



## Role of UNHCR for protecting human rights in India

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### Abstract

The paper scrutinizes the role of the United Nations High Commissioner for Refugees in India, specially in reference to protecting human rights for refugees and asylum seekers. It investigates the legal rules and framework that exists for governing rights of refugees, the challenges faced by displaced populations in India, and the steps taken by UNHCR to mitigate the challenges. The research is concluded by providing various strategies and recommendations for enhancing the UNHCRs role in promoting human rights for the vulnerable groups in India.

**Keywords:** UNHCR, human rights, India, role, Indian government, constitution of India

### Introduction

#### Background of the UNHCR

The United Nations High Commissioner for Refugees was established on 14<sup>th</sup> December 1950 by the United Nations General Assembly. After World War II in Europe and other regions a lot of people got displaced. Millions of people were forced to flee their homes because of conflict, persecution and other crises. In this situation the UNHCR was given the task of assisting those displaced and facilitating them in returning to their homes and resettlement in a place where their human rights are protected <sup>[1]</sup>.

#### Objectives of the Study of UNHCR

While studying the role of UNHCR in protecting human rights in India a lot of objectives can be taken into consideration and the researcher has following objectives behind the study:

- a. The aim is to Assess UNHCRs specific functions and responsibilities and how these mandates align with the global mandate to protect refugees and promote human rights.
- b. To evaluate the legal framework established by UNHCR for protection of refugees and displaced persons in India.
- c. To analyze the collaboration between UNHCR, the Indian Government, non-governmental organizations and Civil society in promoting and protecting the refugee rights and asylum seekers.
- d. To identify the challenges and barriers the UNHCR faces in its efforts to protect human rights in India which includes legal, social and political problems.
- e. To examine the impact of UNHCRs activities and its legal framework on the lives and the rights of refugee communities in India, which includes access to asylum, legal protection, healthcare, education and livelihood opportunities.
- f. The aim is to provide recommendation to improve the effectiveness of UNHCR operations in India and have a more enhanced laws to protect human rights for refugees and displaced persons.

#### Significance of the study

There exists a variety of significant reasons to conduct the study on the role of UNHCR for protecting human rights in India. UNHCR operates under the International human rights law which is one of sub species of international law. Examining the role of UNHCR in India gives a better approach of how these frameworks are applied in a diverse and populous country. The data shows that India hosts a lot of refugees from various countries which includes Afghanistan, Myanmar, and Tibet. A study can reveal how UNHCRs interventions help protect the rights of these vulnerable populations. The study will help shed light into the relationship between national sovereignty and international obligations regarding human rights and how India incorporates international norms into its domestic laws and legal policies.

#### Overview of Refugee situation in India

The historical context of Refugees in India is complex and multidimensional, shaped by various socio-political events, conflicts and migration throughout various eras. It can be divided into Pre-colonial and colonial era, partition of India in 1947, and post-independence period. The pre-colonial and colonial era can further be streamlined into ancient times where there have been various instances of migration that took place because of conquest, trade and cultural exchanges. The ancient period is preceded by Mughal era where there were movements of people including refugees fleeing wars and persecution, which contributed to the cultural and demographic curtains that existed in India at that time. The colonial era came where Britishers policies impacted migration patterns. In 1905 the partition of Bengal led to communal tensions and migrations where people started crossing boundaries to protect their right to live and escape the repercussions of War. In 1947 <sup>[2]</sup> when the partition of India took place resulted into worlds largest displacement and forced migration that the society has seen. Almost around 15 million people were displaced because of variety of reasons and the major being religious lines i.e. Hindus, Sikhs made a move to India whereas the Muslims migrated to Pakistan. The partitions aftermath was prevalence of communal violence where hundreds of thousands of people died. Refugees were facing a lot of

traumas and hardships including the loss of property, family members and the community. At that time the Indian government established rehabilitation programs to address the requirements of the large number of refugees including housing, employment and integration into society. In the post-independence era the problems of East Pakistan i.e., the Bangladesh crisis, Tibetan refugees and Sri Lankan Tamils were seen <sup>[3]</sup>.

The India 2020-year End report summary <sup>[4]</sup> shows that India is hosting many refugees and asylum seekers from various countries like Tibet, Sri Lanka, Bangladesh, Afghanistan and Myanmar. The demographics of refugees can change frequently because of the ongoing conflicts and geopolitical shifts. As of 31<sup>st</sup> December 2020, UNHCR has registered a total of 40,010 individuals where 28,714 were refugees and 11,228 were asylum seekers which can be further classified into 13,089 men's and 11,257 women, 8,067 were boys and 7,529 were girls. There could be seen that the population mandate refugees, and asylum seekers remained stable and a minimal increase of 0.3% from 2019. The refugees can be divided into five categories Tibetan, Sri Lankan, Afghan, Rohingya and Bangladeshi refugees.

### Legal framework governing refugees in India

India is not a signatory to the 1951 Convention relating to the refugees or its additional protocol and it does not have any specific law for refugees, but the Constitution of India has strong mandates to uphold human rights. Article 14 which talks of Right to equality before law, Article 21 Right to life and personal liberty and Article 22 Protection against arrest and detention in certain cases. There are other laws like Bhartiya Nagarik Suraksha Sanhita, Bhartiya Nyaya Sanhita and Bhartiya Sakshya Adhinyam which are applicable to the refugees as well. Even if India is not signatory of Convention on Refugees but it has signed a number of United Nations and World Conventions relating to human rights, refugee issues and related matters. In 1995 India became a member of the Executive Committee of the High Commissioners Programme. India has also voted to adopt the Universal Declaration of Human Rights which affirms rights for all persons whether citizens and non-citizens alike. India has ratified various covenants like the International Covenant on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights in 1976 <sup>[5]</sup>. In 1989 <sup>[6]</sup> India signed the UN Convention on the Rights of the Child. In 1974 <sup>[7]</sup> it signed Convention on Elimination of All Forms of Discrimination Against Women.

The Constitution of India are equally applicable to refugees on the Indian territory in the same manner as it is applicable to the Indian Citizens. The Supreme Court of India has time and again uphold the fundamental right enshrined under Article 21 of the Indian Constitution regarding the Right to life and personal liberty, applies to all irrespective of the fact whether they are citizens of India or aliens. The various High Courts of India has adopted and applied liberally the principles of natural justice to resolve issues of Refugees. The High Court of Guwahati has in its various judgments recognized the problems faced by refugees and allowed them to approach the UNHCR to determine their refugee status, while stimulating the deportation orders issued by the district court. Similarly, the High Court of Madras in the case of Gurunathan and others vs Government of India and ors <sup>[8]</sup> and in the matter of A.C. Mohd. Siddique vs

Government of India and Ors <sup>[9]</sup> expressed Unwillingness to let any Sri Lankan refugees to be forced to return to Sri Lanka against their will. Again, the Bombay High Court in the case of Syed Ata Mohammadi vs Union of India <sup>[10]</sup> held that there is no question of deporting the Iranian Refugee to Iran, since he has been recognized as a refugee by the UNHCR. It also permitted the refugee to travel to whichever country he desired. The order was in line with the principle of non-refoulement of refugees to their country of origin. Article 22 (1) and (2) and 25(1) of the Constitution of India is a reflection of the principles of natural justice prevalent in common law systems and are equally applicable in India, even to refugees. The rule of law established by India is that no person, whether a citizen or an alien shall be deprived of his life, liberty or property without the authority of law.

### Challenges faced by refugees in India

Following are the challenges faced by Refugees in India:

1. **Legal Status:** A lot of refugees are living in legal limbo due to the absence of formal recognition and lack of documentation, which inhibits their access to basic rights and services.
2. **Socio-Economic Barriers:** Refugees face problems in accessing basic human rights like education, healthcare, and employment which creates a never-ending cycle of poverty and vulnerability.
3. **Security Concerns:** Refugees from certain countries, especially where conflicts exist, often face discrimination and hostility, further exacerbating their vulnerabilities.
4. **Repatriation and Resettlement:** Uncertainty regarding repatriation processes and limited resettlement options create a precarious existence for many refugees <sup>[11]</sup>.

### UNHCR's initiatives in India

The UNHCR operates through different programs to protect the human rights of refugees in India:

1. **Registration and Refugee Status:** UNHCR facilitates the registration of refugees and conducts status determination processes, granting protection to those in need.
2. **Legal Aid and Advocacy:** The agency collaborates with local NGOs to provide legal assistance and advocate for the rights of refugees in the judiciary and administration.
3. **Educational Programs:** UNHCR supports educational initiatives, enabling refugee children to access quality education and promoting integration into local communities.
4. **Health and Welfare Services:** The agency provides health services and psychological support, addressing the physical and mental well-being of refugees.
5. **Community Empowerment:** Through capacity building programs and awareness activities, UNHCR tries to empower refugees to advocate for their rights and actively participate in their communities <sup>[12]</sup>.

### Conclusion, future directions and recommendations

The role of UNHCR in India has been more of promoting and protecting the human rights of refugees in India. Despite numerous challenges the organization continues to strive to advocate for the rights of displaced persons, working in collaboration with the Indian government and local organizations. Spreading awareness and strengthening the legal principles for refugees plays an important role in ensuring protection of their human rights.

Following are the recommendations which the researcher would like to highlight:

1. **Legislative Framework:** India should consider enacting comprehensive refugee laws that are clear and provides guidelines which helps in protecting and promoting the rights of refugees.
2. **Increased Funding for UNHCR:** Enhanced funding would definitely allow UNHCR to expand its programs and provide more comprehensive support to refugees.
3. **Awareness Campaigns:** The government should collaborate with NGOs and various other organizations to plan initiatives to educate and spread awareness in the local community on rights of refugees and who they are and contributes to fostering a more inclusive environment.
4. **Collaborative Efforts:** The government should try to work in partnership with NGOs and Civil society that can lead to more effective solutions to the issues faced by refugees.

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