

REFUGEES AND THEIR HUMAN RIGHTS

“Human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safety and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum”¹

-United Nations High Commissioner for Refugees

INTRODUCTION

Upwards of 50 million displaced people have been resettled or repatriated since the finish of World War II, yet about an equivalent number of evacuated individuals are battling hard to recover their essential human rights. As of now, the Office of the UN High Commissioner for Refugees (UNHCR) is helping in excess of 22 million individuals worldwide.² Mass human rights manhandle, common wars, inside difficulty, collective savagery, constrained movement and cataclysmic events prompt the formation of evacuees. While national governments are in charge of the assurance of the fundamental human privileges of their nationals, "outcasts" wind up without the insurance of a national state. There is in this manner more noteworthy requirement for agreeing global assurance and help to these people than on account of individuals living in their home states.

Displaced people by definition are casualties of human rights infringement. As indicated by Article 1(a) (2) of the United Nations Convention Relating to the Status of Refugees 1951 (hereinafter alluded to as Refugee Convention) the term 'exile' should apply to "any people who,

¹ Statement made at the 50th session of the UN Commission on Human Rights (1994) Quoted in UNHCR, *Human Rights and Refugee Protection, Part I: General Introduction* (October, 1995), p.4.

² Some of the standard works on the refugee problem include, Atle Grahl-Madsen, *The Status of Refugees in International Law* vols, 1&2, (1966 - 1972); Guy Goodwin-Gill, *The Refugee in International Law* (Oxford, 1983); Gilbert Jaeger, *Status and International Protection of Refugee* (Leiden, 1978); Peter Macalister-Smith, *International Humanitarian Assistance : Disaster Relief Actions in International Law and Organization* (Oxford,1985); Gill Loescher and Laila Monahan, *Refugees and International Relations* (Oxford,1989).

inferable from an all around established dread of being aggrieved for reasons of race, religion, nationality, enrollment of a specific social gathering or political assessment, is outside the nation of his nationality and can't or, attributable to such dread, is unwilling to benefit himself of the security of that nation". Despite the fact that 'abuse' isn't characterized in the Refugee Convention, Professor James Hathaway characterized it as far as 'the supported or efficient infringement of fundamental human rights expressive of a disappointment of state security'. 'A very much established dread of mistreatment', as indicated by him, exists when one sensibly foresees that the inability to leave the nation may bring about a type of genuine mischief which the legislature can not or won't prevent.³Persecution incorporates badgering from state performing artists and additionally non-state on-screen characters.

The Annexe to the Statute of the Office of the United Nations High Commissioner for Refugees 1950⁴broadens the fitness of the High Commissioner for the assurance of exiles characterized in Article 6(a) (1) in wording like Article 1(a) (2) of the 1951 Refugee Convention.

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969,⁵broadened the definition in the 1951 Refugee Convention to incorporate into the term 'evacuee' additionally every individual who, inferable from outer hostility, occupation, remote control, or occasions truly exasperating open request in either part or the entire of his nation of source or nationality, is constrained to leave his place of ongoing home keeping in mind the end goal to look for shelter in somewhere else outside his nation of root or nationality. The Cartagena Declaration on Refugees of November, 1984 set out that the meaning of outcast couldn't just join the components contained in 1951 Convention and the 1967 Protocol (or the 1969 OAU Convention and General Assembly resolutions), yet in addition cover people who have fled their nation on the grounds that their lives, their wellbeing or their freedom were undermined by an enormous infringement of human rights.

It is obvious from the prior dialog that it is the danger of human rights infringement in their nation of origin which constrains the displaced people to cross global fringes and look for security abroad. Thus, defending human rights in nations of starting point is of basic significance to the anticipation of exile issues as well as for their answers. "On the off chance that conditions have in a general sense changed in the nation of source advancing and checking the wellbeing of

³ James Hathaway, "Fear of Persecution and the Law of Human Rights", *Bulletin of Human Rights*, 91/1, United Nations, (New York, 1992), p.99, quoted in Brian Gorlick, 'Refugees and Human Rights', *Seminar* (March 1998), P.23.

⁴ G.A. Resolution 428 (v) of 14 December, 1950.

⁵ UNTS No 14691.

their intentional return enables displaced people to re-build up themselves in their own locale and to make the most of their fundamental human rights".⁶ Respect for human rights is additionally basic for the security of evacuees in nations where they are incorporated locally or re-settled.

Despite the fact that in the past human rights issues were basically not permitted to enter the worldwide talk on exiles under the mistaken presumption that the displaced person issue, as a compassionate issue is very unmistakable from a human rights issue, the present pattern is towards joining of the human rights law and helpful law with evacuee law. The developing acknowledgment that given the number, size and multifaceted nature of the issue of evacuees the constrained way to deal with the issue which was formulated with regards to the post-second world war displaced people and which set more noteworthy dependence on wellbeing and welfare, as opposed to answers for the issue and for all intents and purposes mitigated the outcast creating nations from their duties towards their nationals living in haven nations. Today, the talk has turned the consideration of the UNHCR and other U.N. bodies to the inherent benefits and qualities of the human rights way to deal with the issue. It is currently progressively perceived that such an approach isn't just helpful in strengthening and supplementing the current outcast law and securing the consistence with its arrangements through semi legal human rights executing bodies,⁷ yet can likewise make it more others conscious and viable. Since the present exile issue is worldwide in nature and concerns people in their relations with states as well as states in their relations with each other, we require a law which isn't just a law identifying with the legitimate status and assurance of evacuees yet in addition includes the displaced person issue overall, a law which is arrangement situated and forces collectivized duty on all states. It is trusted that a human rights point of view of the outcast issue will be useful in rebuilding the present instruments of displaced person law on these lines. What's more, human rights situated approach might be useful in giving the fundamental lawful premise to the security of exiles in states which have not agreed to the 1951 Refugee Convention and additionally the 1967 Protocol.

Along these lines seeing the outcast issue with regards to human rights has expected exceptional significance today. Against this foundation, the present article thinks about a portion of the fundamental human privileges of exiles and their suggestions in the zone of displaced person insurance. It likewise overviews the human privileges of displaced people in India and gives a short record of the effect which human rights standards have made on the present projects and

⁶ UNHCR, *Human Rights and Refugee Protection*, note 1, P.3.

⁷ *Ibid*, pp. 7-9.

strategies of UNHCR and the expanding inclusion of human rights bodies in issues identifying with exiles.

HUMAN RIGHTS OF REFUGEES

I. Right to Protection Against Refoulement

At the point when a man is constrained to escape his nation of starting point or nationality his quick concern is security against refoulement. Such assurance is essential and on occasion, the main methods for averting further human rights infringement. As his persuasive come back to a nation where he or she has motivation to fear abuse may jeopardize his life, security and respectability, the global group has perceived the guideline of non-refoulement,⁸ which restricts both dismissal of an evacuee at the boondocks and ejection after passage. This manage infers its reality and legitimacy from the twin ideas of 'worldwide group' and 'normal mankind' and must be viewed as an indispensable piece of that establishment of opportunity, equity and peace on the planet which is human rights.

Legitimate reason for assurance against constrained return of evacuees to nations where they capture threat to their lives, wellbeing, security and poise can likewise be found in the law identifying with the forbiddance of torment and merciless or brutal treatment.⁹ Thus Article 7 of the ICCPR which denies torment and coldblooded, barbaric or corrupting treatment throws an obligation on state parties not to open people to the peril of torment or barbarous, cruel or debasing treatment or discipline upon return 'to another nation by method for their removal, ejection or refoulement'.^[10] Forcible return of a person to a nation where he or she risks

⁸ The 1951 Refugee Convention (Art. 33(1)), UNHCR, *Basic Legal Documents on Refugees* (1999), 8-37; Article 3, United Nations Declaration on Territorial Asylum, Art. VIII of the Asian- African Legal Consultative Committee, Bangkok Principles, Art.II (3), OAU Convention 1969, Article 22(8), American Convention on Human Rights Convention, 1969.

⁹ Universal Declaration of Human Rights, Article 5; UNHCR, *Basic Legal documents*, pp.43-47; See also *Convention Against Torture*, Articles 2 and 6. Article 7 of the ICCPR (1966).

infringement of the privilege to life is precluded by universal human rights law.¹⁰ Indeed, as the European Court of Human Rights has held, the choice of a state to remove, oust or expel a man "may offer ascent to an issue under Article 3 (European Convention of Human Rights), and henceforth draw in the duty of that state under the Convention, where generous grounds have been appeared for trusting that the individual concerned, if removed, faces a genuine danger of being subjected to torment or to brutal or debasing treatment or discipline in the asking for country".¹¹ This perception is additionally substantial for persuasive return of displaced people to domains where there is a genuine danger of their being subjected to torment, or to brutal or corrupting treatment or discipline or to slaughtering. The demonstration of giving a person over to his torturers, killers or killers constitutes an infringement of the commitment to secure people against torment and unlawful hardship of life. In such manner it is the obligation of the state which gave over people to the genuine culprits of torment or endorsed abuse, and not of the accepting state.

Accordingly the rule of non-refoulement is very much settled in ordinary and standard global law. In spite of this, recently governments wherever are receiving one-sided prohibitive practices to keep the passage of outcasts and other persuasively dislodged people into their territories.¹² Refugees are prohibited on the High Seas. Penalties have been forced against aircrafts or transportation organizations conveying speculated travelers. New ideas, for example, 'brief insurance' and the 'sheltered third nation run' which enable authorities to discharge individuals on flight who have just traveled another state have been presented. A huge number of displaced people looking for protect in the exile camps have been separated in air terminals where physical nearness does not add up to legitimate nearness and from where rundown and discretionary evacuation is passable. Plus, security zones have been made inside nations as in Northern Iraq and previous Yugoslavia to stop shelter searchers moving out and looking for asylum. Shelter searchers have been held in seaward camps which have been viably announced rights free

¹⁰ HRC General comment No. 20, para 9.

¹¹ *Cruz Varas Case*, Judgment of 20 March 1991; Quoted in UNHCR, *International Legal Standards Applicable to the Protection of Internally Displaced Persons: A Reference Manual for UNHCR Staff*, (Geneva, 1996), p.65.

¹² See, Amnesty International, 'The Barriers are Going up', *Refugee* (Spring 1998), 19; B.S. Chimni, 'Refugees in International Law', *Seminar* n.463, (March 1998), pp.18-22; James Hathaway, 'Crisis in International Law', *Indian Journal of International Law*, vol. 39 (1999), pp. 9-11.

zones.¹³ Not content with these measures Europe and North America have systematized the supposed 'nation of first landing' rule which implies to 'relegate' displaced people to be the duty of a solitary refuge state, without respect for the nature of insurance offered there. The 'sheltered third nation' idea (which indicates to deny refuge searchers access to an exhaustive haven assurance system since they could have looked for insurance in nations they went through to achieve their definitive) has come into drive in Europe and the United States.¹⁴ The Dublin and Schengen Conventions which set down new criteria for deciding cases of refuge searchers have likewise confused the issue. Incidentally, these unscrupulous and illicit practices are being turned to by those nations which were instrumental in the underlying drafting and selection of the 1951 Refugee Convention and have the monetary capacity and without a doubt, the obligation to give them both shelter and security. As exile assurance is a vital measurement of human rights security, one-sided prohibitive practices embraced by both the created and creating nations are conflicting with their commitments under worldwide displaced person law and philanthropic law and constitute a genuine infringement of human rights.

(II) Right to Seek Asylum

Once a man escaping abuse enters a state other than that of his beginning or nationality, what he needs most is haven. "Shelter is the assurance which a State gives on its domain or in some other place under the control of sure of its organs, to a man who comes to look for it".¹⁵ Asylum is essential not just to safeguard his entitlement to life, security and respectability yet in addition for avoiding other human rights infringement. In this manner the concede of haven on account of exiles who constitute an exceptional class of human rights casualties is an essential part of human rights security and subsequently ought to be considered in the light of the U.N. Sanction as a general guideline of global law and a rudimentary thought of humankind. No big surprise at that point, not just the privilege of a man to leave the other or his nation is perceived in a few human rights instruments yet even his entitlement to look for and to appreciate in different

¹³ When the U.S. started holding Haitian and Cuban refugees at Guantanamo Bay, a territory leased out from Cuba, a U.S. Court of Appeals ruled in *Cuban American Bar Association (Cuba) v. Christopher*[43 F. 3 A. 1412 (11th Cir. 1995) that refugee in 'Safe haven' camps outside the U.S. did not have the constitutional rights of due process or equal protection and were not protected against forced return. Also See, Chimni, note14, p.22.

¹⁴ The German Federal Constitutional Court, in May 1996, upheld the German safe third country law. See Chimni, note 14,p .22.

¹⁵ Article 1 of the Resolution adopted by the Institute of International Law in Sept. 1950, *American Journal of International Law*, vol. 50, Supplement (1951), p 15

nations refuge from mistreatment has been broadcasted as a human right.¹⁶ And, if a state gifts shelter to people qualified for conjure Article 14 of the Universal Declaration of Human Rights, it can not be viewed as a disagreeable demonstration by some other state (counting the condition of source or nationality of haven searchers).

Under conventional law, haven is the privilege of the state, not of the person who can just look for it and if conceded appreciate it. Lamentably, all endeavors to give that each one has the privilege of refuge from abuse have been disappointed by states. As displaced people require in any event impermanent shelter pending tough arrangements either as resettlement in a third state or repatriation to outcast's own nation, a disavowal of haven on account of certified evacuees is only a refusal of the presence of any universal group and additionally a dissent of the presence of a typical humankind. It is likewise disgusting to the guideline of normal worry for the fundamental welfare of every person which frames the premise of the present displaced person administration and moreover runs counter to the oft-rehashed declaration at the worldwide level that the advancement and insurance of every human right is a true blue worry of the global group and as needs be helpful intercession in specific conditions is passable and defended. Dissent of shelter to certifiable displaced people is additionally against UNHCR approaches. In this specific circumstance, it might be noticed that the basic standard for the UNHCR is that "In instances of substantial scale flood, people looking for shelter ought to dependably get at any rate impermanent asylum". Therefore, it is not any more adequate for industrialized nations to make outcast help accessible to creating nations. "The industrialized nations should likewise share the weight of tolerating those ... who look for shelter outside their locales."¹⁷ In 1986 the UNHCR had taken the position that "Outcasts and refuge searchers who are the worry of ...office ought not be the casualties of measures taken by Governments against illicit migration or dangers to their national security, however legitimate these might be in themselves".

Unexpectedly, it is the alleged champions of human rights and helpful intercession which for the sake of security of the state are putting a wide range of obstructions to keep the passage of the hapless casualties of human rights manhandle into their domains and in this way presenting them to promote human rights infringement. The avoidance of obligation by the North towards evacuees, compounding the financial weights of the South, which today has 90 percent of the

¹⁶ Article 14 (1), Universal Declaration of Human Rights (G.A. Resolution 217 (III); Art. XXVII, American Declaration, Art. 22 (7), American Convention on Human Rights, *ILM*, vol. 9 (1970), p 673, Vienna Declaration, part I (1993), para 23

¹⁷ Opening statement by the High Commissioner for Refugees at the Thirty-Seventh Session of the Executive Committee of the High Commissioner's Programme, 6 October 1986.

aggregate exile issue has additionally constrained numerous Southern States to copy Northern non-course rehearses.

(III) Right to Equality and Non-Discrimination

A displaced person is qualified for be treated with humankind by the condition of shelter. The commitments of the State of asylum on this tally are gotten from the guidelines and standards, which order regard and assurance of key human rights, general global law and rudimentary contemplations of mankind and are established on the universal group's enthusiasm for and worry for displaced people. Exiles under the Refugee Convention are qualified for generally higher principles of treatment¹⁸ than those having a place with B status classification or command displaced people. Since when in doubt, the rights and opportunities perceived by worldwide human rights law apply to everybody, including outcasts, the last are additionally qualified for regard for, and security of their essential human rights like nationals of the condition of asylum. Of pivotal significance to the assurance of human rights and basic opportunities of displaced people is the lead of non-separation set down in a few worldwide and local human rights instruments,¹⁹ in light of the fact that being nonnatives in the refuge nation they are most defenseless against segregation. It must be perceived that displaced people regularly need legitimate ID and authority archives and all things considered may experience issues with the experts. Their quality in an outside nation may be detested or they may be gotten with doubt on account of their religion or ethnicity. They may likewise counter challenges because of nonappearance of adequate arrangements in the national laws of the nation of haven for exiles or due to vulnerability about the expansion of the advantages of the laws to refugees.²⁰

¹⁸ The Refugee Convention contains certain rights provisions- protection from *refoulement*, protection against unlawful expulsion or detention, the right to employment and education, access to the courts, and freedom of movement. In respect of many of these rights, refugees are supposed to receive the same treatment as nationals in the country of residence

¹⁹ ICCPR, Art. 2(1) *ILM.*, vol. 6 (1967), p. 3687; ICESCR, Article 2 (2), *ILM.*, vol.9 (1970), p.360, U.N. Charter, Arts. 1 (3), 13 (1) (b), 55 (c) and 76 (c); Universal Declaration of Human Rights, Art. 2; European Convention, Article 14 213 *UNTS* 221; American Convention, Articles. 1 and 24; African Charter, Articles 2, 13, 18 (3)- *ILM.*, vol. 21 (1982), p. 58.

²⁰ UNHCR, *Human Rights and Refugee Protection*, note 1, p. 37.

In any case, despite the fact that evacuees are outsiders in the haven nation, by ethicalness of Article 2 of ICCPR they appreciate an indistinguishable major rights and flexibilities from nationals. The privilege to uniformity under the watchful eye of the law, break even with insurance of the law and non-segregation which frame a foundation of global human rights law seem to boycott victimization displaced people in light of their status all things considered. What's more, such arrangements would restrict oppressive direct in light of grounds generally identified with circumstances of evacuees, for example, race, religion, national or social beginning, and absence of property.²¹ moreover, all certifications giving insurance against particular classifications of separation, for example, race and sex particular segregation are likewise appropriate to refugees.²²

(IV) Right to Life and Personal Security

Displaced people as a gathering are the most jeopardized individuals on the planet. The greater part of their essential human rights are debilitated amid flight and upon their movement in camps in the asylum state lastly amid their arrival to their nations of cause or nationality. In the underlying and most frantic stage they frequently lose every one of their possessions, their essential security, family and regularly their own particular lives. For dominant part of evacuees, life estranged abroad is as awful or more terrible than the conditions in their own nation which constrained them to escape. Gil Loescher portrays distinctively the predicament of displaced people in the haven states in these words:²³

²¹ UNHCR, *International Legal Standards*, note 12 at p. 18.

²² Relevant instruments include the U.N. Declaration and the International Convention on the Elimination of All forms of Racial Discrimination (CERD), 60 *UNTS* 195

²³ Gil Loescher, 'Refugee Issues in International Relations', in Gil Loescher and Laila Monahan, (eds.) *Refugees and International Relations* (Oxford, 1989), pp. 1-2.

"Numerous are limited to camps or broken-down settlements near the fringes of their nations of origin where, denied of chances to work or ranch their own property, they rely upon global philanthropy for survival. Displaced people are regularly isolated from individuals from their families, presented to the peril of equipped assault, subjected to numerous types of abuse and corruption, and frequented by the steady dread of ejection and the constrained come back to their nations of source. Tremendous quantities of kids have spent every one of their lives in displaced person camps. The more they live there, the less shot they have of consistently encountering some similarity of a typical life".

Exiles much of the time are in danger of different demonstrations of viciousness which may incorporate killings, torment, assault, destruction, additional legal executions, persuasive vanishings and so forth. They are additionally defenseless against immediate and aimless assaults amid threats, demonstrations of psychological warfare, and the utilization of hazardous weapons and land mines.

Numerous states in the South make it outlandish for displaced people to stay there by cutting sustenance proportions, by detaining them behind pointed wires, and generally making their lives inconceivable. What's more, when displaced people restore their home they are regularly not capable, as in Bosnia, to recover their old homes or political rights.

Ladies have dependably been powerless and simple casualties in the alleged displaced person cycle, yet finished the years brutality against them have been showed in the ugliest structures making a smudge on the human conscience²⁴. With regards to his experience in Tanzania, what a Burundi displaced person said is an eye opener for every one of us :

"They took the youngsters and my significant other away into a neighboring house. So I stayed with my oldest little girl whom they started to uncover directly in front of me. They assaulted her for over a hour and when they had completed, they constrained me to mount my kid who lay there like a corpse"

²⁴ Quoted in *Refugees* (1998) Spring, p.9.

In perspective of the previous the arrangements of human rights law ensuring the privilege to life²⁵ and assurance against genocide,²⁶ which is a grave type of infringement of the privilege to life, are of direct pertinence and broad significance to exiles. The reality of the matter is that the majority of the human rights bargains do take into account certain types of taking of life (e.g. as capital punishment or with regards to unlawful viciousness), yet subjective hardship of the privilege to life is disallowed in all conditions. In ensuring against 'self-assertive hardship of life', State Parties should take measures not exclusively to avert and rebuff hardship of life by criminal acts, yet in addition to counteract subjective slaughtering by their own particular security forces.²⁷ with regards to death toll from war and different demonstrations of viciousness it has been expressed that "States have the preeminent obligation to anticipate wars, demonstrations of decimation and different demonstrations of mass savagery making self-assertive loss of life".²⁸ Since the correct life is a non-derogable widespread right, exiles are shielded from self-assertive hardship of life. The Vienna Declaration and Program of Action, (1993) perceived the linkage between monstrous infringement of human rights particularly as decimation, 'ethnic purifying' and efficient assault of ladies in war circumstances and mass departure of exiles and uprooted people and emphasized the call that "culprits of such violations be punished". The Declaration likewise reaffirmed that "it is the obligation of all states, under any conditions, to make examinations at whatever point there is motivation to trust that implemented vanishings has occurred on an area under their locale and, if claims are affirmed, to indict its culprits".

The human rights administration ensuring flexibility from torment and unfeeling, cruel or corrupting treatment or punishment²⁹ is of vital significance to outcasts, especially ladies and young ladies who might be constrained to endure viciousness or abuse amid flight and upon their migration in camps.

²⁵ Universal Declaration of Human Rights, Article 3; ICCPR, Article 6(1), American Declaration, Art. 1; American Convention, Art. 4 (1); European Convention, Art. 2 (1); African Charter, Article 4; CRC., Articles 6 (1) and 19.

²⁶ Article II, Genocide Convention, 1948.

²⁷ Views of the Human Rights Committee on Communication No. 45/1979 (*Suarez de Guerrero v. Colombia*), Paras, 13.2 and 13.3.

²⁸ H.R.C. General Comments, , No. 86, paras 2,3 and 5.

²⁹ Universal Declaration, Article 5; ICCPR, Art. 7; CRC, Art. 37 (a); American Convention, Art. 5 (2); European Convention, Art. 3; African Charter, Art. 5.

(V) Right to Return

Outcasts should be ensured the privilege to return deliberately and in security to their nations of birthplace or nationality. They likewise require assurance against constrained come back to regions in which their lives, wellbeing and nobility would be jeopardized. Human rights law perceives the privilege of a person, outside of national region, to come back to his or her country.³⁰ The U.N. Security Council has additionally avowed "the privilege of outcasts and dislodged people to come back to their homes". In a comparable vein, the Sub-Commission on Prevention of Discrimination and Protection of Minorities has asserted "the privilege of evacuees and uprooted people to return, in wellbeing and respect, to their nation of starting point or potentially inside it, to their place of beginning or choice". The privilege of a displaced person to come back to his nation of birthplace likewise emerges from the principles of customary worldwide law which stretch the obligation of the State of inception to get back its native when the last is ousted by the conceding state and to stretch out its strategic assurance to him. Moreover, the social reality of connection, together with the bona fide association between a national and his express, his notions, and enthusiastic ties with his homeland offer ascent to the previously mentioned commitments of the State of origin.³¹ Therefore, if a condition of cause overlooks the connection of nationality and to 'discount the individuals who have fled, it might include a break of commitment to the condition of shelter and maybe additionally to the universal community.[49] This is the situation, despite the fact that, given the conditions winning in the nation of starting point, the genuine return of displaced people might be banned by that complex of obligations thus omnes which gets from the rule of non-refoulement".

Consequently an outcast has the privilege to come back to his or her nation and make the most of his or her essential human rights. It thusly throws a commitment on the condition of root, the condition of shelter and furthermore the global group to make conditions helpful for his willful and safe come back to the nation of birthplace since outcast status is a transitory situation and its exclusive goal is to convey human rights assurance for the length of hazard, it ought to douse when that hazard arrives at an end by reason of a central difference in conditions.

³⁰ Universal Declaration, Article 13 (2); African Charter, Article 12 (2); CERD, Art. 5d (ii). Art. 12 (4) of the ICCPR, Art. 22 (5) of the American Convention; Art. 3 (2) of the Fourth Protocol to the European Convention prohibits the deprivation of the right to enter the territory of the state of which a person is a national. The African Charter limits restrictions to those provided for by law for the protection of national security, law and order, public health or morality. Article 12 (2).

³¹ See *Nottebohm Case*, *ICJ Reports* (1955),

It is presently progressively perceived that deliberate repatriation will give both successful and tough answers for the displaced person issue and permit the returnees to re-set up themselves in their own locale and to make the most of their fundamental human rights. In spite of this, because of political reasons in the not very far off past displaced person status was compared with perpetual movement and 'outside settlement',³² return was not seen as the ordinary arrangement of the issue of evacuees.

IV.STATUS OF REFUGEES IN INDIA

Turning to human rights of refugees in India one is wonderstruck by the fact that India has neither acceded to the 1951 Refugee Convention nor enacted any legislation for the protection of refugees, although it has always been willing to host the forcibly displaced persons from other countries without adopting legalistic approaches to the refugees issues. All persons who flee their homelands have invariably been provided refuge, irrespective of the reasons of their flight. Taking a broader view of the concept of 'refugees' which somewhat resembles the one found in the 1969 OAU Convention, rather than the narrow definition provided in 1951 Refugee Convention, the Government of India recognises Tibetans, Chakmas, Sri Lankan Tamils and Afghans and thousands of people of other nationalities from Iran, Iraq, Somalia, Sudan and Myanmar as refugees. However 20,000 refugees are not recognised as refugees but foreign nationals temporarily residing in India. These persons are assisted by the UNHCR and provided international protection and assistance under its mandate. Its policies are discriminatory and inequitable, even to members of the same group. Thus it granted substantially less assistance to the Tibetan refugees arriving after 1980 than to the Tibetans who arrived here prior to 1980

In the absence of accession to the Refugee Convention by India and any national legislation on protection of refugee the legal status of individuals recognised as refugees by the Government of India is not clear. Also not clear is the relationship between refugee status granted by the Government and corresponding laws governing the entry and stay of foreigners (i.e. Foreigners Act, 1946).

As Justice J.S. Verma, Chairman of the National Human Rights Commission recently observed, "the provisions of the (1951) Refugee Convention and its Protocol can be relied on when there is no conflict with any provisions in the municipal laws" Fortunately, the judiciary has sought to fulfil the void created by the absence of domestic legislation by its landmark judgments in the area of refugee protection. It extended the guarantee of Article 14 (right to equality) and Article 21 (right to life and liberty) to non-citizens including refugees. The Madras High Court in *P. Neduraman and Dr. S. Ramadoss v. Union of India and the State of Tamil Nadu* (1992) emphasized the need to guarantee the voluntary character of repatriation. The National Human

³² See generally, UNHCR Resettlement Section, "Resettlement – An Instrument of Protection and a Durable Solution", *International Journal of Refugee Law*, vol.9 (1997), p.666.

Rights Commission has also come to the rescue of refugees 'approaching it with their complaints of violations of human rights.'

While India's record with respect to protection of human rights of refugees has been generally satisfactory, the Human Rights Committee recently expressed concern at reports of forcible repatriation of asylum seekers including those from Myanmar (Chins), the Chittagong Hills and the Chakmas. It recommended that in the process of repatriation of asylum seekers or refugees, due attention be paid to the provisions of the Covenant and other applicable norms. The Committee also recognised that India, notwithstanding all its historic generosity to refugees, has recently engaged in certain practices *vis-a-vis* less favoured refugee populations. In this context it needs to be recognised that India is not the only country which resorting to such practices. Indeed, as already noted there are many states in the South which starve refugees out, imprison them behind barbed wire, and otherwise make their lives miserable. At a time when the West is willing to undermine even the most basic premises of international refugee law in the name of 'compassion fatigue', 'saturation of absorbing capacity' or religious intolerance and xenophobia of a section of the local population towards refugees, and already has ignored its commitments flowing from the concepts of 'international solidarity' and 'burden sharing', developing countries alone can not be singled out for condemnation. Use of these practices or schemes by them are legally and ethically repugnant but unless the refugee regime is rejuvenated and revitalised and the interests of the receiving state and refugees find proper accommodation therein, such practices, are likely to continue even in future. Be that as it may, India should reconsider its refugee policy and enact a separate national legislation on the treatment of refugees considering that India presently shelters one of the largest refugee populations in the world, its refusal to accede to the Refugee Convention or its Protocol is not only beyond comprehension but unnecessarily tarnishes its image at the international level.

CONCLUSION

Now is the time for a progressive development of a global approach to the refugee problem, an approach which takes due cognizance of the basic human rights of refugees and interests of the asylum countries and the international community, and secures the cooperation of all parties in seeking a solution to the problem. Given the close link between refugees and human rights, international human rights standards are powerful ammunitions for enhancing and complementing the existing refugee protection regime and giving it proper orientation and direction. Since the refugee problem is an important aspect of human rights protection, human rights groups, humanitarian organisations, the UNHCR, Governments and U.N. human rights agencies should take a hard look at their respective roles and make coordinated efforts for elimination of human rights abuses and protection of the rights of refugees.

As discussed, the absence of a special legal regime on the status of refugees does not however mean that no protection and assistance is offered to refugees. The judiciary and allied institutions like the NHRC have tried to respond to the refugee question with innovative judicial interpretation to establish several procedural rights and in many cases, have prevented forced deportation. However, such interventions have been limited to specific cases and the judicial pronouncements have not been implemented across a wide spectrum. This has been occasioned due to the absence of a definite refugee law. This absence has certainly meant that arbitrary executive action and acts of discrimination are not easily remedied. This further means that the decision to treat a person or a group of persons as refugees or not is taken on the merits and circumstances of the cases coming before it as they are overshadowed by political considerations.

The absence of a national law on the status of refugees has also meant that refugees are dependent on the benevolence of the state rather than on a rights regime to reconstruct their lives with dignity. Thus, the refugees are left to the mercy of the state and have no recourse against systemic violations of its legal obligations by the state. Therefore, a just, fair and humane response to the question of refugees in India, in conformity with India's international and constitutional obligations requires, as an immediate imperative, adoption of a definite statutory regime that clearly defines refugees as a distinct class of persons, spells out a fair procedure for determination of the status of refugees and outlines a due process for refugee protection in consonance with the right to non-refoulement and the right to a dignified life.