

AN ANALYSIS OF NON-REFOULEMENT IN INDIAN LEGAL FRAMEWORK

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1. Introduction

According to Goodwin-Gill 'refouler', means 'to drive back or to repel, as of an enemy who fails to breach ones' defences'.¹ Principle of non-refoulement is the very foundation of the international refugee and human rights law. Basically, the term 'refugee' is a synonym of the various conflicting situations. These discordant experiences of life expose them to social, economic, mental, emotional dangers, and psychological trauma. This paved the way for enactment of principle of non-refoulement in the jurisprudence of international law. According to this principle, states are under obligation to not to send back the refugees to their country of origin when the circumstances of grave violations of human rights exist there. So, for the purpose of providing the protection and shelter to the refugees, this principle has been enacted. The underlying idea of this principle is concomitant with the customary international law and other conventions related to refugees and human rights protection.

Being the non-signatory of the Convention on the status of refugees, 1951, India has always come forward to safeguard the rights of the refugees, e.g., the Tamil Nadu rehabilitated Burma refugees and provided them land grants till March 2001.² Gradually, this practice was transformed into the principle of non-refoulement. However, sometimes, the situation demonstrated otherwise also. Also, there is no legislation in India to deal with it. However, for ensuring its vital role and customary character, judiciary has actively asserted its positive role although some problem related to its implementation still exists in the absence of the uniform legislation.

Hence, the article attempts to analyze this principle in Indian context on which the less literature is available. India has agreed to implement this principle despite being the non-member of the Refugee Convention, 1951, hence the research work strives to look into the implementation part of the principle of non-refoulement in India. The article will present how the Indian judiciary has tried to fill the aperture which is left open by the legislature.

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¹ GS Goodwin-Gill, *The Refugee in International Law* 117 (Clarendon Press, Oxford, 2nd edn., 1996).

² Ranabir Samaddar, *Refugees and the states: Practices of Asylum and Care in India* 192 (Sage Publications, New Delhi/Thousand Oaks/London, 1995).

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Accordingly, the hypothesis would be 'The crucial role of non-refoulement has been internalized by the judiciary in India not only in words but in actions also.' Henceforth, for the purpose of this article, authors have tried to carve out the following research questions:

- (i) What is meant by the customary nature of the non-refoulement?
- (ii) What are the developments in the international jurisprudence governing non-refoulement?
- (iii) How the principle of non-refoulement has evolved in the Indian legal framework?

2. Non-Refoulement as a Customary International Law

The principle of non-refoulement did not exist before the year 1930.³ It's after that period, the principle has gained the prominence. The humanitarian basis for need of protection to the refugees has gained eminence.⁴

The problem of refugee protection is not new on the door-step of the world. Henceforth, for the protection of the refugees who suffers from the crisis of human rights, the principle of non-refoulement is adopted by the international community in consensus. It is often considered as the essential component of the international refugee law which has ushered the track of its development and consequently, it is considered as a fundamental principle backed by the state practices.

Article 38(1)(b) of the Rome Statute says "*international custom, as evidence of a general practice accepted as law*", are the sources of law while deciding any issue or referring something.⁵

Consistent State practice and *opinio juris*, are the minimal requirements for any law or rule in order to bring themselves under the arena of the international customary law. It has to be shown that the practice has been uniformly adopted by the nations from a substantial period of time.

The principle of non-refoulement has found its existence in the international jurisprudence even before the 1951 Convention. This can be elucidated as follows:

³ Robert L. Newmark, "Non-Refoulement run afoul: The Questionable Legality of Extraterritorial Repatriation Programs", 71 *Wash U.L.Q.* 833 (1993).

⁴ James C. Hathaway, *The Law of Refugee Status* 24-27 (Butterworths, Toronto, 1991).

⁵ Article 38(1) of the Statute of the International Court of Justice, 59 Stat. 1031, 1060 (1945).

In case of *Nicaragua v. United States of America*,⁶ position of customary international law has represented in the following manner: "In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule. If a State acts in a way *prima facie* incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule."

In the *North Sea Continental Shelf Cases*⁷, International Court of Justice took the view to follow the customary norms of international law by stating:

"For speaking generally, it is a characteristic of purely conventional rules and obligations that, in regard to them, some faculty of making unilateral reservations may, within certain limits, be admitted; whereas this cannot be so in the case of general or customary law rules and obligations which, by their very nature, must have equal force for all members of the international community, and cannot therefore be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour."

In this context, UNHCR adopted the activist approach in safeguarding the rights of the refugees and it also laid down the emphasis on the fundamental character of the principle of non-refoulement. It was said that the "prohibition to return" forms the part of the customary international law which has been specifically adopted by the Article 33 of the 1951 Convention and other human rights conventions. Hence, it is said that UNHCR agrees to the point that the principle of non-refoulement has been developed into the customary international law due to its normative character.⁸

Also, Goodwin-Gill brought attention of the community towards the principle of non-refoulement and its character which made it obligatory the international community to not to expel the refugees where they may face the fear of persecution.⁹

⁶ 1986 I.C.J. 14 at para 186.

⁷ I.C.J. Reports 1969 at 3, para 63.

⁸ UNHCR, The Principle of Non-Refoulement as a Norm of Customary International Law, Response to the Questions posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, available at: <http://www.refworld.org/docid/437b6db64.html> (last Updated on December 27, 2016).

⁹ *Supra* note 1 at 167–171.

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Due to the normative character of the principle, it has been adopted by the various treaties to which the member states are bound to follow it on the ground of threat to the security of the refugees. Hence, it clearly demarcates the idea that no person shall be expelled, rejected or returned to his country of origin involuntary in order to retain the life, liberty, dignity and integrity of the refugees.

3. International Instruments Governing Non-Refoulement

Before going into the depth of the legal framework of India, we need to be very clear about the international jurisprudence of the principle of non-refoulement. The evolution of this principle is the pre requisite for understanding and comprehending the legal practice follow by the India.

The principle of non-refoulement has formally incorporated during the World War II. **Article 33 of the 1951 Convention**¹⁰:

“(1) No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of 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.”

“(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 judgment of a particularly serious crime, constitutes a danger to the community of that country.”

The intent behind this article is to provide the international protection to the refugees in the host country. The rudimentary nature of the article shows that the refugee cannot be forced to return to his country of nationality or ordinary residence where he has fear of persecution on the grounds of race, religion, nationality, membership of a particular group or political opinion. Further, it is mentioned that on the grounds of security of the country and who has committed any serious crime, then state in a good faith can refuse to provide stay to the refugees.

African Union, examining the aspect of non-refoulement in its Convention of 1969 provides: *“No person shall be subjected by a Member State to measures such as rejection*

¹⁰The 1951 Convention relating to the Status of Refugees, (22 April, 1954) [hereinafter 1951 Convention], available at: <http://www.ohchr.org/Documents/ProfessionalInterest/refugees.pdf> (last visited on July 17, 2016).

at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened.”¹¹

This convention also prohibits forceful expulsion of any person by a state who has signed this convention, although no exception is provided to them. It means under no circumstances, they can be return back.

However, there are other international instruments also which deals with the aspect of non-refoulement. For example: Article 7 of the International Covenant on Civil and Political Rights reads as: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”*.¹²

Further, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment says that a person should not return to a place where he would be subjected to the acts of the torture.¹³

Moreover, Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance also prohibits the expulsion of a person by the state party where he would be subjected to enforced disappearance.¹⁴

Precisely, Principle 5 of the UN Principles on the Effective Prevention and Investigation of Extra Legal Arbitrary and Summary Executions says that no one can be ostracized against his/her will to any other place where that person may suffer the repercussions of extra-legal, arbitrary or summary execution.¹⁵

These provisions are embedded in the Indian jurisprudence for securing the rights of the persons. Enunciating the practical parlance, the Hon’ble Supreme Court in cases of *Nilabati Behera v. State of Orissa*¹⁶ and *Vishakha v. State of Rajasthan*¹⁷ tried

¹¹AU Convention Governing Specific Aspects of Refugee Problems in Africa (20 June, 1974), *available at*: http://www.achpr.org/files/instruments/refugee-convention/achpr_instr_conv_refug_eng.pdf (last visited on July 17, 2016).

¹²1966 International Covenant on Civil and Political Rights, (23 March 1976), *available at*: <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (last visited on July 17, 2016).

¹³ The 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (26 June 1987), *available at*: <http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf> (last visited on July 17, 2016).

¹⁴ UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance (20 December 2006), *available at*: <http://www.refworld.org/docid/47fdfaeb0.html> (last visited on July 20 2016).

¹⁵ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (24May, 1989), *available at*: <http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf> (last visited on July 20, 2016).

¹⁶ 1993 (2) SCC 746.

¹⁷ AIR 1997 SC 3011.

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to convey the idea that the international conventions can be used to supplement the domestic law if the former is not inconsistent with the latter. International conventions could be used to amplify the rights provided under the Indian Constitution.

This position has been clearly identified by the courts in various cases. In the case of *People's Union for Civil Liberties v. Union of India*,¹⁸ court adopted the liberalized rules by stating that the peremptory norms which have already adopted by the various states can be inculcated in the Indian municipal law if they are in conformity with the latter law.¹⁹

Again, in case of *Gramophone Company of India Limited v. Birendra Pandey*,²⁰ it was observed by the court that international instruments must be respected provided they are not against the spirit of legislative enactments of the state.²¹

It becomes well-settled position in India that there is no need to enact the separate domestic laws for creating international obligation if the both operate without any conflict. It follows from the notion that the states have obligation to follow the international conventions and the rules of international customary law in conformity with their domestic laws.

4. Indian Legal Framework and Non-Refoulement

Indian legal framework does not explicitly recognize the concept of non-refoulement. However, the constitutional regime of India contains some provisions for the benefit of all persons, irrespective of their citizenship. Hence, it is said to be applicable on refugees too. The domain of the Indian Constitution has drawn in such a way so as to protect the rights of the persons who are not naturally born in the soil of India.

India is a signatory of the Convention against Torture and International Covenant on Civil and Political Rights. Also India is a signatory of the Bangkok principles. Article III of the Bangkok Principles states that "*the person cannot be expelled if there is a possibility that he might be exposed to some danger on account of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion.*"²²

¹⁸ 1991 (1) SCC 301.

¹⁹ This has also been affirmed in case of *Apparel Export Promotion Council vs. A.K. Chopra*, 1999 (1) SCC 756.

²⁰ AIR 1984 SC 677.

²¹ The same premise has been dictated in the case of *West Rand Central Gold Mining Company vs. The King*, 1905 (2) KB 391.

²² "Final Text Of The Aalco's 1966 Bangkok Principles On Status And Treatment Of Refugees" As Adopted On 24 June 2001 At The Aalco's 40th Session, New Delhi, available at: <http://www.aalco.int/Final%20text%20of%20Bangkok%20Principles.pdf> (last visited on July 24, 2016).

Presently, there are two acts which deal with the refugees i.e, the Foreigners Act, 1946 and the Citizenship Act, 1955. Foreigners Act, 1946 is said to be applicable on all the persons who are not the Indians but it does not contain non-refoulement.

Enunciating the example of the Indian judiciary, which is often regarded as the 'protector of the rights of people', various judgments have been pronounced by the High Courts and the Supreme Court to enforce the liberty of the refugees. By virtue of Article 14 and Article 21 of the Constitution of India, 1950²³, which applies to citizens and non-citizens, courts have tried to liberalise the rights of equality and right to life and personal liberty, respectively. As in case of *Ktaer Abbas Habib Al Qutaifi v. Union of India & Ors.*,²⁴ non-refoulement was recognized under Article 21 by the Gujarat High Court.

Apart from above-mentioned articles, Article 22 of the Indian Constitution also applies to refugees, meaning thereby the refugees also possess the right of protection against arbitrary arrest. Moreover, they also can practice their religion as per Article 25 of the Constitution.

Another facet, from, where the India assumes its responsibility is being the member of the United Nations. UNHCR, lays down emphasis upon the international protection of refugees on grounds of human rights and the humanitarian law. India, although is a non-signatory of the 1951 Convention, still it inferences its responsibility under Article 51 of the Constitution. Under Article 51 (c) of the Indian Constitution which talks about "Promotion of international peace and security", it says that 'the State shall aim to strengthen the international law and the treaties.' Thence, the principle of non-refoulement which is the customary international principle is to be followed by the India due to its prominence in the international jurisprudence.

It is specifically indicated in the constitution that by virtue of the Article 253, Parliament may enact the law for the purpose of incorporating the international treaties, agreements or conventions into the municipal law. This power has to be exercised with the Entry 14 of the List I²⁵ which enunciates the legislative competence of the Union Legislature with regard to execution of treaties, agreements and conventions with foreign countries.

²³ Louis De Raeds v. Union of India, (1991 (3) SCC 554.

²⁴ 1999 Cri.L.J. 919.

²⁵ Entry 14, List I (Union List) states: "Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."

5. Judicial Inventions: Developing the Legal Trends of Non-Refoulement

Setting the boundaries for dispensing the better administration of the refugee protection and to bestow the dignified life and justice to the people of the nation, judiciary has always been the partisan for enforcing the 'basic rights' in the country. The relationship between the human rights and expanding horizons of the law has gained the holistic perspective in the sphere of the refugee protection through judicial engineering.

In the case of *Ktaer Abbas Habib Al Qutaifi v. Union of India & Ors.*,²⁶ two refugees who were basically from Iraq revoked the principle of non-refoulement. The factual matrix suggests that the applicants persecuted from Iraq and they were forced to leave their country of origin if they do not join military operations there. The Gujarat High Court elaborately dealt with the Indian constitutional provisions along with international instruments to emphasize on their right of non-refoulement. The High Court relied on the Article 33 of the Convention on Status of Refugees, 1951, Article 3 of the Universal Declaration of the Human Rights and Article 3 on the Convention against Torture to bring out the notion that forceful return, expulsion and torture to persons are clearly prohibited in the international jurisprudence. While delivering the judgment, the court emphasized on the protection and dignified life of the refugees relying upon the Indian Constitution. Since, these refugees did not pose the treat to the security of the India and they had the proof of the fear of persecution, the court established the principle of non-refoulement.

This concept has put into practical application in various cases by the Indian judiciary. Further, in case of *Khudiram Chakma v. State of Arunachal Pradesh*,²⁷ the Hon'ble apex court emphasized upon the Article 14 of the UDHR, 1948. The court said that the every person who is seeking asylum in a state cannot be sent back to the state from where he has came if there is the risk of persecution is embedded.

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. Malvika Karlekar v. Union of India*,²⁸ the apex court by belaying the refoulement of the Andaman Island Burmese refugees asked for their status verification.²⁹ It reflects that

²⁶ 1999 Cri.L.J. 919.

²⁷ 1994 Supp (1) SCC 615.

²⁸ Criminal Writ Petition No. 583 of 1992 dated 25.09.1992.

²⁹ *Zonthansangpuii v. State of Manipur* (Civil Rule No. 1981 of 1989 and No. 515 of 1990): In this case, the High Court of Guwahati contemplated the commiserative approach for the protection of rights of refugees.

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.³⁰ The same proposition was held by the Madras High Court in the case of *P. Nedumaran v. Union of India*,³¹ where the court asked the Srilankan refugees to stay in India till their status determination by the UNHCR.

In *NHRC v. State of Arunachal Pradesh*,³² the apex court again emphasized on protection of rights of the refugees in India to preserve the constitutional culture. The court held that the rule of law is the predominant segment in the Indian context. The constitutional sway in a country like India reflects the right to equality and thus, ensures right to dignified life to citizens as well as non-citizens. The court in this case directed not to refole the chakma refugees who were the nationals of the Bangladesh on the basis of principle of *non-refoulement*. Reestablishing the position of non-refoulement, the Bombay High Court in case of *Syed Ata Mohammadi v. Union of India*,³³ pointed out that the Iranian refugees cannot be ostracized to the Iran where they have fear of persecution.

These cases clearly illustrate that due to democratic budding of the refugees' human rights, dynamic approach has been adopted by the Indian judiciary in declaring the 'non-refoulement' under Article 21 of the Indian Constitution taking into consideration the international instruments.

6. Exceptions to Non-Refoulement

Talking about the limitations of the principle of non-refoulement, the 1951 Convention on Refugee Status provides two grounds-

- (i) National Security,
- (ii) Public Order.

Hence, if there is any likelihood of the threat to national security of the nation or the disturbance of the public order, the refugees can be deported to their country of the origin. The state has to perform its primary duty towards the nation and its citizens through maintenance of law and the order.

³⁰ It has been agreed upon by the UNHCR's ExCom Conclusion No. 8.

³¹ 1993 (2) ALT 291.

³² 1996 SCC (1) 742.

³³ Criminal writ petition no.7504/1994 at the Bombay High Court.

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In case of *the Maiwand's Trust of Afghan Human Freedom Petitioners v. State of Punjab and others*,³⁴ the apex court stayed the expulsion of the Andaman Island and the Burmese refugees from India as there were no reasonable apprehensions against the security of the India.

Another associated aspect of non-refoulement is that there should not be violation of principle of natural justice. Meaning thereby, they should not be deported on the basis of subjective criteria. Talking about the same alignment, the Indian government has always put forward the best interests of the refugees. Mere inundation of the refugees in the country does not give right to any authority to send back them if they have fear in the country of origin or of habitual residence. However, one should always consider the both sides of the fence, meaning thereby refugees can be allowed to send back if there is any real likelihood to threat of the national security and the public order. In case of *Ananda Bhavani (a) Geethanando, Ananda Ashram, Pondicherry v. Union of India*,³⁵ the court said that if the presence of some constitutes threat to the national security then their deportation order without hearing will not be considered the violation of principle of natural justice.

7. Critical Analysis

There exist a number of affairs which asks for the rectification of the legal framework and implementation in India.

- (i) As we have seen that the Indian Constitution does not recognize the principle of non-refoulement specifically rather it is through the judicial innovations, the principle is being practiced in India. Although, it has been recognized under article 21 but in the absence of specific and uniform law governing the principle, the India is not bound to follow it. Moreover, the non-state actors are not bound by article 21. We have been witnessed that the Chakma refugees faced harassment by the people of the Arunachal Pradesh and were forced to leave the state, now in this case, these persons cannot be held responsible under article 21 of the constitution. Here lies the prospective quandary for refugees. Hence, law should be developed to the extent so that private persons can also be held responsible.
- (ii) Talking about the Article 51(c) of the Constitution, it is well-settled proposition of the law that the Directive Principles of the State Policy are non-justiciable, meaning thereby if India does not follow any international convention for fostering its

³⁴ WP No. (Cri.) No. 125 and 126 of 1986.

³⁵ 1991 MLW (Cri.) 393.

relations, then one cannot approach the court for seeking the remedy against it. Now, this is another dilemma for the refugees.

- (iii) The next problem is related to the municipal law of the India. The Foreigners Act does not make any distinction between the foreigners and the refugees. Moreover, it also gives absolute power to the government to expel any foreigner if his entry is found illegal. In such cases, refugees become 'scapegoat' sometimes if they do not have status determination for their identity. However, the status determination is not the essential requirement for non-refoulement still it is being practiced which is against the spirit of the customary international law of 'non-refoulement'.
- (iv) Another problem is that it is often seen that the security concerns always emerge as a 'risk-factor' for the refugees. They usually viewed as a threat to the security of the nation due to the problem of 'terrorism'. In India, they always prefer the nation's security over the fundamental rights of the individual.³⁶ In this context, we do respect the view taken by the country but for that there is need to adopt proper mechanism because merely blaming any section of refugees would not serve the purpose.
- (v) Another dilemma which asked for the amelioration is that in the context of 'international zones', the principle of non-refoulement creates one more aspect. In case of refugees, it might be possible that they come through airport or water ports, in such cases the concept of 'transit areas' comes into picture. It is seen that these transit area creates insecurity and instability for the refugees to enter into a country. In India, one Palestinian refugee was ousted from the transit area of the Indira Gandhi International Airport, New Delhi.³⁷ This also reflects that such kind of expulsion often operates against the principle of non-refoulement but due to this kind of 'legal portrayal', refugees do not possess any claim for their safety issues. This problem poses serious threat to the life of the refugee persons, which needs to be looked in.

³⁶ Omar Chaudhary, "Turning Back: An Assessment of Non-Refoulement under Indian Law", 39 *EPW* 3257-3264 (2004), available at: <http://www.jstor.org/stable/4415288> (last visited on July 30, 2016).

³⁷T. Ananthachari, "Refugees in India: Legal Framework, Law Enforcement and Security", 7 *ISILYBIHRL* (2001), available at: <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html> (last visited on December 28, 2016).

8. Concluding Remarks

“Would the setting up of an appropriate legal structure or framework not help to provide a measure of certainty in the States dealing with the problem of refugees, and provide greater protection for the refugees?”³⁸

Justice Bhagwati

The principle of non-refoulement has widely accepted in the international jurisprudence. However, it is seen as a ‘weak customary principle’ because nation-states give prominence to their domestic laws.

Although the revolutionary phase in the realm of refugees’ rights has brought various significant changes in India. The Indian judiciary tries to protect the rights of the refugees but in the absence of any specific legislation, the well-established guidelines are not there. The article very elaborately discussed the role of Indian judiciary in establishing the non-refoulement principle in the country.

However, there is need to bring the uniform legislation which would comprehensively deal with the rights of the refugees and the procedure for their status determination would also be ensured through this legislation. There is need to bring harmonious construction between the provisions of the international instruments and the domestic laws.

Also there is need for attitude towards the persons who are seeking the refugee status in the country. The principle of non-refoulement must be made very clear so as to strike the balance between the security of the nation and the rights of the refugees for providing long-lasting answer to their problems. The problem of refugees is very serious so they cannot be sent back to that country from where they flee under the appalling circumstances. For providing assistance to them, governments of each state in India must create some institutional mechanisms for bringing certainty in their lives because they are the persons who need care and protection of the whole international community but primarily of the host nation.

Furthermore, there is need to appoint the specialized officers having worked for the refugee protection at every air ports and water ports who would specifically look into the matters of the refugees.

³⁸ SAARC Law and UNHCR, Refugees in the SAARC Region: Building a Legal Framework, Seminar Report 23, (New Delhi, 1997).

The denial of safe and dignified life to them is the violation of international principle of non-refoulement. Thus it requires the solution through moral considerations. It is also imperative to redefine the institutional niche for the effective governance by creating some independent bodies through the collective efforts of the community for providing the local assistance to the refugees. Merely declaring that the country is providing safeguards to them is not the solution for the problem rather there is need for new 'overarching model'. This can be achieved by enacting the uniform legislation for the refugees through refreshed knowledge which must be based upon the empirical data like how many refugees would suffer real risk of persecution if they sent to their country from where they came. Last but not the least, there is desideratum for looking into the radical innovations in the arena of non-refoulement policy so as to provide the safe shelter to the refugees rather than sending back till their real status determination.