HUMAN RIGHTS OF REFUGEES IN INDIAN LEGAL REGIME AND ROLE OF JUDICIARY
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PRELUDE

Although there are international institutions for the protection of refugees as it is submitted earlier in chapter III, still ultimately the protection of refugees depends on individual sovereign states which have to follow their respective national legislation. States have the responsibility to protect refugees by reason of their accession to international instruments, by reason of their own legislation, by reason of their political and moral commitments, or by reason of customary international law. In its ninth session in 1954, the United Nations General Assembly recognized that 'the ultimate responsibility for the refugees within the mandate of the High Commissioner fall in fact upon the countries of residence'.

Despite the fact that currently there are 146 states parties to the 1951 Convention or its 1967 Protocol, many countries which do harbour large number of refugees, and are vitally concerned with refugee problems are not parties to the refugee conventions. The states of the Asian region lag significantly behind those of other regions of the world. So far in Asia only China, Iran, Japan and the Philippines (and Iran Israel and Yemen) are states parties. Whereas states in other regions of the world have adopted binding regional

2. Id., at 120.
instruments for the protection of refugees. There is no such instrument to protect the refugees of the Asian region.4

Historically, South Asia has witnessed substantial intra-regional movement and dislocation of regional groups fleeing ethnic or religious persecution and political instability. India’s multiethnic, multilingual and relatively stable society has often made it a natural destination for people fleeing persecution and instability in their own countries.5 This phenomenon continues, today India is still a land of refuge. India’s status as a preferred refugee haven is confirmed by the steady flow of refugees from many of its sub-continental neighbours as also from elsewhere. India continues to receive them despite its own over-a-billion population with at least six hundred million living in poverty with limited access to basic amenities.6

Refugees in India

India mostly plays host to refugees from its neighbouring countries who are either forced to leave their countries of origin due to internal or external conflict, political persecution or human rights infringements. Tamil refugees from Sri Lanka, Jumma people from Bangladesh, Tibetan refugees from Tibet and Chin and other tribal refugees from Burma, Afghanistan, Iran and even Sudan today comprise the bulk of India’s refugee population.7 In modern times, the movement of the refugees and displaced persons has seriously affected India and other South Asian countries. The statistics

7. Ibid.
indicate that India has one of the largest refugee populations in the world because of India's porous borders and accommodative policies. It is estimated that India hosted approximately 456,000 refugees in 2008,\(^8\) including about 96,000 Sri Lankans, about 73,300 stay in more than a hundred camps but registered with the nearest police stations. About 2,800 more entered in 2008.\(^9\) Some 110,000 Tibetans, about 80 percent of whom lived in camps or scattered settlements, lived more freely in the country.\(^{10}\) About 100,000 ethnic Chin from Myanmar lived under the most restricted conditions in the eastern state of Mizoram with a few hundred in New Delhi.\(^{11}\) An estimated 30,000 Afghans remained although only about 9,000 held UNHCR mandate status. Around 25,000 Bhutanese refugees also resided in India as more left Nepal for Indian states of West Bengal, Sikkim, and Bihar and about 25,000 Nepalis remained in fear of Maoists now in the Government of Nepal.\(^{12}\) India also hosted some 600 Somali refugees, who began fleeing their country after collapse of the government in 1991 and an unknown number of Iraqi and Iranian refugees and about 200 Palestinians from Iraq also resided in India.\(^{13}\) Some 65,000 ethnic Chakmas from Bangladesh remained mostly in the states of Arunachal Pradesh, Mizoram and Assam.\(^{14}\) The Supreme Court established their Indian nationality but the actual naturalization process proceeded slowly.

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9. Ibid.
10. Ibid.
11. Ibid., at 2
12. Ibid.
13. Ibid.
14. Ibid.
Statistics for India

<table>
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<th>Item</th>
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<td>Refugees &amp; Asylum Seekers</td>
<td>411,000</td>
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<td>Sri Lanka</td>
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<td>China</td>
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<td>Myanmar</td>
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<td>New Asylum Seekers</td>
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<td>1951 Convention</td>
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<tr>
<td>1967 Protocol</td>
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<tr>
<td>UNHCR Executive Committee</td>
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</tr>
<tr>
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<tr>
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Legal Status of Refugees in India

In India there is no national legislation concerning refugees, their legal status and rights. They are treated as aliens. In the absence of clear cut guidelines, refugees thus fall under the purview of the legislative framework that addresses all foreigners in India. Further India's refugee policy is governed by certain administrative regulations. There are three sets of laws that deal with foreigners in India. They are: The Registration of Foreigners Act, 1939, dealing with all the foreigners, the foreigners Act, 1946, empowering
the state of regulates the entry, the presence and departure of aliens in India and the foreigner’s order 1948. Under Section 2 of the Registration of Foreigners Act, the term foreigner is defined as “a person who is not a citizen of India”, which can refer to aliens of any kind including immigrants, refugees and tourists. The Foreigners Act of 1946 and the foreigners’ order of 1948 also uses this definition of a foreigner.15

The Indian government has the power to restrict movement inside India, limit employment opportunities, and control the opportunity to associate and the right to return refugees to the country they have fled from. Further Government has the power to either grant or refuse entry if a person does not possess a valid passport.16 The governments can refoule refugees at the border.17

No current Indian law refers directly to refugees. The current position is that they are dealt with under the existing Indian Laws, both general and special, which are otherwise applicable to all foreigners. In the absence of a legal process, India’s treatment of asylum seekers has always been a political decision, a direct result of the country’s relation with the refugee’s country of origin18 hence the government of India handles refugee matters administratively, according to

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16. The Government may also order that any non-citizen of India “shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed”. India’s citizenship Amendment Act of 2003 defines all non-citizens who entered without visas as illegal migrants, with no exception of refugees or asylum seekers.

17. Supra n. 6 at 6.

internal domestic and bilateral political and humanitarian consideration.

**India is not a signatory to the 1951 convention relating to the status of refugees or the 1967 protocol**

India has never been a member of the 1951 International Convention for Refugees and its 1967 Protocol, and even though it is member of the UN High Commissioner for Refugees (UNHCR) Executive Committee since 1996\(^\text{19}\), but it does not officially recognizes the work of the UN body in its territory.\(^\text{20}\)

India’s reluctance to sign the Convention stems from its position that it is Eurocentric, tailored to fit the refugee movements after World War II and has not responded well to mass migration.\(^\text{21}\) Another reason of not signing the UN convention protecting refugees is that the signing convention meant to be obligated to accept massive flows of refugees from politically unstable neighbors'. As mentioned earlier India has a huge population over a billion people with at least six hundred million living in poverty. Thus our own people are living like refugees with limited access to basic necessities. Signing convention implies taking on the obligation to provide employment, food, housing, medical care, education etc., to refugees.\(^\text{22}\) Despite not signing up, our record to giving shelter has been very good.

**India’s International Commitments**

India does not have on its statute book a specific and separate law to govern refugees. In the absence of such a

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\(^{19}\) ExCom of the UNHCR approves and supervises the material assistance programmes of the UNHCR.

\(^{20}\) *Supra* n. 18 at 7.

\(^{21}\) *Ibid*.

specific law, all existing Indian laws like *The Criminal Procedure Code, The Indian Penal Code, and The Evidence Act etc.* apply to the refugees as well. Even though India is not a signatory to the 1951 convention of Refugees and also the 1967 Protocol, India is a signatory to a number of United Nations and World Conventions on Human Rights, refugee issues and related matters. India's obligations in regard to refugees arise out of the later.23 India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995. Membership of the EXCOM indicates particular interest and greater commitment to refugees matters. India voted affirmatively to adopt the UN Declaration of Human Rights which affirms rights for all persons, citizens and non-citizens alike.24 India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967 and also ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. India ratified the UN Convention on the Rights of the Child in 1989. India ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1974. Further India accepted the principle of non-refoulment as envisaged in the Bangkok-Principles, 1966, which were formulated for the guidance of member states in respect of matters concerning the status and treatment of refugees. These principles also contain provisions relating to the repatriation, right to compensation, granting asylum and the minimum standard of treatment in the state of asylum.25

A general survey of the law and policies of the India shows that the country has followed most of the provisions of International Convention on Refugees in practice. Taking this into account, it is clear that India respects international treaties on the treatment of refugees residing within its territory; but it chooses to maintain its own administrative arrangement of dealing with temporarily or permanent settled refugee’s communities.

**Indian Practice Regarding Refugee Protection**

The practice of the Indian Government has been to deal with refugees in three main ways:

(a) Refugees in mass influx situations are received in camps and accorded temporary protection by the Indian Government including, sometimes, a certain measures of socio-economic protection.

(b) Asylum seekers from South Asian countries or any other country with which the government has a sensitive relationship, apply to the government for political asylum which is usually granted without an extensive refugee status determination subject, of course, to political exigencies;

(c) Citizens of other countries apply to the office of the United Nations High Commissioner for Refugees (UNHCR) for individual refugee status determination in

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26. *Supra* n. 5 at 2.
27. India has received and accommodated mass influx refugees from Tibet and Sri Lanka in special camps with varying facilities for health, education and employment, as cited in Isha Bothra, “The Law, Policy and Practice of Refugee Protection in India”. 2007, p. 2, [http://www.legalserviceindia.com](http://www.legalserviceindia.com).
28. Asylum seekers who enter India individually after a mass influx has taken place are granted asylum after a preliminary screening mechanism. This process continues in the case of Tibetan’s and Sri Lankans who enter India in small number and must fulfill certain criteria before they are registered by the Indian Government as cited in Isha Bothra, “The Law, Policy and Practice of Refugee Protection in India”.2007. p. 2, [http://www.legalserviceindia.com](http://www.legalserviceindia.com).
accordance with the terms of the UNHCR statute and the Refugee Convention.29

Indian Government has established fairly well experienced bureaucratic machinery conversant with the problems of refugee administration.

India has a three pronged strategy to deal with refugee problem:30

(a) The Home Ministry deals with the formulation of policies of rehabilitation and settlement of refugees.

(b) The Ministry of External Affairs is empowered with the responsibility of bilateral negotiation and to deal with the issues internationally.

(c) The State Governments are entrusted with the responsibility of protection and maintenance of the refugee camps at the local level.

On the other hand, National Human Rights Commission, Minority Commission and State Human Rights Commission etc., are entrusted for ensuring overall human rights, fundamental freedom and equal opportunity to all, at national level in their areas.

Refugees and the Indian Legal Framework

India is home to one of the largest refugee populations in the world. Although the Indian government claim that its policies conform to international standards, no Indian law refers directly to refugees. The result is that refugees are


treated under the law applicable to aliens. The Indian government deals with the refugees at both the political and administrative levels. Refugees encounter the Indian legal system on two counts. There are laws which regulate their entry into and stay in India. Once they are within the Indian Territory, they are then liable to be subjected to the provisions of the Indian penal laws for various commissions and omissions under a variety of circumstances.31 There are various constitutional and legal provisions with which refugees may be concerned under varying circumstances.

(i) Constitutional Provisions

India is a country governed by the Rule of Law. Indian Constitution is a living document in which the status of human rights is fairly high. Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before law and equal protection of the law. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus state is bound to protect the life and liberty of every human being, be he a citizen or otherwise.32 The Constitution of India expressly incorporates the common law percept and the courts have gone further to raise it to the status as one of the basic features of the Constitution which cannot be amended. The Constitution of India reflects the international norms set out in the Universal Declaration of Human Rights which, among other things, affirm, the principle of non-discrimination and proclaim that all human beings are born free and equal in dignity and rights, and that everyone is entitled to all the rights and freedoms set forth in the document without distinction of any

31. *Supra* n. 23 at 5.
32. *Supra* n. 22 at 529.
kind. Hence, in India, almost all the basic refugee rights have got constitutional recognition. Chapter III of the constitution, under Article 14-35, deals with a variety of fundamental rights. However, all these fundamental rights are not available to aliens and at the time of emergency, due to war and external aggression, the enforceability of the fundamental rights other than right to life can be suspended by the state.

The constitution of India provides following fundamental human rights and fundamental freedoms to refugees, legally admitted to India and so long as he is permitted by the government to remain in this country:

(a) **Equality before the Law or Equal Protection of the Law**

The principle of 'equality before the law' is universally recognized, and is to be found in almost all those written Constitutions which guarantee fundamental rights. The underlying principle of Article 14 is that all persons and things similarly circumstanced should be treated alike both in privileges conferred and liabilities imposed. Among equals, the law should be equal and should be equally administered. The like should be treated alike. What is prohibited is discrimination between persons who are substantially in similar circumstances or conditions. Article 14 applies to "any person" and is not limited to citizens alone. Both individuals and juristic persons are entitled to the benefit of Article 14.

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34. *Supra* n. 30.
35. Article 14 of the Indian Constitution.
36. *Supra* n. 33 at 86.
Article 14 provides: "The state shall not deny to any person equality before the law or equal protection of laws within the territory of India".

**Why May Claim Article 14 Protection**

The obligation imposed on the state by Article 14 is for the benefit of all persons, within the territory of India. The benefit of Article 14 is, therefore, not limited to citizens. Every person whether natural or artificial, whether he is a citizen or an alien,\(^{37}\) is entitled to the protection of this Article.\(^{38}\)

So, as per the provision, even a foreigner will have the right to invoke Article 14 and complain against the discrimination if he is denied the equal protection of law within the territory of India. The state would not discriminate a refugee against other refugees of same class regarding any benefit or rights they enjoy by virtue of their refugee status. It may however be noticed that an alien (a foreign national) cannot claim equal rights under Article 14 with that of the Indian nationals, so far as the grant of citizenship of India.

In *Louis De Raedt Vs. Union of India*,\(^{39}\) the Supreme Court had ruled that the fundamental rights of the foreigner was confined to Article 21 and did not extend to a foreigner, the right to reside and settle in India, as states in Article 19 (1) (e) Relying on the judgments and distinguishing the decision of the Supreme Court in *National Human Rights Commission Vs. State of Arunachal Pradesh*\(^{40}\) the Madras High Court in *David John Hopkins Vs. Union of India*\(^{41}\), held that foreign nationals did not have any fundamental right

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40. AIR 1996 SC 1234.
41. AIR 1997 Mad. 366.
guaranteed for the grant of citizenship of India, in which matters, the Government of India had got unrestricted power under the citizenship Act, 1955, to refuse citizenship, without assigning any reason whatsoever and that a foreign national could not claim equal rights under Article 14 with that of the Indian national.  

(b) Right to Life and Personal Liberty etc.  

The Indian Constitution guarantees the right to life and personal liberty to all persons. The protection of Article 21 of the constitution is available to citizens as well as non-citizen, and they also have right to live, as long as they are here, with human dignity. 

Article 21 provides "No person shall be deprived of his life or personal liberty except according to procedure established by law". This right has been held to be the heart of the constitution.  

Article 21 secures two rights: 

(i) Right to life; and 

(ii) Right to personal liberty 

Article 21 prohibits the deprivation of the above rights except according to procedure established by law.  

Article 21 can be claimed only when a person is deprived of his "life" or personal liberty by the "states" as defined by 

42. Supra n. 38 at 106. 
43. Article 21 of the Constitution of India. 
44. The foreigners enjoy the protection of Article 21 in two ways: 
(a) They are equally entitled to the right against deprivation of life or bodily integrity and dignity (Louis De Raedt (1991) 3 SCC 554 at P. 13; Chandrima Das 2000, 2 SCC 465 at P. 28, 32 and 34; Anwar (1971) 3 SCC 104 at p. 4; and NHRC 1996, 1 SCC 742 at p. 20. 
(b) To a certain extent, the right against executive action sans procedural due process accrues to them. P. Mohammed Khan 1978, 11 APWR 208. 
46. Supra n. 38 at 289.
Article 12. It not only refers to the necessity to comply with procedural requirements, but also, substantive rights of citizen.\(^{47}\) Violation of the right by a private individual is not within the purview of Article 21.\(^{48}\)

**Who can claim the Protection of Article 21**

The right secured by Article 21 is available to every person, citizen or non-citizens. Thus, even a foreigner\(^ {49}\) can claim this right. However, Article 21 applies only to natural person. It has no application to corporate bodies.\(^ {50}\)

It is well settled that an alien can claim the protection of Article 21. It, however, does not include the right to reside and settle in India, as mentioned in Article 19 (1) (e) which is applicable to the citizens of the country.\(^ {51}\)

In Cherchi Domenico Ferdinando V. Union of India\(^ {52}\), the petitioner a foreigner who had come to India on tourist visa, granted extension to stay in India on the ground of his purported marriage with an Indian, which way, in fact, to facilitate and carry out widespread trafficking in drugs by foreign tourists. Holding that an alien had no right to reside or settle in India, the Delhi High Court upheld his deportation from India by an order of the Government.

Just as the state is under an obligation to protect the life of every citizen in this country, so also the state is under an obligation to protect the life of the persons who are not citizens. Thus, the refugees can avail of the benefit under


\(^{48}\) Supra n. 46.


\(^{50}\) Supra n. 38 at 290.


\(^{52}\) AIR 2004 Del. 147.
Article 21 of the Constitution in the same way as the citizens of India. They cannot be exposed to threat to life and personal liberty. State being governed by the rule of law is bound to protect the life and liberty of every human being, be he a citizen or otherwise.

Article 21 is of the widest amplitude after the judgment of Meneka Gandhi case\(^53\) and it covers a variety of rights which are provided to refugees' aliens and non-citizens in India:

(i) **Right to live with human dignity\(^54\)**

"It is the fundamental right of everyone in this country to live with human dignity free from exploitation." This right to live with human dignity enshrined in Article 21.

(ii) **Right to livelihood\(^55\)**

"The right to life includes the right to livelihood." If the right to livelihood is not treated as a part of the Constitutional right to right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Deprive a person of his right to livelihood means person is deprived from his life.

(iii) **Right to Shelter\(^56\)**

The right to shelter has been held to be a fundamental right which springs from the right to residence secured in Article 19 (1) (e) and the right to life guaranteed by Article 21.

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Right to shelter, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads, etc. So as to have easy access to his daily avocation. The right to shelter, does not mean a mere right to a roof over one's head but "right to the entire infrastructure necessary to enable him to live and develop as a human being".

(iv) Right to Education

Right to education is fundamental right under Article 21 and "it directly flows from the right to life". The right is, however, not an absolute right and that it's content and parameters have to determine in the light of Article 41 and 45.

The Constitution (86th Amendment) Act, 2002 inserting a new Article 21-A declaring right to education an independent fundamental right.

(v) Right to Social Security and Protection of the Family

Right to life guaranteed under Article 21 includes within its ambit "the right to social security and protection of the family". Interpreting Article 39 (e) of the Constitution of India vis-a-vis Article 25 (2) of the Universal Declaration of the Human Right and Article 7 of the International Convention on Economic, Social and Cultural rights, 1966, J.K. Ramaswamy in Calcutta Electricity Supply Corporation (India) Limited Vs. Subhas Chandra Bose, held that the right to social and

58. Supra n. 38 at 303.
60. AIR 1992 SC 573 (Minority opinion)
economic justice was a fundamental right. It is explained that right to life and dignity of person and status without means, were cosmetic rights. "Socio-economic rights were, therefore, basic aspirations for meaningful right to life and that the right to social security and protection of the family were integral part of the right to life".

In *NHRC V. State of Arunachal Pradesh* the Supreme Court said that the state was bound to protect the life and liberty of every human being, be he a citizen or otherwise an that the state could not tolerate or permit anybody or group of persons to threaten other person or group of persons.

**(vi) Right to Health and Medical Assistance**

The right to life guaranteed under Article 21 includes within its ambit the right to health and medical care. It includes the right to lead a healthy life so as to enjoy all faculties of the human body.

It is not merely a right enshrined under Article 21 but an obligation cast on the state to provide this both under Article 21 and under Article 47.

**(vii) Right to Privacy**

The Right to personal liberty and the right to move freely and speech could be described as contributing to the right to privacy. However, the right was not absolute and would always be subjected to reasonable restrictions. The right

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61. AIR 1996 SC 1234.
63. Mr. 'X' Vs. Hospital 'Z', AIR 1999 SC 495.
65. R. Rajagopal Vs. State of Tamil Nadu, AIR 1995 SC 264; Mr. 'X' Vs. Hospital 'Z', AIR 1999 SC 495.
would necessarily have to go through a process of case by case development.

(viii) Right to Free Legal Aid and Right to Speedy Trial

The "right to free legal aid" at the cost of the state to an accused, who could not afford legal services for reasons of poverty, indigence or incommunicado situation, was part of fair, just and reasonable procedure implicit in Article 21. The "right to speedy trial", has been interpreted to be a part of the fundamental right to life and personal liberty. Article 21 requires that a person can be deprived of his liberty only in accordance with procedure established by law which should be a just, fair and reasonable procedure.

(ix) Right against Inhuman Treatment

The Supreme Court in several cases, has taken a serious note of the inhuman treatment meted to the prisoners and has issued appropriate directions to prison and police authorities for safe guarding the right of the prisoners and person in police lock-up, particularly of women and children. So the inhuman treatment by the police was violation of Article 21. As human dignity is a clear value of our Constitution not to be parted away for mere apprehension entertained by jail officials.

(c) Protection against Arrest and Detention

The Indian Constitution guaranteed protection against arrest and detention in certain cases. It embodies procedural

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70. Supra n. 38 at 333.
71. Article 22 of the constitution.
safeguards against arrest or detention which are available in the following two cases:

A. Where the arrest a detention is made under the ordinary law relating to commission of offences.

B. Where the detention is made under a law providing for preventive detention.

Who can claim Article 22

The safeguard contained in Article 22 can be claimed by every person whether a citizen or a non-citizen. Even a foreigner can claim these safeguards. However, these safeguards are not available to an enemy alien (i.e., a national of a country with whom India is at war)\(^72\) Article 22 lays down the four rights/safeguards against arrest or detention made under ordinary law relating to the commission of offences:\(^73\)

(a) Right to be informed, as soon as may be, of the grounds for arrest or detention.

(b) Right to consult and to be defended by a legal practitioner of his choice.

(c) Right to be produced before the nearest Magistrate within 24 hours of arrest.

(d) Right not to be detained in custody beyond 24 hours without the authority of the Magistrate.

Article 22 (1) and 22 (2) of the Indian Constitution reflect that the rules of natural justice in common law system are equally applicable in India, even to refugees.

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\(^72\) Supra n. 38 at 344.

\(^73\) See, Article 22 (1) & (2) of the Constitution of India.
(d) Protection in Respect of Conviction for Offences\textsuperscript{74}

Constitution provides protection in respect of conviction for offences. The protection contained in Article 20 is available to all persons, citizens or non-citizens. The term “person” in Article 20 includes a corporation which is accused, prosecuted, convicted or punished for an offence.

So the foreigners or aliens are also entitled to the protection of the rights:\textsuperscript{75}

(a) The right against prosecution under retrospective penal law;
(b) The right against double jeopardy; and
(c) The right against self-incrimination.

(e) Right against Exploitation\textsuperscript{76}

The Constitution of India provides protection against exploitation. This right is secured to every person, whether citizen, non-citizen or alien. The protection contained therein is available not only against state but also against private individuals.\textsuperscript{77}

**Prohibition of “Traffic in Human Beings’ and Forced Labour**

Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour and any contravention of this provision shall be an offence punishable in accordance with law.\textsuperscript{78} However it does not prohibit state to impose compulsory services for public purposes provided that in making so it shall not make any

\textsuperscript{74} Article 20 of the Constitution of India.
\textsuperscript{75} See, Article 20 (1), 20 (2) & 20 (3) of the Constitution of India.
\textsuperscript{76} Article 23 and 24 of the constitution of India.
\textsuperscript{77} People’s Union for Democratic Rights Vs. Union of India, AIR 1982 SC 1473.
\textsuperscript{78} Article 23 (1) of the Constitution of India.
discrimination on grounds only of religion, race, caste or class or any of them.\textsuperscript{79}

So this right is available to citizens and refugees, and non-citizens without any discrimination. The practice of traffic in human being is condemned in almost every international instrument dealing with human rights.

**Prohibition of employment of Children**\textsuperscript{80}

Article 24 provides: "*No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment*".

This provision read with the Directive Principles of State Policy contained in Article 39 (e) and 39 (g), provides for the protection of the health and strength of children below the age of fourteen years.\textsuperscript{81}

The prohibition contained in Article 24 could be plainly and indubitably enforced against everyone, whether state or private individual.

**(j) Right to Religious Freedom**\textsuperscript{82}

"*Secularism is the basic feature of the Constitution*.\textsuperscript{83} In the matter of religion, the state is neutral and treats every religion equally.

Constitution of India provides ‘freedom of religion’, the right is available to every person, citizens or non-citizens or aliens.

Article 25 of the constitution of India provides: ‘*Subject to public order, morality and health and to the other provision*

\textsuperscript{79.} Article 23 (2) of the Constitution of India.
\textsuperscript{80.} Article 24 of the Constitution of India.
\textsuperscript{81.} People's Union for Democratic Rights Vs. Union of India, AIR 1982 SC 1473.
\textsuperscript{82.} Article 25 (1) of the Constitution of India.
\textsuperscript{83.} S.R. Bommai Vs. Union of India, AIR 1994 SC 1918.
of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion”.

Article 25, secures to every person:

- freedom of conscience; and
- the right to-
  - profess religion;
  - practice religion; and
  - propagate religion

The state has an obligation to guarantee this right to all.

(g) Right to Constitutional Remedies

Fundamental Human Rights are meaningless unless there is effective machinery for the enforcement of these rights. Violation of the fundamental rights by the state can be challenged. Article 32 and 226 of the Constitution provided an effective remedy for the enforcement of these rights. So any person whether citizen or non-citizen or alien or refugee aggrieved by the infringement of the fundamental rights enshrined in part III of the constitution can directly approach to the Supreme Court or High Courts for relief. It is one of the ‘highly cherished rights’ of the Constitution. This right has been held to be “integral part of an important and the basic structure of the constitution”.

84. Article 32 and 226 of the Constitution of India.
85. For detail, see Article 32 of the Constitution of India.
86. Fertilizer Corporation Kamgar Union Vs. Union of India, AIR 1981 SC 344.
87. Ibid.
Thus, the right to move the Supreme Court or High Courts for the enforcement of the fundamental rights is itself declared to be a fundamental right.

(h) Directive Principles of State Policy

Part IV of the Constitution relates to the Directive Principles of State Policy. It sets forth the ideals and objectives to be achieved by the state for setting up in India a Social Welfare State. The basic aim of the Welfare State is the attainment of substantial degree of social, economic and political equalities, the assumption by community acting through the State, as its responsibility, to provide the means, whereby all its members can reach minimum standard of economic security, civilized living, capacity to secure social status and culture to keep good health.

Article 51(a) requires that “The State shall endeavour to promote international peace and security” which stipulated that government had a fundamental duty to show compassion which is important for the recognition of refugees as human beings.

Further Article 51 (C) stipulates that “the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with another”.

Even without being a party to the 1951 Convention relating to the status of Refugees or the 1967 Protocol, in India, the rights of refugees to this extent are protected by the provisions made in Constitution.

As discussed earlier all the basic human rights of refugees have got constitutional recognition in India, inspite
of that the persons who granted asylum in India get some special treatment as long as they remain in the territory.

SPECIAL TREATMENT

(i) Exemption from penalties

Article 3 (1) of the 1951 Refugee Convention provides that "the contracting state shall not impose penalties, on account of their illegal entry or presence on refugees who coming directly from a territory. Where their life or freedom was threatened ............... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".92

This is one area where India is very apathetic towards refugees. Under Section 14 of the Foreigners Act, 1946 a foreigner is liable to the punishment with imprisonment for a term which may extend to five years and is also liable to fine. Due to lack of a procedure for considering asylum claims, all individual asylums - seekers who entered illegally or stayed in India without authorization were persecuted and punished under this section. However, in case of large scale influx, India has always acted according to the principle laid down in the Refugee Convention and has not imposed penalties on the refugees.93

(ii) Identity and travel documents

The 1951 Convention on the Status of Refugee under Article 28 provides that:

"The contracting states shall issue to refugees lawfully staying in their territory travel documents for the purpose of

93. Id., at 134.
travel outside their territory unless compelling reason of national security or public order otherwise require". 94

In India, all refugees who are recognized so were given identification certificates showing their refugee status. But, as regard to travel documents; no refugee has so far had a privilege of getting travel documents except Tibetan refugees. Tibetan refugees can even travel to foreign countries and come back to India on the basis of such identification paper. 95

Statutory Provisions

In the absence of any refugee specific legal frame work, the legal position is that they are treated as aliens. There are some statutory provisions which are applicable to aliens as well as to refugees. As mentioned earlier that India has no general legislation on refugees and hence refugees are not classified and treated differently from other aliens. They are covered under the:

- Registration of Foreigners Act, 1939 (Central Act 16 of 1939) which is applicable to all foreigners.
- The Foreigners Act, 1946, which empowers the State to regulate the entry, presence and departure of aliens in India.
- The Passport (Entry into India) Act 1920.

(a) The Registration of Foreigners Act, 193996 (Act 16 of 1939)

The Government of India has enacted the Registration of Foreigners Act, 1939, which received assent on 8th April 1939. This Act was to provide for the registration of

94. Ibid.
95. Id. at 135.
96. Act No. 16 of 1939, received assent on the 8 April 1939, published in Gazette of India, 1939, extra. p. 59.
Foreigners in India i.e. entering, being present in, and departing from India. In this Act 'Foreigner' means a person who is not a citizen of India. This Act extends to the whole of India.

The relevant sections of the Act to Refugees are Section 3 and 6.

Section 3-Powers to Make Rules

The Central Government may by notification in the official gazette make rules with respect to foreigners for any or all of the following purposes, that is to say:

(a) For requiring any foreigner entering, or being present in (India) to report his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(b) For requiring any foreigner moving from one place to another place in (India) to report, on arrival at such other place, his presence to a prescribed authority within such time and such manner and with such particulars as may be prescribed;

(c) For requiring any foreigner who is about to leave (India) to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) For requiring any foreigner entering, being present in, or departing from (India) to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed;

(e) For requiring any person having the management of any hotel, boarding, house, sarai or any other premises of
like nature to report the name of any foreigner residing therein for whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(f) For requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from (India) in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;

(g) For providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act.

Section 6: Powers to exempt from application of Act

The Central Government may, by order declare that any or all of the provisions of the rules made under this Act shall not apply or shall apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigners.

Provided that a copy of every such order, shall be placed on the table of parliament as soon as may be after its promulgation.

(b) The Foreigners Act, 1946\(^7\) \(\text{(Act 31 of 1946)}\)

The Government of India has enacted the Foreigners Act, 1946. This Act confers upon the Central Government certain powers in respect of the entry of foreigners into India, their presence therein and their departure there from. In this Act

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97. Act No. 31 of 1946, received assent on 23rd Nov. 1946.
CHAPTER - IV

"Foreigner" means a person who is not a citizen of India. This Act extends to the whole of India.

The relevant sections of this Act which are applicable to refugees are section 3, 3A, 7 and 14 of the Act. These sections read as under:

Section 3, Power to make orders

(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure there from or their presence or continued presence therein.

(2) The particular and without prejudice to the generality of the foregoing powers orders made under this section may provide that the foreigner:

(a) Shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) Shall not depart from India or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) Shall not remain in India; or in any prescribed area therein;

(cc) Shall if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;
(d) Shall remove himself to, and remain in, such area in India as may be prescribed;

(e) Shall comply with such conditions as may be prescribed or specified:

(i) Requiring him to reside in particular place;

(ii) Imposing any restriction on his movements;

(iii) Requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) Requiring him to allow his photograph and finger impression to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) Requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) Prohibiting him from association with persons of a prescribed or specified description;

(vii) Prohibiting him from engaging in activities of a prescribed or specified description;

(viii) Prohibiting him from using or possessing prescribed or specified articles;

(ix) Otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) Shall enter into a bond with or without sureties for the due observance of or as an alternative to the enforcement of, any or prescribed or specified restrictions or conditions;
(g) shall be arrested and detained or confined; and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect of this Act.

(3) Any authority prescribed in this behalf may with respect to any particular foreigner make under clause (e) for clause (f) of sub-section (2).

Section 3-A Powers to exempt citizens of commonwealth countries and other persons from application of Act in certain cases:

(1) The Central Government may, by order, declare that all or any of the provision of this Act or of any order made there under shall not apply or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order to or in relation to:

(a) The citizens of any such common wealth country as may be so specified; or

(b) Any other individual foreigner or class or description of foreigners

(2) A copy of every orders made under this section shall be placed on the table of both houses of parliament as soon as may be after it is made.

Section 7: Obligation of hotel keepers and others to furnish particulars:

(1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such
information in respect of foreigners’ accommodation in such premises, as may be prescribed.

_Explanation:_ The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific times or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sec-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open to inspection by any police officer or by a person authorized in this behalf by the District Magistrate.

(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may be in the opinion of the authority be best adopted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under his control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of sub-section(2) shall apply to every person accommodated in any such premises.
Section 14-Penalties

If any person contravenes the provisions of this Act or of any order made there under, or any direction given in pursuance of this Act or such, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound there by shall pay the penalty thereof, or show cause to be satisfaction of the conviction court why such penalty should not be paid.  

India relies on the Foreigners Act, (i.e. Registration of Foreigners Act, 1939 (Act 16 of 1939) and the Foreigners Act, 1946 (Act 31 of 1946) to govern the entry, stay and exit of foreigners in India. However, the Foreigners Act is an archaic legislation that was enacted by a colonial government in response of the Second World War. Section 2 (a) of the Act defines a foreigner as a person who is not a citizen of India, thus covering all refugees within its ambit as well. Without a specialize governance regime for country of his former habitual residence as a result of such extent is unable or, owing to such fear, is unwilling to return to it. The unrestricted power of the executive to remove foreigners was first confirmed by the Supreme Court in 1955, where it held that:

"The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering

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99. Supra n. 5.
100. Hans Muller of Nuremberg AIR 1955 SC 367.
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this discretion in the constitution, an unrestricted right to expel remains".

The untrammelled right of the executive to remove foreigners from India has been upheld by the Supreme Court in a number of subsequent decisions.101

(c) The Passport (Entry into India) Act, 1920102

The Government of India has enacted the Passport (Entry into India) Act, 1920. In this Act, "entry" means entry by water, land or air and "passport" means a passport for the time being in force issued or renewed by a prescribed authority and satisfying the conditions prescribed relating to the class of passport to which it belongs.103 This Act is extended to the whole of India.

The relevant sections of this Act to refugees are Section 3 and 5, which read as under:

Section 3-Power to make rules

(1) The (Central Government)a may make rulesb requiring that persons entering India shall be in possession of passport, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may:

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102. Act 34 of 1920, receive assent on 9th September, 1920, Published in Gazette of India, Pt. V, P. 54.
103. Section 2 of the Passport (Entry into India) Act, 1920.
   (a) Substituted for the word "Governor-General in Council", by A.D., 1937.
   (b) For Indian Passport Rules, 1950, see Gazette of India, 1950, Pt. 1, S. 1, p.91, as amended by S.O. 1794 of 1960.
(a) Prohibit the entry into (India) or any part there of any person who has not in possession a passport issued to him;

(b) Prescribe the authorities by whom passport must have been issued or renewed and the conditions with which they must comply, for the purpose of this Act; and

(c) Provide for the exemption, either absolutely or an any condition, of any person or class of person from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.

(4) All rules made under this section shall be published in the official gazette, and shall thereupon have effect as if enacted in this Act.

Section 5-Power of Removal

The (Central Government) may by general or special order, direct the removal of any person from (India) who, in contravention of any rule made under Section 3 prohibiting entry into (India) without passport, has entered therein, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction.
(d) The Passport Act, 1967

The Government of India has enacted the Passport Act, 1967. This Act is to provide for the issue of passport and travel documents to regulate the departure from India of citizens of India and other persons and for matters incidental or ancillary thereto. It extends to whole of India.

The passport Act is 'procedure established by law' within the meaning of Article 21 of the constitution and it is not ultra virus the Article. All the departure and entry of the foreigners into India is not valid until they do not hold a valid passport or travel document. But no refugee has so far had a privilege of getting travel document in India, except Tibetan refugees. Tibetan refugees can even travel to foreign countries and come back to India on the basis of their identification papers and documents.

(e) The Extradition Act, 1962

The Government of India has enacted the Extradition Act, 1962 in the thirteenth year of Republic of India. In this Act, extradition is the surrender by one state to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justifiable in the Courts of the other state. Surrender of a person within the state to another state, whether a citizen or an alien is a

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(a) Substituted for the words "Governor-General in Council" by A.D., 1937.
(b) Substituted for "the Provinces" by the Indian Passport (Amendment) Act, 1949 (36 of 1949) S. 4 (28.4.1949).
105. Section 3 of the Passport Act, 1967.
106. Supra n. 92 at 135.
political act done in pursuance of a treaty or an arrangement ad-hoc.\(^{108}\)

(f) **The Protection of Human Right Act, 1993\(^{109}\)**

The Government of India has enacted the *Protection of Human Rights Act 1993*. The Act provided for the constitution of a National Human Rights Commission (NHRC) State Human Rights Commissions (SHRC) and Human Rights Courts (HRC) for better protection of human rights and for matters connected or incidental thereto. These recommendatory bodies have powers to inquire into the violation of human rights or abetment thereof. The Commission is not restricted to investigating issues of concerns to citizens only and in fact it also considers the matters relating to all human beings including the rights of refugees in India.\(^{110}\)

The National Human Rights Commission (NHRC) which was established by the Protection of Human Rights Act, 1993 is the main body entrusted with promoting and protecting human rights. The Human Rights Acts vests the NHRC with a broad mandate but it only has the power to issue recommendations and does not have any effective enforcement mechanism at its disposal. The National Human Rights Commission of India (NHRC) has functioned effectively for the protection of refugee's human rights in India.

**Enforcement of Human Rights of Refugees**

It is true that a declaration of Fundamental Human Rights is meaningless unless there is effective machinery for the enforcement of these rights. India has been quite in the

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\(^{108}\) For detail, see the Extradition Act, 1962.


\(^{110}\) The National Human Rights Commission filed a petition in the Supreme Court on the threatened expulsion of Chakmas in Arunachal Pradesh.
line of respecting and enforcing the concepts which stand for human rights.

As discussed earlier, the Part III of the Constitution of India has given all people including non-citizens found on Indian territories the ‘freedom of religion’,\footnote{Article 25 of the Constitution of India.} \textit{Personal liberty}\footnote{Id., Article 21.} and ‘the right of equality’\footnote{Id., Article 14.} etc. further the right to enforce these fundamental rights,\footnote{Id., Article 32.} itself has been made a fundamental right.\footnote{U.N. Gupta, \textit{The Human Rights, Conventions and Indian Law}, 2004, pp. 17-18.} The Supreme Court of India has described this unique provision in the Constitution as “the corner stone of the democratic edifice” (Prem Chand Vs. Excise Commissioner)\footnote{AIR 1963 SC 996.} and “the protector and guarantor of fundamental rights” (Romesh Thaper Vs. State of Madras).\footnote{AIR 1950 SC 124}

In Indian Constitution the law enforcement provisions ensure the full protection of the rights of refugees. So any person, refugee or asylum seeker cannot be discriminated against because of their non-citizens status. A person whose right have been violated has right to directly approach the High Court (Under Article 226) and the Supreme Court (Under Article 32) for judicial rectification, redressal of grievances and enforcement of fundamental rights.\footnote{Dr. S. Subramanian, \textit{Human Rights: International Challenges}, Vol. 1, 1997 p. 321.} Government has also constituted a statutory National Human Right Commission (NHRC), which acts like a watch dog for any complaints of Human Rights violations, vide protection of Human Rights Act, 1993. In acts sue moto also for the protection of Human Rights.
Constitutional Remedies

The most significant aspect of Constitutionalism and human rights is the exclusive and never to be denied the right to constitutional remedies. It is remedy which makes the rights real. It was, therefore, our constitution-makers having incorporated a long list of Fundamental Rights have also provided for an effective remedy for the enforcement of these rights under article 32 of the Constitution. Article 226 also empowers all the High Courts to issue the writs for the enforcement of Fundamental Rights.119

The significance of incorporating Article 32 in the Constitution was explained by Dr. B.R. Ambedkar.120

"If I was asked to name any particular Article in this constitution as the most important—an Article without which this constitution would be a nullity—I could not refer to any other Article except this one i.e. Art. 32. It is the very soul of the constitution and the very heart of it".

This right has been held to be an "important and integral part of the basic structure of the constitution."121

So any person, natural or artificial whose fundamental rights has been violated can invoke the jurisdiction of the Supreme Court under Article 32 which guarantees the right to move the Supreme Court by "appropriate proceedings" for the enforcement of the fundamental rights conferred by Part III of the Constitution.122 Further this Article confers power on the Supreme Court to issue appropriate directions or orders or

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121. Fertilizers Corporation Kamgar Union Vs. Union of India, AIR 1981 SC 344.
122. Article 32 (1) of the Constitution of India.
writs, for the enforcement of any of the rights conferred by Part III of the constitutions.

Under Article 32, the Supreme Court's power to enforce fundamental rights is widest. There is no limitation in regard to the kind of proceedings envisaged in Article 32 except that the proceeding must be "appropriate". So whenever, there is violation of fundamental right, any person can move to the court for an appropriate remedy. Article 32 is not merely preventing the infringement of fundamental rights; the Court held that under Art. 32 it has power to grant remedial relief which includes the power to grant compensation in appropriate cases. Where the fundamental rights of the poor and disadvantaged person are violated:

Under Article 226 of the Constitution every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction to issue any person or authority including the appropriate cases, any Government, within those territories, directions, orders to writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrants and certiorari or any of them.

(a) for the enforcement of fundamental rights conferred by Part III, and

(b) for any other purpose'.

It is well settled that it is not necessary to move the High Court under Article 226 before moving the Supreme Court.

123. Writs in the nature of habeas corpus, Mandamus, prohibition, quo warranto and certiorari.
124. Article 32 (2) of the Constitutional of India.
126. Supra n. 119 at 528.
127. 'For any other purpose' meant for the enforcement of an statutory as well as common law rights (Calcutta Gas Co. Vs. State of West Bengal, AIR 1962 SC 1044).
Court under Article 32 of the Constitution. Many High Courts have granted relief to refugees in exercise of powers under Article 226 of the Constitution.

Under both these Article i.e. 32 and 226 of the Constitution, violation of Fundamental Rights can be challenged in the court of law and even a foreigner, alien or refugee will have the right to invoke the jurisdiction of the Supreme Court\(^{128}\) and High Courts\(^{129}\) under Article 32 and 226 respectively for the enforcement of their fundamental rights in the same way as citizens of India. Under Article 32 and 226 a refugee or alien or foreigner or non-citizen can complain against discrimination, if he or she is denied the fundamental rights, which are provided to them within the territory of India.

**Dynamic Approach-Public Interest Litigation (PIL)**

The various aspects of human rights are deeply ingrained in the Constitution of India. However, it is to the credit of the Supreme Court of India that they have adopted an activist approach in matters of protecting and enforcing human rights norms and over the years evolved several judicial techniques such as ‘Public Interest Litigation’ to effectuate remedial justice.\(^{130}\)

The Concept of Public Interest Litigation in India was initiated by Hon’ble Justice Krishna Iyer in 1976 in *Mumbai*.

Kamgar Sabha V. Abdulbhai’s Case\textsuperscript{131} Justice Iyer gave a liberal expansion to the locus standi rule and observed:

Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances...... Representative actions, pro bono publico and like...... are in keeping with the current assent of justice to the common man.\textsuperscript{132}

In a series of decisions, the apex court has widened the ambit of constitutional provisions to enforce the human rights of citizens and has sought to bring the Indian law in conformity with the global trends in human rights jurisprudence.\textsuperscript{133} Public interest litigation is the most important contribution of judicial activism.

Explaining the concept of public interest litigation (PIL) in \textit{S.P. Gupta Vs Union of India}\textsuperscript{134} the Supreme Court ruled that “any member of the public or social group acting bonafide” could invoke the writ jurisdiction of the High Courts or the Supreme Court, seeking redressal against violation of legal or constitutional rights of persons, who owing to their poverty or social or economic or other disability, could not approach the Court of relief”.

The concept of public interest litigation also applies where the state or public authority acts in violation of a constitution or statutory obligation or fail to carry out such obligations resulting in injury to public interest or whatever may be conveniently term as public inquiry, according to Supreme Court “The only way in which this can be done is by entertaining writ petitions and even letters from public spirited

\textsuperscript{131} AIR 1976 SC, p. 1463.
\textsuperscript{133} \textit{Supra} n. 38 at. 422.
\textsuperscript{134} AIR 1982 SC 149
individual seeking judicial redress for the benefit of such persons".  

So, public interest litigation is an opportunity to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our constitution. The Supreme Court has widened the scope of public interest litigation or social interest litigation under article 32 when it held that under article 32 Supreme Court has power to grant remedial relief which includes the power to grant compensation in appropriate cases where fundamental rights of the poor and disadvantaged person are violated.

Underlining the significance of public interest litigation in protecting and promoting the human rights of the people of India, the former chief justice of India, P.N. Bhagwati has rightly observed that the “Supreme Court has developed the innovative strategy of ‘Public Interest Litigation’ for the purpose of making basic human rights meaningful for the large masses of people in the country and making it possible for them to realize their social and economic entitlements.”

In a landmark judgment in National Human Rights Commission Vs. state of Arunachal Pradesh, the Supreme Court has held that state is bound to protect the life and liberty of every human being whether he is a citizen or non-citizen. In this case public interest litigation was filed by the

135. M.C. Mehta Vs. Union of India, AIR 1987 SC 1087
136. Bandhu Mukti Morcha Vs. Union of India, AIR 1984 SC 803
National Human Right Commission under Article 32 for enforcing the rights under Article 21 of the constitution. The apex court of India held that the state is bound to protect the life and liberty of every being and it is the constitutional duty of the state to safeguard the life, health and well being of even aliens or refugees.

The landmark innovation of Public Interest Litigation (PIL) is the most important contribution of Judicial Activism. The judiciary has safeguarded the basic human rights of people, with regard to –

(i) The prisoners' rights and prison administration.\textsuperscript{140}
(ii) The protection of bonded contract and child labour.\textsuperscript{141}
(iii) The protection of environment.\textsuperscript{142}
(iv) The widening of scope of the right to life and personal liberty.\textsuperscript{143}
(v) The corruption and crime involving holders of high political offices.\textsuperscript{144}
(vi) For activating the investigative process.\textsuperscript{145}

Thus the public interest litigation has today become a byword for judicial involvement in social, political and

\textsuperscript{141} Neerja Chaudhari Vs. State of M.P., AIR 1984 SC 1099; See also M.C. Mehta Vs. State of T.N., AIR 1997 SC 699.
\textsuperscript{143} Chairman, Railway Board Vs. Chandrima, AIR 2000 SC 988; Vishaka V. State of Rajasthan, AIR 1997 SC 3011; People’s Union for Civil Liberties V. Union of India, AIR 1997 SC 1203.
\textsuperscript{144} Shiv Sagar Tiwari V. Union of India, AIR 1997 SC 2725; State of Bihar V. Ranchi Zila Samta Party, AIR 1996 SC 1515.
\textsuperscript{145} Vineet Narain V. Union of India, AIR 1988 SC 889; Union of India Vs. Sushil Kumar Modi, AIR 1997 SC 314.
economic affairs of the Indian society and state. Public Interest Litigation helped the judiciary to exercise its power in the most creative manner and devised new strategies to ensure the protection of human rights to the people.

**Statutory Remedies - Under the Protection of Human Rights Act, 1993:**

The Government of India has enacted the protection of Human Rights Act, 1993 for the better protection and promotion of human rights in India. This act was enacted in the context of International Covenant on Civil and Political rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.¹⁴⁶

The Human Rights Bill was introduced in the Lok Sabha on 14 May, 1993. It was thoroughly discussed and debated in both the houses with certain modifications. The president, under Article 123 of the constitution, promulgated the Protection of Human Rights Ordinance in 1993 on 28 September, 1993. The Protection of Human Rights Bill, 1993 was passed by both houses of Parliament and received assent from the President on 8 January 1994. The Act came into force with retrospective effect from 28 September 1993.¹⁴⁷

The Act provide for the Constitution of a National Human Rights Commission (Herein referred to as NHRC), State Human Rights Commission in the states and the Human Rights Courts at district level for the better protection of human rights and the matter connected herewith or incidental thereto.¹⁴⁸


National Human Rights Commission

The National Human Rights Commission came into existence on 12 October 1993, under the Protection of Human Rights Act, 1993, is statutory autonomous body and has the authority to deal with the legal matters concerning the human right cause.

The Ministry of Home Affairs, mentioned three specific objectives of the establishment of the National Human Rights Commission: 149

(a) To strengthen the institutional arrangements through which human rights issues could be addressed in their entirety in a more focused manner;
(b) To look into allegations of excess independently of the government in a manner that would underline the Government’s commitment to protect human rights; and
(c) To complement and strengthen the efforts that has already been made in this direction.

The National Human Rights Commission is fully an autonomous body with pluralistic composition 150 to have a Chairperson, who has been the Chief Justice of India, and four other members, one who is or has been a judge of the Supreme Court, one who is or has been the Chief Justice of a High Court; and two others to be appointed from among persons having knowledge or practical experience in matters relating to human rights. The chairperson of the National Commission for minorities, National Commission of Scheduled Casts and Scheduled Tribe and National

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Commission for women are ex-officio members for the discharge of certain function. The Chief Executive of the National Human Rights Commission is the Secretary-General, who exercises powers and discharge functions that the commission delegates to him. The head quarters of the commission is at Delhi and Commission with the prior approval of the central government establish offices at other places in India.

The Chairperson and members of the commission are appointed by the president on the basis of the recommendations of a committee comprising the Prime Minister and other six members. The members shall hold office for a term of five years, provided that no member shall hold office after he has attained the age of 70 years. A Member may be reappointed for another terms of five year provided that he has not attained the age of seventy years. After their tenure, a chairperson or a member become ineligible for further employment under the government of India or under the government of any state. On the enquiry of the Supreme Court, the President can remove the chairperson or any member of the commission into charges of misconduct or incapacity. They can also be removed if:

a) he is adjudged an insolvent; or

b) he is engages during his term of office in any paid employment outside the duties of his office; or

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151. Functions specified in clause (b) to (j) of Section 12.
153. Section 3(5)
155. Section 6 (1)
156. Section 6 (2)
157. Section 6 (3)
c) he has become unfit to continue his office by reason of infirmity of mind or body; or

d) he has been declared by a competent court a person of unsound mind; or

e) he has been convicted and sentenced to imprisonment for an offence which in the opinion of the president involves moral turpitude.\(^{158}\)

The Act provides that besides Secretary General, the Central Government shall make available to the commission such police and investigative staff not below the rank of a director general of police and such other officers and staff as may be necessary for the efficient performance of the functions of the commission.\(^{159}\)

Section 12 and 13 of the Act, provides for functions to be performed and powers to be exercised by the commission and the Commission is also vested with the wide-ranging powers relating to inquiries and investigation.

There are wide ranges of functions envisaged for the Commission under section 12 of the Act, all or any of which are to be performed by it. These functions are:

a) to inquire, on its own initiative or on a petition presented to it by a victim or any person on his behalf, into complaints of -

(i) Violation of human rights or abetment thereof; or.

(ii) Negligence in the preventing of such violation, by a public servant.

\(^{158}\) Section 5 of Protection of Human Rights Act, 1993.

\(^{159}\) Id., Section 11.
b) to intervene in any proceeding involving any allegation of violation of human rights pending before a court, with the approval of such court;

c) to visit, under intimation of the state government, any jail or any other institution under the control of the state government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

d) to review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights, and, recommend measures for their effective implementation,

e) to review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

f) to study treaties and other international instruments on human rights and make recommendations for their effective implementation;


g) to undertake and promote research in the field of human rights;

h) to spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

i) to encourage the efforts of non-governmental organizations and institutions working in the field of human rights; and
j) to carry out such other functions as it may consider necessary for the promotion and protection of human rights.

*Under Section 13:* While inquiring into complaints under the Act, the Commission could exercise all the powers of a civil court trying a suit under the code of civil procedure, 1908, and, in particular, in respect of the following:

a) summoning and enforcing the attendance of witnesses and examining them on oath;

b) discovery and production of any document;

c) receiving evidence on affidavits;

d) requisitioning any public record or copy thereof from any court or office;

e) issuing commissions for the examination of witnesses or documents; and

f) Any other matter which may be prescribed.\(^\text{160}\)

In addition commission has powers to require any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and 177 of the Indian Penal code (45 of 1860).\(^\text{161}\) The Commission or any Gazette officers on the behalf of the Commission can seize any document or copies which is required into the inquiry.\(^\text{162}\)

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160. Section 13(1)
161. Section 13(2)
162. Section 13(3)
CHAPTER - IV

After inquiry Commission may recommend to the concerned government or authority the initiation of proceedings or such other action as the commission may deem fit against the concerned person for the violation of human rights; or recommend the immediate interim relief to the victim; or approach to the Supreme court or the High Court for such directions, orders or writs as the court may consider necessary. Inquiry report with the recommendation, sent to the concerned government or authority and the concerned government or authority shall, within a period of one month forward its comments on the report, including the action taken or proposed to be taken thereon. Commission published its inquiry with the comments of the concerned government or authority.

The National Human Rights Commission is an institution which provides sharp focus on allegation of violation of human rights and seeks to provide quicker redressal. In the last 14 years, the commission received a large number of complaints relating to various human rights issues. The commission also takes suo moto cognizance in same case on the basis of media reports etc.

The number of complaints registered and disposed off during last three years is as following:

163. *Id.*, Section 18(1) (2) (3)
164. *Id.*, Section 18 (5) & (6)
165. NHRC-“India Paper for Universal Periodic Review.”

The NHRC, which has earned the world-wide reputation of being an effective and independent institution in implementing human rights, has been actively considering the problems of refugees. The commission acts as watch dogs as far as refugee rights are concerned. The NHRC has submitted numerous reports urging the promulgation of a national law, or at least, making changes or amendments to the outdated foreigners Act (1946), which is the current law consulted by authorities with regard to refugees and asylum seekers.\(^{166}\) The commission (NHRC) is of the view that it is essential that India develops a national policy and possibly a national law, fully in consonance with the 1951. UN Convention and the 1967 Protocol have been recounted in its earlier reports.\(^{167}\) NHRC has made numerous recommendations advising the formulation of such law, (National law for refugees) but with an Indo-centric nature and content.\(^{168}\) It approaches to the Supreme Court under Article 32 of the Constitution and obtained protection for the Chakma refugees.\(^{169}\) Relief was granted on the basis of the rights of aliens. Thus in the absence of a specific statute, the role played by the superior

\(^{166}\) Supra n. 6  
\(^{167}\) Id., at p. 4.  
\(^{168}\) Id at p.8  
courts and the Human Rights Commission in protecting refugee rights has been exemplary. It is an important mechanism to strengthen human rights protection and promotion in India.

**Comparative Analysis of the Human Rights of Refugees in the International Documents and Indian Constitution**

Although India is not a signatory to the 1951 refugee Convention or the 1967 Protocol, it is party to a number of international human rights instruments\(^\text{170}\) that create protection obligation towards refugees. As India has no specific law dealing with refugee, result is that the rights of the refugees in India are those available to all aliens under the Indian constitution, our constitution incorporate some rights from international instruments. In India almost all the basic refugee rights has got constitutional recognition. The Fundamental Rights incorporated in the Indian Constitution have a close similarity with the provisions in the United Nations documents/conventions.

The following table makes a comparative analysis of the Human Rights of Refugees in the International documents and Indian Constitution.

<table>
<thead>
<tr>
<th>Human Rights of Refugees Under Indian Constitution</th>
<th>Provision in UN International Documents</th>
<th>Constitutio n of India</th>
<th>Gift of Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equality before law, or equal protection of law</td>
<td>All are equal before the law and are entitled without any discrimination to equal protection of the law [UN Declaration of Human Rights, 1948, Article 7(1); [ICCPR, Article (26)]</td>
<td>Article 14</td>
<td>State shall not deny to any person equality before the law/equal protection of the law within the territory of India</td>
</tr>
</tbody>
</table>

\(^{170}\) India is Signatory to the *Universal Declaration of Human Rights, 1948*, *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*, which were adopted by the General Assembly of United Nations on 16 December 1966, etc.
| Protection of Life and Personal Liberty | No one shall be subjected to arbitrary arrest, detention or exile. Everyone has the right to leave any country, including his own, and to return to his country. [UN declaration of Human rights, 1948, Article 9&13(2); ICCPR, Articles 6 & 9] | Article 21 | No person shall be deprived of his life and personal liberty except according to procedure established by the law |
| Right against arbitrary or illegal arrest | No one shall be subjected to arbitrary arrest, detention or exile. [[UN declaration of Human rights, 1948, Article 6; ICCPR, Articles 6(1) & (9)] | Article 22(1)(2) | No person who is arrested shall be detained in custody without being informed, of the ground of such arrest, nor shall be denied the right to consult and to be defended by a legal practitioner of his choice. |
| Right against traffic in Human being | No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms (UN Declaration of Human Rights, 1948, Articles 4 & 5, ICCPR, Article 7 &8) | Article 23 | Traffic in human being and beggary and other similar forms of forced labour are prohibited |
| Right to religious freedom | Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religious or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance (UN Declaration of Human Rights, 1948, Article 18; ICCPR Article 18&27; Convention relating to the status of refugees, 1951, Article 4) | Article 25(1) | All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. |
| Right to Privacy | No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference of attacks (UN Declaration of Human Rights, 1948, Article 12; ICCPR, Article 17) | Article 21 (as interpreted in Kharak Singh's case, AIR 1963 SC 1295; see also R. Rajagopal Vs. State of Tamil Nadu, | Right to privacy is implicit in the right to life and personal liberty under Article 21 |
| Right to Shelter | Everyone has the right to be a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services. | Article 21 (as interpreted in Chameli Singh vs. Union of India, AIR 1996 SC 1051) | The right to shelter has been held to be a fundamental right. |
| Right to live with human dignity | All human beings are born free and equal in dignity and rights (UN Declaration of Human Rights, 1948, Article 1; ICCPR, Article 10(1)) | Article 21 (as interpreted in people's Union for democratic Rights vs. Union of India, AIR 1982 SC 1473) | The right to life includes the right to live with human dignity. |
| Right to education | Everyone has the right to education. Education shall be free in the elementary and fundamental stages (UN Declaration of Human Rights, 1948, Article 26; ICESCR, Articles 13 & 14; Convention relating to the status of Refugees, 1951, Article 22) | Article 21 (as interpreted in Unikrishnan vs. State of A.P, AIR 1993 SC 2178) | The right to education flows directly from right to life it is a fundamental right. |
| Right to free access to the Courts | A refugee shall have free access to the courts of law on the territory of all contracting state (Convention relating to the status of Refugees, 1951, Article 16(1) (India is not a signatory state of this convention but still there is a provision of free access to the court of law for refugees of law for refugees in Indian constitution. | Article 21 (As interpreted in Hussainara Khatoon vs. Home Secretary Bihar, AIR 1979 SC 1365) | The right to free legal services was clearly an essential ingredient of reasonable, fair, and just procedure for a person accused of an offence and that it must be held implicit in the guarantee of Article 21. |
| Right against inhuman treatment | No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Declaration of Human Rights, 1948, Article 5; ICCPR Article 7 and Convention on the Rights of Human dignity is a clear value of our constitution and no person can be treated inhumanely under Article 21 of the constitution. | Article 21 (as interpreted in Kishore Singh |
### Cooperation with United Nations High Commissioner for Refugees (UNHCR) in the protection of Rights of Refugees in India

Currently, the office of the United Nations High Commissioner for Refugees (UNHCR) cares for 25 million, including a record 14.4 million IDPS—up from 13.7 million in 2007 and 10.5 million refugees. The office of UNHCR cares for 10.5 million of refugees in 2008, down from 11.4 million in 2007.\(^{171}\) In India, the UNHCR is very active, playing one of two roles, depending on the refugee population in question. The Indian government has undertaken to assist the refugees of Tibet and Sri Lanka under its own auspices with respect to these populations then, the UNHCR plays only a ‘watch-dog’ role monitoring conditions and ensuring that when refugees

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return to their home country, their repatriation is voluntary. UNHCR deals exclusively with the remaining refugee population in India, comprising displaced nationals of Afghanistan, Ethiopia, Iran, Iraq, Liberia, Myanmar, Somalia and Sudan. With respect to these populations, UNHCR performs the function of refugee status determination in addition to providing medical, educational, vocational and financial assistance to those recognized as refugees.\textsuperscript{172}

The Indian Government's position in relation to refugees is reflected in the fact that different refugees groups have been granted different rights and privileges, and also different legal status, accorded under domestic laws and regulations. Though UNHCR Refugee Certificate are legally recognized by the government, in practice the Ministry of Home Affairs, The Foreigners Registration office, and the local police authorities have taken cognizance of them and 'extended stay' has, to date, normally been granted to UNHCR recognized refugees.\textsuperscript{173}

UNHCR's first involvement in the sub-continent was with the Tibetan refugees in India. Then came the Bangladesh crisis in 1971. Since the UNHCR has been involved with almost all the refugee and displaced persons movements in the sub-continent, in one way or other, except the Bangladeshi hill tribe refugee groups in India which have been dealt with on a bilateral basis.\textsuperscript{174} As, India for the first time, established its formal relationship with United Nations High Commissioner for Refugees in 1969 for rehabilitating Tibetan refugees in India and UNHCR branch office was

\begin{itemize}
  \item \textsuperscript{172} Christina Harrison, “UNHCR and the Protection of Refugees in India”, \url{http://www.unhcr.org/en} visited on 12.01.2007.
  \item \textsuperscript{174} Shamsul. Bari, UNHCR Director. Regional Bureau for CASWANAME, “Inaugural statement” in fourth Informal consultation on Refugee and Migratory Movement in South Asia, Dhaka, 10-11 November 1997, p.17.
\end{itemize}
officially opened in Delhi on February 1, 1996. In cooperation with India, UNHCR undertook new projects and consolidated old ones in the fields of agricultural settlements, housing for the aged Lamas, and medical facilities. Thus, a close working relationship between UNHCR and India was established. By the time India got involved in providing emergency relief to Bangladesh refugees. In 1975 UNCHR suddenly wound up its projects in India and closed its Delhi Branch office for no reason, again in 1979 UNCHR requested, the Government of India to reopen its Branch office in Delhi. India did not give permission to that effect, but agreed to allow a UNCHR representative to functions as the "UNCHR component of the United Nations Development Programme (UNDP)" in New Delhi. However, in 1981 the Government of India allowed the UNCHR to re-open its office in New Delhi after a significant number of refugees had arrived from Afghanistan and Iran. But it imposed that the UNCHR must function under the banner of the United Nations Development Programme.

The UNCHR Delhi office works toward assisting the refugees to become self-sufficient in India through a series of assistance and income generating activities with non-governmental organization partners. Over the last few years, UNCHR, in cooperation with a number of institutions such as international committee of the Red Cross (ICRC), the Indian society of international law, the National Law School of India University, non-Governmental Organizations (NGOs) and other research institutions throughout India, have developed a wide range of training, research and promotional

175. Supra n. 92 at 135.
176. Id. at 136
activities.\textsuperscript{177} Although the UNCHR operates in India, the UN Agency's work is sharply limited by the government. UNCHR's main role in India is to make sure that refugees are not forced to return to the countries they have fled in order to escape persecution and danger.

India's membership in the Executive Committee of the High Commissioner's Programme (EXCOM), highest policy making body of the UNCHR, obliged India both politically and morally to provide humanitarian assistance and protection of refugees in India. So the role of UNCHR is not only important but of highest value from ethical and humanitarian point of view.

\textbf{Role of judiciary in the protection of human rights of refugees in India}

Only an impartial and independent judiciary can protect the rights of the individual and provide equal justice without fear or favour. Every constitution institutionalizes the judiciary as the principle instrumentality for enforcement of human rights when invaded by the state or by any authority under the state or by an individual.\textsuperscript{178} The status of human rights is fairly high under the India constitution which makes provision for fundamental rights and empowers the judiciary to enforce these rights, and the judiciary in India has done matchless service in protecting the people's human rights.\textsuperscript{179} In the exercise of its jurisdiction and power the judiciary has devised new strategies, forged new tools and broadly interpreted the letter of law to ensure the protection of

\begin{itemize}
\item \textsuperscript{177} Ms. Irene Khan, Chief of Mission, UNHCR, New Delhi, "Introduction Remark", in New Delhi Workshop on International Refugee Law, 20-21 February 1998, Indian Journal of International Law, Vol. 39, No. 1, 1999, p. 3.
\item \textsuperscript{178} V.R Krishan Iyer \textit{Human rights and inhuman wrongs}, 1999, p. 15
\item \textsuperscript{179} Jitender Narayan, "Judicial activism and protection of human rights in India", \textit{Journal of Constitutional and Parliamentary Studies}, Vol.xxv, No. 3-4 (July-Dec. 2001)., p. 113
\end{itemize}
human rights to the people. As a fearless watchdog of the fundamental rights, the superior courts in India have vigorously upheld the value of a liberal democracy and acted as a catalytic agent of social control and successfully hammered out human rights jurisprudence in the light of the philosophy envisaged in our national charter. The judiciary has made their task easy by evolving the concept of Social Action Litigation or Public Interest Litigation.

**Judicial treatment provided to refugees**

In the absence of specific law on refugees, the Indian judiciary has played a very constructive role in protecting the interest of the refugees. Courts orders have filled legislative gaps and in many cases have provided a humanitarian solution to the problems of refugees. Moreover, Indian courts have allowed refugees and intervening non-governmental organizations (NGOs) to file cases before them. Furthermore, the courts have interpreted provisions of the Indian constitution, existing laws and, in the absence of municipal law, provisions of international law to offer protection to refugees and asylum seekers.

The judicial opinion is that rules of international law and municipal law should be cordial and harmonious, and only when there is an inevitable conflict between these two laws the municipal law should prevail over international law. Against this backdrop when one examines the binding force of international refugee law on and its relations with Indian municipal law, one can conclude that as long as international refugees law does not come in conflict with Indian legislations or policies on the protection of refugees, international refugee

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181. Supra n. 15 at 5, also see, Hindustan Times, 07.05.2000.
law is a part of the municipal law. Courts in India have always adopted a liberal approach in taking into account the international covenants, while interpreting the statute law. Indian courts, while generally strictly interpreting the stringent legislation on foreigners by refusing to interfere with the powers of the executive, have on occasion, evolved a wider and more humane approach to protect the rights of refugees in India. In 1996, the Supreme Court in N.H.R.C. Vs state of Arunachal Pradesh intervened with a liberal interpretation of the law to suggest that refugees are a class apart from foreigner deserving of protection of article 21 of the constitution.

Despite the fact that the Indian government has not signed the Convention relating to the status of refugee, 1951 and the Protocol of 1967, India cannot refuse asylum to bonafide seekers of shelter from other countries, consistent with India’s commitment to human rights. The Indian judiciary has consistently recognized the importance of human rights and has been giving effect to the provisions of the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural

184. Supra n. 5 at 2.
185. Universal Declaration of Human Right, 1948 Article 8. “Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.” Article 10 “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”
186. International covenant on civil and political rights. 1966, Article 14(1) “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”
Rights, 1966. The Convention on the Rights of the Child, 1989,\textsuperscript{187} The Convention on the Elimination of all forms of Discrimination against Women, 1981,\textsuperscript{188} etc. Which government of India has been ratified, in addition, the Indian judiciary has generally giving effect to principles of international law.\textsuperscript{189}

India’s Supreme Court has gone so far as to extend the application of article 14 (right to equality) and article 21 (right to life and liberty) to everyone, including migrant and refugees residing within the territory of India, and also basic human rights as defined by the UN have been conferred upon the refugees. In addition, India also affirms the principal of non-refoulement which is integral to any law on refugees.\textsuperscript{190} The judiciary has sought to fulfill the void created by the absence of domestic legislation by its landmark judgments in the area of refugee protection. Refugees may not be citizen but they are certainly persons, and hence they too are entitled to the protection of their basic human rights.\textsuperscript{191}

There are several decisions of the Supreme Court of India and High Courts where refugees have given protection by invoking article 14 and article 21 of the constitution.

Article 12(2) “The child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”

\textsuperscript{188} Convention on the Elimination of all forms of Discrimination against women
Article 15(1) ‘State party shall accord to women equality with men before the law’


\textsuperscript{190} Supra n. 6 at p. 5.

While the executive branch of the government of India does not recognize refugees as such the positive and humanitarian steps initiated by the Indian judiciary has bridged the gap to a considerable extent.

**Judicial remedy available for refugees in India:**

The Indian courts have made tremendous advancements in promoting the interest of refugees. The role of judiciary, particularly the Supreme Court of India, in interpreting the Indian Constitution in a manner so as to expand the scope of various provisions to include within their fold principles of Universal Declaration of Human Rights, 1948, and thus ensure effective protection of score of refugees. Indian Constitution not only guarantees some basic human rights to aliens, non-citizens or refugees, but also confers remedy if violations of right take place. Under article 32 of the constitution, whenever there is a violation of fundamental right any person can move the Supreme Court for an appropriator remedy. Similarly, the right to move a high court under article 226 for the enforcement of any such right or other legal right is also available to citizens and non-citizens alike. The activist role of the apex court has now dramatically changed. A number of rights which, though are not specified in part III of the Constitution by name as fundamental rights have been regarded as fundamental by the Hon'ble Supreme Court by enlarging the meaning and scope of named fundamental rights. So Supreme Court has always been very,


helpful in giving remedies against violation of human rights of refugees.\textsuperscript{194}

**Judicial interpretation: case law in India**

In India, the judiciary has played a very important role in protecting refugees. The refugees have reasonable access to the Indian judiciary. The judicial opinion in India as expressed in numerous recent judgments of the Supreme Court of India demonstrates that the rules of international law and municipal law should be construed harmoniously, and only when there is an inevitable conflict between these two laws should municipal law prevail over international law\textsuperscript{195} C.J. Verma, *In Vishaka Vs. state of Rajasthan (1997) 6SCC 241, at 251*. So the judiciary in India has played a commendable role in the protection of human rights generally and rights of refugees in particularly and the judiciary will continue to do favour of protecting the rights and interest of refugees in the absence of refugee specific laws in India. Presented below are cases where the Indian courts have provided protection to the refugees in the territory of India.

**Judgments on various refugee issues**

**In Hans Muller of Nurenberg Vs. Supdt. Presidency jail\textsuperscript{196}**

The court held that even if there is a requisition and a good cause for extradition, the government is not bound to accede to the request, because section 3(1) of the Extradition Act gives the government discretionary power. The Extradition takes place only under a treaty and person whose extradition is demanded under the treaty are handed over to the requesting state for prosecution and punishment. The

\textsuperscript{194} *Ibid.*


\textsuperscript{196} **AIR 1955 SC 367.**
procedure for extradition is laid down under the municipal law. Despite the treaty, a state may refuse extradition.

Further, if the treaty does not enlist a particular offence for which extradition was sought, but authorizes the Indian government to grant extradition for some additional offences by inserting a general clause to this effect, extradition may still be granted. 197

_In Dawood Ali Vs. Deputy commission of police._ 198

Court held that a passport by itself is not a conclusive proof of nationality. But it is accepted as a proof of the fact, by international agreement and the comity of nations, whatever is the probative value of it, a person who has deliberately applied for a passport affirming him to be a Pakistan national cannot be heard to say that he did so under false pretences.

Further, it was held that he acted with deliberation in renouncing his Indian citizenship and accepting Pakistan nationality, and was precluded from saying that he had no intention of making Pakistan his abode or residence. By accepting a Pakistan passport he caused the sovereign state of Pakistan to accepting him as its citizens and to extend protection and safety to him as a Pakistan citizen. Under section 3 of the Foreigners Act the Central Government has got the power to order foreigner to leave Indian Territory.

_In state Vs. Ibrahim Nabiji_199

The court decided that the respondent had not infringed rule 7 of the foreigner's order. Because when he entered India, he was not a foreigner and was by law not required to

197. See Rambabu Saxena Vs. State, AIR 1950 SC 155
199. AIR 1959 Bombay 525.
obtain a permit; and by overstaying the period prescribed by the Visa, also did not infringe rule 7. The respondent could not be held otherwise guilty of the infringement of the provision of section 14 because there was no lawful direction issued against him requiring him under section 3, subsection (2) class (c) of the Foreigner’s Act to leave India even if the respondent was a foreigner under the Foreigner’s Act as amended under the Foreigner’s Law (amendment) act, 1957.

Further under section 3 of the Foreigners act, the power to make an order either against an individual or against a class generally, is conferred upon the Central Government and under section 12 of the Foreigner’s Act the power to make orders under section 3 May be delegated to a subordinate authority. Therefore, the order passed by the district superintendent of police, must be regarded as an unauthorized and failure to carry out the requisition contained in that order cannot be penalized under section 14 of the Foreigner’s Act.

*In Mohd. Meah Vs. Secy. Political department Union Territory of Tripura*\(^{200}\)

It was decided by the court that the district magistrate of Tripura had no power under section 3, unless there was a delegation of authority under section 3(3) and section (12) to deport a foreigner or to issue a notice to such person under the foreigner’s act. It was held that this is not a case of mere irregularity but of total lack of jurisdiction for the district magistrate to issue a notice of deportation.

*In Afjal Ali Baig Vs. the state*\(^{201}\)

It was held that though a citizen of India the petitioner lost his citizenship by virtue of article 7 of the Constitution

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200. AIR 1961 Tripura 35
201. AIR 1961 Orissa 174
when he went to East Pakistan and remained for a long period. If after his return to India he wanted to acquire Indian citizenship, it was open to him to apply to the authorities concerned, under section 5 of the citizenship act. Section 9 (i) of that act makes it clear that once a citizen of India has acquired Pakistan citizenship between the 26th January 1950 and the date of commencement of the act he ceased to be a citizen of India. He could not, therefore, claim Indian citizenship unless the Central government after due inquiry register him as a citizen of India under section 5 of the citizenship act. 202

**In A.H. Magermans Vs. S.K. Ghose** 203

It was decided by the court that the registration of foreigners act, 1939, under which the Registration of Foreigners rule, 1939 were framed by the central government, is an act to provide for the registration of foreigners in India and for no other purpose. Besides, Rule 7(3) of the Rules provides that the certificate of registration would be valid so long as the foreigner does not leave India. But it does not provide for the converse proposition, namely that so long as a foreigners held a certificate of registration he would have a right to remain in India or that no order could be made directing him to leave India. The proviso to Rule 13(1) provides for cancellation of a certificate of registration.

Even assuming that the Certificate of Registration conferred upon the party a right to remain in India, such a right must be subject to the terms of the permit which was issued to the foreigner under clause (7) of that order. So a

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203. AIR 1966 Calcutta 552
foreigner cannot claim to reside in this country unless a residential permit has been obtained by him, merely because he has obtained a certificate of registration under the registration of Foreigners Rules, 1939.

*The chief settlement commissioner Vs. Om Prakash.*

It was decided by the apex court that under our Constitutional system the authority to make the law is vested in Parliament and the State legislatures and other law making bodies and whatever legislative power the executive administration possesses must be derived directly from the delegation of the legislature and exercised validly only within the limits prescribed. Further court held that the notion of inherent or autonomous law-making power in the executive administration is a notion that must be emphatically rejected, with all its defects, delays and inconveniences. Men have discovered no technique for long preserving free government except that the executive be under the law, and that the law be made by parliamentary deliberations.

In our Constitutional system, the Central and most characteristic feature is the concept of rule of law which means in the present context, the authority of law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court. The court held that the expression 'displaced person' or the word 'refugee' has been used in the relevant enactments with reference to a person who has migrated to India as a result of disturbances or fear of disturbances or the partition of the country. Therefore, if a person had died before such migration, he

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204. AIR 1969 SC 33
could not come within the meaning of the expression 'displaced person' or the word 'refugee' under the relevant statutory enactments.

_In Anwer Vs. State of J& K_\textsuperscript{205}

The apex court held that when a foreigner enters India illegally and is ordered to leave India but fails to do so, his arrest for purposes of deportation does not fall under article 22. The foreigner concerned had no right to enter and remain within India. The constitutional protection against illegal deprivation of personal liberty construed in a practical way cannot entitle non-citizens to remain in India contrary to the law governing the foreigners. \textsuperscript{206}

_Shishwala Pal Vs. Union of India_\textsuperscript{207}

In this petition under article 226 and 227 of the constitution of India, the petitioner have prayed for a writ of mandamus restraining the respondents from treating them as foreign National of Bangladesh or their stay in India as unauthorized.

It was held by the court that mere long stay which is unauthorized does not confer citizenship rights. As petitioners were permitted to enter India as refugees, it will be deemed that they are foreigners. Moreover, they have not shown any certificate of registration, except a solitary document from the ministry of home affairs in respect of the objection specifically taken up by the respondent.

It is not their case that they are Indian citizens during the commencement of the Constitution of India etc, as envisaged under article 5, 6 and 7 of the constitution of

\textsuperscript{205} AIR 1971 SC 337.
\textsuperscript{206} Also see, State of UP Vs. Abdul Sammad, AIR 1962 SC 1506; 1962 SUPP.(3) SCR 915
\textsuperscript{207} AIR 1989 MP 254
India. The expression ‘foreigner’ has been defined in the Foreigners Act, 1946, which means ‘a person who is not a citizen of India.’ Section 3 of the Foreigners Act, says that the Central Government may by order make provisions either generally or with respect to all foreigners or with respect to any particular foreigners into India or their departure there from or their presence or continued presence therein, and in particular and without prejudice to the generality of the foregoing power, inter-alia, may order, that a foreigner shall not enter India or shall enter India only at such times and by such route, subject to the conditions as prescribed and shall remove himself to, and remain in, such area in India as may be prescribed.

**In Luis De Raedt Vs. Union of India**

The apex court held that the fundamental rights of the foreigner is confined to article 21 for life and liberty and does not include the right to reside and settle in India, as mentioned in article 19(1)(e), which is applicable only to the citizens of this country.

It was held by the Constitution Bench in **Hans Muller of Nuremburg Vs. Supdt. Presidency jail, Cal** that the executive government has unrestricted right to expel a foreigner so far the right to be heard is concerned there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case.

**In State of Arunachal Pradesh Vs. Khudiram Chakma**

The court held that foreigners also enjoy some fundamental rights under the constitution of this country.

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208. AIR 1991 (3) SC 554
209. (1955) lSCR 1284; AIR 1955 SC 367
210. 1994 (Supp) (1) SCC 615; AIR 1994 SC 1461
The fundamental rights of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1) (e), which is applicable only to the citizens of this country. The apex court held that as such Article 19(1)(d) and (e) are not available to foreigners because those rights are conferred to the citizens. Certainly, the machinery of Article 14 cannot be invoked to obtain that fundamental right. Rights under Article 19 (1) (d) and (e) are expressly withheld to foreigners.

It was stated in this case that the foreigners had no right to seek a permanent place of abode in that area and authority had every right requiring them to shift. It is true, that this court in Louis De Raedt\textsuperscript{211} took the view that even foreigner has a fundamental right, but that fundamental right is confined only to article 21 and does not in clued the right to move freely throughout and to reside and stay in any part of the territory of India. Further it was held by the court that "It has long been recognized that persons who reside on the territory of country of which they are not nationals possess a special status under international law. State has traditionally reserved the right to expel them from their territory and to refuse to grant them certain rights which are enjoyed by their own nationals. Nevertheless, once lawfully admitted to a territory, they are entitled to a certain minimum rights necessary to the enjoyment of ordinary life".

**In National Human Rights Commission Vs. The State of Arunachal Pradesh\textsuperscript{212}**

The Supreme Court reiterated the principle that protection of life and liberty are guaranteed rights of even aliens in Indian Territory. We are a country governed by the

\begin{footnotesize}
\textsuperscript{211} 1991 AIR SCW 2113
\textsuperscript{212} 1996 (1) Supreme 295; (1996) 1 SCC 742; AIR 1996 (1) SC 1235.
\end{footnotesize}
rule of law. Our Constitution confers certain rights on every human being. Every person is entitled to equality before the law and equal protection of the law. So also, no person can be deprived of his life or personal liberty except according to the procedure established by law. Thus the state is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons for example the Students Union of Arunachal Pradesh, threaten the Chakmas to leave the state, failing which they would be forced to do so.

No state government worth the name can tolerate such threats by one group of persons to another group of persons, it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. It was further stated that the state government must act impartially and carry out its legal obligations to safeguard to life, health and well-being of Chakma residing in the state without being inhibited by local politics.

*In Luis de Raedt Vs. Union India*\(^{213}\) and *Khudiram Chakma's*\(^{214}\) Case the court held that foreigners are entitled to protection of Article 21 of the constitution Again in this case court asked the government to protect the refugees with all the might at its command, against the imminent force threatened by the local population.

*In Chairman, Railway Board Vs. Chandrimadas & Other*\(^{215}\)

The Supreme Court held that where a foreign national, a Bangladeshi Woman was gang raped compensation can be granted under public law (Constitution) for violation of

213. (1991) 3 SCC 554
215. 2000 (2) SCC 465; AIR 2000 SC 988
fundamental right on the ground of domestic jurisdiction based on constitutional provisions and Human Rights jurisprudence. The court said that "where public functionaries are involved and that the matter relates to the violation of fundamental rights or the enforcement of public duties the remedy would be available under the public law, not withstanding that a suit could be filed for damages under private law". It was more so when it was not a mere violation of an ordinary right of a person but the violation of fundamental right was involved. As petitioner was a victim of rape which is violation of the fundamental rights of a person guaranteed under article 21 of the constitution.

As regards the question whether fundamental rights are available to a foreign national, or not, the court held that the relief can be granted to the victim for two reasons—firstly on ground of human rights jurisprudence founded on the Universal Declaration of Human Rights, provisions from convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and secondly our constitution guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights to its citizens and other person.

This case may be called as a landmark in taking the jurisprudence of human rights on the highest level placing its decision on protection of human dignity. Another important feature of this judgment is that it opened the doors for Public interest Litigation (PIL) in case of a foreign national. In this case Supreme Court has set up a right precedent in enforcement of human rights of the refugees.

Following are type of protection that the Indian Courts have been provided to refugees.
CHAPTER - IV

Physical Security

Indian Courts have decided in a number of cases that the constitutional protection of life and liberty must be provided to refugees. In the cases of Luis de Readt ([1991] 3 SCC 554) and Khudiram (Nos. 1994) Supp. (1) SCC 615), The Supreme Court held that Article 21 of the constitution of India, which protects the life and liberty of India citizens, is extended to all, including aliens:

The Supreme Court of India in the case of National Human Rights Commission Vs. State of Arunachal Pradesh restrained the forcible expulsion of Chakma refugees from the state (Civil WP No. 720: 1996 (1) Supreme 295). The Supreme Court in its interim order on Nov.2, 1995, directed the state government to ensure that the Chakmas situated in its territory are not ousted by any coercive action not in accordance with the law. The court directed the state government to ensure that the life and personal liberty of each and every Chakma residing within the state should be protected. 216

Non-Refoulement and the Right of Refugee Status

In a number of cases, Indian courts have protected the rights of refugees where there are substantial grounds to believe that their life would be in danger. There are cases where the courts have ordered the life of refugees who are in danger to be safeguarded and have allowed them to be granted refugees status by the United Nations High Commissioner for Refugees (UNHCR).

In Zothansangpuri Vs. State of Manipur (Civil Rule No. 981 of 1989) The Gouhati-Imphal bench of the Gauhati High

216. Supra n. 15.
Court ruled that refugees have the right not to be deported if their-life was in danger.\textsuperscript{217}

\textit{In Dr. Malvika Karlekar Vs. Union of India (Criminal) 583 of 1992} In writ petition, the Supreme Court held that authorities should consider whether refugee status should be granted; and until this decision was made, the petitioner should not be deported.\textsuperscript{218}

\textit{In Bogyi Vs. Union of India (Civil Rule No. 981 of 1989)} The Gouhati High Court not only ordered the temporary release of a Burmese man from detention but approved his stay for two months so that he could apply to UNHCR for refugee status (Civil Rule No. 1947/89 Gauhati High Court)\textsuperscript{219}

The case of \textit{U. Myat Kayew and Nayzan Vs. State of Manipur (Civil Rule No. 516 of 1991)} has contributed substantially to India’s refugee policy. It involved eight Burmese people, aged 12 to 58 who were detained in the Manipur Central jail in Imphal for illegal entry. These people had participated in the democracy movement, had voluntarily surrendered to the Indian authorities and were taken into custody. The cases were registered under section 14 of the Foreigners Act for illegal entry into India. They petitioned for their release, however, to enable them to seek refugee status with UNHCR in New Delhi. The Gauhati High Court, under Article 21, ruled that asylum seekers, who enter India, even if illegally, should be permitted to approach the office of the U.N. high Commissioner to seek refugee status.\textsuperscript{220}

\textit{In Seyed Mohammadi Vs Union of India WP (Criminal) 1450/1994.} In this case where in, the petitioner granted

\begin{footnotesize}
\textsuperscript{217.} Ibid.
\textsuperscript{218.} Ibid.
\textsuperscript{219.} Ibid.
\textsuperscript{220.} Ibid.
\end{footnotesize}
refugee status by the UNHCR and the court ruled that. "There is no question of deporting the accused under the circumstances."

The Supreme Court of India has in a number of cases stayed deportation of refugees such as *Maiwand's Trust of Afghan Human Freedom Vs. State of Punjab* and *N.D. Pancholi Vs. State of Punjab & others.* The Supreme Court judgment in the Chakma refuge case clearly declared that no one shall be deprived of his or her life or liberty without the due process of law. Earlier judgments of the Supreme Court in *Luis De Readt Vs. Union of India* and also state of *Arunachal Pradesh Vs. Khudiram Chakma* had also stressed the same point.

**Right to Basic Amenities**

_In Digvijay Mote Vs. Government of India (Writ Appeal No. 354 of 1994),_ The High Court of Karnataka in Bangalore, considering the rights of 150 Sri Lankan refugee children, ordered the state to make the necessary arrangements to provide basic amenities to the refugee children in the camp on humanitarian grounds.

_In Majid Ahmed Abdul Majid Mohd. Jad Al-Hak Vs. Union of India (Crl. WP No. 60 of 1997)_ The court held that basic necessities, like food and medical care, must be provided while in detention.

221. WP (Crim) 125 & 126/1986 as cited in *Supra* n. 15.
222. WP (Crim) 43/1988 as cited in *Supra* n. 15.
223. AIR 1991 (3) SC 554.
224. 1994 (Supp) (1) SCC 615.
225. *Supra* n. 15.
CHAPTER - IV

Forced Repatriation

In the matter Gurunathan and other Vs. Government of India\(^{227}\) The High Court of Madras expressed its unwillingness to allow any Sri Lankan refugees to be forced to return to Sri Lanka against their will. The court stayed the repatriation process as it was not voluntary. The court acknowledged the 'Competence and impartiality' of the UNHCR.\(^{228}\)

In P. Neduraman and Dr. S. Ramadoss Vs. Union of India & State of Tamil Nadu (1992)\(^{229}\) The madras High Court emphasized the need to guarantee the voluntary character of repatriation. The NHRC has also come to rescue of refugees “approaching it with their complaints of violations of Human Rights”.

Deportation on Grounds of National Security and Criminal Activities

The courts have ruled that refugees can be deported on the grounds of national security. In Mohammed Siddique Vs. Government of India (Civil Rule Writ No. 405/98), The court allowed the deportation of refugees under the Foreigners Act of 1946 if they were found indulging in activities undesirable and prejudicial to the security of India.\(^{230}\)

In Khadija Vs. Union of India (Crl. WP 658 of 1997), The High Court of Delhi in New Delhi ruled that international law and conventions cannot be applied to refugees indulging in criminal activities, and consequently, they can be repatriated or deported.\(^{231}\)

\(^{229}\) Supra n. 15.
\(^{230}\) Ibid.
\(^{231}\) Ibid.
Right to leave (Return)

The court has upheld a refugee's right to leave the country. In Nuang Muang Mye Nyant Vs. Government of India (C.W.P. No. 5120/94) and Shar Aung Vs. Government of India (GI. WP No. 110 of 1948),

The court ruled that even those refugees against whom cases were pending for illegal entry should be provided exit provided exit permits to enable them to leave the country for third-country resettlement.232

Application of international laws for the protection of Refugees

In Ktaer Abbas Habib Al Qutafi Vs. Union of India (CA 3433 of 1998), The High Court of Gujarat in Ahmadabad Summarized the principles that have emerged from Indian judicial precedents. This included conformity with international conventions and treaties. Although not enforceable, the government is obliged to respect them, put the power of the government to expel a foreigner is still absolute. Meanwhile, Article 21 guarantees the right to life for non-citizens International covenants and treaties which effectuate these fundamental rights can be enforced. The principal of non-refoulment is encompassed in Article 21 so long as it is not prejudicial to national security. Under Article 51 (c) and 253, international law and treaty obligations are to be respected as long as they are consistent with domestic law.233

In the case of Khy Htoon and other Vs. State of Manipuir,234 The Imphal bench of the Guahati High Court

232. Ibid.
233. Ibid.
ruled that refugees have fundamental rights under Article 14, 21 and 22 of the Indian Constitution.

'Leave India' Notices: The administrative authorities vide sec. 3 of the Foreigners Act, 1946 may issue Leave India Notice to refugees who have failed to obtain extension of their travel permits, or who are ordered to be deported by the court. In the case of Gurinder Singh & Karamjit Singh Vs. Union of India. WP (Criminal) 871/1994.

Afghan Sikhs of Indian origin, who had fled persecution from Afghanistan, were registered as refugees with UNHCR in New Delhi. They were issued Leave India Notices by the Foreigners Regional Registration Office to leave India within 7 days of receipt of the notice. The only remedy under such circumstances is through legal action in the appropriate court. In this case criminal writ petition was filed in the Punjab and Haryana High at Chandigarh and interim stay of the leave India notice was obtained.²³⁵

Need for National Refugee Law in India

The Indian legal framework has no uniform law to deal with its huge refugee population, and has not made any progress towards evolving one either; until then, it chooses to treat incoming refugees based on their national origin and political considerations, based on their national origin and political considerations, questioning the uniformity of rights and privileges granted to refugee communities.²³⁶ Indeed, the National Human rights Commission (NHRC) has submitted numerous reports urging the promulgation of a national law, or at least, making changes or amendments to the outdated Foreigners Act (1946), which is the current law consulted by

²³⁵. Supra n. 23 at 7.
²³⁶. Supra n. 6.
authorities with regard to refugees and asylum seekers. So the absence of a well defined national refugee law has created a number of anomalous situations.  

It is important to note that India is not a signatory to the 1951 convention relating to the status of refugees or its 1967 protocol. This makes India's international position in terms of treatment of refugees, disputable. However, it is equally important to note that India is a signatory to various other international and regional treaties and conventions relating to Universal Human Rights and refugees. Taking this into account, it is clear that India respect international treaties on the treatment of people residing within its territory. But, without having any refugee policy and any separate national legislation on the treatment of refugees and furthermore India's hesitation to sign any international convention or even accept any regional or national framework to deal with refugees as it is of the firm belief that the issue of accepting or rejecting refugees is a unilateral decision and, therefore, there is no real need to pass an entirely new law to consider multilateral and bilateral agreement, unnecessarily tarnishes its image at the international level.

Although India's past efforts in dealing with mass influxes has been commendable, its geopolitical position in the subcontinent makes it a preferred destination for asylum seekers and refugees. In India refugees, like all foreigners, have free access to the court for the protection of their life

237. Ibid.
238. Such as the UN Declaration on Territorial Asylum (1967), The Universal Declaration of Human Rights, and the International Convention on Civil and Political Rights. India is also a member of Executive Committee (Ex Com) of the UNHCR which approves and supervises the material assistance programmes of the UNHCR, all this without actually supporting or acknowledging the role of the UNHCR on its own territory.
239. Supra n. 6 at 7, also see B.C. Nirmal, "Refugee and Human Rights" p. 11 at http://www.worldlji.org/int/journals/JSILYBIHRL6/2001 visited on 01.08.2009.
and liberty. India does not discriminate between refugees on the basis of race, political affiliation or religion all refugees have the complete freedom to practice their religion. However, in the absence of a specific municipal law incorporating and protecting the rights of refugees, it is left to the courts to read the provisions of the international human rights instruments into the provisions of Article 14, 21 and 25 of the constitution.\(^\text{240}\) The zeal of the Court to protect the rights of refugees, though commendable, has its limitations. The dangers of judge-centric solutions are that in many cases the outcome of the case would depend on the outlook of a particular judge to the issue before him. There indeed cannot be any certainty or uniformity in judicial activism. There is thus, an urgent need for a legal framework to provide for the protection, rehabilitation and repatriation of refugees. No doubt judicial creativity has, to some extent, minimized the rigours of the refugees but legislation alone will provide an effective and permanent solution.\(^\text{241}\)

As stated earlier, no current Indian law refers directly to refugees. The primary documents dealing with the treatment of foreigners/refugees in India are the Registration of Foreigners Act, 1939, the Foreigners Act, 1939, The Foreigners Act, 1946, and the Foreigners Order, 1948. Both the Act and the Order affirmatively grant the Indian government powers to restrict the movement of foreigners inside India, to mandate medical examinations, to limit employment opportunities, and to control the opportunity to associate, and the ability to "refoul" or "return", refugees. The Refugees Convention


\(^{241}\) Ibid.
however, bars all these actions.\textsuperscript{242} Therefore, the policy of India toward refugees already matches international standards and is, consequently, not in need of any change is not acceptable to watchdog agencies like the UNHCR and the NHRC. NHRC is of the view that it is essential that India develops a national policy and possibly a national law, fully in consonance with the 1951 UN Convention and the 1967 Protocol.\textsuperscript{243}

The need for a refugee law is immediate. The uniform treatment of refugees is a must as long as India continues to accept asylum seekers across its porous borders. The need for a stable and secure guarantee of refugee protection in India led to the establishment of an Eminent Persons Group (EPG), chaired by former Chief Justice P.N. Bhagwati, to suggest a model law for refugee protection. The draft of this proposed law was adopted by the Fourth Annual Meeting of the Regional Consultation at Dhaka in 1997. The India-specific modal law was born out of this regional consultative process to provide statutory protection to refugees in the diverse south Asian region. Despite technical or specific misgivings about the model law, there has been unanimity about its necessity and widespread acceptance of its use as a framework for future protection. But the bill was never tabled in Parliament.\textsuperscript{244}

The restrictions and unequal treatment imposed on the refugee population by the Indian government is discriminatory and tarnishes its human rights record, which is not outstanding in any case. There is an urgent need for

\begin{itemize}
\item \textsuperscript{244} Supra n. 5 at 3.
\item \textsuperscript{243} Supra n. 6 at 4.
\item \textsuperscript{242} Supra n. 6 at 6 also see, V. Suryanarayan, “Need for National Refugee Law”, \textit{ISIL Year Book of International Humanitarian and Refugees Law}, 2001 p. 4, \url{http://www.worldlii.org/int/journals/ISILYBIHRL/2001/15} , visited on 15.08.2009.
\item \textsuperscript{244} Supra n. 6 at 4.
\item \textsuperscript{242} Supra n. 6 at 6 also see, V. Suryanarayan, “Need for National Refugee Law”, \textit{ISIL Year Book of International Humanitarian and Refugees Law}, 2001 p. 4, \url{http://www.worldlii.org/int/journals/ISILYBIHRL/2001/15} , visited on 15.08.2009.
\end{itemize}
India to incorporate its various treaty obligations in the domestic law of the land to make their obedience by the executive enforceable directly. It is time now to provide for an appropriate legal framework to process matters in respect of determination of refugee status, protection from refoulment, and treatment during their stay as refugees.\textsuperscript{245}

Such a legal framework can make provisions for the following:

- A person shall be excluded from refugee status if he or she is convicted for a crime against peace, a war crime, or a crime against humanity;

- No refugee or asylum seeker shall be expelled or returned to a place where there are reasons to believe his or her life of freedom would be threatened;

- Where an application is made by an asylum seeker for the determination of refugee status, pending such determination, he shall not be deported or nor any restrictions be imposed save and except those that are necessary in the interests of sovereignty and integrity of India or maintenance of public peace and order.

- The determination of refugee status shall be by a Refugee Committee to be prescribed over by the Commissioner of Refugees who shall be a sitting or retired High Court judge.

- During the determination of his refugees status, the asylum seeker shall be entitled to all assistance including that of an interpreter and legal practitioner; and

- An appeal shall lie against the order of the Refugee Committee.\textsuperscript{246}

\textsuperscript{245} Supra n. 240.
\textsuperscript{246} Ibid.

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While India has a human rights law regime, an effective National Human Rights Commission and an innovative, creative and active judiciary, yet now there is urgent need for a domestic refugee law regime. India now needs to consolidate, streamline and harmonize into legislation, its long tradition and experience in accommodating the inflow of refugees, its faith in the principle of non-refoulment, and its commitment to uphold the principles of international human rights.

Conclusion

India has so far dealt with situations of mass influx without a refugee law but with a continuously enlarging population of refugees and asylum seekers, a large section of who may not be repatriated in the near future, a uniform law would allow the government to maintain its huge non-citizen population with more accountability and order, apart from allowing them to enjoy uniform rights and privileges. No doubt India has done appreciable work concerning refugees, but a lot more still required to be done for realization and enforcement of human rights of refugees. Although international legal regime have been accepted by Indian Legal System to provide people better laws on human rights. These norms are reflected in many decision of Indian Courts, further India has ratified several international treaties on Human Rights. Also appreciable is the role of Indian Judiciary, for interpreting constitution of India with the principles of international law and Human rights in protecting the basic rights of refugees. Further United Nations High Commissioner for Refugees, being the main agency to tackle the refugee matters has played a significant role in the protection of refugees in India. The current watch dog of India’s refugee policy, the NHRC, has made numerous recommendations advising the formulation of such a law, in accordance with the articles of the convention, but with an Indo centric nature and content so a national legislation on refugees, combining the humanitarian needs of the refugees with the security interests of the state, should be enacted.