
EXAMINING REFUGEE RIGHTS UNDER THE HUMAN RIGHTS FRAMEWORK

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Abstract

The plight of refugees and their human rights remains a critical concern on both international and national levels. This paper provides a comprehensive examination of the multifaceted challenges refugees face, analyzed through international human rights frameworks and national policies. At the international level, protections under the 1951 Refugee Convention and its 1967 Protocol outline state obligations; however, refugees often struggle to access their rights due to barriers such as restrictive asylum processes, violence, discrimination, and limited access to essential services like education and healthcare. The politicization of refugee issues and rising anti-immigrant sentiments have led to increasingly hostile national policies, including border closures and the criminalization of irregular migration, further exacerbating refugee vulnerabilities. Responses vary significantly among countries: while some adopt progressive measures to uphold refugee rights, others implement detrimental policies shaped by political ideologies and public opinion. This paper critically evaluates the effectiveness of existing mechanisms in safeguarding refugee rights, identifying key areas for improvement, including adherence to international obligations, enhanced support for resettlement and integration, and the promotion of tolerance. Ultimately, addressing these challenges necessitates a collaborative effort from the international community, national governments, and civil society to foster a more inclusive and compassionate environment for refugees, ensuring their rights and dignity are upheld.

Keywords: *Refugee Rights, Human Rights Frameworks, Asylum Challenges, National Policies and International Human Rights instruments*

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1.0 INTRODUCTION

Forced migration, arguably the most egregious violation of human rights in today's world, has intensified over the years, exacerbating the global refugee crisis that has persisted since the aftermath of the First World War. According to a recent report by the United Nations High Commissioner for Refugees (UNHCR), the number of forcibly displaced individuals reached a staggering 80 million by mid-2020. Among them, 26 million were categorized as refugees, 4.2 million as asylum seekers, and 45.7 million as internally displaced persons. Asia, home to 41 percent of the global refugee population, bears the brunt of this crisis, with South Asia ranking fourth globally, hosting approximately 12 percent of all refugees. The question arises: why do individuals endure the perilous journey of forced migration, risking not only their own lives but also the lives of their loved ones? The reasons for their displacement are diverse, spanning civil wars, political and religious turmoil, ethnic conflicts, large-scale development projects, and other factors. The complexity of these causes underscores the challenge of comprehending why people opt for the uncertain life of a refugee. In recent years, the identification of root causes has gained prominence due to the significant movement of people within and across borders, placing considerable social and economic strain on host nations, particularly those in middle- and low-income brackets.

The limited resources in these countries make it arduous for refugees to access basic necessities, especially when they must compete with local communities for essential services.² India, from a multifaceted perspective, has served as a sanctuary for numerous waves of refugees, asylum seekers, and forcibly displaced populations throughout its history, including the post-independence era.³ Notably, despite being a developing nation, India has successfully provided refuge to over 2.5 million refugees. The Constitution of India upholds certain fundamental rights applicable to non-citizens, including the Right to Equality,⁴ the Right to Life and Personal Liberty,⁵ and the Freedom to Practice and Propagate Religion.⁶ The Indian Supreme Court has asserted that any violation of these rights can be remedied through legal means, stressing that refugees or asylum seekers should not face discrimination based on their non-citizen status.

In this paper, we delve into the profound issue of forced migration and the global refugee

² Sumita Das Majumder, "Refugee Management in India: Policy Introspection", 5 ISIL 2005

³ Ibid.,

⁴ (Article 14)

⁵ (Article 21)

⁶ (Article 25).

crisis, examining its causes and consequences. We also explore India's pivotal role as a safe haven for displaced populations, analyzing its legal framework and commitment to protecting the rights of refugees and asylum seekers. Through this exploration, we aim to shed light on the complexities of forced migration and the imperative of upholding human rights in addressing this pressing global challenge.⁷

I. MEANING & DEFINITION OF HUMAN RIGHTS

Human beings possess certain basic rights which belong to them simply because of their very existence. These rights are the fundamental and inhere in a human being from their birth irrespective of their caste, creed, religion sex and nationality. These rights are commonly known as human rights. Human rights do not depend for their existence on any legal or moral practices of a country they become operative with the birth of the individual and are inalienable.⁸

R.J Vincent: Human rights are the rights that everyone equally has by virtue of his very humanity and also because of the reason of being grounded in an appeal to our human nature.⁹

D.D Basu: Human rights are the minimal rights which every individual possess against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration.

Human rights are therefore rights which belong to an individual as a consequence of his very humanity. These rights are possessed by individuals every time and everywhere and cannot be deprived without a grave affront of justice.¹⁰

1.1 MEANING OF REFUGEES

The term "refugee" originates from the ancient French word "refuge," meaning a "hiding place" or "shelter from danger or distress." Its roots can be traced back to the Latin word "refugere," which signifies "to flee," and "refugium," denoting "taking refuge or a place to flee back to."

⁷ available at: <https://www.unhcr.org/> last accessed on 19th september, 2023.

⁸ Tim Dunne, Nichols J. Wheeler, "Introduction: Human Rights in Global Politics"⁴ (Press Syndicate of the U.S.A)

⁹ H.O Agarwal, "International Law & Human Rights", 754(Central Law Publication, Allahabad, 20th edn.,2014).

¹⁰ D.D Basu, "Human Rights in constitutional Law", 5 (Prentice Hall of India Pvt. Ltd., New Delhi, 1994)

¹¹In a broad sense, a refugee is an individual or alien who finds themselves outside their native place or habitual residence due to persecution, human rights violations, or disasters, whether natural or man-made.¹² A refugee, whether a man, woman, or child, is compelled to leave their country of origin due to a well-founded fear of persecution based on religion, race, nationality, sex, membership in a particular social group, or political opinion. It's essential to note that individuals fleeing criminal prosecution for non-political breaches of the law are excluded from the refugee category. Common to all refugees are the shared characteristics of being uprooted, homeless, and lacking national status and protection. A refugee is an involuntary migrant, often a victim of political turmoil, warfare, or natural catastrophes.¹³

2.0 DEFINITION OF REFUGEE:

There was and is no single definition of "refugee" suitable for all purposes. The term 'refugee' is an evolutionary as well as a contested concept.¹⁴ Refugee is not a concept of customary international law. Therefore, refugee has not been defined thereunder. Refugee has been the subject of treaties and other international agreements. So, it is impossible to give one single definition, which could be used in all circumstances.¹⁵ As Prof Goedhart rightly observed that: "A sociological definition of the term "refugee" differs from a legal one; the definition drafted for the purpose of the binding international agreement will look very different the definition adopted by an association with a humanitarian aid." However a more precise definition of a refugee is given as "a person having well-founded fear of persecution on grounds of race, religion, nationality or membership of a particular group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, was unable or, owing to such fear, was unwilling to return to it."¹⁶

However, in general terms, a 'refugee' is usually thought of a person compelled to flee his state of origin or residence due to political troubles, persecution, famine or natural disaster.¹⁷ A man's status as a refugee is determined first and foremost by the factors which led to his

¹¹ R.C. Chhangani, "Rights of Refugees Under Nigerian Law",30 JCPS 45(1996).University of Cambridge, United Kingdom,1994).

¹² Ibid.,

¹³ See Supra-8

¹⁴ Ibid.,

¹⁵ G.J.V. Hemen Goedhart - "The Problem of Refugees", 267 (Recueil Des Cours,1953)

¹⁶ Article 1(2) of the Convention Relating to the status of Refugees,1951.

¹⁷ C.R. Partharathi "State's Obligation Towards Refugees: Vision and Reality",45(Oxford University Press, 2004)

condition: expatriation and the breaking of the ties that bound him to the states of his nationality.¹⁸ A refugee is distinguished from an ordinary alien because of the lack of normalcy of relationship between him and the authorities of his state of origin, arising from the fear of political persecution upon his return. The refugee is distinguished from a stateless person because he, unlike the stateless person, may still have a de jure national status. The refugee is perceived as an involuntary migrant, a victim of circumstances which force him to seek sanctuary in a foreign country.¹⁹

3.0 INTERNATIONAL PERSPECTIVE FOR THE PROTECTION OF THE REFUGEES:

3.1 *Universal Declaration For Human Rights, 1948:-*

The rights of refugees under international law are derived from various sources, including treaties, customs, and general principles of international law. In addition to specific laws, there are also general human rights documents that provide protection for all individuals.²⁰ All states are therefore obligated to safeguard the human rights of refugees, as well as those of other individuals. The Universal Declaration of Human Rights (UDHR) of 1948, along with subsequent international treaties such as the International Covenant on Civil and Political Rights (ICCPR)²¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR), establish human rights as mandatory and non-negotiable. These rights are protected under customary international law, with some, like the right of asylum seekers and the principle of non-refoulement, attaining the status of jus cogens. While the UDHR sets out standards for human rights, it is not enforceable.²² Therefore, the ICCPR²³ and ICESCR²⁴ were adopted to provide enforceable mechanisms for protecting these rights. States are permitted to progressively implement the provisions of these covenants based on their resources. Additionally, certain rights outlined in the UDHR have been

¹⁸ Jacques Vernant, "The Refugee in the Post-war World" 13(George Allen and Unwin Ltd.,1953).

¹⁹ Atle Grahl Moolsen, "The Status of Refugees in International Law", (A.W. Sijthoff, 1966). The Shorter Oxford English Dictionary, 3rd Edition, 1977, The statute of International Court of Justice, 59 stat 105 1945, adopted on June 26 1945 and entered into force on October 24 1945 (ICJ Statute), article 38 (1).

²⁰ 18 The statute of International Court of Justice, 59 stat 105 1945, adopted on June 26 1945 and entered into force on October 24 1945 (ICJ Statute), article 38 (1).

²¹ Adopted by the UN General Assembly on 10th December 1948. It is the basic document of Human Rights Law and was referred to as the Magna Carta of Human rights by Eleanor Roosevelt who chaired the UN Commission on Human Rights that drafted the document.

²² available at <https://www.refworld.org>.last accessed on 20 september,2023 at 05:00 PM.

²³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966.

²⁴ Article 2 para 1 of ICESCR.

recognized as part of customary international law over time. The principles and provisions of the UDHR, along with those of the UN Charter, are seen as guaranteeing the human rights of all individuals, including refugees and asylum seekers.²⁵ The UDHR has also influenced national laws and constitutions, with many countries, such as India, incorporating its principles into their legal frameworks. According to the UDHR, states have a duty to protect the inherent dignity and worth of every human being, including refugees and asylum seekers. The principle of non-refoulement ensures that asylum seekers are not returned to countries where they may face persecution. These rights are further reinforced by the Convention on the Status of Refugees of 1951 and its 1967 Protocol. Even states that are not signatories to these conventions are still bound by customary law to fulfill the basic rights of refugees. If customary law is recognized as *jus cogens* internationally, it takes precedence over treaty provisions.²⁶

3.2 UN CONVENTION ON STATUS OF REFUGEES, 1951:

The United Nations adopted the Convention Relating to the Status of Refugees in 1951, commonly referred to as the Refugee Convention, under the UN General Assembly resolution 429(V). The preamble of the convention emphasizes the commitment, as outlined in the UN Charter and the Universal Declaration of Human Rights, to ensure the enjoyment of fundamental rights and freedoms for all individuals without discrimination.²⁷ This convention establishes the status of a 'Refugee' and delineates the protection of the rights associated with that status.²⁸ The primary objective of the Refugee Convention was to consolidate and extend the scope of protection provided by previous international agreements related to refugees. According to the convention, a 'Refugee' is defined as "any person who is unable or unwilling to return to their country of origin owing to a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group, or political opinion." The fundamental purpose of the convention is to prevent contracting states from expelling a refugee from their territory if their life or freedom would be threatened due to factors such as

²⁵ Article 53 of Vienna Convention on Law of Treaties, 1155 UNTS 331, done May 23, 1969, entered into force on Jan.27, 1980 (Vienna Convention).

²⁶ The Shorter Oxford English Dictionary, 3rd Edition, 1977.

²⁷ 30 Adopted by General Assembly Resolution 429(V) of 14 December 1950 and came into force on 22 April 1954.

²⁸ UN Convention Relating to the Status of Refugees signed in Geneva on 28 July 1951, 189 UNTS 150.

race, religion, nationality, or social or political affiliation.²⁹

The convention also outlines exemptions for certain individuals who may not be entitled to refugee status, including those who have committed crimes against peace, war crimes, or crimes against humanity, as defined by international law. Additionally, individuals guilty of serious non-political crimes outside the country of refuge or acts contrary to the purposes and principles of the United Nations may be excluded from refugee status. Key principles of the convention include non-discrimination, non-penalization, and non-refoulement. It prohibits the penalization of refugees for illegal entry or stay, with certain restrictions.³⁰ The principle of non-refoulement ensures that refugees cannot be expelled or returned against their will to a territory where they fear threats to their freedom or life.³¹ Importantly, the convention establishes minimum standards for the treatment of refugees, including access to work, primary education, courts, and documentation such as refugee travel documents. It also delineates grounds for the loss of refugee status, including voluntary re-availing of the protection of one's nationality or re-establishment in the country left due to fear of persecution.³² Additionally, individuals without nationality may lose refugee status if they can return to their former habitual residence after the circumstances leading to their recognition as a refugee cease to exist.³³

V. NATIONAL PERSPECTIVE RELATING TO STATUS OF REFUGEE: As of January 31, 2023, India continues to stand out among developing nations for its remarkable record of providing sanctuary to over 2.5 million refugees since gaining independence in 1947. India's tradition of offering refuge transcends its borders, embracing diverse persecuted communities such as Jews and Parsees. Notably, during World War II, India welcomed thousands of Polish refugees, many of whom later returned to Poland or resettled elsewhere.³⁴ The post-independence era marked one of history's largest mass migrations, triggered by the India-Pakistan partition, which displaced over 140 million Hindus, Sikhs, and Muslims. While these individuals did not strictly fit the 1951 Convention's definition of refugees, India established a separate Ministry for the Rehabilitation of these Displaced Persons to address their needs.

²⁹ 31 Article 1(2), Refugee Convention 1951.

³⁰ *id.*, Article 33

³¹ Guy S. Goodwin Gill, "The Refugee in International Law" (Oxford University Press, 4th edn. 2021).

³² Article 1(C), Refugee Convention.

³³ Article 53 of Vienna Convention on Law of Treaties which states that a treaty which conflicts with peremptory norms on the date of conclusion will be void.

³⁴ *Id.*, Article 1(C)(1) 36 *Id.*, Article 1(C)(2) 37 *Id.*, Article 1(C)(3) 38 *Id.*, Article 1(C)(4) 39 *Id.*, Article 1(C)(6)

In 1959, India witnessed another significant influx of refugees, this time from Tibet, where over 80,000 Tibetans sought refuge in neighboring countries due to religious persecution, torture, and other atrocities inflicted by the Chinese government. Prime Minister Nehru extended support to the Dalai Lama and his followers, offering asylum based on shared cultural ties and humanitarian concerns. Despite providing refuge, India refrained from officially recognizing the Tibetan Government in Exile to maintain solidarity with China. India's commitment to providing sanctuary extends to Afghan and Sri Lankan refugees, while a considerable number of Bangladeshi refugees have sought safety in India following its separation from Pakistan. However, the recent arrival of Rohingya refugees from Myanmar has prompted discussions on national security, with concerns raised about potential terrorist infiltration among the refugee population.³⁵

4.0 LEGAL FRAMEWORK FOR REFUGEE PROTECTION IN INDIA:

In India, there is no specific legislation addressing the protection and status of refugees. Instead, the country deals with refugee matters at political and administrative levels, treating refugees under the laws applicable to foreigners. The Registration of Foreigners Act, 1939 mandates that every foreigner entering India must provide true particulars about themselves and the purpose of their visit to the registration officer to obtain a registration certificate. Similarly, the Foreigners Act of 1946 regulates the presence and departure of foreigners to and from India. Under the Foreigners Act, the executive is vested with broad powers to remove foreigners from India, a discretion typically exercised without judicial review. Section 3(2)(c) of the Foreigners Act, 1946 empowers the Central Government to execute such removals. This authority, including the power to refuse entry and prompt deportation for failure to meet entry conditions, was first affirmed by the Supreme Court in 1955. Subsequent judicial decisions have upheld the executive's discretion in this matter. Additionally, both the Parliament and various states in India have enacted legislation related to refugees, contributing to the legal framework governing refugee protection in the country.³⁶

5.0 CONSTITUTIONAL PROTECTION

Refugees residing on Indian soil benefit from several provisions of the Indian Constitution that safeguard their fundamental rights, akin to those afforded to Indian citizens. These rights,

³⁵ Sanjay K.Roy, "Refugee and Human Rights", (Rawat Publications, New Delhi, 2001). 43 Section 3(2)(c) of the Foreigners Act reads, "In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner ... shall not remain in India, or in any prescribed area therein."

³⁶ International Commission of Jurists, *The Question of Tibet and the Rule of Law* (Geneva: ICJ, 1959)

primarily enshrined in Part III of the Constitution, ensure equitable treatment and protection for refugees within the territory of India.

a) Part II - Citizenship (Articles 5-11): These articles delineate the provisions regarding Indian citizenship. While refugees may not necessarily be Indian citizens, they are still entitled to certain fundamental rights guaranteed by the Constitution.

b) Article 14: Equality before Law: Article 14 ensures that refugees, like Indian citizens, cannot be denied equality before the law or equal protection of laws within the territory of India. This provision prohibits discrimination based on nationality or refugee status.

c) Article 20: Protection in respect of conviction of offences: Article 20 provides safeguards to refugees facing criminal charges, including protection from ex post facto laws, double jeopardy, and self-incrimination. This ensures that refugees are afforded fair treatment under the law.

d) Article 21: Protection of life and personal liberty: Article 21 guarantees the protection of life and personal liberty to all individuals, including refugees. This provision ensures that refugees cannot be arbitrarily deprived of their life or liberty, except according to established legal procedures.

e) Article 22: Protection against arrest and detention: Article 22 provides refugees with protections against arbitrary arrest and detention. It includes rights such as knowing the grounds for arrest, the right to defense by a legal practitioner, and the right to be produced before a magistrate within specified timeframes.

f) Article 25(1): Freedom of conscience and free profession, practice, and propagation of religion: Article 25(1) grants refugees the freedom to practice and propagate their religion without discrimination. This ensures that refugees have the right to follow their religious beliefs without interference from the state.

g) Article 27: Freedom as to payment of taxes for the promotion of any particular religion: Article 27 ensures that refugees, like Indian citizens, are not compelled to contribute to the promotion of any particular religion through taxes. This provision upholds the secular principles of the Indian Constitution.

h) Article 28(3): Freedom as to attendance at religious worship in educational institutions: Article 28(3) guarantees refugees the freedom to attend religious worship in educational institutions, ensuring that they can practice their religious beliefs freely within educational settings.

i) Article 13 read with Articles 32 and 226: These articles empower the High Courts and the Supreme Court of India to declare any law or administrative action contravening the

aforementioned rights as null and void. This ensures that refugees have access to legal remedies in case of violations of their fundamental rights. In all the aforementioned provisions, the term 'person' is understood to include any alien, such as refugees, excluding enemy aliens. Articles 22(1), 22(2), and 25(1) of the Indian Constitution underscore that the principles of natural justice in the common law system are equally applicable in India, extending protection even to refugees.³⁷

6.0 LAWS GOVERNING REFUGEES

India currently employs several domestic legislations to address refugee matters, without drawing a distinct line between "foreigners" and "refugees." These laws include:

- Passport (Entry into India) Act, 1920³⁸ & Passport Act, 1967.³⁹
- Registration of Foreigners Act, 1939.
- Foreigners Act, 1946.
- Foreigners Order, 1948.

The Passport (Entry into India) Act, 1920, and the Passport Act, 1967 do not differentiate between genuine refugees and other categories of foreigners, such as economic migrants or tourists. Consequently, refugees face the risk of arrest by immigration authorities and potential illegal deportation due to the absence of a valid passport. Imposing penalties on refugees for this reason seems unjustifiable, considering their circumstances and the challenges they face in obtaining passports amid turmoil. While refugees may obtain valid passports and identity cards upon entering Indian territory if they fulfill certain criteria, currently, only Tibetan refugees have been granted this privilege. This preferential treatment stems from the presence of their political and spiritual leader in India, along with their parliament being located on Indian soil. However, some scholars criticize this practice, arguing that it compromises India's sovereignty.

The Registration of Foreigners Act, 1939 authorizes the Central Government to establish rules for foreigners regarding reporting, proof of identity, and registration certificates. However, applying this law to refugees adds to their hardships, as they have already endured persecution in their home countries. Moreover, the arbitrary use of Central government power to harass genuine refugees lacks proper oversight, leaving them vulnerable to exploitation. Similarly, the

³⁷ Bimal N Patel, *India and International Law*, (Martinus Nijhoff Publishers, 2005).

³⁸ THE PASSPORT (ENTRY INTO INDIA) ACT, 1920, ACT NO. 34 OF 1920

³⁹ THE PASSPORTS ACT, 1967 ACT NO. 15 OF 1967[24th June, 1967.] An Act to provide for the issue of passports and travel documents, to regulate the departure from India of citizens of India and other persons and for matters incidental or ancillary thereto.

Foreigners Act, 1946 imposes additional restrictions on refugees, dictating whom they can meet and the specific routes through which they can enter the country. Critics argue that this act grants authorities unlimited power to arrest and detain any foreigner based on mere suspicion of non-compliance, further exacerbating the challenges faced by refugees.

7.0 JUDICIAL APPROACH TO REFUGEE PROTECTION IN INDIA:

The legal status of refugees in India is that they are to be treated as foreigners under the Foreigners Act, as India does not have any specific law to deal with refugees. India is also not a signatory to the refugee convention and its protocol, and there is no separate National legislation for dealing with refugee issues therefore the Government of India adopts adhoc policies based on political exigencies and the discretion of the executive. The Constitution of India, 1950 provided for strong fundamental rights which the courts have liberally interpreted extending the protection of certain provisions even to refugees. Under right to judicial remedy many refugees have sought protection through the High Courts and the Supreme Court based on the protection given by the Constitution of India which is applicable to both citizens and non-citizens. One important provision is Article 21 of the Indian Constitution which envisages protecting the life and personal liberty of a person.⁴⁰ Based on this provision, several petitions have been filed by asylum seekers and refugees contending that sending a person to a place where they may face persecution will violate their right to life. Courts have agreed to that this provision is also applicable to refugees and therefore they cannot be sent to places where their life is threatened. This is an example how India has helped in protecting the right to non-refoulement, through constitutional interpretation by the higher courts.⁴¹ In the landmark decision of the Indian Supreme Court in the case of Chakma refugees from Bangladesh, the court prevented the government from sending them back as there was threat to their lives. The Government of India in 1989 gave assistance to the 3000 refugees who came from Myanmar, ensuring that no one would be sent back even though they did not recognize them as refugees. But the same was not the case in 2015 when Government of India returned some Rohingya refugees on the grounds of national security. The government had apprehensions that there could be militants posing as refugees within their ranks. Government of India decides on taking refugees when there is a mass influx, while individual cases are handled by UNHCR. In

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

⁵⁰ Ibid, pp 79. ⁵¹ National Human Rights Commission v. State of Arunachal Pradesh, 1996 SCC 742.

⁵² 1999 CrLJ 919.

⁵³ AIR 1981 SC 1886

⁴¹ 51 National Human Rights Commission v. State of Arunachal Pradesh, 1996 SCC 742.

several cases the courts have suspended deportation of refugees while their applications are pending for consideration of refugee status with UNHCR. In the landmark case of *Ktaer Abbas Habib Al Qutaifi v Union of India*⁴², the Gujarat High Court upheld the principle of non-refoulement under the wide umbrella of Article 21 of the Indian Constitution and decided not to deport the two Iraqi nationals to their original country as long as they had a fear for their life and liberty. Instead, they were handed over to UNHCR in India. *Louis De Raedt v. Union of India*⁴³, the court held that even non-citizens have the fundamental right to life, liberty and dignity.

8.0 SUGGESTIONS AND RECOMMENDATIONS:

There have been endless debates and discussions over which is better passing a domestic legislation or framing a refugee convention specifically for India. The various recommendations are:

8.1 NEED FOR A DOMESTIC LAW

1. A domestic law is needed in India to ensure that all refugees are given basic protection. Without that, refugee rights are not rights in the real sense, they are simply privileges at the hands of the administration.
2. A domestic law should also define refugees to include “**internally displaced people**” due to natural calamities, terrorist activities. For instance, the Kashmiris were forced to flee Kashmir due to the militant activities.
3. Housing and employment can be ensured to refugees so that they can become self-reliant. A number of civil society organizations should work in collaboration with the Govt. under this act to improve their living conditions.
4. A domestic legislation will overrule all the existing acts like the Passport act and the foreigner act and will reduce the suffering of refugees by specifically dealing with their problems. A domestic legislation will make the procedure of granting refugee status simple, fair and transparent. It will also call for greater accountability and checks on the power of the officials.
5. It will abolish discrimination which currently exists among refugees of

⁴² 1999 CrLJ 919.

⁴³ AIR 1981 SC 1886

different nationalities.

6. Special provisions guaranteeing protection to women and children should be made because in the Indian society, crimes against women (rape) and children (child trafficking) are at its peak. This will also be in consonance with India's obligations under UNCRC.
7. India is a superpower in Asia, so it has a tendency to “**dominate**” over other nations. In such a case drafting a South Asian Refugee convention will be of great significance to ensure refugee protection.
8. The convention can be drafted by experts from all countries highlighting their specific issues relating to the refugees based on the understanding of each nation. In this way, the convention will reflect the background of every country.
9. The definition of refugee should be broadened to incorporate people displaced due to environmental disasters, socially ostracized because of admitting openly of a different sexual orientation and people fleeing because of threat caused by crimes against women and children. This can ensure that there is no western intervention in case of dealing with refugees and at the same time, maximum protection can be given.

9.0 CONCLUSION

Thus, at last it can be concluded that Protection of the Refugees in today's world is much more complex undertaking than it when the 1951 convention relating to the status of refugees was drafted. Today refugees are not only those persons who satisfy the traditional definition to the term refugees but also victims of all sorts of conflicts. The refugee problem is reaching critical proportions in almost all the parts of the world, placing the international and national governance under stress of their protection. India has important role in treatment of refugees because it shelters a large population in the world. However, India still lacks in providing clear standards for refugee treatment and is resulting in violations of the international norms for treatment of refugees. Thus, in order to protect refugees India has need to improve domestic laws, pass relevant legislations for the protection of refugees and at the same time monitoring refugee groups. Along with all these there is dire need to conform with the International Community and must accede the Refugee Conventions or Protocols.