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Law College, Mysuru, Karnataka,  
Email Id: [boregowdasb@vvlc.ac.in](mailto:boregowdasb@vvlc.ac.in).***



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### **ABSTRACT:**

Human rights are basic rights for every individual in the world, because without human rights it's very difficult to live or survive in the universe. Because we are valuable human beings in the world. *December 24<sup>th</sup> 1945* is the historical day in the history of every human being in the world. Because on that day our international leaders established one of the strongest international institutions in the world, it's popularly known as United Nation. In modern era United Nation plays a vital role to protect the basic rights of Individuals. One of the main objects of UNO is to maintain peace and security throughout the world. The preamble of Charter of UNO started in the name, we the people of United Nation, its shows that in modern era its try to put lot of effort to protect the rights of UNO. On December 10<sup>th</sup>, 1948 United Nation declared the basic rights for the entire individual through by *UDHR (Universal Declaration of Human Rights)*.

Human rights form the base of human existence thus, are of great importance. After a long period of struggle, they are at this point well-established under the Universal Declaration of Human Rights and the multiple human rights conventions. These documents provide civil, political, economic, social, and cultural rights to every individual either a refugee, migrant, or full-fledged citizen. Universal Declaration of Human Rights applies to every living being from the day of his birth to death. The people among the territory of various nations especially the refugees and migrants are protected under these articles and various other Conventions. This article discusses about rights, law and problems of refugees and Migrants and also discuss about rights and obligations of States regarding detentions etc.

The concept of human rights is not new. Many states and communities have been established on the basis that individual members have certain inherent rights which must be represented by those governing. This idea may be on religious, political, moral or social grounds, and it is a mistake to assume that it owes its origin to any one particular doctrine or theory of government, rather, human rights are best understood as a common and unifying expression

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of all people’s deepest aspirations to live freely and securely in a just and peaceful world and as a natural response to the violence, repression, acute poverty and insecurity that plague the world we live in. The idea of these rights should become part of international law and should be protected at an international level is relatively recent, taking shape with the establishment of the United Nation itself. The UN Charter proclaims in its preamble that *“promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”* is a primary purpose of the United Nations, and member States of the UN pledge themselves to take action in cooperation with the UN to achieve this purpose.

International Refugee Law, International Human Rights Law and International Humanitarian Law are considered complementary bodies of law, which possess a common objective: the protection of lives, freedoms and dignity of human beings. International Refugee Law, in turn, arose during the 20<sup>th</sup> century and aims to develop and implement mechanisms for the protection of forcibly displaced persons owing to well-founded fear of persecution. *According to the Article 1(A) (2) of the 1951 Convention*, the term refugee shall apply to any person who as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it.

There is a common misconception prevailing in the Indian legal circles to the effect that international conventions are not enforceable in Indian Courts unless a statute is enacted. This misconception is based on the American and English position without taking into consideration the specificities of the Indian Constitution. The desert discussion on this issue

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is found in the case, *Maganbhai Ishwarlal Patel vs. Union of India*<sup>1</sup>, making of law is necessary when treaty or agreement operates to restrict the rights of citizens or others or modifies the laws of the state. If the rights of the citizens or others which are justiciable are not affecting, no legislative measure is needed to give effect to the agreement or treaty.

India claims to abide by the Universal Declaration of Human Rights, 1948 Article 14(1) of which states: “*everyone has the right to seek and to enjoy in other countries asylum persecution*”. In *Khudiram Chakma vs. State of Arunachal Pradesh*, the Supreme Court approvingly referred to the UDHR in the context of refugee. Article 14 of the Universal Declaration of Human Rights, 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 as asylum seeker has to 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.

There is a conceptual parallel between international refugee law and international humanitarian law. Both originated in the need to address the protection of persons in the hands of a State of which they are not nationals. By contrast, international human rights law was developed to protect persons against abuses by their own State. International humanitarian law and human rights law have grown closer over the years. International humanitarian law has extended its reach into non-international armed conflicts, and human rights law has been recognized as applying to all individuals within the territory or jurisdiction of a State, even if only temporarily, including during times of armed conflict (*though some restrictions can be applied to non-nationals and also during times of armed Conflict or similar emergency*). Similar developments are beginning to happen in relation to refugee law, but a radical rethinking is needed. The provisions enumerated under the

<sup>1</sup> Maganbhai Ishwarlal Patel vs. Union of India, AIR 1969 SC 783.

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Universal Declaration of Human Rights apply to every living being from the day of his birth to death. The people among the territory of various nations especially the refugees and migrants are protected under these articles and various other Conventions.

***Some of the important rights available to the Refugees and Migrants are:***

- i. Right to freedom from torture or inhumane treatment*
- ii. Right to freedom of opinion and expression*
- iii. Right to freedom of thought, conscience and religion*
- iv. Freedom from discrimination*
- v. Right to asylum*
- vi. Right to family*
- vii. Non-Refoulement<sup>2</sup>*

***Right To Freedom From Torture Or Inhumane Treatment:***

Article 5 of the Universal Declaration of Human Rights, 1948 provides that ‘*No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.*’ This denotes that to achieve the purposes of the Convention, the refugees and migrants must be protected from inhumane treatment. Inhuman treatment or punishment is treatment which causes intense physical or mental suffering. It includes: *serious physical assault. Psychological interrogation, Cruel or barbaric detention conditions or restraints.*

***Right To Freedom Of Opinion And Expression:***

Article-2 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression and no distinction be made based on race, colour, sex, national or social region, birth, place. It is pertinent to note that this right disallows any form of discrimination based on the political, jurisdictional, or international status of the country or territory to which a person belongs. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

<sup>2</sup> Dr. S.k. Kapoor, International law and Human Rights, 390-392 (central law agency, Allahabad, 7<sup>th</sup> edn, 2015).

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### **Freedom From Discrimination:**

Article 7 of the Universal Declaration of Human Rights states that ‘*All are equal before the law and are entitled without any discrimination to equal protection of the law.*’ This means that everyone is equal in the eyes of law and all persons should not be treated without any discrimination. Here, the discrimination in the case of refugees and migrants does not include those opportunities which are available only to the citizens but discrimination in matters of basic necessities like food, safety, right against exploitation, and shelter.

### **Right To Asylum:**

Article 14 of the Universal Declaration of Human Rights states that every person has the right to seek and to enjoy in other countries asylum from persecution. It is further stated that this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes. Asylum, in international law, the protection granted by a state to a foreign citizen against his own state. The person for whom asylum is established has no legal right to demand it, and the sheltering state has no obligation to grant it. *Article 1(A)(2) of the 1951 Convention* defines a refugee as an individual who is outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group. Applying this definition, internally displaced persons (IDPs) including individuals fleeing natural disasters and generalized violence, stateless individuals not outside their country of habitual residence or not facing persecution, and individuals who have crossed an international border fleeing generalized violence are not considered refugees under either the *1951 Convention or the 1967 Optional Protocol*<sup>3</sup>.

### **Right To Family:**

Article 16 of the Universal Declaration of Human Rights states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. It is further provided that every person has the right to marry and start a family. Article

<sup>3</sup> Dr. H.O. Agarwal, *International Law and Human Rights*, 857-859, (central law publications, Hyderabad, 21<sup>st</sup> edn, 2016).



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23 provides that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation.

### **Non-Refoulement:**

*Article 33(1) of the Convention relating to Status of Refugees 1951*, non-Refoulement refers to the obligation of States, not to refoule, or return, a refugee to the territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This principle is universally acknowledged as a human right. It is expressly stated in human rights treaties such as *Article 22(8) of the American Convention on Human Rights, 1969 and Article 3 of the Convention against Torture, 1987*.

### **Rights And Obligations Of Countries Regarding Detentions:**

The refugees and migrants have certain rights under International Law. It is the duty of every state to protect and enforce these rights. The State has an obligation to oversee whether the rights provided to all the people within their territory and under their jurisdiction are being exercised or are just for the namesake. Some specific rights are also offered to both migrants and refugees during the detention and are mentioned by the International Organisation for Migration (IOM). This preventive detention act is a necessary tool in the hands of the executive which authorizes them to arrest any person from whom reasonable suspicious

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arises that he can commit any cognizable offense or his activities are prejudicial to law and order to state and the police can arrest that person without warrant<sup>4</sup>.

**According to the International Migration Law Unit, the obligations of the states are discussed below:**

### **Right To Be Informed Upon Entry In The Territory And While In Detention:**

The asylum seekers or immigrants must be informed, in the language he/she understands, the reason behind the refusal to enter the border or for their removal from the territory. The state authorities are under the obligation to disclose the grounds of detention.

### **Right To Communicate With The Outside World:**

The persons detained should be given access to communicate with the outside world through electronic mail, fax, and telephone. It is the obligation of the state to provide the lawyer or any representative and relatives both in the country of destination and country of origin.

### **Obligation To Establish A Maximum Period Of Detention In National Legislation:**

The maximum period of detention must be established by the law to avoid any kind of harassment and exploitation. After the expiry of the detention period, the detained person must be released automatically and the State must provide for periodic reviews of detention.

### **Right To Humane Detention Conditions And Obligation To Respect The Inherent Dignity Of Every Human Person:**

As stated by Article 10 of the International Covenant on Civil and Political Rights, 1976, all persons must be treated with respect and the dignity of the individual must be valued. It is the obligation of the State, not to treat a person inhumanly and to take positive measures. In case, the State fails to take any such measure then, the State will be held responsible for the violation of Article 7 of the International Covenant on Civil and Political Rights which prohibits torture and cruel, inhumane, and degrading treatments.

<sup>4</sup> S.P.Gogia, Law Relating to Human Rights, 205, (Asia Law House, Hyderabad, 10<sup>th</sup> edn, 200).

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## **CONSTITUTIONAL PROVISIONS IN INDIA:**

Refugees are considered under the term ‘alien’ in India. The term appears in *Constitution of India (Article 22), Section 83 of the Indian Civil Procedure Code, Section 3(2) (b) of the Indian Citizenship Act, 1955*, as well as some other statutes. Constitutions of India are applicable to the refugees when they are in India. The most important Article is Article 21 which deals with Right to Life and personal liberty; it applies to everyone irrespective of whether they are a citizen of India. Many judgements have been given based on Article 21 on refugees. Article 14 guarantees the person right to equality before the law. *Article 5, 6, 7, 8, 9, 10, 11, 12, 20, 22, 25-28, 32, 226*, also available for non-citizens of India including Refugees<sup>5</sup>.

### **Treatment given to the Asylum people were divided into three heads<sup>6</sup>:**

- *National Treatment*
- *Treatment that is accorded to foreigners*
- *Special Treatment*

### **National Treatment:**

The national treatment to the asylum people is same as the citizens of India. There are certain Articles in the Constitution of India, which takes care of the Fundamental Rights of all people in India. The rights such as equal protection to law under article 14, religious freedom under article 25, the right to life and personal liberty under article 21, right to social security and educational rights are guaranteed in Part III of the Indian Constitution.

### **Treatment That Is Accorded To Foreigners:**

Under this head, there are rights which are related to the housing problems, movements, etc. the rights which are provided under this treatment are: right to employment or profession under article 17, freedom of residence and movement under article 26, right to housing under article 21, right to form association under article 15 and right to property under article 13 of the 1951 Refugee Convention.

<sup>5</sup> V.R. Krishnaswamy Iyer, *Human Rights in India*, 39, (Eastern Law House, New Delhi, 1<sup>st</sup> ed, 1999).

<sup>6</sup> Dr. H.O. Agarwal, *International Law and Human Rights*, 796-797, (central law publications, Hyderabad, 21<sup>st</sup> edn, 2016).

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### **Special Treatment:**

This treatment includes the identity and travel document under article 28, exemption from penalties under article 3(1) of the 1951 Refugee Convention.

### **CONCLUSION:**

In the whole world, though there are a number of conventions and laws governing refugees, the refugees still keep facing problems. At present several states doesn't have a Refugee Law, we can understand that many countries have the same face and are on the same boat. If UNHCR and state human rights commission work together, there will be much more development in the field of Refugee Law. There is definitely a need for sates in the world to set up a Law regarding Refugees, as in the future there may be many more issues due to various reasons. Whenever UNHCR tries to do something regarding refugees NGOs should actively help them.

Though protection to refugees is given under various articles of the different convention and the state laws, there needs to be a uniform Law that give equal rights to all the refugees and migrants. Throughout the universe and over the eras, civilizations have received scared, weary outsiders, the fatalities of persecution and violence. This humanitarian practice of offering preserve is often now played out on small screen across the sphere as combat and large-scale torture produce masses of refugees and internally displaced persons.

Yet even as people continue to flee from threats to their lives and freedom, governments are, for many reasons, finding it increasingly difficult to reconcile their humanitarian impulses and obligations with their domestic needs and political realities. At the start of the 21st century, protecting refugees means maintaining solidarity with the world's most threatened, while finding answers to the challenges confronting the international system that was created to do just that. Caring immigrants is mainly the accountability of States. Throughout its 72-year history, *the United Nations High Commissioner for Refugees (UNHCR)* has

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functioned carefully with governments as associates in refugee safety. In every area of the world, governments have liberally approved asylum to refugees and allowable them to continue until situations were favourable for the refugees to reappearance to their homes in safety and with self-respect.

