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India's Stance on the Principle of *Non-Refoulement*

– Dr Kanika Sharma

Introduction

India is a country having a long historical tradition of welcoming refugees from all over the world. Post-independence India, just as the ancient India, is the home for refugees belonging to all religions and sects. India has always been a generous country in hosting a refugee population. Despite receiving a number of refugees, the country has neither a domestic legislation on the protection of refugees, nor is it a party to the Convention Relating to the Status of Refugees, 1951 (1951 Refugee Convention) and its 1967 Protocol. The plight of refugees in India generally depends upon the extent of protection they receive from either the Indian government or the office of the United Nations High Commissioner for Refugees (UNHCR). Based on the above, refugees in India can be classified as mandate and non-mandate refugees. Those who are under the protection of UNHCR are classified as mandate refugees (Afghanistan, Iran, Iraq, Sudan, Somalia and Myanmar) and those who are under the direct protection of the Indian government are non-mandate refugees (displaced persons during the partition of India, refugees from Tibet, and Bangladesh, and Sri Lankan Tamils).

India not being party to the 1951 Refugee Convention or 1967 Protocol always respected and followed the principle of *non-refoulement* in granting safe haven to refugees. Recent deportation of Rohingya refugees by the government and rejection of plea of Sri Lankan Tamil individual seeking refuge by the Supreme Court of India highlights the shift of India's long-standing position of following the principle of *non-refoulment* as the customary principle of international law to adopting the strict refugee policy. An attempt has been made in this paper to analyse India's refugee policy and its stance on granting asylum to refugees based on the principle of non-refoulement by delving into the case laws.

Right to Seek Asylum

Once a person fleeing persecution enters a state other than that of his origin or nationality, what he needs the most is asylum. Asylum is the protection which a state grants on its territory to a person who comes to seek it. In the context of refugee problem, we do understand the concept of asylum, but nowhere is it defined in clear and precise terms. Nevertheless, the Universal Declaration of Human Rights, 1948 (UDHR) refers to "asylum" from persecution. The UDHR recognizes the right of a persecuted person to seek and enjoy asylum by providing that: Everyone has the right to seek and enjoy in other country asylum from persecution.[1] Besides UDHR, the Declaration on Territorial Asylum, 1967 was adopted wherein the General Assembly recommended that, without prejudice

to existing instruments dealing with asylum and the status of refugees and stateless persons, States should grant asylum and the asylum so granted should be respected by all other States.[2] It also provides that where a State finds difficulty in granting or continuing to grant asylum then it shall individually or jointly or through UN adopt appropriate measures to lighten the burden of that State.[3] The 1967 Protocol is also limited to updating the refugee definition and no other instrument of universal character has specifically strengthened the institution of asylum. On the regional level, however, some slight progress can be discerned. The European Convention on Human Rights has facilitated an overall improvement in the situation of individuals at large, whether citizens, non-citizens, non-nationals or refugees, although not to the extent that might be expected of this document. The 1957 European Convention on Extradition, on the other hand, formulates the principle of non-extradition for political offences. Within Latin America, the 1954 Caracas Convention on Territorial Asylum reaffirmed the territorial State's sovereign right to grant asylum, the duty of other States to respect such asylum and the exemption from any obligations to surrender or expel a person "sought for political offences" or "persecuted for political reasons or offences."[4] The other Caracas Convention on Diplomatic Asylum stressed that while "every State has the right to grant asylum … it is not obligated to do so or state its reasons for refusing it" and that it rested with the State granting asylum to determine the nature of offence or motive of persecution.[5]

Furthermore, the 1969 OAU Convention also strengthens the institution of asylum. Member States of OAU proclaim that they „shall use their best endeavours … to receive refugees and to secure the settlement" of those unable or unwilling to be repatriated. Given the absence of firm legal obligations to grant asylum, it is encouraging to note that many States continue liberal asylum policies. Whether persons flee their countries for fear of persecution in the sense of Article 1 of the 1951 Refugee Convention, or as a result of armed conflict, foreign aggression or occupation, gross violation of human rights, etc., there is widespread recognition that they should be granted and admitted at "temporary asylum."[6] The Preamble to the 1951 Refugee Convention notes expressly "that the grant of asylum may place unduly heavy burden on certain countries" and that a satisfactory solution to this problem of international dimension depends largely on international cooperation. As there is no provision in the Convention which can satisfactorily be applied to this category, except to describe them as refugees "unlawfully in the country of refuge." The 1951 Refugee Convention provides for the right of refugees unlawfully in the country of refuge. As we know that the circumstances under which the refugees may be compelled to leave their country, it may not be possible for them to enter the country of refuge in a regular manner. Ordinarily, such illegal entry or presence is punishable under law. The 1951 Refugee Convention protects refugees from such penalties by providing: The contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees ... provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.[7]

Right Against Expulsion and Principle of *Non-Refoulement*

Refoulement describes the act of returning a person to a country where he fears for his life or freedom on grounds of race, religion, nationality, membership of a particular social group or political opinion. As his forcible return to a country where he has a reason to fear of persecution which may endanger his/her life, security and integrity, the international community has recognized the principle of non-refoulement as cardinal principle of international refugee law. The term *non refoulement* derives from French word "*refouler*", which means to drive back or to repel,

as of an enemy who fails to breach one's defences. The 1951 Refugee Convention provides that a Contracting State shall not expel a refugee lawfully in its territory except under certain strictly defined conclusions. The State Parties undertake not to "expel a refugee lawfully in their territories save on grounds of national security or public order." Decisions to expel are further required to be in accordance with "Due Process of Law" and "except where compelling reasons of national security otherwise require."[8]

Article 33 of the 1951 Refugee Convention gives expression to the principle of *non-refoulement:* "No contracting State shall expel or return a refugee in any manner whatsoever to the frontier of territories where his life or freedom would be threatened." It is clearly evident from the phrase "expel or return … in any manner whatsoever" that the 1951 Refugee Convention intends to prohibit any act of removal or rejection that would place the person concerned at risk. Furthermore, the Declaration of State Parties to the 1951 Refugee Convention and/or its Protocol, 2001 while reaffirming the central relevance of the 1951 Refugee Convention acknowledges that the principle of *non-refoulement* is embedded in customary international law, and commits States to provide better refugee protection within the framework of international solidarity and burden sharing. Despite being the cardinal principle of International Refugee Law, the principle of *non-refoulement* is undeniably under increasing attack in State practice. States generally adopt three types of practices against the principle of *non-refoulement*. First, the return of refugees physically present in the territory of a State; second, the return of refugees at or near the border; and third, the evolution of non-entrée policies. It is remarkable that the principle of non-refoulement is in fact respected by most of the States most of the time still there are instances of refoulement of refugees, especially in the context of large influxes of refugees. In 1982-83, for example, thousands of Rwandan refugees were chased from Western Uganda back to Rwanda. In Pakistan, some of the non-Afghan refugees due to non-recognition by the Government were summarily returned to their countries of persecution as illegal immigrants. Tanzania has a history of forcibly returning refugees, including expelling hundreds of thousands of Rwandan refugees in 1996, in 2006 and 2007 returning thousands of Rwandan and Burundi refugees against their will. In certain States, restrictive interpretation of 1951 Refugee Convention definition led to the rejection of genuine refugees who faced certain persecution upon their return. As in Austria, asylum-seekers who face persecution on any ground other than political opinion or who are persecuted as a group rather than individuals are not considered refugees under 1951 Refugee Convention. In addition to refoulement of refugees physically present within the territory of the State of refuge, States also violate Article 33 by repelling refugees who claim asylum at their frontiers. For instance, Austrian Border guards have the authority to deny entry to refugees who do not come directly from the State in which they claim to fear persecution. Besides the abovementioned two handicaps, the gravest contemporary threat to refugees' protection against refoulement is the pernicious new State practice of non-entrée which means "the refugee shall not access our community." Non-entrée tactics include the imposition of visa requirements on the nationals of genuine refugees producing countries enforced through carrier sanctions; first host country and safe third country rules applying to refugees who do not travel directly to the country where they seek asylum.

Thus, while the principle of *non-refoulement* is basic, it is recognised that there may be certain legitimate exceptions to the principle. The protection from refoulement under 1951 Refugee Convention is, however, restricted on two grounds. It cannot be claimed by a refugee who, on reasonable grounds, is regarded as a danger to the security of the country of asylum or has been convicted of a particularly serious crime and, therefore, constitutes a danger to the community.[9]

Non-Refoulement Embedded in Regional Instruments.

The 1969 OAU Convention declares that, no person shall be subjected to measures such as rejection at the frontier, return or expulsion, which would compel him to return or remain in a territory where his life, physical integrity or liberty would be threatened. Further, the 1984 Cartagena Declaration reiterates the importance and meaning of the principle of non-refoulement including the prohibition of rejection at the frontier as a corner-stone of international protection of refugees. The 1966 Bangkok Principles as revised in 2001 also provide for the principle of non-refoulement that no one seeking asylum should be expelled or returned to the country where there is threat to his life except for certain reasons. Besides refugee specific legislations the principle is also articulated in various Conventions and human rights instruments.

The principle of *non-refoulement* is expressed in UN Convention against Torture or Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT). The principal purpose of this Convention was to strengthen the already existing prohibition of torture in international law by adding a number of supportive measures. During its drafting process, it was suggested to include a guarantee against refoulement in the CAT. After long negotiations, the obligation of non-Refoulement was formulated which says that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.[10] Further that for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violation of human rights.

Refugee Policy of the Indian Government

Throughout its age-old history, India has always welcomed refugees and given them a place of honour and dignity. India is currently hosting 129,460 Refugees and Asylum seekers. Being non-signatory to 1951 Refugee Convention or its 1967 Protocol, India's legal obligation to protect the refugees is found in several core treaties which requires states to ensure access to basic human rights and human dignity for all and provide basic protection to people seeking asylum in India. For example, UDHR, 1948, International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC) provides affirmative rights to ensure dignity, respect for life and liberty and conducive environment for children to grow and also customary international law. The Constitution of India contains provisions on the status of International Law in India under the Directive Principles of State Policy enshrined in Part IV of the Constitution which provide: "The state shall endeavour to foster respect for International law and treaty obligations in the dealings of organized people with one another".[11] Though this provision is not enforceable in any court yet it is well established in India that the principle of Customary International law can be enforced by the courts if they are not in conflict with the Statutes. However, Indian courts have accepted and applied the 'Doctrine of Incorporation' according to which Customary rules are to be considered part of the law of the land and enforced as such, with the qualification that they are not inconsistent with the Acts of Parliament.[12] In *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey*[13] the Supreme Court observed:

> "The Comity of Nations requires that Rules of International Law may be accommodated

in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. But when they do run into conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The Doctrine of Incorporation also recognizes the position that the rules of international law are incorporated into national law and considered to be part of national law, unless they are not in conflict with an Act of Parliament."

Article 51 thus, is indicative of the spirit in which India approaches its international relations and obligations. The Indian system being Common Law system, the Indian courts administer the basic principles governing the relationship between international law and Municipal law under the Common Law doctrine. This Common Law practice has been followed by Indian Executive, Legislature and Judiciary after the independence as well. The Constitution of India under Article 253 clearly states that "Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body". This Constitutional provision implies that whenever there is necessity, the Parliament is empowered to incorporate an international obligation undertaken at international level into its own municipal law. Indian courts, thus, have achieved via judge made law what successive governments were unable to or unwilling to do. Today International Refugee Law stands somewhat integrated into Indian law via certain provisions of Indian Constitution, viz., Articles 5 to 11, 14, 20,21, 22, 25(1), 27, 28, 51(c) and 253; Entries 14, 17, 18 and 19 of List-I; and Entry 27 of List III.[14]

The Constitution of India recognises the right to equality (Article 14), right to life (Article 21), right to protection in respect of conviction of offences (Article 20), right to protection against arbitrary arrest (Article 22), freedom of religion (Article 25). The established principle of the 'rule of law' in India as set under Article 21 of the Constitution is that no person, whether a citizen or an alien shall be deprived of his life or personal liberty except in accordance with the procedure established by law. Judiciary has adopted the creative interpretation of Article 21 of the Constitution. The Supreme Court has interpreted the word 'life' in Article 21 to mean not merely an animal life but a dignified life[15] and hence, refugees being persons are also entitled to the same. There are several decisions of the Supreme Court and High Courts where refugees have been given protection by invoking Article 21. The leading case in this connection is *State of Arunachal Pradesh v. Khudiram Chakma*[16] wherein the appellant along with many other Chakma refugees claimed Fundamental Rights under Articles 21 and 19(1)(d) and 19(1)(e) of the Constitution of India and also claimed benefit under Section 6(A) and (6)(2) of the Citizenship Act, 1955. Regarding Article 21, the Supreme Court held that it is available to any person including the refugees on Indian soil. With regard to Article 19 (1)(d) and 19(1)(e), the Supreme Court stated that they can be claimed only by Indian citizens and the refugees not being citizens of India cannot claim them. Relying on *Louis De Raedt v. Union of India,*[17] the Supreme Court held that foreigners including refugees can enjoy the Fundamental Right to life and liberty as guaranteed under Article 21 of the Constitution of India but cannot invoke Article 19 (1) (e) as the same is available only to Indian citizens.

Earlier in *Hans Muller of Nuremberg v. Superintendent, Presidency Jail, Calcutta,*[18] the Supreme Court held that the Government has an unrestricted and unfettered right to expel a foreigner. The Supreme Court approvingly referred to UDHR in the context of refugees and laid that:

> "Article 14 of the UDHR, which speaks of the right to enjoy asylum, has to be interpreted in the light of the instrument as a whole, and must be taken to mean something. It implies that although an asylum seeker has no right to be granted admission to a foreign state, equally a state which has granted him asylum must not later return him to the country whence, he came. Moreover, the Article carries considerable moral authority and embodies the legal prerequisite of regional declarations and instruments."

The protection to refugees under Article 21 of the Constitution was again highlighted by the Supreme Court in *National Human Rights Commission (NHRC) v. State of Arunachal Pradesh and Another*[19] wherein it *prima facie* found evidence that a threat existed to the life and liberty of the Chakmas, the protection of which is guaranteed under Article 21 and if there exists 'a reasonable apprehension' or 'a well-founded fear of persecution', or 'a clear danger', as in this case, foreigners would be entitled to the protection of Article 21. The Court also acknowledged that they were entitled to apply for citizenship under Section 5 of the Citizenship Act. The Court on this issue distinguished the present case from *Khudiram Chakma's* case. It held that in latter case the court was required to consider the claim of citizenship based on the language of Section 6-A and within the narrower context of Section 6-A (2) of the Citizenship Act whereas in this case the Chakmas were seeking citizenship under Section 5(1)(a) of the Act, which provides for citizenship by registration and so the considerations were entirely different. The court finally stated:

> "We are a country governed by the 'rule of law'. Our 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 law. So also, no person can be deprived of his life or personal liberty except according to 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."[20]

On 22nd December, 2010, the Delhi High Court decided a landmark case titled *Namgyal Dolkar v. Ministry of External Affairs*[21], related to the citizenship right of Tibetan Refugees in India. Namgyal an ethnic Tibetan refugee born in April 1986 in Kangra, Himachal Pradesh, India, claimed the citizenship right under Section 3(1)(a) Citizenship Act. According to this Section, every person born on or after 26th January 1950 but before 1st day of July 1987 shall be citizen of India by birth.[22] The Court decided the case in favour of the petitioner and held that Tibetans born in India, regardless of their parentage during the aforementioned period enjoy birthright citizenship.

Judicial Response to the Principle of *Non-Refoulement*

Remarkably, the judiciary has time and again safeguarded refugees from deportation, expulsion, forced repatriation etc revealing a complex interplay between municipal law, international obligations and humanitarian considerations. Besides Constitution of India, there are some landmark cases decided by the Supreme Court and the various High Courts in relation to recognising the rights of refugees falling within other relevant legislations dealing with the foreigners in India *viz.* (a) The Passport (Entry into India) Act, 1920; b) The Passport Act, 1967; (c) The Registration of Foreigners Act, 1939; (d) The Foreigners Act, 1946 and e) The Foreigners Order, 1948. However, with a view to regulate the immigration, entry, and stay of foreigners in India, The Passport (Entry into India) Act, 1920; The Registration of Foreigners Act, 1939, The Foreigners Act, 1946 has been repealed by the Immigration and Foreigners Act, 2025

In *Ktaer Abbas Habib Al Qutaifi and Anr V. Union of India and Ors*,[23] the petitioners were Iraqi refugees who entered India in 1996 and were subsequently granted refugees status by UNHCR in New Delhi. The petitioners were asked to be handed over to UNHCR instead of being deported to Iraq. The court in this case reflected intently upon international law principles of refugee protection and India's obligations under various human rights instruments. Finally, on the basis of the principle of *non-refoulement* and humanity, the court ordered in favour of the petitioners not to be deported from India. *Dongh Lian Khanand Ors v. Union of India and Ors*[24], is another case that shows India's golden tradition in respecting comity. In this case, both the petitioners were citizens of Myanmar belonging to the ethnic Chin community. They entered India in 2009 and 2011 respectively along with their families and were issued refugees certificates by UNHCR in New Delhi valid until 2017. On the basis of the refugee certificate issued by UNHCR, the Ministry of Home Affairs (MHA) issued them with long-term visas (LTVs). The petitioners were convicted under the Narcotic Drugs & Psychotropic Substances Act, 1985 by a competent court and served prison terms. After their release from prison, the MHA detained them in a camp and started procedures. The petitioners contended that if they were to be deported to Myanmar, they would face persecution and their lives would be threatened. The MHA contended that given the conviction of the petitioners, they represented a threat to the security of the nation, and that their involvement in drugs also posed a threat to the social fabric, so the decision was taken by the MHA to deport them. The petitioners contended for quashing MHA order on the ground that they are refugees to be protected under Article 21 of the Constitution and also on the basis of principle of *non-refoulement* as customary international law. The court mentioned in its order that the Foreigners Act confers the power to expel foreigners from India and such power is absolute and unlimited and there is no provision in the Constitution of India or other law, putting fetters on this discretion of Government. Since, there is apprehension that deportation of petitioners may result in danger to their lives and also considering the good conduct of petitioners in social life and their family status, the Court ordered MHA in consultation with UNHCR to find option of deportation to a third country.

In *Biyogi v. Union of India*,[25] a refugee from Myanmar was sentenced under the relevant provision of the Act of 1946 for entering India without valid documents. He prayed before the High Court that on completion of his sentence, if he would be deported to his country of origin, his life would be in danger. The Court ordered that the petitioner be released for a period of two months to visit Delhi and make necessary arrangements for political asylum and if he got the refugee status he should be released forthwith.

In yet another case, *U. Myat Kyaw and Nayzin v. State of Manipur and the Superintendent of Jail Manipur Central Jail, Imphal*,[26] the petitioner entered India with travel documents to flee the political disturbance in Myanmar and approached the authorities after arriving in India. A criminal case was registered under Section 14 of the Foreigners Act, 1948 and the petitioner was placed in judicial custody. The petitioner approached the High Court to request the opportunity to seek refugee status from UNHCR in New Delhi. The court allowed the petition and ordered interim bail for 2 months to allow him to seek refuge status from UNHCR. The court further ordered that because the petitioner might not be able to provide local survey, he would be released on personal bond.

Broadly speaking, the Indian judiciary has played vital role in promoting the interests of the refugees. Henceforth, in case of an unreported judgment named, *Dr. Malavika Karlekar v. Union of India and Anr.,* [27] the apex court by staying the deportation of 21 Burmese refugees from Andaman Island to Burma pending their status determination asked

for their status verification. It reflects that those who want to seek the protection in another country cannot be sent back to their country of origin if the status determination of such persons is pending in the present country. The court observed:

> "their claim for refugee status is pending determination and a prima facie case is made out for grant of refugee status. However, the supreme court consistently proceed that the fundamental rights enshrined in Article 21 of the Constitution regarding the right to life and personal liberties applies to all including aliens particularly refugees too."

In addition, the judiciary has come up with the protection of refugee children. At the outset, mention must be made of the case *Digvijay Mote v. Government of India and others*[28] in which a public interest litigation was moved before the High Court of Karnataka. The request was made to direct the Government to provide food for the Sri Lankan refugee children mostly orphaned staying and studying in the residential school. The school is administered from the funds collected from state government of Karnataka and various others organisations. But when the aid was stopped by the government, PIL was filed. Initially rejected, on appeal before the High Court, notices were served to the government and the government immediately decided to continue with the humanitarian assistance.

Juvenile Justice Board has also considered that refugee children committing offence under section 14A (B) of Foreigners Act of entering into Indian Territory without valid documents are Juvenile in conflict with law. They decided to leave their country of origin just to save their life and limb under compulsion. The JJ Board considered that GOLDEN thread of two principles that runs through the Juvenile Justice Act are Principle of presumption of innocence and the best interest of the child. Even after considering the fact that refugee children are admittedly foreign nationals and crossed the borders without valid documents, JJ Board were of the opinion that they are CHILDREN IN NEED OF CARE AND PROTECTION.[29]

Case of *Mohammed Salimullah v. Union of India*[30] wherein Supreme Court refused to grant interim relief of temporary release of Rohingya refugees and allowed their deportation to Myanmar after following the procedure established by law, has raised question on the fate of world's most persecuted religious refugees and brings to the forefront India's International Law obligations as to principle of *non-refoulement*. The Court observed that the principle of *non-refoulement* is applicable to 'Contracting States'; that since India has open/porous borders with many countries, there is continuous threat of influx of illegal immigrants and such influx posed serious national security ramifications.[31] *Nandika Haksar v State of Manipur*[32], the Manipur High court granting seven Myanmarese asylum seekers safe passage to approach UNHCR in Delhi explicitly held that non-refoulement is *prima facie* a part of Art.21 of the Indian Constitution. The court further directed Imphal airport to immediately provide them with temporary identification cards to enable them to travel to New Delhi by air, if such identity proofs are necessary and the State and Central Governments to facilitate their travel to New Delhi without any obstruction.

Recently the Supreme Court of India has adopted different approach towards granting asylum to refugees staying in India by rejecting the plea related to the forcible deportation of 43 Rohingyas. It is not for the first time that such approach has been adopted. The right against non-refoulement is not an absolute right, an exception is attached to the principle that if there is any real likelihood to the threat of the national security and the public order, the refugee can be sent back by the authorities. The same approach was adopted in case of *Ananda Bhavani Geethanando, Ananda Ashram, Pondicherry* v. *Union of India*[33] the court said that if the presence of some constitutes threat to the

national security, then their order of deportation without hearing will be not considered against principle of natural justice. Delhi High Court in *Mohammad Sediq v. Union of India*[34], upheld the deportation of an Afghan refugee ordered by Foreigner's Regional Registration Officer under section 20 of The Passport Act, 1967[35]. The Court upheld the stand taken by the Union of India that it could deport any refugee even if he has the valid authority to stay in India if his activities are found to be prejudicial to the interests of the State.

On 10th May 2025 a petition before the Supreme Court was filed for an urgent hearing alleging that on May 8, 43 Rohingyas refugees were picked by the police in vans and buses from various locations including Utham Nagar, Shaheen Bagh, and Vikaspuri around 8 pm. According to the petition, the cops kept the refugees in custody for 24 hours without filing any charges. Thereafter they were transferred to the Inderlok Detention Centre. "Authorities claimed (sic.) that biometric facilities were only available at that location and that the refugees would be released following the procedure." Instead, they were including women, children, elderly, individuals with serious health conditions such as cancer were transported with their hands tied and blindfolded to airports and flown to Port Blair in Andaman Nicobar. Pointing that the "Country is passing through a difficult time and you come out with fanciful ideas called the petition a "beautifully crafted story" that lacked material evidence, the court dismissed the petition. The court then referred to its order and remarked that the identity cards issued by the UNHCR may not be of any help to them under the law. "If they are all foreigners and if they are covered by the Foreigners' Act, then they will have to be dealt with as per the Foreigners' Act," it said.[36]

Once again, on 19 May, a plea seeking refuge by Sri Lankan individual is also rejected by the Supreme Court.[37] Refusing to interfere with Madras High Court order directing deportation of Sri Lankan individual after he completed his seven-year sentence under the Unlawful Activities (Prevention) Act, 1967 for being a member of the banned Liberation Tigers of Tamil Eelam (LTTE), the Supreme Court said India is not a "Dharamshala" for housing refugees. A bench headed by Justice Dipankar Datta and Justice K Vinod Chandran made oral observation and said, "We are struggling with population of 1.4 billion. This is not a Dharamshala that we can entertain foreign nationals from all over. If Subaskaran's life is at risk in Sri Lanka, he may seek refugee status in some other country."[38]

Conclusion

These current observations by the Apex Court shows the makeshift of India's stance on the non-refoulement principle of international law that may become a serious concern for the future and existing refugees in India. In absence of any law, the Indian State (administration/judiciary) has been very flexible in its treatment to refugee communities. With regard to entry into India, the Government of India has followed a fairly liberal policy of granting refuge to various groups of refugees though some groups have been recognized while others have not been, often keeping in view the security concerns of the nation. However, the past refugee experiences bear testimony to the fact that entry into India for most refugee groups is in keeping with international principles of protection and *non-refoulement* by embedding it with extensive interpretation of Article 21 of the Constitution by the judiciary. Although judiciary has extensively and exhaustively promoted and safeguarded the rights of refugees but in reality, it cannot alone address the issue unless national legal framework defining refugees and their rights and suggesting durable solutions is emplaced that are not provided either under Constitution of India or Foreigners legislations. Thus, the refugee issue in India requires rights-based approach rather charity-based approach and that can only be achieved by adopting National legislation.

Endnotes

1 Universal Declaration of Human Rights, 1948 Article 14.

2 UNGA Resolution 2132 (XXII), 14 December, 1967.

3 The Declaration on Territorial Asylum, 1967, Article 2.

4 Caracas Convention on Territorial Asylum, 1954, Articles 1-4.

5 Caracas Convention on Diplomatic Asylum, 1954, Article II.

6 S.R. Chauhan, N.S. Chauhan, International Dimension of the Human Rights, p. 800 (2006).

7 Convention Relating to the Status of Refugees, 1951 Article 31 - Refugees unlawfully in the country of refuge 1. The Contracting States 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 in the sense of article 1, 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. 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

8 Convention Relating to the Status of Refugees, 1951 Article 32 … the expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specifically designated by the competent authority.

9 Convention Relating to the Status of Refugees, 1951 Article 33 (1)… (2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

10 CAT, 1984, Article 3.

11 The Constitution of India, Article 51 (c).

12 Ian Brownlie, *Principles of Public International Law*, p. 43 Oxford University Press (1990).

13 *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey* AIR, SC 667 (1984).

14 Constitution of India, List I Entry 14 confers on the Parliament exclusive power to make laws with respect to entering into treaties and agreements with foreign countries and implementing treaties, agreements and conventions with foreign countries; Entry 17 speaks about citizenship, naturalisation and aliens; Entry 18 speaks about extradition; Entry 18 speaks about admission into and emigration and expulsion from India; passport and visas.

15 *Maneka Gandhi v. Union of India*, AIR, SC 597 (1978).

16 *State of Arunachal Pradesh v. Khudiram Chakma*, 3 SCC 615 (1993).

17 *Louis De Raedt v. Union of India*, 3 SCC 554 (1991).

18 *Hans Muller of Nuremberg v. Superintendent, Presidency Jail*, Calcutta, AIR, SC 367, (1955).

19 *National Human Rights Commission v. State of Arunachal Pradesh and Another*, 1SCC 742, (1996).

20 *Ibid*, Para 20.

21 *Namgyal Dolkar v. Ministry of External Affairs*, Delhi High Court 2010.

22 Citizenship Act 1955 as amended by Citizenship (Amendment) Act, 1986.

23 *Ktaer Abbas Habib Al Qutaifi and Anr V. Union of India and Ors*, High Court of Gujarat, 1999 CRI.L.J.919.

24 *Dongh Lian Khanand Ors v. Union of India and Ors*, High Court of Delhi, WP(CRL) No.1884/2015, 21 December 2015.

25 *Biyogi v. Union of India*, Guwahati High Court, Civil Rule No. 1847 (1989).

26 *U. Myat Kyaw v. State of Manipur*, High Court, Civil Rule No. 516 (1991).

27 *Dr. Malavika Karlekar v. Union of India*, Writ Petition (Criminal No) 583 of 1992.

28 *Digvijay Mote v. Government of India and others*, Karnataka High Court, W.A.No. 354/1994.

29 *Minara Begum and others*, Juvenile Justice Board, Calcutta, 19.11.2014; Samsur Alam and Others, Juvenile Justice Board, North 24 Parganas, West Bengal.

30 *Mohammed Salimullah v. Union of India*, Writ Petition (Civil) No. 793, (2017).

31 *Id*. Para 10.

32 *Nandika Haksar v State of Manipur* W.P.(Crl.) NO. 6 OF 2021.

33 *Ananda Bhavani Geethanando, Ananda Ashram, Pondicherry* v. *Union of India* 1991 LW (Crl) 393.

34 *Mohammad Sediq v. Union of India,* Delhi Reported Journal, p. 74, vol. 47(1998).

35 The Passports Act, 1967, Section 20 Issue of passports and travel documents to persons who are not citizens of India: Notwithstanding anything contained in the foregoing provisions relating to issue of a passport or travel document, the Central Government may issue, or cause to be issued, a passport or travel document to a person who is not a citizen of India if Government of India is of the opinion that it is necessary so to do in the public interest.

36 www.ndtv.com "Fanciful Ideas": Top Court On Plea Claiming Rohingyas Dropped In Andaman Sea.

37 Petition for Special Leave to Appeal (Crl.) No. 7898/2025 dated 19-05-2025.

38 www.indiatoday.in 19-05-2025

About the Author

Dr. Kanika Sharma, Assistant Professor, Head - Centre for Advanced Studies in International Humanitarian Law and Military Law at the Indian Society of International Law, New Delhi; did her Ph D in International Refugee Law and LL M from University of Jammu, Jammu & Kashmir. She has delivered lectures in the field of humanitarian and refugee law at national and international universities. She has published various papers in Journals of repute and also presented papers in National and International Conferences. She is a course coordinator of PG Diploma Course in International Law and Diplomacy and PG Diploma Course in Human Rights, International Humanitarian and Refugee Law conducted by the Indian Academy of International Law and Diplomacy, the teaching wing of the Indian Society of International Law.

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