shelter to a large number of refugees from neighbouring states, including Chakma refugees from Bangladesh, Tamil refugees from Sri Lanka, Tibetan refugees, Bhutanese refugees, and Arakanese refugees from Myanmar. The World Refugee Survey of 2008 reported that India was home to approximately 411,000 refugees and asylum seekers.

Despite India's efforts to offer sanctuary, the sheer scale of the refugee crisis means that these individuals often experience precarious living conditions and limited access to legal protection. The global community and national governments need to address these issues more effectively to ensure that the rights of non-citizens are upheld and that they receive the protection and support they urgently need.

Definition and Meaning

Here's a detailed reference for the definition. The Shorter Oxford English Dictionary defines a refugee as an "involuntary migrant, a victim of circumstances which force him to seek sanctuary in a foreign country."¹

Distinguishing Refugees and Asylum Seekers from Migrants

Refugees and asylum seekers differ significantly from migrants in terms of their reasons for crossing international borders and their legal status. According to the Convention Relating to the Status of Refugees, 1951 (commonly known as the Refugee Convention), a refugee is defined as an individual who flees their country of origin due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. This fear of persecution is the primary factor that forces refugees and asylum seekers to seek safety in another country. They are considered externally displaced people (EDPs) because they cannot return to their homeland due to the risks they face.

In contrast, internally displaced people (IDPs) share the same fear of persecution as refugees but have not crossed international borders; they remain within their own country but are unable to return to their homes. This situation highlights the similar, though not identical, challenges faced by IDPs and refugees.

Migrants, however, are different from refugees and asylum seekers. Migrants move across international borders primarily in search of better socio-economic conditions or opportunities, rather than fleeing from persecution. Consequently, migrants do not

¹ Shorter Oxford English Dictionary, 6th ed., edited by C. T. Onions et al., Oxford University Press, 2007, p. 1612.

typically have a well-founded fear of persecution that would prevent their return to their country of origin.²

India's Role in Refugee Protection and Integration

India's rich diversity and stable governance have made it a prominent sanctuary for individuals fleeing persecution and instability from neighbouring countries. The nation's commitment to maintaining a tolerant, democratic, and secular government stands in stark contrast to the political turbulence in many of its neighbouring states. This stability has not only attracted refugees seeking safety but also facilitated their integration into Indian society. Historically, India has demonstrated resilience and generosity in absorbing various waves of refugees, contributing to its reputation as a country that welcomes those in need.

India's geographical location and its shared borders with eleven countries, many of which have experienced conflict or are in recovery from strife, place it in a unique position to provide refuge. Over the years, India has hosted large numbers of refugees from its neighbouring countries. This includes refugees from Sri Lanka, Bangladesh, Myanmar, and Tibet, among others. The ability of these displaced individuals to integrate into India's multi-ethnic society and contribute positively to local cultures and economies underscores India's role as a haven for those escaping turmoil in their homelands.

The historical influxes of refugees into India highlight the nation's capacity for accommodating diverse populations and fostering peaceful coexistence. India's experience with integrating various refugee groups illustrates its commitment to upholding humanitarian values amidst regional instability. This ongoing effort not only showcases India's dedication to refugee protection but also its broader role in contributing to regional stability through a supportive and inclusive approach.

The Historical Waves of Refugee Influx into India

Since gaining independence, India has faced several waves of refugee and asylum seeker inflows, each driven by distinct geopolitical and socio-economic factors. The first major influx occurred in the wake of the 1947 partition of British India, which led to massive population movements between India and Pakistan. This period saw an enormous number of refugees from both sides seeking safety and stability in their new countries. The partition displaced millions, creating a significant refugee crisis that India struggled to manage.

Following the initial wave, India continued to receive refugees from various other regions. The subsequent decades saw significant numbers of Burmese and Sri Lankan individuals fleeing to India due to political and ethnic strife in their home countries. The late 20th century brought additional challenges with the arrival of political refugees from Tibet, Sri Lanka, and East Pakistan, as well as people from Bhutan, Burma, Afghanistan, Iran, Somalia,

² "Refugee." Shorter Oxford English Dictionary, 6th ed., edited by C. T. Onions et al., Oxford University Press, 2007, p. 1612. The definition of a refugee is outlined in the context of the Convention Relating to the Status of Refugees, 1951, which specifies that refugees are those who flee their country due to fear of persecution.

and Iraq. These groups sought refuge in India due to persecution, conflict, and instability in their own countries.

India's ongoing role as a refuge for displaced populations highlights its enduring commitment to humanitarian principles despite the challenges. The diverse origins of these refugee groups reflect the broader regional instability and India's strategic position in South Asia. India has had to navigate complex issues related to the integration and support of these various refugee populations, all while maintaining its democratic and secular values.

India's Role as a Major Refugee Host

One of the most notable aspects of India's refugee history is the absence of any instances where refugees have originated from Indian soil, with the sole exception being the trans-boundary movements during the 1947 partition of the country. This partition led to significant population exchanges between India and Pakistan, marking a period of intense displacement. Since then, India has consistently been a receiving country, providing refuge to individuals fleeing conflict, persecution, and instability from neighboring regions. This unique position highlights India's role as a major sanctuary amidst South Asia's complex geopolitical landscape.

India's status as a primary refuge for displaced persons underscores its ongoing commitment to humanitarian principles and its ability to absorb diverse refugee populations. Over the years, the country has opened its doors to individuals from various neighboring states, including Sri Lanka, Myanmar, Bangladesh, and Afghanistan. These refugees have contributed to India's multicultural and multi-ethnic fabric, enriching the country's social and cultural diversity. India's experience in integrating such diverse groups into its societal framework reflects its resilience and adaptability in the face of ongoing regional challenges.

In comparison to other South Asian nations, India has emerged as a leading host country for refugees. The scale of India's refugee intake surpasses that of its regional neighbors, making it a pivotal player in addressing the humanitarian needs of displaced populations in the region. This commitment not only demonstrates India's capacity for managing large-scale refugee movements but also reinforces its role in fostering stability and tolerance in a region marked by frequent turmoil. India deals with asylum seekers and refugees in three different ways:

Categories of Refugees in India

India's refugee population is diverse and can be broadly categorized into three main groups based on their status and recognition. The first group includes refugees who live in camps and receive protection and assistance from the Indian government. This category comprises Sri Lankans and Tibetans who have been formally recognized and supported by Indian authorities. These refugees typically reside in designated camps where they benefit from government-provided services, including housing, healthcare, and education.

The second group consists of individuals who, although not officially recognized by the Indian government, have been granted refugee status by the United Nations High

Commissioner for Refugees (UNHCR). These refugees are protected under international law through the principle of non-refoulement, which prohibits their forcible return to countries where they face persecution. This category includes Burmese, Somalis, Afghans, and others who have sought refuge in India but remain under the protection of UNHCR rather than Indian government recognition.

The third group encompasses refugees who have entered India and assimilated into local communities but are neither acknowledged by the government nor by UNHCR. This group includes tribal refugees and the Chin community living in Mizoram. These individuals often integrate into the local socio-economic fabric, contributing to their communities while lacking formal recognition and support from official bodies.

Political refugees and asylum seekers like Tibetans, Sri Lankan Tamils, and East Pakistan refugees of 1971, Chakmas, Bhutanese, Burmese, Afghan, Iranian, Somalis and Iraqis have come to India to save their life and property and to avoid political or ethnic persecution. There is also presence of stateless persons who were emanated from immigration to India³.

India's Approach to Refugee Protection: A Legal and Administrative Perspective

India's approach to refugee protection is distinctive in that it does not adhere to the 1951 United Nations Convention on the Status of Refugees or its 1967 Protocol. Unlike many other countries that have incorporated these international frameworks into their domestic laws, India has opted not to be a party to these treaties. Consequently, India has not enacted a specific national law dedicated to refugees. Instead, the country manages refugee issues through political and administrative mechanisms, relying on ad hoc measures to address their status and challenges.

Despite the lack of a formal legal framework, India does offer some protection and assistance to refugees. However, the absence of a dedicated refugee law means that refugees in India often face challenges due to arbitrary executive actions and discrimination. Without a structured legal regime, remedies for such issues are not easily accessible, and refugees frequently depend on the goodwill of the State rather than having a clear set of legal rights to ensure their dignity and well-being. This reliance on administrative discretion rather than codified legal standards highlights the gaps in the protection afforded to refugees in India.

Furthermore, India's lack of a uniform legal approach has resulted in a situation where the treatment of refugees is often based on their nationality and political considerations. This can lead to inconsistencies in the rights and privileges granted to different refugee communities. Without a comprehensive legal framework, the Indian legal system struggles to provide equitable and uniform support to its diverse refugee population, which affects the ability of these individuals to rebuild their lives with dignity.

Gaps in India's Legal Framework for Refugees

³ BANDHOPADHYAY RATHIN, HUMAN RIGHTS OF THE NON-CITIZEN LAW AND REALITY, 15 2007)

Infra. n. 6.

The National Human Rights Commission (NHRC) of India has consistently highlighted the pressing need for a national refugee law. In its numerous reports, the NHRC has advocated for the enactment of a dedicated national law or substantial amendments to the outdated Foreigners Act of 1946, which currently governs the status and treatment of refugees and asylum seekers. This Act, originally designed to regulate the entry and stay of foreigners, does not address the unique needs of refugees or provide them with specific protections. Under the current legal framework, asylum seekers in India do not enjoy any special status. Individuals fleeing persecution are subject to the same rules and regulations as all other foreigners. This lack of differentiation means that refugees are treated similarly to tourists or immigrants, which does not adequately address their unique circumstances. The Foreigners Act fails to explicitly mention the term 'refugee,' resulting in a broad classification that encompasses various categories of non-citizens without recognizing their specific needs or rights.

This broad categorization under the term 'foreigner' leads to significant shortcomings in the protection afforded to refugees. Unlike the rights granted under international conventions like the Geneva Convention, which provides a distinct framework for refugee protection, Indian law does not offer similar guarantees. The absence of specific legal provisions for refugees means they are deprived of the privileges and protections that international standards prescribe, leaving them vulnerable to inconsistent treatment and legal uncertainties.⁴

Executive Policy vs. Statutory Position of Refugees in India

India's executive policy regarding refugees tends to be more favorable compared to their legal status. The Indian government has established a framework that includes issuing long-term visas and work permits, which are renewable annually. This policy demonstrates a level of flexibility and support for refugees, allowing them to stay and work in the country while contributing to its economy. Additionally, refugees in India generally have access to government-funded healthcare and education, reflecting a commitment to providing essential services.

Despite these positive aspects, several specific issues remain within the broader framework of rights and access. While refugees can access healthcare and government schools, there are significant challenges related to accessing additional benefits and opportunities. For instance, scholarships, higher education, and employment opportunities may be limited or obstructed by procedural hurdles. Similarly, benefits such as disability support can be difficult for refugees to obtain due to bureaucratic barriers or lack of clarity in the procedures.

These challenges impact the overall quality of life for refugees, highlighting a gap between the theoretical support provided by the executive policies and the practical difficulties faced by refugees. Although the general policy framework is supportive, the specific issues related to education, employment, and social benefits illustrate how the refugee population may still experience significant obstacles in their daily lives, affecting their

⁴ Namrata Gupta, 'Protection of Refugees in India', 7 INTERNATIONAL JOURNAL OF RESEARCH IN SOCIAL SCIENCES. P.420, 420-433, (2017).

ability to fully integrate and thrive in India.

The Asylum Bill of 2015: An Overview and Critique⁵

In late 2015, Shashi Tharoor, a Member of Parliament (MP) in India, introduced the Asylum Bill, 2015, with the ambitious goal of positioning India as a leader in asylum management globally. This bill marked a significant moment in Indian legislative history, as it was the first attempt since the Lok Sabha's inception in 1952 to create a formal asylum regime. Despite the absence of such a framework, there had been ongoing discussions and calls from various MPs regarding the need for robust refugee protection mechanisms. The introduction of this bill represented a major step towards formalizing India's approach to managing asylum seekers.

The Asylum Bill, 2015, was generally welcomed for its intent to address asylum issues comprehensively. However, it has faced criticism for its shortcomings in effectively addressing the complexities of asylum management. Bhairav Acharya, the deputy director of the Public Interest Legal Support and Research Centre (PILSARC), highlighted several critical areas where the bill falls short. Acharya argued that the future asylum law should adhere to four key principles to be considered effective

Multifaceted Protection

Asylum laws must cater to different categories of protection, recognizing the diverse needs of asylum seekers. This principle emphasizes that a one-size-fits-all approach is inadequate for addressing the varied circumstances of individuals seeking asylum.

Flexible Processing Mechanisms:

Given the nature of mixed migratory flows, which include various forms of migration and displacement, the bill must incorporate flexible processing mechanisms. This ensures that the asylum system can adapt to changing conditions and respond effectively to different types of migration.

Attention to Mass Influxes:

The bill should prioritize managing large-scale influxes of refugees rather than focusing solely on individual cases. Mass influxes often require different strategies and resources compared to handling individual asylum applications.

Goals of Legislation

The overarching goals of the asylum legislation should include effective asylum management and refugee governance. This means that the law should not only facilitate the asylum process but also contribute to broader governance objectives related to refugee integration and support.⁶

⁵ India does not have any specific legislation dealing with the problem of refugees and asylum seekers. At present, refugees were treated as par with the foreigners and all laws applied to foreigners were also applied to them.

⁶ NUJS LAW REVIEW 9 NUJS L. Rev. 173 (2016)

These principles suggest that while the Asylum Bill, 2015, was a positive development, its implementation and effectiveness would depend on addressing these critical areas. For India to lead in asylum management, it must refine its approach to ensure that the legislative framework is both comprehensive and adaptable to the evolving landscape of global migration.⁷

Conclusion

In conclusion, India's role as a major host country for refugees underscores its historical commitment to humanitarian principles and its capacity for integrating diverse populations. Despite its rich tradition of offering sanctuary, India's current approach to refugee protection is hampered by the absence of a comprehensive national refugee law. This gap in legal framework results in inconsistent protection and support for refugees, who often face significant challenges due to ad hoc administrative measures and reliance on outdated legislation.

The lack of adherence to international standards, such as the 1951 Refugee Convention and its 1967 Protocol, further complicates the refugee situation. The reliance on the Foreigners Act of 1946, which inadequately addresses the unique needs of refugees, highlights the urgent need for legislative reform. The Asylum Bill of 2015, while a step in the right direction, falls short of addressing the complexities of asylum management and the diverse needs of refugees.

India's historical experiences with refugee inflows and its ability to integrate various refugee populations demonstrate its resilience and commitment to humanitarian values. However, to effectively address the evolving refugee crisis and align with international standards, India must undertake significant legislative reforms. Establishing a robust and flexible legal framework for refugees will not only ensure their protection and dignity but also reinforce India's role as a leading advocate for refugee rights and integration.

⁷ Acharya, Bhairav. *"Critique of the Asylum Bill, 2015: Principles for Effective Asylum Law"*, Public Interest Legal Support and Research Centre (PILSARC), p. 145.