Table of Contents

**Introduction**

**Understanding the term refugee**

**International refugee law and Human Rights of the refugees**

**International legislations on refugee law**

**International Refugee Law**

**1951 Convention relating to the Status of Refugees**

**1967 Protocol**

**International Human Right Law**

**1948 Universal declaration of human rights**

**International Humanitarian Law**

**Geneva Conventions of 1949 and the Additional Protocols agreed in 1977**

**The aspect of human rights of refugees**

**Importance to protect rights of refugees**

**The rights which need to be protected**

**Basic rights to be guaranteed by the host country**

**Refugees in northeast India**

**Background**

**Refugee law in India and the role of international refugee law in protecting refugees of northeast India**

**Need for refugee laws in India**

**Legal obligations to protect refugees of Northeast India**

**Recent events in northeast India**

**Citizenship (Amendment) Act, 2019**

**Lockdown and its impact**

**Myanmar conflict and India’s response**

**Conclusion**

Introduction

Every year millions of people are forced to abandon their homes and flee in search of safer and better places to rebuild their lives. There are several reasons that cause people to leave behind their entire life and move to an unknown place, including armed conflicts, human rights violations, persecution and several other forms of exploitation.

The need for international protection of refugee rights arose right after the Second World War when people around the world were forced out of their homes. This led to the formation of the United Nations High Commissioner for Refugees, an international body that seeks to provide protection to refugees and formulate lasting solutions to refugee problems.

Even though India does not have a framework for refugee protection and is not a signatory to the 1951 Refugee Convention or the 1967 Protocol, the country continues to provide a home to a large number of refugees from neighbouring countries. In the recent past, India’s concerns around security have led to a more restrictive approach on providing asylum. However, there are still a large number of refugees seeking asylum in the country. This brings in the need for a national refugee protection law that protects the human rights of those who were persecuted out of their homes.

Understanding the term refugee

Due to several misconceptions around who is a refugee, it is often assumed that “refugees”, “migrants” and “asylum seekers” mean the same and are used synonymously. However, refugees constitute a special class of persons different from migrants and asylum seekers. This difference must be noted in order to examine who can qualify as a refugee and be entitled to several rights, protection and support under international laws and conventions.

A refugee, as generally understood, is a person who has been forced to flee their own country due to the fear of violence, persecution, war or other forms of conflict. An immigrant, on the other hand, is a person who makes a conscious decision to leave their country and move to a foreign country, not due to fear of violence or threat, but to settle there and improve their lifestyle. An asylum seeker is someone who claims to be a refugee, but their claim has not been approved yet. Like refugees, they seek international protection from the threats present in their home country. However, to classify as a refugee, they must prove to the authorities that they fall within the legal definition of a refugee and are entitled to the protection and care available to them.

Article 1 of the Convention relating to the Status of Refugees 1951, defines a refugee in three ways – Inclusion, Cessation and Exclusion.

Article 1(A) is an inclusionary provision that lays down the requirement to be met with to fall under the definition of a refugee, including alienage. The clause also states that there must be a well-founded fear among the members and this fear must be reasonable. It also lays down five grounds for persecution – race, religion, nationality, membership of a particular social group and political opinion. In order to determine if the risk of persecution is reasonable, several factors must be looked at, such as violation of human rights, nature and severity of the rights denied, and restrictions imposed, and so on.

The grounds mentioned under this article are broad enough to cover any persecution based on gender, caste etc and thus expands the scope of the meaning of refugee.

Article 1(C) describes when a person who was previously classified as a refugee loses their status. This section lays down several situations where a person’s refugee status ceases to exist due to acts done by the person or changes in circumstances that indicate that the risk of persecution no longer exists.

Article 1(D)-(F) specifies which members will not classify as refugees and excludes them from the definition. In order to legally classify a person as a refugee, they must be in accordance with all clauses mentioned under Article 1.

International refugee law and Human Rights of the refugees

International legislations on refugee law

Internationally applying law governs the interests of forcibly displaced persons and ensures them with proper protection and support in the foreign country. The important legal frameworks for refugees can be studied under three main heads-

International refugee law;

International human rights law;

International humanitarian law.

International Refugee Law

The core instruments of the international refugee law are the 1951 Convention relating to the Status of Refugees and the 1967 Protocol.

1951 Convention relating to the Status of Refugees

The 1951 convention lays down the foundation for the international refugee law and was formulated in the aftermath of World War 2. It lays down the meaning and scope of the term “refugee”, sets out several duties of the refugees in the host country and the responsibilities of the states towards them. It also establishes one of the key principles to ensure that the refugees are not forced back to their home country where there is considerable danger to their life or basic human rights.

The convention was made in the context of the events during the second world war and due to this, the definition of the refugees was temporal and geographically limited as being applicable to the events in Europe before 1 January 1951. However, over the years, there arose a need for a universal instrument to ensure the protection of the refugees. This led to amendments and the adoption of the 1967 Protocol.

1967 Protocol

The protocol aimed at removing the limitations present in the 1951 convention but remained integrally related to the convention. It redefined the application of the term refugees, thus overcoming the time and space-related limitations. The protocol ensures the application of the core content of the 1951 convention to all persons falling within the revised definition of a refugee.

International Human Right Law

1948 Universal declaration of human rights

The international refugee law does not operate in isolation and must be in compliance with several basic rights guaranteed under the declaration of human rights. Article 14(1) specifically provides the right to seek and enjoy asylum in other countries.

In addition to stating the basic rights that are applicable to all humans, including refugees, the human rights law also specifies the states obligation to respect, protect and fulfil the rights of their citizens.

International Humanitarian Law

Geneva Conventions of 1949 and the Additional Protocols agreed in 1977

A large number of refugees are displaced in the midst of internal conflicts or war-like situations. The principles of the International Humanitarian Law which deal with the laws of war or armed conflict are applicable to protect them.

A major part of this law is covered in the Geneva Conventions of 1949 and Additional Protocols of 1977. These ensure protection for those people who do not take part in fighting or are not in a position to fight. This is applicable to a wide range of persons from sick and wounded soldiers to civilians of the countries. This limits the effect of the conflict on the members who are not directly involved.

The aspect of human rights of refugees

Importance to protect rights of refugees

As discussed, the international refugee law and the human rights law work conjointly. This ensures that the rights of the refugees are not violated by the home country or the foreign country they are forced to cohabit in.

The refugees are forced to leave behind their homes, livelihood and move to a new place, which leaves them in a vulnerable and unstable position. In such a state, it becomes more important to ensure that their human rights are restored and protected. It is also important that the host country recognizes and upholds its rights.

The rights which need to be protected

Principle of Non-refoulement

The principle of non-refoulement is stated under Article 33(1) of the 1951 convention. This basic principle refers to the obligation of the states to not forcibly return or expel a refugee to a territory that endangers or poses a threat to their life or freedom.

However, just like all the other principles, this principle has certain exceptions that have been stated under Article 33(2), under which a refugee can be made to return to their home country. The exception can be valid if there exists a sufficiently serious danger to the security of the host country or to its community due to the refugee.

Principle of non-discrimination

The principle of non-discrimination is one of the core principles of all international laws. Any discrimination on the basis of sex, religion, language, political opinion and so on is strictly prohibited. Article 3 of the 1951 convention upholds this principle while obliging the states to apply all provisions following the principle of non-discrimination.

It is thus a basic right of the refugees to not be discriminated against in the host country. All provisions must be applied in a fair manner and as per this principle. The application of this principle extends to all rights from granting the status of a refugee to the treatment and care given to them in the host country.

Right to family life

The family is recognized as a fundamental group unit of the society and is thus entitled to be protected from separation or breakage. When refugees are forced to leave their homes in a state of fear and chaos, often many members of the families get separated from each other. This increases their risks to violence and exploitation, which makes them entitled to protection by the state.

The Conference of Plenipotentiaries that adopted the 1951 Convention reaffirmed the “essential right” of family unity for refugees. The right to family unity has been read into the right to family life, which is a basic right for all refugees. Family reunification in asylums is thus, an important right that all refugees are entitled to.

Basic rights to be guaranteed by the host country

Right to work

This is a socio-economic right that all refugees are entitled to. It enables the refugees to earn a living for themselves and improve their standards of living. In addition, this also reduces the dependence of the refugees on the state and thus, the burden of the state. It also contributes to a more cohesive society by improving contact between refugees and the local community.

Right to education

Education is an essential requirement in order to enable the realization of other rights. Non-discriminatory education is a fundamental right that protects refugee children from illiteracy, abuse, exploitation, child labour and other evils. It also enables them to find better work and reduce their reliance on the state for a livelihood.

Freedom of Movement

Freedom of movement within the host country is a key right recognized under Article 26 of the 1951 convention which gives refugees the right to choose their place of residence within the territory and to move freely within the State. This ensures that the state does not impose discriminatory restrictions that apply only to the refugees to confine them to a certain area.

Right to access basic facilities

The refugees also have the right to access several facilities to ensure social welfare and proper health. They have a right to a standard of living adequate for their health and well-being. This right extends to their right to access the courts in case of violation of their rights and be treated in a non-discriminatory manner before the court. However, in reality, many refugees are often unable to access these facilities due to several challenges such as poverty, marginalization and discrimination.

Refugees in northeast India

Background

As per the census data, there has been a decline in the inflow of immigrants to northeast India in 2011 as compared to 2001. Despite this decline in the percentage of inflow of international migrants, India continues to host over 2,00,000 refugees who live in the country without an official status of a “refugee”.

Northeast India comprises eight states Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim. Due to sharing international borders with several neighbouring countries, these states have become home to a large number of refugees. Some of the common refugee groups are Tibetans, Nepalese Bhutanese, Chakmas, Hajong and Rohingyas. These groups tend to seek asylum in northeast India due to fear of persecution in their home countries.

A large share of the international migrants in the northeastern states emerge from Bangladesh, Nepal and Myanmar. Only a small proportion of these immigrants have moved to the region for work reasons. The northeastern states make home to a large number of the refugee population in the country, likely due to their sharing borders with several neighbouring countries.

While the government of India continues to deny these refugees the status of refugees and calls them “illegal immigrants”, there is a clear and well-established presence of a large number of refugees according to the United Nations High Commissioner for Refugees, India.

Refugee law in India and the role of international refugee law in protecting refugees of northeast India

Need for refugee laws in India

India is one of the most prominent refugees receiving countries in the world. On the face of it, it appears that India, being home to such a huge number of refugees, is flexible and welcoming in its treatment of the refugees. However, considering that the country is not a signatory of the 1951 convention and the 1967 Protocol and also has no national refugee law governing the rights of the refugees, it is clear that the government is following an ad hoc policy regarding the refugees.

The lack of a specific statutory framework or policy in order to protect the refugees poses wide-ranging problems that need to be addressed. The absence of such a framework allows the government to keep their options open while dealing with the refugees and provides them with the leeway to declare such refugees as “illegal immigrants” and deport them under the Foreigners Act of 1946. A major drawback of implementing this statute to the refugees is that the legal status of the refugees is thus no different from those ordinary aliens whose presence is regulated essentially by the Foreigners Act of 1946 and the Passports Act of 1920.

Due to the lack of a proper definition for a refugee as per Indian law, the government often fails to distinguish between migrants, refugees and asylum seekers and places all the groups under foreigners. What the government fails to take into consideration before classifying refugees as “illegal immigrants” is that the refugees or asylum seekers are displaced out of their countries by force and cannot return due to a threat to life and freedoms. Unlike migrants, they do not make a conscious decision to shift to another country in a voluntary search for social and economic betterment.

The main condition for the deportation of a foreigner is the lack of a valid passport or visa to enter India. Considering that the refugees are driven out of their homes due to violent situations, it is likely that they contravene these provisions and are thus liable to prosecution and can be deported back to a place where there exists a fear or threat to their life or freedom. Such treatment is in violation of the principle of non-refoulement established under the 1951 convention as it endangers the rights and safety of the refugees.

A lack of a specific statute governing the basic laws of the refugees also gives scope for the government to formulate discriminatory laws against the refugees and implement them under the pretext of illegal immigrants. Such discrimination could also lead to different refugee communities being subjected to varying standards of protection.

The lack of a proper definition of refugee and collaboration with international bodies has led to the refugees receiving no official acknowledgement. This makes it even more difficult to ensure proper care and protection against harassment and discrimination.

However, despite the several drawbacks of the lack of a statutory framework or national policy, there are several basic rights that are guaranteed to all persons under the Indian Constitution.

This also extends to refugees who abandon their country and seek asylum in India. The constitution guarantees to every person, equality before the law and the right to protection of life and liberty which is a fundamental right. In extension, all persons are also guaranteed the right to a free trial in case of violation of rights.

The Supreme Court in the case of the National Human Rights Commission v. State of Arunachal Pradesh (1996) has restricted the forcible expulsion of the Chakma refugees from the state and asked the state to protect the refugee groups right to life and personal liberty. In a number of such cases, the courts have protected the refugees right against refoulement and the right to life, thus providing the refugees basic security in the host country.

From this analysis, we can observe that the Indian law around the refugee law is not clear and explicitly stated and this has given scope to violate the human rights of the refugees. Even though the courts have upheld certain rights of the refugees, the area regarding what rights of the refugees are protected also remains unclear due to the lack of a proper policy. There is thus, an urgent need for a proper statute specifying the rights and obligations of the refugees and the state, and the procedure to be followed while handling refugees in India.

Legal obligations to protect refugees of Northeast India

The major international obligations to protect the rights of the refugees against refoulement, discrimination etc specifically emerge from the 1951 convention and the 1967 protocol. India is not a signatory and is thus not under any direct obligation to protect the rights of the refugees in India. However, as discussed earlier, the International Refugee law cannot work in isolation from other humanitarian and human rights laws.

Mere refusal to sign the 1951 refugee convention on India’s part does not absolve it from adhering to the basic humanitarian commitment to the protection of the refugees. Non-signatories are very well under an indirect legal obligation to respect the basic rights of the refugees if they are parties to the Human Rights Conventions. India is a member of this convention and is thus indirectly obliged. Therefore, international law as a whole must be looked at while evaluating its role in protecting the refugees of northeast India.

The United Nations High Commissioner for Refugees, which has an office in New Delhi, recognizes nearly 185,000 refugees. However, the actual figures are contemplated to be much higher. The lack of proper access due to India being a non-signatory has restricted the commission from gathering a thorough estimate. A large number of these refugees are known to be present in the northeastern states as they share international borders with several neighbouring countries and absorb large amounts of refugees from them.

As previously discussed, instead of having a codified law, the Indian government has been administering the issue of refugees by political and administrative decisions. These actions of the government are however governed by international humanitarian and human rights laws. This can be understood in the context of the refugees’ basic right against refoulement, which has been stated under the 1951 convention and must be followed by all signatories. India is not a signatory to the convention and thus is not directly obliged to follow this principle. However, even non-signatories are indirectly obliged to respect this basic right of the refugees as per other international conventions such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Fourth Geneva Convention of 1949 (Article 45) and the International Covenant on Civil and Political Rights (Article 7).

In addition, the Universal Declaration of Human Rights also places an obligation on all states to guarantee certain basic rights to everyone and also specifically states the refugees right to seek asylum. Thus, though India is not a signatory of the refugee convention and its protocol, several other international legislations look over the actions of the government and safeguard the basic rights of the refugee in northeast India.

Though India has been known to respect the refugees right against refoulement and provide a home to huge numbers of refugees and asylum seekers, the recent events indicate that the government is going back on this policy by refusing to host refugees and expelling them by branding them under the umbrella of “illegal immigrants”. Therefore, India’s approach towards dealing with refugees lacks uniformity in law and policy which leaves the refugees in a vulnerable position and at the will of the government.

Recent events in northeast India

Citizenship (Amendment) Act, 2019

The government of India initiated a citizenship verification project which excluded around 2 million people from its list, leaving them vulnerable to statelessness. In addition, the government also enacted the Citizenship (Amendment) Act, 2019 that made migrants from non-Muslim religions from Bangladesh, Afghanistan and Pakistan eligible for citizenship.

The government has placed all refugees in the northeastern part of India under the definition of “illegal immigrants” and seeks to provide citizenship to certain groups of these immigrants based on religion while deporting the rest. This policy by the government is not just in violation of the principle of non-refoulement but also discriminates among all refugees, asylum seekers and illegal immigrants on the basis of religion. The Act clearly excludes Muslim refugees and puts them at risk of statelessness.

The Muslim minorities such as Rohingya’s in Myanmar are known to face a genuine fear of persecution in their home country which increases the need for protection of such minorities against refoulement. Out of the 2 million people excluded from the National Register of Citizens, the Act will help protect all non-Muslim migrants from the threat of deportation. This indicates that the government is applying varying standards to protect certain groups of refugees while endangering others to expulsion. Such favourable treatment based on religion is highly discriminatory and does not uphold the basic right against discrimination.

Lockdown and its impact

The Covid-19 has had a serious impact on the population around the globe. The lockdown imposed by the Indian government was one of the world’s largest and strictest ones, which has had a devastating impact on several groups including the refugees and asylum seekers in northeast India. Though the lockdown has impacted all citizens in different ways, the refugees and migrants remain among the most impacted groups. This is due to their continued exclusion from the mainstream system and their lack of access to the benefits provided.

A large number of refugees are a part of the unorganised working sector, which had halted due to the nationwide lockdown imposed. This has led to several refugees being in a vulnerable position due to the lack of work and earnings to survive during the pandemic.

This has also increased their restrictions from accessing several public health care and essential services. However, despite these hardships faced by the refugees, due to a lack of clarity around the legal status of the refugees in India and any governmental policy, the plight of the refugees remains the same as their concerns go unaddressed by the government.

Myanmar conflict and India’s response

The removal of the government and seizure of its powers began on 1st February 2021, when the National League for Democracy (NLD) was deposed by the Tatmadaw. This led to several protests in Myanmar which were suppressed violently and caused a severe threat to the lives of the people.

This has led to a recent influx in the northeastern states of India, mainly Mizoram, due to an existing fear of loss of life to the people in Myanmar. The government ordered officials to turn away refugees coming into India from Myanmar. This order was, however, withdrawn after facing severe criticism. It was then replaced by a second-order seeking to take all humanitarian steps towards the refugees.

The Ministry of Home Affairs said that India is not a signatory to the 1951 convention and 1967 protocol and will treat all foreign nationals under the Foreigners Act, 1939 and the Passport (Entry into India) Act. The ministry reiterated that the state governments do not have the power to grant refugee status to foreigners in India. By doing so, the government is going back on it respecting the right to non-refoulement of the refugees.

While the government has justified this decision to be in order to prevent influx into the northeastern states, they must recognise the urgency of the situation in Myanmar and the serious threat to life. There is a need to provide them shelter until the country returns to normalcy. The reason for the influx is a well-founded threat and the government must not be insensitive to their plight.

Conclusion

Over 1% of the world’s population is displaced from their homes today. It is essential to ensure that these people are provided with immense care and protection from further threats. This requires cooperation between the international bodies and all the countries.

India being home to a large number of refugees cannot ensure the proper support and protect their rights in the absence of a specific statute. In order to ensure a uniform and fair procedure while dealing with refugees, the government must enact a specific non-discriminatory law for the refugees. It is also important that the country gives these refugees a legal status and does not treat them under the ambit of “foreigners” or “illegal immigrants”.

Northeast India, which is largely inhabited by refugees from neighbouring countries for a long time, requires proper implementation of refugee policies and special focus by the government. Also, the denial of asylum to refugees in need is not a solution to the huge influx caused over the years and cannot be the reason to endanger their life or freedom.