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Legal Position & Status of Refugees in India: A Critical Analysis

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“Refugees are mothers, fathers, sisters, brothers, children with the same hopes and ambitions as us-----except that a twist of fate has bound their lives to a global refugee crisis on an unprecedented scale” Khaled Hosseini

ABSTRACT

Despite being a host to various groups of refugees from the very beginning, India does not have any specific national legislation pertaining to refugees, nor does it accede to the 1951 Refugee Convention or 1967 Refugee Protocol. In the absence of a specified legal framework in India, influxes of refugees are being addressed at purely ad-hoc administrative level. Resultantly some groups are enjoying benefits and privileges while others are subject to discrimination and unfavorable treatment despite being similarly situated. In this paper, the authors attempt to analyse and assess India’s international obligation towards this vulnerable group and further examines the legal position and status of refugees in India and scrutinizes the factors that desist our country from having a specific legal framework. The authors further venture to explore what would be the fate of this vulnerable group in the absence of a specific rights regime in our country. Lastly, the authors through this paper have attempted to throw some considerable light upon the judicial response towards the protection of this vulnerable group.

Keywords: Asylum, Non-Refoulement, Mixed migration, Country of origin.

I. INTRODUCTION

India follows a rich and cultural tradition of “*Atithi Devo Bhava*” where a guest or a visitor is treated as equivalent to god.³ It is derived from ancient Hindu scripture and gradually

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³ In Taittiriya Upanishads, the Sanskrit phrase ‘Atithi Devo Bhava’ holds sacred place which means ‘the guest is god’. Atithi means ‘without a fixed calendrical time’ and is used to describe a ‘guest’; Devo means ‘God’ and; Bhava means ‘to be’. Thus ‘Atithi Devo Bhava’ means a code of conduct that has made Indian hospitality renowned around the world for its genuine desire to place the guest above all. Claudette D’Cruz, “Atithi Devo Bhava: The Guest is God” available at: [https:// noworriescurries.com.au/blogs/no-worries-curries-blog/atithi-](https://noworriescurries.com.au/blogs/no-worries-curries-blog/atithi-)

becomes elevated to the category of moral code of conduct in the Indian society. By virtue of this principle, closing the door or refusal of entry to a person who seeks shelter and protection would be tantamount to insulting the god itself. In tune with this ancient Hindu scripture, India has a long standing tradition of welcoming refugees from almost all over the world. Since our primitive times, we have always extended welcome gesture to almost all refugee groups with open arms and provided them with a place of honour and dignity in our society.⁴ From time immemorial, India appeared as a favourite destination for asylum seekers from Asian and African countries and especially from neighbouring states.⁵ Because of its close proximity with other South Asian countries like Nepal, Bangladesh, Bhutan etc. in terms of its geographical and territorial border, often asylum seekers and victims of persecution find it more convenient and suitable to enter into this land in search of a safe haven⁶ and India continues to receive them despite its own over-a-billion population with at least six hundred million living in poverty with limited access to basic amenities. However, India has been more generous towards giving shelter to various refugee groups despite a majority of its population is infected with poverty, malnourishment and unemployment⁷. But the fact is that the *“Indian legal framework has no uniform law to deal with its huge refugee population, and has not made any progress towards evolving one either; until then, it chooses to treat incoming refugees based on their national origin and political considerations, and thus questioning the uniformity of rights and privileges granted to refugee communities”*⁸.

Now, from the backdrop of above discussion, the authors venture to write an article on the topic of “Legal Position & Status of Refugees in India: A Critical Analysis”. The authors attempt to analyze and assess India’s position and status on refugee issues in a broad spectrum, constitutional provisions applicable on refugees, existing legislative framework to deal with refugees in India. The researchers through this article will also focus upon the ad-hoc administrative measures pertaining to refugees in India and judicial response towards refugee protection in India and further strive to examine the primary obstacles in having a refugee specific legislation in India.

devo-bhava-the-guest-is-god (last visited on April 22, 2021).

⁴ Markandey Katju, “India’s Perception on Refugee Law” AIR 2002 Journal 14.

⁵ Manoj Kumar Sinha, “Legal Framework of Protection of Refugees in India” 14 ISIL Y.B. Int’l Human. & Refugee L 199 (2014-15).

⁶ Because of its extraterritorial position, which is surrounded by water and has seven land borders with nations, India appears as a prominent place for a significant refugee population. Available in: Akanksha Malhotra & Akshay Kumar, “Indian Perspective on Protection of Refugees” in S. Sri Krishna & Anil Kumar Samudrala (eds.), *Refugee and Human Rights* 5 (Serials Publications, New Delhi, 2008).

⁷ Sanyukta Moitra, “Protection of Refugees in India: Mechanisms and Strategies of India with Its Neighbours and Challenges Ahead” 6 *Indian J.L. & Just.* 110 (2015).

⁸ Arjun Nair, “National Refugee Law for India: Benefits and Roadblocks” IPCS Research Papers, New Delhi 1 (2007).

II. INDIA AND ITS INTERNATIONAL OBLIGATION TOWARDS REFUGEES

As we all know that the 1951 U.N. Refugee Convention and the 1967 Protocol forms the bedrock of international refugee law regime. But India, like other South Asian countries, has neither signed the U.N. Convention Relating to the Status of Refugees, 1951, nor the Protocol Relating to the Status of Refugees, 1967 for some unknown reasons. Economic condition, financial constraints and other myriad reasons may be the compelling factor behind this non-signatory stance. However, it is equally important to note that India is a signatory to various other international and regional treaties, Declarations and Conventions relating to universal human rights such as the “UN Deceleration on Territorial Asylum, 1967”, the “Universal Declaration of Human Rights 1948”, the “International Covenant on Civil and Political Rights, 1966”, “International Covenant on Economic, Social and Cultural Rights, 1966”, “Convention on the Rights of the Child, 1989” etc. It is no doubt true that these international instruments do not specifically deal with refugees or asylum seekers but through these international human rights instruments, some sort of constraint has been put in place on unequal treatment of non-citizens and refugees. Almost all these international instruments have duly emphasized on the principle of ‘non-discrimination’ and has elevated this principle to the position of non-derogable character. By virtue of this principle, discrimination on the ground of race, religion, ethnicity, sex or country of origin falls within the prohibitory note. So in the enjoyment of universal human rights, discrimination on the basis of nationality or country of origin is strictly prohibited. In this context, the author considers it appropriate to assess the scope of asylum claim in international law. A bare scrutiny of Universal Declaration of Human Rights, 1948 will reveal that “everyone has the right to seek and to enjoy in other countries asylum from persecution”⁹ It implies that a person seeking asylum has no right to be granted asylum in India. It does not confer individuals with an absolute right of asylum, but it casts an obligation upon the state to merely scrutinize the asylum application and decide upon the same. The state exercising territorial supremacy over persons in its territory are at liberty to grant or reject such asylum claim. That apart, another point which must be taken note of is that India has acceded to the 1989 Convention on the Rights of the Child and Article 22 of such Convention specifically addresses the issue of refugee children.¹⁰ Apart from that, India is a member of the UNHCR's Executive Committee, which

⁹ Article 14(1) of the Universal Declaration of Human Rights, 1948. However, Article 14(2) of the UDHR Provides that “this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations”.

¹⁰ Article 22 of the Convention on the Rights of the Child, 1989, provides that, “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or

authorises and oversees the UNHCR's material aid programmes; all of this without really supporting or recognising the UNHCR's function on its own soil.¹¹ Given this, it is apparent that India adheres to international treaties governing the treatment of individuals living within its borders. Beside this another noteworthy point is that India's reluctance to ratify the 1951 Refugee Convention does not free it of its basic responsibility to provide humanitarian assistance to refugees. 'Non-refoulement' or non-expulsion as a right of refugees has been recognised as a component of customary international law, but with significant reservations.¹² In this context, Article 51(c) of the Constitution of India is of relevant note which provides that, "*the state shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another*".

At this juncture, a reasonable question may arise in the mind of a reasonably prudent man that why India, in spite of providing shelter to lakhs of refugees from many of its sub-continental neighbours, refuse to become a signatory party to the 1951 Refugee Convention or its Protocol. The renowned refugee law expert Prof. B.S. Chimni¹³ has cited several reasons for answering such question. For better appraisal and understanding, a few prominent reasons are reproduced below: -

i) Most of the South Asian states don't have the capacity to control population entry because of its porous borders and they lack requisite administrative, military or political capacity to enforce rules of entry;

ii) In South-Asia, cross border population movement has the tendency to severely affect internal security, political stability and international relations;

iii) There is every possibility that refugee influxes would attempt to change the linguistic or religious composition or culture of the receiving area within the country. Local populace often apprehend that enormous refugee flows is a potential threat of being culturally or economically swamped and converting the indigenous population into a minority in their own land.

iv) The rights regime of 1951 Refugee Convention are considered as unrealistic for a poor country like India. This apart, one can't deny this basic fact that a portion of India's

accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties".

¹¹ Amit Singh, "India in need of National Policy on Refugees", available at: <http://www.differenttruths.com/cover-story/india-in-need-of-national-policy-on-refugees/> (last visited on July 14, 2021).

¹² Saumitra Mohan, *Regimes in International Relations: A Study of the Refugee Problem in South Asia* 171 (Deep Prakashan, Kolkata, 2019).

¹³ B.S. Chimni, "The Legal Condition of Refugees in India" 7 *JRS* 378 (1994).

population is still living below the poverty line. In view of such condition, it was not proper for India to look after the refugees coming from other countries.

v) The 1951 Convention and the UNHCR was perceived as an instrument and corresponding institution established and financed by the West to serve its geopolitical interests. The restrictive policies of the western countries towards refugees do not provide the climate in which any state can be persuaded to become a party to the Convention.¹⁴

Beside this, India endorses the view that the 1951 Refugee Convention and 1967 Protocol was created in a Eurocentric setting. The said international refugee regime is intended to address individual instances rather than large refugee influxes. It does not effectively address the problems that developing countries confront, nor does it deal with mixed-flow scenarios. India is also of the view that the said 1951 Convention fails to maintain an acceptable balance and equilibrium between the rights and duties of the involved nations, as well as to effectively handle issues of international burden and responsibility sharing.¹⁵ Thus it can at best be termed as “anachronistic”. The Indian Permanent Representative Mr. H.S. Puri has opined in the UNHCR Executive Committee that, *“the international legal framework still falls short of dealing with massive flows and mixed migration. In the absence of appropriate adjustments to match these realities countries such as India will find it difficult to accede to this framework.....”*¹⁶

The Ministry of External Affairs of the Govt. of India in 1999 had expressed their stand very much clear on this non-signatory stance of our country when it observed that *“they do not address adequately situations faced by developing countries, as it is designed primarily to deal with individual cases and not with situations of mass influx, they also do not deal adequately with situations of mixed flows, that is, they do not distinguish between political refugees and economic migrants.....the Convention does not provide for a proper balance between the rights and obligations of receiving and source states. The concept of international burden-sharing has not been developed adequately in the Convention. The idea of minimum responsibility for states not to create refugee outflows and cooperating with other states in the resolution of refugee problems should be developed. The credibility of the*

¹⁴ *Ibid.*

¹⁵ A. David Ambrose, “Refugee Protection: An Indian Perspective” in Sanoj Rajan (eds.), *Global Refugee Crisis: A Contemporary Reflection* 185 (Thomson Reuters, 2018).

¹⁶ A. David Ambrose, “Refugee Protection: An Indian Perspective” in Sanoj Rajan (eds.), *Global Refugee Crisis: A Contemporary Reflection* 185 (Thomson Reuters, 2018). Originally taken from Bhairav Acharya, “The Law, Policy and Practice of Refugee Protection in India” (2004) available at: <https://notacoda.files.wordpress.com/2014/08/acharya-the-law-policy-and-practice-of-refugee-protection-in-india.pdf> (last visited on July 4, 2021).

*institution of asylum, which has been steadily whittled down by the developed countries, must be restored”.*¹⁷

To sum up this stand, it can be said that the problem with the convention is that it was designed in a different era. It can be said as “anachronistic” because the convention is a product of cold-war environment as it reflects Nazi war-time persecutions and western political interest at that material point of time. Beside these, under this Convention the total obligations fall squarely upon the receiving states. It is also criticised on the ground that the definition of refugee, as provided in the Convention, is outdated as the notion of exile is conceived as a solution to refugee problems. It is further criticised on the ground that the convention confers entire obligations upon the refugee receiving states but imposes no obligation on their own countries not to persecute or expel their citizens. Thus it seems probably on these cogent and convincing grounds, India prefers not to become a signatory to the predominant international instrument pertaining to refugees.

III. INDIAN POSITION & STATUS

India’s stand of welcoming refugees with open arms and recognition of their basic human honour and dignity would be testified and strengthened from the following pertinent facts¹⁸; -

- a) About 2000 years ago, Jews came to India because they were persecuted in Syria and since then, they are living in this country with honour.
- b) In the 12th century, parsis came to India as they were persecuted in Persia due to religious bigotry.
- c) In the fourth century, Syrian Christians came to India for fear of persecution in Syria and since then they are living here with honour and dignity.
- d) After partition of the country, lakhs of persons came to India from Pakistan in 1947-1950 as refugee.
- e) In 1971, during Indo-Pak war, about 97 lakhs people came to India from East Pakistan (now Bangladesh) and sought temporary asylum in India, which was granted by the Govt. of India and after the formation of Bangladesh, they were allowed to go back to their country.

¹⁷ Saumitra Mohan, *Regimes in International Relations: A Study of the Refugee Problem in South Asia* 174 (Deep Prakashan, Kolkata, 2019).

¹⁸ Prof. S.R. Bhansali, *Law Relating to Human Rights* 1003 (Universal Law Publishing Co., New Delhi, 2013).

- f) In 1989, about 5,00,000 Kashmiri Pandits fled the Kashmir Valley, when militancy was at its peak, at times targeting members of their community. Today most of them live in various parts across the country.
- g) As per one non-governmental source in 1999, India hosted more than 2,92,000 refugees; which includes persons from Afghanistan, Bangladesh, Bhutan, Myanmar, Srilanka, Mandalay regions etc.

Thus, India hosts a considerable number of various groups of refugees from the very beginning. However, in India there is no refugee specific legislation to regulate the entry and stay of refugees, rather refugees and their influxes are being addressed at the political and administrative level. In India, refugees are being dealt with under the law applicable to foreigners.¹⁹ History is a witness to the fact that India has experienced boundary disputes with some of its neighbours since independence. Owing to these historical ramifications, India prefers to prioritise security issues and to handle the refugee situation administratively, in accordance with its foreign policy, bilateral political ties with the nation of origin, and humanitarian concerns.²⁰ Till date, India does not have any domestic legislation in relation to refugees despite the fact that it has provided shelter to lakhs of refugees. Thus, the protection of refugees is strictly confined to ad-hoc measures adopted by the Government of India. It appears that India's domestic refugee policy neither conforms equality of treatment nor any uniform sound legal principle, rather it treats refugees on the basis of shifting exigencies of domestic political opinion and foreign policy.²¹ It is said that India has non refugee-specific legislation and thus refugees are not classified and treated differently from other aliens.²² In India, the principal laws relevant to refugees are: The Foreigners Act, 1946 (Sections 3, 3A, 7 & 14), the Registration of Foreigners Act, 1939 (Sections 3 & 6), the Passport Act, 1920, the Passport Act, 1967 and the Extradition Act, 1962. However, influxes of refugees are handled by administrative policy decisions rather than through legislative norms. Absence of specified legal framework for the safety and welfare of refugees leads to varying treatment of refugees at the hands of administrative authorities resulting in violation of their civil and political

¹⁹ As there is no specific legislation that defines the term refugee or establishes provisions for dealing with refugee protection, India relies on laws dealing with foreigners to deal with refugees. Available at: Shuvro Prosun Sarker, *Refugee Law in India: The Road from Ambiguity to Protection* 16 (Palgrave Macmillan, Singapore, 2017).

²⁰ A. David Ambrose, "Refugee Protection: An Indian Perspective" in Sanoj Rajan (eds.), *Global Refugee Crisis: A Contemporary Reflection* 185 (Thomson Reuters, 2018).

²¹ Shuvro Prosun Sarker, *Refugee Law in India: The Road from Ambiguity to Protection* 21 (Palgrave Macmillan, Singapore, 2017).

²² India fails to recognise the subtle distinction in between a refugee who is forced to flee his or her nation without travel documents under a warlike scenario or to escape persecution and a foreigner who flees his or her home country voluntarily in regular conditions.

rights. Some groups are granted a full range of benefits including legal residence, and the ability to be legally employed, whilst others are criminalized and denied access to basic resources²³. This results in discriminative practices on the basis of the country of origin of refugees and resultantly this affects one's entitlement to resources and other legal and humanitarian considerations. S.P. Sarker²⁴ in his book has rightly mentioned that refugee policy in India is based on "politics of care and power" and thereby allowing policy framers to adopt different policies for different groups of refugees on the basis of myriad reasons like country of origin, India's relation with that country, global ramifications etc. It appears that Foreigners Act, 1946, is the main existing law with regard to refugees and asylum seekers that governs the entry, exit and stay of non-nationals as a homogenous category. However, the notable lacuna in this law is that it does not contain the term 'refugee'; rather the term 'foreigner' was used to deal with aliens temporarily or permanently claiming residence in our country. Section 2(a) of the said Act simply defines the term "foreigner" as "*a person who is not a citizen of India.*" Hence, it is a reasonable failure that obscures the distinguishing line between refugees; one who is forced to flee his or her countries and unable to return for fear of persecution and migrants; those who leave the country in the hope of a better life²⁵. It is now widely felt that refugees are also human beings and consequently they possess certain basic and inalienable rights in consonance with their liberty, freedom and human dignity. It is therefore desirable that explicit and specific national legislation in that regard should be enacted to protect human rights of refugees. It is also expected that India being a country governed by rule of law and other equality standards with constitutional and international obligations, should have one uniform and consistent policy towards various refugee groups. India should keep in mind the subtle difference between a refugee who crosses international border owing to persecution or fear of persecution and a foreigner who enters into other international border for any purpose except persecution. In this context, Prof. Bhattacharjee²⁶ has rightly put in place a well-reasoned contention when he observed that, "*the absence of a national law on the status of refugees has also meant that refugees are dependent on the benevolence of the state rather than on a rights regime to reconstruct their lives with dignity.*"

²³Human Rights Law Network, "Report of Refugee Population in India" November 2007, available at: http://www.hrln.org/admin/issue/subpdf/Refugee_populations_in_India.pdf (last accessed on 22.12.2020).

²⁴"Indian policy towards refugees is inclined towards the politics of care and power, which allows policy-makers to have policy "A" for Tibetans, policy "B" for Pakistani and Bangladeshi minorities..... and policy "Z" for others". Available in Shuvro Prosun Sarker, *Refugee Law in India: The Road from Ambiguity to Protection* 25 (Palgrave Macmillan, Singapore, 2017).

²⁵Editorial, "Wanted, A Law for Refugees" The Hindu, August 24, 2012, available at: <http://www.thehindu.com/opinion/editorial/wanted-a-law-for-refugees/article3812816.ece> (last visited on February 20, 2021).

²⁶Saurabh Bhattacharjee, "India needs a Refugee Law", available at: <https://www.epw.in/journal/2008/09/notes/india-needs-refugee-law.html> (last visited on July 12, 2021).

Thus, the refugees are left to the mercy of the state and have no recourse against systemic violations of its legal obligations by the state”.

In this regard, the opinion of Justice Markandey Katju²⁷ in defending India’s stand towards its refugee policy is mentioned worthy. His Lordship has put a very poignant question by asserting that India has a vast population of over a billion of people, half of whom are uneducated and living below the poverty line in basically sub-human conditions without sufficient food, education, job, medical care, housing etc. As a result, half of our own people are leading life like refugees. Then how can we be expected to care for other refugees in this situation? His Lordship has opined that because India is a poor country with meagre and limited resources, it is a reasonable hope that the international community would understand our challenges in this regard.

However, Rajeev Dhavan²⁸, a leading jurist and renowned counsel of the Supreme Court of India, scrutinized India’s hesitant stand towards providing a comprehensive protection to refugees seeking refuge in its territory. Dhavan is of the view that India’s hesitation to provide an intelligible and comprehensive protection to refugees is mainly based on two major considerations, which can be termed as ‘artificial ghosts in the machine’. According to Dhavan, the threat of terrorism appears to be the foremost reason for refusing to concretise a refugee protection policy. However, Dhavan was of the view that, there is no reason for sustaining such a fear. He said that Justice P.N. Bhagwati’s model law, which the National Human Rights Commission has examined, and the SAARC Anti-Terrorism Protocol of 2004 ensure that suspected ‘terrorists’ are not treated as refugees. Under the proposed model law, India may exclude even other undesirable persons provided they are not sent back to the country of persecution. The second reason, according to Dhavan, is that such liberality would create a flood of migrants — especially from Bangladesh. Dhavan however felt that this reason is also fallacious. In fact, a proper ‘refugee’ law would distinguish between refugees and migrants by a fair, fast and stringent procedure²⁹.

IV. JUDICIAL PRONOUNCEMENTS:

Although there are no explicit provisions in our Constitution pertaining to refugee, however some of the basic fundamental rights available under Part-III of our Constitution, i.e; Article 14, 21, 22, 25 etc., are provided to all persons, whether that person is a citizen or non-citizen.

²⁷ Markandey Katju, “India’s Perception on Refugee Law” AIR 2002 Journal 14.

²⁸ Rajeev Dhavan, “India’s Refugee Law and Policy” *The Hindu*, June 25, 2004, available at: <https://www.thehindu.com/2004/06/25/stories/2004062501791000.htm> (last visited on March 3, 2021).

²⁹ *Ibid.*

Consequently, refugees are equally entitled to their benefits. So long as the national legislation does not take place, our judiciary is required to protect their rights and interests within our territory. Hence, in absence of a specific law regarding refugees, the judiciary has filled the legislative vacuum and has provided humanitarian protection to the refugees as well. Therefore, the judicial wing of our state recognizes refugee and refugee law, to a certain extent, by adopting an activist and creative role. The humanitarian protection rendered to various groups of refugees in India has been duly emphasized by the Indian Courts in a catena of decisions³⁰. Some of the prominent decisions are mentioned below: -

1) In *Vincent Ferrer v. District Revenue Officer, Anantpur*³¹, the Andhra Pradesh High Court observed that foreign nationals are eligible to claim protections enumerated under Article 14 regarding right to equality but foreigners are not entitled to assert their claims under Article 19 (1)(d) and (e) of our Indian constitution. It was further observed by the Andhra Pradesh High Court that foreigners are eligible to have equality before the law and equal protection of laws under Article 14 of the Constitution of India but foreigners are not entitled to any protection under Article 19(1) (d) and (e) of the Constitution of India.

2) In *Louis De Raedt vs. Union of India*³²; our Apex Court observed that Article 21 of our Constitution protects life and personal liberty to all persons and therefore aliens in Indian territory should not be deprived of those inalienable and basic rights except upon maintaining the terms of procedure established by law. However, the court was of the view that the right to life and liberty does not include the right to reside and settle in this country as mentioned in Article 19(1) (c), which is applicable only to citizens of this country.

3) In *State of Arunachal Pradesh vs. Khudiram Chakma*³³; the Apex Court re-iterated that foreigners are entitled to the protection of Article 21 of our Constitution. Therefore, the Supreme Court indirectly has extended the protection of Article 21 to refugees as well.

4) In *National Human Rights Commission vs. State of Arunachal Pradesh*³⁴; the Supreme Court added human rights dimension to the refugee issues for their protection and due recognition of their basic human dignity. In this case, the Court pointed out that ‘a state is bound to protect the life and liberty of every human being, be he a citizen or otherwise and it can’t permit anybody or group of persons to threaten the chakmas to leave the state failing

³⁰ V. Vijayakumar, “Refugees and Human Rights: International and National Experiences” in Chiranjivi J. Nirmal (ed.), *Human Rights in India: Historical, Social and Political Perspectives* 185 (Oxford India Paperbacks, 2002).

³¹ AIR 1974 AP 313.

³² AIR 1991 SC 1886; (1991) 3 SCC 554.

³³ AIR 1994 SC 1461

³⁴ AIR 1996 SC 1234.

which they would be forced to do so'. In this case, the court observed that chakma refugees who had come from Bangladesh due to persecution can't forcibly be sent back to Bangladesh, as they may be killed there and thus they would be deprived of their right under Article 21 of our Constitution. The Court further directed that any attempt to forcibly evict or drive them out of the state shall be repelled, if necessary, by requisitioning the service of para-military or police force.

5) *Digvijay Mote vs. Government of India and Anr*³⁵. is another notable case on this point. In this case, a public interest litigation has been filed before the Karnataka High Court seeking prayer for direction to the government to provide food and other welfare measures to 250-300 Sri-Lankan Tamil refugee children who are residing and studying in a boarding school in Karnataka. The school being set up by an N.G.O was subsequently funded by various donors, organizations as well as by the state of Karnataka. When Karnataka government stopped its humanitarian assistance, the school and its children found it very difficult to maintain themselves and to lead a dignified life. Being moved by the PIL, the Karnataka High Court served notice to all the respondents including the state government. On receipt of the notice, the government through the Chief Secretary convened a meeting with all the concerned delegates and decided to extend humanitarian assistance in the form of food and others and communicated to the court and the court disposed the petition accordingly without going into merit.

In such manner, the Indian Judiciary has given protection to refugees and recognised their rights. It is therefore the need of the hour to have a comprehensive national legislation to deal with refugee situations keeping in view the relevant international instruments and the decisions of our Apex Court pertaining thereto, so that human rights of an extremely vulnerable group of persons can be protected and safeguarded.

V. CONCLUSION

In conclusion, the authors firmly and reasonably believe that a person becomes a refugee as a result of events and conditions beyond their control, which are frequently tragic. He or she has no choice but to flee human rights infringements, socio-economic and political insecurity, widespread violence, civil conflict, ethnic or internal strife, all of which jointly put them in danger of being persecuted.

Time has come for India to re-evaluate and introspect the refugee law and policy existing in our country keeping in mind the hosting nature and behavior of India despite a complete

³⁵Karnataka High Court in WAN No. 354 of 1994.

vacuum in this area. Considering all these, India is required to denounce its uncertain or ambiguous refugee law policy, evolve a regional approach and must enact its own rules or regulations to protect these vulnerable groups. Therefore, it is the high time for India to reconsider its refugee policy and enact a specific national legislation in that regard clearly defining refugees as distinguished from other class of foreigners or aliens, providing a due process for the determination of the refugee status, enumerating the refugee rights in conformity with the set international and regional instruments, focusing on other important aspects like employment, education, rehabilitation, livelihood etc, and accepting the naked truth that India is one of the largest refugee populations in the world, its refusal to accede to the Refugee Convention, 1951 or its Protocol, 1967 unnecessarily hampers its image at the international level.
