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Statelessness and Rights of Refugees

TANVI GOYAL¹

ABSTRACT

A refugee is said to be any person who is forced to leave his country out of a fear or persecution. The 1951 United Nations Convention Relating to the Status of Refugees defines refugee as a person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social 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. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, extended the definition in the 1951 Refugee Convention to include in the term 'refugee' also every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. The Cartagena Declaration on Refugees of November, 1984 laid down that the definition of refugee could not only incorporate the elements contained in 1951 Convention and the 1967 Protocol, but also cover persons who have fled their country because their lives, their safety or their liberty were threatened by a massive violation of human rights.

Therefore, refugees are civilians who no longer receive protection from their government. They are people who have been displaced from their Home states. The concept of refugees has been cause of concern for International Humanitarian law since time immemorial.

Most countries have their own laws with respect to the process of status granted to refugees. Refugees are generally not automatically admitted in a country and placed at an equal footing with the citizens of that country.

Since a refugee is an alien entity, countries have to fulfill a number of criteria before admitting a refugee.

What further complicates the matter is the changing scenario of the world in recent times. With the advent of globalization, the free movement of people has also led to an increased movement of refugees. The concern in case of a refugee is not just limited to the individual refugees but also the matter of relation between the two states between whom the movement takes place. For example, if the two states are not on good terms then the refugee entering the country may be viewed as an enemy of the nation.

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Since a refugee flees his country out of fear for his life and liberty, there is a need to understand the human rights aspect of refugee laws. This could help restructure refugee laws in countries.

It is essential to protect and respect the human rights of refugees where they re-settle. States can attempt to provide some level of protection in order to ensure minimal right to life and liberty is now upheld in the country in which they seek refuge.

In the past, the refugee problem was only seen as a humanitarian problem and not a human rights problem. However, there is an urgent need to introduce human rights law into humanitarian refugee law in order to ensure welfare and safety of all.

There is an increased role of the United Nations, essentially the United Nation Human Rights Commission (UNHRC) in ensuring protection to the refugees and making the world laws towards refugees more inclusive and humane.

I. INTRODUCTION

A refugee is said to be any person who is forced to leave his country out of a fear or persecution. The 1951 United Nations Convention Relating to the Status of Refugees defines refugee as a person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social 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.”² The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, extended the definition in the 1951 Refugee Convention to include in the term ‘refugee’ also every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence

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² Article 1(a)(2) of UN Convention on Refugees, 1951

³ Article 1(2) of 1969 Protocol

⁴ 4th and 8th preambular paragraphs of Cartagena Declaration

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Since a refugee flees his country out of fear for his life and liberty, there is a need to understand the human rights aspect of refugee laws. This could help restructure refugee laws in countries.

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the refugees and making the world laws towards refugees more inclusive and humane.

A. Review of the Literature

1. Central Law Agency's Human Rights under International Law & Indian Law, Dr. S. K. Kapoor: This book on international law helps one understand the concept of refuges and asylum. It attempts to list the various international conventions that deal with refugees and their corresponding rights. Furthermore, it focuses on India's stance on the issue of refugees.

2. Refugees and Human Rights, B.C. Nirmal, [2001] ISILYBIHRL 6: This paper focuses on the definition of refugees as per various international conventions. It highlights the various rights that are available to refugees. The dichotomy between rights of refugees as well as interest of countries has also been discussed.

3. Credibility Assessment in Refugee Status Determination, Douglas McDonald, 26 NLSI Rev 115 (2014): This paper sheds light on a major issue that refugees face which is the determination of their refugee status. It notes the various ways in which the credibility of a refugee may be checked as well as the criteria that need to be given importance to.

4. Promoting A Notion of Refugee Protection; Role of Religion As A Value-Influence on Law, Rangin Pallav Tripathy, (2012) 3 GNLU L. Rev. (April) 71: The paper discusses the role of religion in determining protection given to a refugee. It discusses the notion of refugee protection in a legal system of a country as well as the value system of a society.

It discusses the hurdles faced in providing protection to a refugee.

5. Protection of Refugees In India: A Critical Analysis, Nimrat Kaur, SSRN: <https://ssrn.com/abstract=2214274> : This paper focuses on the issue of refugee protection with respect to India. It highlights that fact that India is not a party to the UN Refugee Convention. It sheds light on India's administrative policy towards refugees and the human right challenges they face in the country. The author also attempts to understand the role of NHRC in providing protection to rights to refugees.

B. Statement of Problem

Today, India hosts the largest number of refugees across South East Asia. However, India is not a party to any international convention on refugees. It also lacks a domestic legislation on the said issue. This thus poses a problem of human right abuses of refugees, lack of basic amenities and discrimination between refugees themselves.

C. Hypothesis

The legislators, executive and judiciary have not been able to strike a balance between managing the interests of the nation as well as upholding the basic human rights of refugees in India.

D. Objective

The objective of the paper is to understand the concept of refugees, especially in the context of international conventions. It aims at highlighting

the plight and hurdles faced by refugees in both determination of their status, as well as abuse of human rights faced by them. The paper further aims to list the solutions available to refugees.

E. Research Methodology

This research is a doctrinal research. The main source of information is secondary in nature. The study is not empirical in nature. Cases decided by the Courts, books, scholarly articles, magazines and newspaper articles are relied upon to develop and examine the role of nations, especially India in attempting to uphold human rights of refugees.

II. HUMAN RIGHTS OF REFUGEES

A. The Rights of Individuals who have obtained Official Refugee Status

Once Refugees case has been examined, the individuals who come under obtain a juridical status that usually gives them rights similar to those of the citizens of the State in question. The legal status thus obtained recognition of the person's refugee status in a territory of asylum is defined by the national laws of the country in question. The Refugee Convention⁵ enumerates the main rights that must be granted to refugees by the national laws of each country.⁶

B. Rights of the refugees of world at large

1. Right to Protection Against Refoulement

According to this principle⁷, no country shall deport, expel or forcefully return the refugee back to his original territory against his will or if there is a reasonable threat to his life, liberty and

⁵ Article 12-34 of Refugee Convention, 1951

⁶ Protection of Refugees In India: A Critical Analysis, Nimrat Kaur, SSRN: <https://ssrn.com/abstract=2214274>, P. 15

⁷ Article 33 of Refugee Convention 1951

freedom. No State is permitted to expel or return (refoul) a refugee, in any manner whatsoever, towards the country where his life or liberty would be threatened on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. Thus if a country denies a refugee asylum, he is still entitled to temporary asylum given the threat he faces in his own country. This right ensures protection against violation of the refugee's human rights.

The legal basis for this principle is that a refugee cannot be forcibly asked to return to his country of origin by expelling him from boundaries of country he is seeking asylum in, in order to ensure safety of his life, security and dignity.

The principle has its backing in Article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment upon individuals. It therefore casts a duty on state parties not to expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return 'to another country by way of their extradition, expulsion or refoulement'.

Furthermore, it has been held by the European Court of Human Rights that if a person is forced to return back to a place which possesses threat to his safety, then the state is said to have violated Article 3 of the European Convention on Human Rights.

The act of handing an individual over to his torturers, murderers or executioners constitutes a

violation of the obligation to protect individuals against torture and unlawful deprivation of life, which would make the state liable for handing such people over.⁸

The principle of non-refoulement is well entrenched in both conventional and customary international law. Despite this, lately governments around the globe are adopting unilateral restrictive practices to prevent the entry of refugees and other forcibly displaced persons into their territories.

New concepts such as 'temporary protection' and the 'safe third country rule' which allow states to eject people on flight who have already left for another state are being used excessively. Hundreds of thousands of refugees seeking shelter in the refugee camps have been demarcated in airports where physical presence does not amount to legal presence and from where summary and arbitrary removal is permissible. Safety zones are being created in countries to ensure that refugees don't move out of those zones. They are often held in offshore camps, wherein the conditions are terrible.

India abides by this rule explicitly through various case laws. In the landmark case of *Ktaer Abbas Habib Al Qutaifi v Union of India*⁹, the Gujarat High Court

upheld the principle of non-refoulement under the ambit 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,

⁸ Cruz Varas Case, note 12. Series A no. 161. Para 91

⁹ 1999 Cri LJ 919, para- 3

they were handed over to UNHCR in India. Similarly, in *Malvika Kalrekar v. Union of India*¹⁰, the Supreme Court stayed the order on deportation of Burmese refugees on ground of non-refoulement.

2. Right to Seek Asylum

“Asylum is the protection which a State grants on its territory or in some other place under the control of certain of its organs, to a person who comes to seek it”.

This is a right provided to refugee who flees his country out of fear of persecution and seeks means to live in another country to protect his life and liberty. This right allows refugee to flee their country and enter another country, even illegally, if they can show good cause for the same.¹¹

Refugees have the Right to Submit a Request for Asylum before the Appropriate Authorities. This means that States must not impede refugees’ access to the competent national authorities and, in fact, must facilitate this access. For example, UNHCR is allowed by state to assist refugees with fulfilling all the necessary formalities. There is thus a duty upon states to provide administrative services to refugees, either directly or through an international authority—namely, UNHCR.

Similarly, the Right of Refugees to Have Their Request Examined by the Appropriate National Authorities in conformity with the rules established by the Refugee Convention and under the supervision of UNHCR¹².

The grant of asylum in the case of is a very important aspect of human right protection. It must thus be considered in the light of the U.N. Charter as a general principle of international law, for the consideration of humanity.

Article 14 of Universal Declaration of Human Rights further states that the act of a state granting asylum to refugees cannot be regarded as an unfriendly act by any other state.

The current refugee regime is based on common concern principle which tries to protect welfare of its own people and thus runs counter to international humanitarian concerns for refugees. Denial of asylum to genuine refugees is against UNHCR policies.

3. Right to Equality and Non-Discrimination

A refugee is entitled to be treated with humanity by the state of asylum. The state is under obligations to respect and protect the fundamental human rights and interest of refugees. Non-discrimination is crucial to the protection of human rights and freedoms of refugees.

The right to equality before the law, equal protection of the law and non-discrimination which form a cornerstone of international human rights law appear to ban discrimination against refugees based on their status as such.¹³

These provisions ensure that no discriminatory conduct based on grounds of race, religion, gender or social origin is conducted against the refugees. The Refugee Convention contains

¹⁰ 1992, CrI. WP No. 243 of 1992

¹¹ Art. 31 of Refugee Convention

¹² Article 8a UNHRC Statute

¹³ U.N. Declaration and the International Convention on the Elimination of All forms of Racial Discrimination (CERD), 60 UNTS 195

provisions which provide refugees the right to employment and education, access to the courts, and freedom of movement. Thus with respect to these rights, refugees are supposed to receive the same treatment as nationals in the country of residence.

4. Right to Life and Personal Security

Refugees are the most endangered people in the world, and as a result, their basic human rights are threatened. This is seen in their refugee camps wherein they live without their belongings, any sense of security or even their family. Human rights law provides the right to life¹⁴ as well as protection against genocide.¹⁵ The aim of the said law is to ensure that the state does not arbitrarily deprive refugees of their right to life. The laws also guarantee protection from torture and cruelty in the relocation camps.

It is the duty of the State “to afford protection to all through legislative action or any other necessary measure to avoid torture and cruel, inhuman or degrading treatment or punishment, whether inflicted by people in their official capacity or in a private capacity”.¹⁶

Refugees cannot be deprived of their liberty except by procedure as are established by law.¹⁷ Certain safeguards have been listed in ICCPR which the refugees can claim, such as legal remedy against arbitrary detention, etc.

5. Right to Return Refugees to Return Voluntarily and in safety to their countries of origin

¹⁴ Article 1 of Universal Declaration of Human Rights

¹⁵ Article II of Genocide Convention, 1948

¹⁶ Art. 10 (1) of the ICCPR

Art. 3 (2) of the European Convention prohibits the deprivation of the right to enter the territory of the state of which a person is a national. The African Charter limits restrictions to those provided for by law for the protection of national security, law and order, public health or morality.

The U.N. Security Council also highlights “the right of refugees and displaced persons to return to their homes. This right of a refugee arises from the rules of traditional international law which sheds light on the duty of the State of origin to receive back its citizen when he is expelled by the admitting state.

Voluntary repatriation has become increasingly effective in modern times. It ensures that the refugee can return to his home and establish his basic human rights. The aim of voluntary repatriation must be to uphold the rights of the refugees, it must not be used as a means to force or coerce a refugee into moving back to his country wherein he faces a threat of survival. The 1979 Arusha Conference, on the situation of Refugees in Africa, went a step further and recommended that appeals for repatriation and related guarantees should be made known by every possible means.¹⁸

6. The Right to Remain in their own country

U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has affirmed “the right of persons to remain in peace in their own homes, on their own lands and in their own countries”.¹⁹ The Turku Declaration on

¹⁷ Article 9(1) of ICCPR

¹⁸ Goodwin-Gill, note 49, p.263

¹⁹ Sub-Commission resolution 1994/94, para, 1, UN Doc. E/KN.4/ Sub.2/1994/56, 28 Oct. 1994 at 67.

Minimum Humanitarian Standards also provides that “All persons have right to remain in peace in their homes and their places of residence.” It further states that “No person shall be compelled to leave their own country”²⁰. i.e. ‘the right not to be refugees’.

III. RIGHTS OF REFUGEES IN INDIA

A. India and the Refugee Convention 1951, Refugee Protocol 1967

Since time immemorial, India has been a host country to a number of refugees, not only from its neighboring states but from all parts of the World, owing to its geographic location, democratic government, religious tolerant society and goodwill. India is not a signatory of the 1951 Refugee convention, nor the Refugee Protocol of 1967. It has however, ratified other human rights treaties which impose obligations to provide protection to refugees. For example, UN Declaration on Territorial Asylum 1967, Universal Declaration of Human Right 1948, International Convention on Civil and Political Rights, Convention on the Elimination of Discrimination against Women (CEDAW), International Convention on Economic Social and Cultural Rights (ICESCR) and Convention against Torture and Cruel Inhuman or degrading Treatment or Punishment (CAT).

These treaties impose a duty on India to provide protection to refugees who face fear of persecution in their own country. In terms of human rights however, India faces certain challenges, such as follows:

- (1) Since India is a developing country, it is unable to provide basic amenities to its own population and on top if there is added burden of refugees.
- (2) India does not have a domestic law to regulate the status, entry, rights and rehabilitation of refugees. The concept is dealt with on an ad hoc basis.
- (3) The existing laws treat refugees as foreigners which cause a lot of human right violations.

India’s reluctance to sign the convention stems from the reasoning that it is Eurocentric and addresses only the refugee issues that existed post Second World War. No amendment since then has helped make the laws more friendly towards developing nations. The laws seem outdated and incompatible with the current scenario on refugees. Furthermore, India shares a complicated history with its neighboring nations which create a political barrier towards refugee laws in the country. There is also a fear that ratifying the Convention will lead to an even heavier influx of refugees in the country thus jeopardizing the well being of the citizens of the country. Furthermore, India was not represented at the signing of the draft of the Convention or Protocol and therefore is in the dark regarding the true intention of the laws.

In pursuance of the other international treaties that India is a party to as well as other international customary laws binding on India, India does provide temporary refuge to refugees.

See also, resolution 1995/13, para 1, Report of the Sub-Commission on its Forty Seventh Session,

Geneva 31 July-25 August 1995.
²⁰ Article 7 of Turku Declaration

Furthermore, the fundamental rights available to non-citizens in India are even extended to such refugees, this includes the Right to life and liberty under Article 21 of the Indian constitution, as well as the Right to Equality under Article 14.

One of the landmark judgements first *Chakma case*²¹, wherein the Supreme Court held that every state government had the constitutional obligation to protect refugees.

In another progressive pronouncement, the Supreme Court upheld the decision of the Calcutta High Court directing the Railway Board to pay Rs. 1,000,000 to a Bangladeshi national who was raped by the railway employees. The Supreme Court stated that ‘rape is a crime against society and remedies are independent of the citizenship status of the victim’

In *U Myat Kayew and another v. State of Manipur and another*²², the Guwahati High Court ordered for interim bail for Burmese refugees who were detained and the court was considerate in not insisting on local sureties.

In another case of *Majid Ahmed Abdul Majid Mohd. Jad Al-Hak v. Union of India*²³, the Court upheld that food and medical care should be provided to detainees as they are the bare minimum essentials for survival.

The refugees in India are also given rights to practice and profess their own religion subject to reasonable restrictions that are applicable to everyone including aliens²⁴.

Courts in India have thus been liberal and lenient in providing the rights to refugees. Despite the protection available to refugees in India, there are circumstances wherein they are discriminated against, denied legal aid, kept in deplorable conditions in refugee camps etc. For example, the country has been more liberal towards Tibetan refugees who are even provided land in order to build their own villages. It is the lack of uniform domestic legislation in India that allows such discrimination. There are however certain laws such as the Passport (Entry into India) Act, 1920, Passport Act, 1967, Registration of Foreigners Act, 1939, Foreigners Act, 1946, Foreigners Order, 1948 etc., which fail to draw a distinction between “refugee” and “foreigner”, thus risking the protection of rights of refugees.

In India is the Foreigners Act, 1946, which deals with the entry, exit and presence of foreigners in India. This Act is applicable to all persons who are ‘aliens’ i.e. non-citizens. Under this Act, the Central Government is endowed with the power to prohibit, regulate and restrict the entry of foreigners into India, their departure and their presence. This Act also gives the Central Government the power to restrict the movement of foreigners within India, limit their employment opportunities, confine them to refugee camps, limit their possessions and prohibit selected activities.

Apart from the Foreigners Act, the Registration of Foreigners Act, 1939, the Passport (Entry into India) Act, 1920, the Passport Act, 1967, the

²¹ *Arunachal Pradesh v. Khudiram Chakma* AIR 1994 SC 1461

²² Guwahati High Court 1991, (Civil Rule No. 516 of 1991).

²³ Delhi High Court 1997, Criminal Writ Petition No 60 of 1997.

²⁴ Article 25, Indian Constitution

Extradition Act, 1962, and the Citizenship Act, 1955 are the other legislative measures that deal with regulation, status and treatment of aliens, including refugees.

The Foreigners Order, 1948 authorises the State government to “grant or refuse” a foreigner entry into the Indian territory on grounds like invalid passport, unsound mind, public safety etc .The civil authority can refuse permission if the formalities are not fulfilled under the Foreigner Act.

Usually, most of the refugees are detained in transit areas, prior to their entry in India, such as airports, sea coasts or land earmarked as “International Zones”. In these zones, the domestic law does not apply. Thus, the refugee can only seek administrative remedies and not legal remedies. When a case is handled by bureaucrats or custom officials, they lack legal knowledge and competence which poses a great danger of deportation and ultimately persecution of the refugees. This leads to violation of principles of non-refoulement.

B. Analysis Of the Role Of UNHRC In India

UNHCR plays a very comprehensive role for protection of uprooted and displaced people. India has been an executive member of the UNHCR since 1995 and has been availing the benefits since then. Their work starts the moment, a refugee enters India. Such person may apply for refugee status and registration at the

UNHCR office. A legal officer is appointed to interview such refugees and procure all the relevant information. If there are inconsistencies in the interview, they should be handled with care and caution.²⁵

The main object for deciding the status is the fear of persecution or threat to life. The UNHCR helps in protecting refugees against illegal arrest and detention and also rescues the person if they are already under arrest.

The UNHCR provides a number of amenities which the Indian government fails to do in most cases. Because their status and identity is well established by the UNHCR office, they can procure a valid passport, travel documents authorizing them to travel abroad, ration cards or open a bank account. The legal officers of UNHCR provide free legal aid to the recognized refugees.

The organization has formal agreements with other NGOs to provide financial assistance to the poor and needy across the globe including India. Furthermore, they provide free medical treatment to the sick refugees in government hospitals with special emphasis on women and child health care²⁶. The UNHCR has a number of volunteers and interns who assist in providing vocational training which makes them self-reliant, primary education and counselling to the distressed refugees with the assistance of other NGOs who have an expertise in these fields.

UNHCR works hand in hand with the Central government. However this leads to the fact that

²⁵ R. J .S. Tahir (eds.) Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir: Refugees and the Law, 2edn,

HRLN, 2011, pp. 183

²⁶ *Ibid* pp. 185

its scope and extent are also determined by the government. Since UNHCR has its limitations, it cannot succeed alone and requires the co-operation and participation of the nation.

Unfortunately, in India, the State policies determine the nature of protection afforded to refugees and thus the scope for UNHCR is reduced.

Furthermore, since UNHCR receives most of its funds from NGOs, it usually faces financial hurdles in performing its duties. There is thus a need for increased role of government in aiding UNHCR to ensure effective protection of rights of refugees.

C. Role Of NHRC In India

National Human Rights Commission, State Human Rights Commissions and Human Rights Courts have been established in India under the Protection of Human rights Act, 1993. They have the powers of a civil court and can suo moto inquire into any petition.

The objective behind establishing these institutions was to curb human right abuse in the country.

NHRC and SHRC been actively involved in the protection of refugees since their inception. For example, in 1994, NHRC issued directions to the Tamil Nadu government to provide immediate medical treatment to Sri Lankan refugees who were put in camps.

In 1995, NHRC on the basis of a PIL was filed by them for protection of Chakma community

(from Bangladesh) , found that the Arunachal Pradesh state government is acting in accordance with the AAPSU (All Arunachal Pradesh Students Union) and threatening the Chakmas. The supreme court thus intervened and imposed duty on states to protect the life and liberty of every individual and therefore abide by the non-refoulment principle.²⁷

NHRC has proposed a model law for refugees under the guidance of Justice PN Bhagwati in order to improve the status of refugees in India as well as curb the clashes that take place between refugee communities and local communities over access to resources. Unfortunately, the law was never admitted as legislation by the Parliament.

There is an urgent need to pass a domestic legislation that ensures rights and basic protection to refugees in India. The law should not only deal with “foreign refugees” but also “internally displaced people” such as the Kashmiri Pandits, in order to assure access to rights and liberties in another state within their own country.

The law should contain provisions regarding housing and employment of refugees. It should make the procedure to determine refugees simple, less ambiguous and cut out any scope of discrimination.

There is a need to guarantee protection to women and children from crimes such as rape and =child trafficking.

²⁷ National Human Right Commission v State of Arunachal Pradesh , Supreme Court of India 1996, AIR 1996

Furthermore, there is a need for a South Asian Refugee Convention. There is a lot of movement of refugees around the neighboring countries in the said region. The countries need to include the concept of people displaced due to climate changes and environmental disasters. There should be stringent punishment laid down for violators of refugee rights for crimes against humanity. It can also formulate a regional tribunal to handle cases of refugees.

Thus, if both the Convention and the municipal law are in sync, there is no scope for deviation. It will be able to address all the problems associated with refugees and help reduce arbitrariness in procedures.

A definite and uniform refugee mechanism is the need of the hour.

IV. CONCLUSION

India is in a paradoxical state- on one hand it refuses to ratify the already existing Refugee Convention and on the other hand, it does not pass its own independent legislation. To top it all, it continues to allow large influx of refugees from all across the globe to enter India.

Now is the time for a progressive development of a global approach to the refugee problem, an approach which takes due cognizance of the basic human rights of refugees and interests of the asylum countries and the international community, and secures the cooperation of all parties in seeking a solution to the problem. Given the close link between refugees and human rights, international human rights standards are powerful ammunitions for enhancing and complementing the existing refugee protection

regime and giving it proper orientation and direction. Since the refugee problem is an important aspect of human rights protection, human rights groups, humanitarian organisations, the UNHCR, Governments and U.N. human rights agencies should take a hard look at their respective roles and make coordinated efforts for elimination of human rights abuses and protection of the rights of refugees.

India's refugee policy is not a conscious choice but a result of failed idealism and a rude awakening to pragmatism. Its shifting stands and policies regarding international issues occurring in its neighbourhood which require its involvement have made refugees the scapegoats in its international policies, even if initially it was not intended to be so.

The Tibetan crisis arose right after Indian independence. India wanted to prove to the world that it could emerge as an ambassador of peace and as a successful nation especially in light of international scepticism. The Tibetan crisis provided the requisite opening for India to further its idealistic pursuits and as a consequence Tibetan refugees were allowed to seek refuge. This strain of idealism continued while initially dealing with refugees from Burma when India welcomed pro-democracy refugees with open arms. The Bhutanese though, were spared involvement in this great Indian pursuit as they came at a time when idealism was at its death bed but faced worse as they were subjected to Indian expediency instead. India's failed effort at idealism has cost the refugees on its territory dearly. Since its shift to pragmatism India has

been actively exploiting these refugee communities towards gaining favour with the country of their origin.

Due to discriminatory assistance it may appear that individually one refugee community is better off than the other. But as a group they all suffer. India may maintain that it has sufficient laws for refugees and that it does not require an exclusive law for them. It may also cite one or two odd cases where it has indeed successfully protected them but in general refugees in India have no substantial rights.

India's obligations to protect refugee rights will not have much effect as long as the subject of refugees remains intrinsically related to the maintenance of geo strategic relations.

Therefore, in order to avoid exploitation of refugees for the purpose of national interest, there is an urgent need to draw a uniform policy which can eventually lead India to sign the Refugee Convention and Protocol.

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