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Need for Asylum and Refugees laws in India

Divyansi Karki^a

^aUttaranchal University, Dehradun, India

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Asylum seekers and refugees are those people who fled from their home country in fear of persecution based on religion, caste, or co-ammunity or have done any political offense and are unwilling to return to their home country. India is one of the largest countries which provides houses to many asylum seekers and refugees every year. There are many international laws related to asylum and refugees but India is not a party to any of the International Convention. The condition of the asylum seekers and refugees is very poor in India, by seeing their condition the parliament should make the law to protect their rights. Till date, two bills were introduced regarding the asylum and refugee law but none of the two was passed by the parliament of India. This article is an attempt to describe why India needs Asylum and refugee law and some suggestions are given regarding the asylum and refugee law at the end of the article.

Keywords: *asylum seekers, refugees, asylum law, refugee law, asylee.*

INTRODUCTION

Asylum is a protection given to the person of another state from the persecution faced by him in that state and to the person who seeks asylum as he has committed some political offense in his home country or his home country is unwilling to provide him shelter or protection. The person who seeks asylum is known as Asylee. The Word Asylum is derived from the Greek word Asyilia means inviolable place i.e. the place which is secure from violation.

The person can seek asylum because of the following reasons:

1. His home country is not able to provide him with proper shelter or protection
2. Due to an outbreak of war.¹

As he has committed any offense in his home country and due to the fear of prosecution he wants to seek asylum. The person who seeks asylum is known as Asylee and when the asylum is granted to that person he is known as Refugee.

KIND OF ASYLUM

Asylum is divided into two broad categories:

1. **Territorial Asylum:** when the asylum seeker has been granted shelter (asylum) in the territory of the country that is granting the asylum it is known as a territorial asylum.
2. **Extra-territorial Asylum:** when the asylum seeker has been granted asylum outside the territory of the country granting the asylum such as in warships etc. it is known as extraterritorial Asylum.²

According to the U.N. Refugee Convention of 1951, a refugee is a person who is persecuted in his own country for reasons of race, religion, nationality, membership of a particular social group, or political opinion and is not willing to go back to his own home country.³

The laws which govern Asylum and refuge internationally:

- i) **Universal Declaration of Human Rights, 1948:** Article 14 of the UDHR ensures that every person has the right to seek asylum and enjoy asylum in other countries. ⁴
- ii) **U.N. Refugee Convention of 1951:** the U.N. Refugee Convention of 1951 provides the definition of refugee, the right of the refugees, and outlines the legal liability of the state to protect the refugees.

¹ 'Asylum in International Law' (*Law Corner*, 24 March 2021) <<http://lawcorner.in/asylum-in-international-law/>> accessed 04 July 2022

² Jasmine Madaan, 'Asylum- Territorial and Extra-territorial' (*Ipleaders*, 22 June 2020) <<https://blog.ipleaders.in/asylum-territorial-extra-territorial/>> accessed 04 July 2022

³ U.N. Refugee Convention, 1951

⁴ Universal Declaration of Human Rights, 1948, art.14

iii) **International Covenant on Economic, Social, and Cultural Rights:** International Covenant on Economic, Social, and Cultural Rights Recognizes the Right to Work of every person and it is the responsibility of every state to recognize the right to work.

THE LAW WHICH DEALS WITH ASYLUM AND REFUGEES IN INDIA

As of 31 January 2022, more than 46,000 refugees and asylum seekers are inscribed with UNHCR India, mainly from Myanmar and Afghanistan. Refugees and asylum seekers in India primarily live in an urban setting alongside the host community. 46% of the refugees are women and girls and 36% are children. As we know India is one of the largest countries to provide protection to asylum seekers and refugees and the law which governs the issue/matter related to asylum and refugee are as follow:

1. Citizenship Act, 1955
2. Extradition Act, 1962
3. Foreigners Act, 1946
4. Illegal Migrants (Determination by Tribunals) Act, 1946
5. Indian Penal Code, 1860
6. Passport (Entry to India) Act, 1920
7. Passport Act, 1967
8. Protection of Human Rights Act, 1993
9. Registration of Foreigners Act, 1993
10. Foreigners Order, 1948.

Status of Refugee and Asylum Seeker in India:

India has adopted or protected many refugees and asylum seekers itself by 1947 from neighboring countries such as Afghanistan, Bangladesh, Myanmar, Tibet, Pakistan, Nepal, Sri Lanka, etc. As of 2005, UNHCR i.e. United Nations High Commissioner for Refugees reported that India houses around 139,283 refugees and 303 Asylum seekers. The World Refugee Survey

2009 of the U.S. Committee for Refugees and Immigrants reveals that India had protected or provided shelter to 411,000 Refugees⁵. As per the Citizenship Amendment Act, 2019 if a person of any religion other than the Muslim community belonging to the country of Pakistan, Afghanistan, and Bangladesh asks for shelter from India, then he is free to come to India as a refugee.

The Refugee or Asylum Seeker who is under the protection of India is as follows:

Sri Lankans: Sri Lankans are those refugees and asylum seekers who come to India from Sri Lanka. Around 62,000 Sri Lankans refugees and asylum seekers are directly assisted by the government of India⁶. As of late 2008, about 73,000 Sri Lankans refugees and asylum seekers living in 117 camps across Southern India mainly in Tamil Nadu.

Tibetans: After the annexation of Tibet by China, many Tibetans fled to India from Tibet under the leadership of the Dalai Lama, along with their families. All these Tibetans have been living in India for the past 50 years. As per 2009 figures, 110,095 Tibetan refugees are living in India. About 100,000 Tibetans are directly assisted by the Government of India.

Bangladeshi: In 1964, after the annexation of the land of Chapmas and Hajongs By the Muslim Community, they fled from Bangladesh to India in the region of Arunachal Pradesh. Around 36,000 Chapmas and Hajongs fled from Bangladesh to India at that time.⁷

Rohingyas: Rohingyas are those refugees or asylum seeker which came to India from Myanmar. In late 2011, the Rohingyas faced persecution from the Myanmar armed forces and started to fly to India from Myanmar and started to live in the northeast region of India. According to the home ministry of India, there are around 14,000 refugees in India who has the status of refugee

⁵ 'World Refugee Survey 2009-India' (*Refworld*, 17 June 2009)

<<https://www.refworld.org/docid/4a40d2a75d.html>> accessed 09 July 2022

⁶ 'Refugee problem I India-Explained Pointwise' (*Forum IAS*, 31 March 2021)

<<https://blog.forumias.com/refugee-problem-in-india-explained-pointwise>> accessed 09 July 2022

⁷ 'World Refugee Survey 2008-India' (*Refworld*, 19 June 2008)

<<https://www.refworld.org/docid/485f50d9ad.html>> accessed 11 July 2022

as per the guidelines of UNHRC. Apart from that, there are around 40,000 Rohingyas who are living in India illegally for the past few years.⁸

Nepalese: As per the World Refugee Survey 2008- India, the occurrence of gross violence between the Maoist rebels and their government over the past few years led to the flow of refugees from Nepal to India. As per the report, around 50,000 Nepalese fled to India from Nepal.⁹

Afghans: Afghans are those refugees and asylum seekers who came to India from Afghanistan. In September 2021, many Afghan Refugees and asylees are protesting outside the office of the United Nations High Commissioner for Refugees (UNHCR) in New Delhi in order to get the status of Refugee and Asylee. As per Ahmad Zhia Ghani, the head of the Afghan asylum seeker community in India, there are around 21,000 Afghans in India. According to the UNHCR, recently India houses 11,000 Afghans as asylum seekers.¹⁰

Role of judiciary in protecting the rights of the Refugee and the Asylum Seeker:

As we know India does not have any uniform law for asylum seekers and refugees, so, in absence of a specific law related to asylum seekers and refugees, it is the responsibility of the judiciary to secure the rights of the asylum seeker and the refugees and the judiciary is doing it very efficiently.

- **N.D. Pancholi v State of Punjab¹¹**

In this case, the deportation order was promulgated against a Burmese Refugee which was stayed by the Supreme Court and ordered him to obtain refugee status from the UNHCR office, in New Delhi.

⁸ *Ibid*

⁹ World Refugee Survey 2009-India (n 9)

¹⁰ Roshni Majumdar, 'Why Afghans asylum-seekers are protesting in India' (*DW*, 7 September 2021) <<https://p.dw.co/p/4000we>> accessed 12 July 2022

¹¹ *N.D. Pancholi v State of Punjab* (1988) Writ Petition (Criminal) No. 243/1988

- **Dr. Malvika Karelkar v Union of India**¹²

In this case, the deportation order was stayed by the Supreme Court which was declared against 21 Burmese Refugees from the Andaman Islands who was allowed to obtain refugee status from the office of UNHCR.

- **National Human Rights Commission v State of Arunachal Pradesh**¹³

In this case, the Supreme Court observed that The Indian Constitution bestows every human being with certain rights. The Supreme Court Further Observed that No person shall be deprived of his life or personal liberty except according to the procedure established by law and it is the responsibility of the state to safeguard the life and personal liberty of every person whether he is a citizen or not.

WHY DOES INDIA NEEDS ASYLUM AND REFUGEE LAW

As we know every year India gives protection to many refugees and Asylee from different countries such as Afghanistan, Pakistan, Bangladesh, Myanmar, etc. But India doesn't have any specific or uniform law which can deal with the status, protection, and application of the refugees and Asylee.

There are the following reasons why India needs an Asylum and Refugee law:

As India is not a party to any International law or convention that deals with the asylum or refugee laws and their protection and the Foreigners Act, 1946 which deals with the Asylum and refugee laws and their protection fails to solve the problems faced by them such as problem faced in obtaining education, shelter, job, food, etc. and the government has the absolute power to do anything with the asylum seeker and the refugee.

There is no provision for the right of the non-refoulment of the asylum seeker and the refugees. About 10-12 laws govern the matter related to asylum and refugees in India but none of them have the provision of non-refoulment i.e. no person shall be returned to the country where he

¹² *Dr. Malvika Karelkar v UOI* (1992) Writ Petition (Criminal) No. 583/1992

¹³ *National Human Rights Commissioner v State of Arunachal Pradesh* (1996) 1 SCC 742

had faced persecution and where his life is in danger. The provision of refoulement is a violation of Article 21¹⁴ of the Indian Constitution which provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Recently Rohingyas are returned to Myanmar from India which violates Article 21 of the Constitution of India. To protect the right to life and personal liberty of the asylum seeker and refugee, there shall be a provision of non-refoulement.

The Ill-treatment of the Asylum Seeker and the Refugee: India is the 2nd largest country in the world on the basis of population. Due to so much population, there is huge unemployment in India. The refugees and the asylum seeker always face the problem of getting jobs and education, due to which the ill-treatment was faced by them.

Maintaining the security of the state: Most of the Refugees are illegal migrants in India and they may be terrorists we cannot say anything about those illegal migrants. To safeguard the country from terrorists or those illegal migrants a proper law should be made.

SUGGESTIONS

There are some suggestions on how the law should be made:

1. There shall be a provision on to whom the asylum should be granted and what should be the merits by which a person can seek asylum.
2. There must be the provision of non-refoulement i.e. no person shall be sent back to the country from where he faces persecution or where his life will be in danger except when he has committed any crime or disturbs the peace of the country or is a danger to the security of the country.
3. Before accepting the asylum application, the government has to make the arrangements for his livelihood i.e. food, shelter, job, and education.
4. There must a provision to safeguard the rights of the asylum seeker and the refugee.
1. Authority should be appointed which deals with asylum and refugee-related matters.

¹⁴ Constitution of India, 1950, art.21

2. There must be a check and balance on the steps of the Government of India in asylum and refugee-related matters.
3. There should not be arbitrariness on the part of the Government of India.
4. A simple yet sufficient law should be made.

CONCLUSION

India gives protection or houses to many asylum seekers and refugees every year. As we know India is not a party to any of the International Treaty or Convention which deal the asylum and refugee-related matters and the domestic laws of India are not sufficient to protect the rights of the asylum seeker and the refugees. Refugee and asylum seeker has to face many problems in their daily life such as detention or arrest, deportation, unemployment, food, shelter, education, etc. To safeguard the refugee and asylum seekers from the arbitrariness of the government, legislation should make the law related to asylum and the refugee. To date, only two Asylum and refugee-related bills were introduced from which none of the two was passed by the parliament of India. From the circumstances which are happening in India such as detention and deportation of the Asylee and the refugee from India, it is clear that it is high time to introduce a uniform or specific law related to Asylum and Refugee.