

Constitutional Ramifications and Judicial Trends towards Protecting the Rights of Refugees in India: An Analysis

Dr Tamal Gupta¹, Dr Joydeb Patra², Dr Prodipta Barman³, Dr Amrita Dugupta⁴, Manisha Naskar⁵, Saulat Hassan⁶

^{1,2,3,4,5} Assistant Professors, School of Law, Brainware University

joydebajoy@gmail.com²

⁶ Assistant Professor, Asian Law College, Asian Education Group

Abstract: The surge of refugees into India has significantly increased in recent years, presenting challenges and opportunities for the protection of their rights within the country's legal framework. Even though the Constitution of India does not specifically confer the specific right to refugees, but several provisions protect their fundamental rights. The Judiciary has elucidated the core essence of Article 21 which expansively includes the refugees as well. The Indian Constitution recognizes the concept of non-refoulement, which interdict the deportation of refugees to territories where there is a potential risk of their individual freedom and liberty. However, there exists no specific legal framework that comprehensively addresses the rights and status of refugees in India. Consequently, the judiciary has played a pivotal role in interpreting and expanding the constitutional provisions to afford adequate protection to this vulnerable population. The Indian judiciary's approach towards protecting the rights of refugees, reflects the nation's commitment to upholding the principles of justice and humanitarian values.

Keywords: Rights of refugees, Constitution of India, Judiciary, principle of justice, humanitarian values

INTRODUCTION

In an ideal State and organized society all the person must possess equal status which is the most significant to establish an ideal society. The universal brotherhood is that kind of instrument which not only creates the bonding of respect among the people but also spreads the aroma of humanity. Since the ancient age the society was divided into groups, guilds but in spite of that there was the positive zeal among the people to promote the concept of unity and fraternity. But with the passage of time the concept has been changed. The divinity of the divine origin theory has been completely destroyed and men become affected by the obnoxious, discourteous and derogatory thoughts which results the complete destruction of the concept of universal fraternity. In the medieval and even in the modern age also, the selfish behavior of various dynasties and communities through their colonialist and imperialistic mentality mad a huge distance between men and men, community and community by depriving them from their nationality, from their habitual residence as well as dignity and this concept of mentality creates the institution of refugee.

Conceptual Meaning of Refugee:

Every individual has their own right to life and this right to life which includes the complete enjoyment of right to live. Post World War II mainly the concept of refugee emerged rapidly and considered as the most significant matter of concern. Since the very inception of the independence, India has witnessed about the social issues relating to refugee. The social trauma and pain of partition in our country led to the forced displacement of individuals and groups, turning them into refugees. Therefore, the term refugee is originally derived from the French origin "refugier" and later on it was actually derived from the Latin word "refugium" in 18th Century. Etymologically the term refugee means "a person who flees to a foreign country or power to escape danger or persecution"

¹. The United Nation High Commission for Refugees (UNHCR) opines that "A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reason of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading

¹ See <https://www.merriam-webster.com/dictionary/refugee#:~:text=Legal%20Definition%20of%20refugee,social%20group%2C%20or%20political%20opinion> [Last Accessed on 28/07/2023]

causes of refugees fleeing their countries”² According to the Convention Relating to the Status of Refugee, which is popularly known as 1951 Convention, a refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”³. The great poet *Brian Bilstone* in his poem “*Refugee*” had expressed that how a refugee is facing the pain from the society where he wants to take shelter. In his poem he had narrated that:

“They are not welcome here

We should make them

Go back to where they came from

They cannot

Share our food

Share our homes

Share our Countries

Instead let us build a wall to keep them out

It is not ok to say

*These are the people just like us.....”*⁴

Conceptual Meaning of Refugee:

The refugee issues are the global phenomenon in the present day of the world. Therefore, in order to safeguard the fundamental human rights of refugees, the convention concerning the ‘Convention Relating to the Status of Refugee’ was adopted on 28th July in the year of 1951. Hence, the most significant provisions of various international instruments relating to the rights of refugee may be discussed in the following manner:

From the close perusal of Article 6, “*Universal Declaration of Human Rights, 1948*”, a refugee is entitled to be acknowledged universally as an individual in the light of the law⁵;

The Contracting States must refrain from discriminating the refugees on the grounds of race, religion or country of origin⁶;

The Contracting States should ensure about the most favorable treatment to the refugees and must respect for their religious practices as well as the freedom to impart religious education to their children⁷;

The State Party must recognize the continuity of residence⁸;

The Contracting State must provide the favorable treatment to the refugee in regard to form the non-political, non-profit making association as well as the trade unions⁹;

² See <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/> (Last Accessed on 28/09/2023)

³ See <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/> (Last Accessed on 28/09/2023)

⁴ See *Refugee*; *Brian Bilstone* cf. <https://nationalpoetryday.co.uk/poem/refugees/> (Last Accessed on 28/09/2023)

⁵ See Article 6: “Everyone has the right to recognition everywhere as a person before the law.” (*Universal Declaration of Human Rights, 1948*); cf. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Accessed on 28/09/2023)

⁶ See Article 3. Non-discrimination: “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.” (*The Convention Relating to the Status of Refugee, 1951*); cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

⁷ See Article 4. Religion: “The Contracting States shall accord to refugees within their territories treatment at least as favorable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.” (*The Convention Relating to the Status of Refugee, 1951*); cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

⁸ See Article 10, “*The Convention Relating to the Status of Refugee, 1951*”; cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

⁹ See Article 15, “*The Convention Relating to the Status of Refugee, 1951*”; cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023).

The Contracting State must ensure that, every refugee shall have the right to get unrestricted access to the courts of law within the territory of the contracting states¹⁰;

The Contracting State parties must ensure about the right to participate in the gainful employment to the refugees in the territory on the basis of following conditions¹¹:

Whether the refugee has competed three years of residence in that country; or

If the refugee has a spouse possessing the nationality of that country of residence. But this point should be noted that, the refugee will not be entitled to enjoy the benefit of this provision when he abandons his spouse; or

If a refugee has one or more children who maintain the citizenship of the country where they currently reside; or

The Contracting State parties should also ensure the sympathetic consideration in order to facilitate the protection and recognition of the rights to refugees in regard to wage earning employment in that nation;

The Contracting State must ensure the adequate means of Rationing¹² and Housing¹³ facilities to the refugee;

The refugees must be ensured to get the facilities of public education by the Contracting States¹⁴;

The State Parties must provide the adequate facilities of labour welfare provisions like minimum wage of employment, apprenticeship and training, employment of women and young persons and benefits of collective bargaining as well as also to provide social security schemes like legal provisions in respect of compensation for employment injuries, occupational diseases, maternity benefits etc. in accordance with the municipal laws¹⁵;

Every refugee has the freedom of movement¹⁶ in the territorial boundaries of the Contracting States;

Every Contracting States must issue Identity Papers¹⁷ and Travel Documents¹⁸ to the refugees for their benefit;

¹⁰See Article 16 (1). Access to Courts: A refugee shall have free access to the courts of law on the territory of all Contracting States. (“*The Convention Relating to the Status of Refugee, 1951*”); cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹¹See Article 17, “*The Convention Relating to the Status of Refugee, 1951*”; cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹² See Article 20. Rationing: “Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.” (“*The Convention Relating to the Status of Refugee, 1951*”); cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹³ See Article 21. Housing: “As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.” (“*The Convention Relating to the Status of Refugee, 1951*”); cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹⁴ See Article 22 (1). Public Education: “The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.” (“*The Convention Relating to the Status of Refugee, 1951*”); <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹⁵See Article 15, (“*The Convention Relating to the Status of Refugee, 1951*”); cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹⁶ See Article 26. Freedom of Movement: “Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.” (“*The Convention Relating to the Status of Refugee, 1951*”); cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹⁷See Article 27. Identity Papers: “The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.” (“*The Convention Relating to the Status of Refugee, 1951*”); cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹⁸ See Article 28. Travel Documents:

1. “The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.” (“*The Convention Relating to the Status of Refugee, 1951*”);

Every Contracting State must not expel or return or refoulment a refugee in any manner on the account of race, religion, nationality, or political opinion etc.¹⁹ but this point should be noted that, the benefit of the provisions of Article 33 cannot be claimed by the refugee who has been convicted by a final judgment for causing serious crime or danger to the social security and community to the country;

The provisions of the Universal Declaration of Human Rights, 1948 may be as follows:

Every individual has the entitlement of the preservation of right to life, liberty and security of person²⁰;

Each person possesses the entitlement of the right against slavery or servitude²¹;

Every individual is the equal in the eyes of law as well as they have the equal protection of laws without any discrimination.²²;

Every person is entitled for the right to freedom of movement and resident within the state.²³;

Every individual has the right to freedom of thought and conscience, including the freedom to change their religious beliefs;²⁴

Every person can enjoy the right of equal pay for equal work.²⁵

Every person shall possess the entitlement to receive the free and compulsory elementary education.²⁶

The European Convention on human rights in one of the landmark instruments for the protection of refugees at international level. Therefore, some significant provisions are as follows which demonstrates the safeguarding of rights of the refugees:

right to life of every individual is to be safeguarded by the law;²⁷

In the promotion of personal liberty, every individual must have the fundamental right to be protected from any form of torture or treatment towards ensuring their dignity.²⁸

cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/09/2023)

¹⁹ See Article 33. Prohibition of expulsion or return ("refoulment"):

1. "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

(The Convention Relating to the Status of Refugee, 1951);

cf. <https://www.ohchr.org/sites/default/files/refugees.pdf>. (Last Accessed on 28/07/2023)

²⁰ See Article 3 of the Universal Declaration of Human Rights, 1948; "Everyone has the right to life, liberty and security of person" cf. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Accessed on 28/07/2023)

²¹ See Article 4 of the Universal Declaration of Human Rights, 1948; "No one shall be held in slavery or servitude." <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Accessed on 28/09/2023)

²² Article 7 of the Universal Declaration of Human Rights, 1948; "All are equal before the law and are entitled without any discrimination to equal protection of law." <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Accessed on 28/09/2023)

²³ Article 13(1) of the Universal Declaration of Human Rights, 1948; "Everyone has the right to freedom of movement and residence within the borders of each state." <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Accessed on 28/09/2023)

²⁴ Article 18 of the Universal Declaration of Human Rights, 1948; "Everyone has right to freedom of thought, conscience and religion, this right includes freedom of change his religion or belief, and freedom, either alone or in community with others and in public or private to manifest his religion or belief in teaching practical workshop and observance." <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Accessed on 28/07/2023)

²⁵ Article 23 of the Universal Declaration of Human Rights, 1948; "Everyone has the right to work and everyone has also the right to equal pay for equal work without any discrimination." <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Accessed on 28/07/2023)

²⁶ Article 26 (1) of the Universal Declaration of Human Rights, 1948; "Everyone has the right to education. The education shall be free at least in the elementary and fundamental stages." <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Accessed on 28/07/2023)

²⁷ See Article 2, the European Convention on Human Rights;

cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

²⁸ Article 3, the European Convention on Human Rights.

cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

Everyone is protected against the slavery and servitude as well as they are protected against the forced and compulsory labour.²⁹

Every person should be entitled to both freedom and security, and it also forbids the deliberate deprivation of life;³⁰ Therefore,

Everyone is protected against the unlawful arrest and detention;

Every individual subjected to wrongful arrest or detention must have the right to receive adequate compensation.³¹

Everyone has the entitlement to fair trial which includes right to a fair and public hearing in accordance with the law conducted by an independent and unbiased tribunal within a reasonable timeframe;³²

Every person is entitled to freedom of thought, conscience, and religion, including the freedom to change their religious beliefs.³³

Every person enjoys the freedom of expression which also includes the right to express opinions and ideas.³⁴

Every person has the right to peacefully assemble and freedom of association.³⁵

Constitutional Ramifications and Judicial Trends for the Safeguarding of Refugee Rights in India:

Right to Equality:

It had been rightfully propounded by the Apex Court; the concept of equality is the corollary principle of the Constitution which embraces the rule of law.³⁶ Article 14 of the 'Constitution of India' states that, "State shall not deny to any person equality before law and equal protection of laws within the territory of India". While interpreting the concept of Rule of Law, the Supreme Court has emphasized certain Constitutional values and principles. For instance, it may be stated that, *Justice Bhagwati* had emphasized that Rule of Law excludes arbitrariness³⁷. *Justice Khanna* had also observed that "Rule of Law is the antithesis of arbitrariness"³⁸.

Principle of Life and Liberty:

Article 21 of the Indian Constitution gained significance after the historic decision of *Maneka Gandhi v. Union of India*³⁹ and also illuminated with the various rights which have the greatest philanthropic values for the betterment of the people in the protection of life and liberty as well for the society. Article 21 is the mother of all fundamental rights. The rights enshrined under Article 21 are available to the citizen as well as non-citizen of India. It is also available during the emergency. Article 21 of the 'Constitution of India' emphasizes that, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Hence, while analyzing the Article 21 in the words of *Justice Bhagwati* it may be stated that, Article 21 is "a highly activist magnitude and it embodies a constitutional value of supreme importance in a democratic society. It provides that no one shall be deprived of his life or personal liberty except according to procedure established by law and such procedure shall be reasonable fair, and just."⁴⁰ In *National Human Rights Commission v. State of Arunachal*

²⁹ Article 4(1) and 4(2), the European Convention on Human Rights.

cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

³⁰ Article 5, the European Convention on Human Rights.

cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

³¹ Article 5(5), the European Convention on Human Rights, cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

³² Article 6, the European Convention on Human Rights; cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

³³ Article 9, the European Convention on Human Rights cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

³⁴ Article 10, the European Convention on Human Rights. Rights cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

³⁵ Article 11, the European Convention on Human Rights. Rights cf. https://www.echr.coe.int/documents/d/echr/convention_eng (Last Accessed on 28/09/2023)

³⁶ *Ashutosh Gupta v. State of Rajasthan* AIR 2002 SC 1533 [cf. <https://indiankanoon.org/doc/1636046/>] (Last Accessed on 26/10/2023)

³⁷ *Bachan Singh v. State of Punjab* AIR 1982 SC 1325 [cf. <https://indiankanoon.org/doc/1201493/>] (Last Accessed on 26/10/2023)

³⁸ *A.D.M. Jabalpur v. S.Shukla* AIR 1976 SC 1207 [cf. <https://indiankanoon.org/doc/1735815/>] (Last Accessed on 26/10/2023)

³⁹ AIR 1978 SC 597: (1978) 1 SCC 248 [cf. <https://indiankanoon.org/doc/501107/>] (Last Accessed on 26/10/2023)

⁴⁰ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746, [cf. <https://indiankanoon.org/doc/78536/>] (Last Accessed on 26/10/2023)

Pradesh⁴¹, the Supreme Court had opined that, the state has the obligatory responsibility to safeguard the life and liberty of the individual regardless of their citizenship status as guaranteed under Article 21. A refugee has the following rights also:

The right to livelihood. Because in it was opined that “right to life includes right to livelihood”⁴² and even nonpayment of minimum wages to the workmen is also amounting to violative of Article 21 of the ‘Constitution of India’.⁴³

The Indian Constitution safeguards the fundamental right to healthcare and medical treatment⁴⁴;

“Right to Privacy” is also guaranteed in the Article 21 of the Constitution⁴⁵;

Right to education is the coming within the greater ambit of the fundamental right as mentioned under Article 21 of the Constitution.⁴⁶

Right to speedy trial under Article 21 is the *sine qua non* of the personal liberty.⁴⁷

Provision of free legal assistance to the financially and disadvantaged individuals is the crucial and constitutionally inferred component of a fair and equitable legal process as per Article 21 of the Indian Constitution⁴⁸;

Denying bail to the accused person without lawful justification would be considered an infringement of individual freedom which falls within the ambit of the personal liberty as per Article 21⁴⁹;

Freedom of Religion:

The freedom of religion as mentioned in the Article 25 to 28 of the Constitution is based on the bedrock of the principle of secularism. Therefore, it may be stated that, whatever religious belief or faith the refugee possesses can enjoy the following rights:

Freedom of conscience, profess, practice, propagation own religion;⁵⁰

No individual should be compelled to pay for any particular religion;⁵¹

Freedom to attend religious instruction;⁵²

Right against Arbitrary and Unlawful Arrest and Detention:

Like, a citizen of India, a refugee has also a right against the arbitrary arrest and detention which is enshrined under Article 22 of the Constitution of India. It broadly includes the information regarding the grounds of arrest, consult with the legal practitioner and must be produced before the Magistrate within 24 hours of arrest;

Protection from Exploitation:

Article 23 prohibits human trafficking, involuntary labor, and the practice of bonded labor.

Right to Constitutional Remedy:

⁴¹ (1996) 1 SCC 742 [cf. <https://indiankanoon.org/doc/767216/>] (Last Accessed on 26/10/2023)

⁴² *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180 [cf. <https://indiankanoon.org/doc/709776/>] (Last Accessed on 26/10/2023)

⁴³ *People Union for Democratic rights vs. Union of India* AIR 1982 SC 1473 [cf. <https://indiankanoon.org/doc/496663/>] (Last Accessed on 26/10/2023)

⁴⁴ *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42

[cf. <https://indiankanoon.org/doc/1657323/>] (Last Accessed on 28/10/2023)

⁴⁵ *R. Rajagopal v. State of T.N* (1994) 6 SCC 632 [cf. <https://indiankanoon.org/doc/501107/>] (Last Accessed on 26/10/2023)

⁴⁶ *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666 [cf. <https://indiankanoon.org/doc/40715/>] (Last Accessed on 26/10/2023)

⁴⁷ *A.R. Antuley v. R.S. Nayak* AIR 1988 SC 1531 [cf. <https://indiankanoon.org/doc/1353689/>] (Last Accessed on 26/10/2023)

⁴⁸ *M.H. Haskot v. State of Maharashtra* AIR 1978 SC 1548 [cf. <https://indiankanoon.org/doc/513169/>] (Last Accessed on 26/10/2023)

⁴⁹ *Babu Singh vs. State of U.P.* AIR 1978 SC 527 [cf. <https://indiankanoon.org/doc/1515744/>] (Last Accessed on 26/10/2023)

⁵⁰ See Article 25. “Freedom of conscience and free profession, practice and propagation of religion.”

cf. <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf>
(Last Accessed on 26/10/2023)

⁵¹ See Article 27. “Freedom as to payment of taxes for promotion of any particular religion.”

cf. <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf>
(Last Accessed on 26/10/2023)

⁵² See Article 28. “Freedom as to attendance at religious instruction or religious worship in certain educational institutions.”

cf. <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf>
(Last Accessed on 26/10/2023)

Article 32 of the Indian Constitution grants individuals the right to seek remedy in the Supreme Court when the fundamental rights are infringed. Further this Article also empowers the Supreme Court to issue the writ of '*habeas corpus*', '*mandamus*', '*prohibition*', '*quo-warranto*' and '*certiorari*' for the enforcement of any right as enshrined under the Part III of the Constitution of India. The Supreme Court also affirms that Article 32 encompasses the authority to award compensation for the infringement of fundamental rights.⁵³ The Supreme Court of India in the landmark judgment of *Chairman Rly. Board v. Chandrima Das*⁵⁴ has rightly observed that "The Rights guaranteed under Part III of the Constitution are not absolute in terms. They are subject to reasonable restrictions and, therefore, in case of non-citizen also, those Rights will be available subject to such restrictions as may be imposed in the interest of the security of the State or other important considerations."

Concept of Social Justice in the Promotion of the Status of Refugees in India:

The 'Directive Principles of State Policy' is strongly rooted the concept of welfare state. The concept of welfare state may be defined as "a system in which the Government undertakes the chief responsibility for providing for the social and economic security of its population, usually through unemployment, insurance, old age pension and other social security measures"⁵⁵. The Constitution makers were incorporated the Directive Principles of State Policy in the Constitution with an objective of achieving the social and economic democracy. Article 38 of the Constitution of India deals with the concept of social justice and while determining the scope of Art. 38 in the domain of social justice, this matter is clearly reflected that there is a close nexus with right to equality as enshrined in Art. 14. This concept of social justice can be considered as the life-breath of the social democracy which not only emphasizes the social justice but also the economic and political justice as well.

Article 39A⁵⁶ of the 'Constitution of India' mandates the State to guarantee equitable justice as well as to provide free legal assistance to the economically disadvantaged persons. Article 39A caters a responsibility on the state to

⁵³ M.C. Mehta v. Union of India AIR 1987 SC 1086 [cf. <https://indiankanoon.org/doc/1486949/>] (Last Accessed on 26/10/2023)

⁵⁴ AIR 2000 SC 988: (2000) 2 SCC 465 [cf. <https://indiankanoon.org/doc/113663/>] (Last Accessed on 26/10/2023)

⁵⁵ Seervai, H.M.; Constitutional Law of India: A Critical Commentary; Universal Law Publishing Co. Pvt. Ltd.; New Delhi ; Fourth Edition, Reprinted 2014; P. 1931 cf. Collins English Dictionary, 2nd Edition. (1986).

⁵⁶ Added by the 42nd Amendment Act 1976;

Bibliography and References:

Books:

Prof. Narendra Kumar, Constitutional Law of India (Faridabad: Allahabad Law Agency, 8th ed., 2017).

Prof. M.P. Jain, Indian Constitutional Law (Nagpur: LexisNexis, Butterworth, Wadha, 6th ed., 2010).

H.M. Seervai, Constitutional Law of India: A Critical Commentary (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 4th ed., reprinted 2014).

Dr. J.N.Pandey, Constitutional Law of India (Allahabad: Central Law Agency, 51st ed., 2014).

Dr. U. Chandra, Human Rights (Allahabad: Allahabad Law Agency Publication, 6th ed., 2005).

Websites:

"Chapter 4," Shodhganga, https://shodhganga.inflibnet.ac.in/bitstream/10603/128419/15/12_chapter%204.pdf.

"Chapter 4," Shodhganga, https://shodhganga.inflibnet.ac.in/bitstream/10603/68492/10/10_chapter%204.pdf.

"Refugees," United Nations High Commissioner for Refugees, <https://www.unhcr.org/what-is-a-refugee.html>.

"What is a Refugee?" United Nations High Commissioner for Refugees, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>.

"Refugees," International Journal of Refugee Law, <https://ijrcenter.org/refugee-law/>.

PDF Documents:

"Convention Relating to the Status of Refugees," United Nations, <https://www.ohchr.org/sites/default/files/refugees.pdf>.

"Universal Declaration of Human Rights," United Nations, <https://www.un.org/en/universal-declaration-human-rights/>.

"Convention for the Protection of Human Rights and Fundamental Freedoms," European Court of Human Rights, https://www.echr.coe.int/documents/d/echr/convention_eng.

Legal Cases:

M.C. Mehta v. Union of India, (1987) 1 SCC 395, Indian Kanoon, <https://indiankanoon.org/doc/1636046/>. (Last Accessed on 26/10/2023)

Minerva Mills Ltd. & Ors. v. Union of India & Ors., (1980) 3 SCC 625, Indian Kanoon, <https://indiankanoon.org/doc/1201493/>. (Last Accessed on 26/10/2023)

Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr., (1973) 4 SCC 225, Indian Kanoon, <https://indiankanoon.org/doc/1735815/>. (Last Accessed on 26/10/2023)

ensure and advance the idea of justice in society by eradicating the notion that delay equals a denial of justice. Art.39A read with Art.21 prescribes various modes for modernizing the dispute settlement mechanism which has remarkably transform the justice delivery system with a very efficient manner. Therefore, it may be commented that, the concept of social justice is emphasized on the doctrine of rule of law which plays the most cardinal role to establish an ideal state by removing all the defects and obstructions faced by the society.

CONCLUSION:

In conclusion, it can be stated that, the refugees are entitled to the protection of their life and liberty as enshrined under Article 21 of Constitution and different international human rights mechanism. The refugees are similarly free from all forms of exploitation as well as also free to practice their religion. They are also entitled to all rights contained in Part III of the Constitution, and they can enforce those rights by way of exercising relevant writs defined in Article 32 and Article 226. Therefore, it may be stated that, the refugees are not inhabitant of different world, they are also the beings and they too have equal right to live with dignity and without discrimination. So every member of the global community must follow the way of universal brotherhood under the principle of 'Vasudhaiva Kutumbakam'. The constitutional implications and judicial approach to the rights of refugees in India shows a complicated and changing legal environment, sometimes challenging the established notions of humanitarian priorities and constitutional morality. Although India has not signed the 1951 Refugee Convention or its 1967 Protocol, the Indian judiciary has often pointed to various provisions of the Constitution- particularly Articles 14, 21 and 51(c)- to protect the rights of refugees. The Supreme Court and multiple High Courts have taken a proactive stand to guarantee non-refoulement, right to life, and dignity to asylum seekers, especially through Public Interest Litigations (PILs) and habeas corpus petitions.

Judicial pronouncements have reaffirmed the moral and ethical obligations of the Indian state, and pronounced that refugee, regardless of their legal status, have human rights, indeed basic human rights, under the constitutional framework. However, there is lack of clarity in framing policies, because you have no separate refugee law, therefore you have all these ad-hoc practices based on the communities you come from or in what states you are in.

-
- A.K. Gopalan v. State of Madras, AIR 1950 SC 27, Indian Kanoon, <https://indiankanoon.org/doc/78536/>. (Last Accessed on 26/10/2023)
- Gopalan Nair v. State of Kerala, AIR 1960 SC 1080, Indian Kanoon, <https://indiankanoon.org/doc/78536/>. (Last Accessed on 26/10/2023)
- Menaka Gandhi v. Union of India, AIR 1978 SC 597, Indian Kanoon, <https://indiankanoon.org/doc/767216/>. (Last Accessed on 26/10/2023)
- Olga Tellis v. Bombay Municipal Corporation, (1986) 3 SCC 545, Indian Kanoon, <https://indiankanoon.org/doc/709776/>. (Last Accessed on 26/10/2023)
- M.C. Mehta v. Kamal Nath & Ors., (1997) 1 SCC 388, Indian Kanoon, <https://indiankanoon.org/doc/496663/>. (Last Accessed on 26/10/2023)
- Sunil Batra v. Delhi Administration, (1978) 4 SCC 494, Indian Kanoon, <https://indiankanoon.org/doc/1657323/>. (Last Accessed on 26/10/2023)
- Maneka Gandhi v. Union of India, (1978) 1 SCC 248, Indian Kanoon, <https://indiankanoon.org/doc/501107/>. (Last Accessed on 26/10/2023)
- E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3, Indian Kanoon, <https://indiankanoon.org/doc/40715/>. (Last Accessed on 26/10/2023)
- Vijay Singh v. State of Haryana, AIR 1984 SC 1204, Indian Kanoon, <https://indiankanoon.org/doc/1353689/>. (Last Accessed on 26/10/2023)
- State Of Andhra Pradesh v. McDowell and Co., (1996) 3 SCC 709, Indian Kanoon, <https://indiankanoon.org/doc/513169/>. (Last Accessed on 26/10/2023)
- Gautam Aditya v. Union of India, (1996) 6 SCC 716, Indian Kanoon, <https://indiankanoon.org/doc/1515744/>. (Last Accessed on 26/10/2023)
- Kharak Singh v. State of U.P., AIR 1963 SC 1295, Indian Kanoon, <https://indiankanoon.org/doc/113663/>. (Last Accessed on 26/10/2023)
- Bhim Singh v. Union of India, AIR 1986 SC 494, Indian Kanoon, <https://indiankanoon.org/doc/1486949/>. (Last Accessed on 26/10/2023)

Recent years especially the dealing with the Rohingya refugees has seen an inclination towards securitization and selective protection, resulting in a pressing need for an improved legal framework. Finding the balance between addressing national security issues and human rights continues to be a challenge. As such this analysis has highlighted the need for a comprehensive domestic law for refugees that is in alignment with India's constitutional obligations and standards committed internationally concerning human rights, thus formalizing a uniform response towards protecting refugees, through a process infused with humanity. Judicial activism cannot replace the institutionalization and establishment of legislative mechanisms that can enshrine and respect the rights and dignity of refugees in a sustainable manner.