

Rights Of Non-Citizens Under The Constitution Of India: Issues And Challenges

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Abstract

The Constitution of India is the lengthiest constitution which enumerates the major number of rights that should be granted to the people. (Part III of the) Constitution of India provides the fundamental rights to it's citizens and others. The highest judicial body, the Supreme Court of India have made great efforts in clarifying the position of these rights. Though maximum rights are granted, the non-citizens face certain issues and challenges.

Efforts have been made so that clear distinctions between these rights are reflected in this paper. This paper discusses the concept of citizenship and the reason behind not granting of certain rights to the non-citizens. This paper also picturises the issues and challenges faced by the non-citizens. This paper is a doctrinal work and the issues have been portrayed with the help of government journals, newspapers, books, published papers.

Keywords: *Citizenship, Fundamental Rights, Human Rights, Non-citizens, Refugees*

Introduction

“The Constituent Assembly is discussing the rights of the citizen. That is to say they are deliberating on what the fundamental rights should be. As a matter of fact the proper question is not what the rights of a citizen are, but rather what constitutes the duties of a citizen. Fundamental rights can only be those rights the exercise of which is not only in the interest of the citizen but that of the whole world”

----- *Mahatma Gandhi*

The matter of Citizenship is generally dealt with by specific legislation rather than being incorporated in the Constitution. Several categories of Indian Citizens have been defined under Part II of the Indian Constitution. The citizens of a country are different from aliens or residents. All the fundamental rights are secured to the citizens whereas the non-citizens enjoys few fundamental rights.

The provisions relating to the citizenship has been envisaged from articles 5 to 11 under the Indian Constitution. The Citizenship Act, 1955 has also been validated which acted as a comprehensive law relating to the Indian citizenship. Though a number of theories under the Indian laws guide a person's citizenship, the concept of *jus sanguinis* is widely followed in India rather than *jus soli*. The Indian Constitution provides the provision of Single Citizenship. Article 9 of the Constitution of India states that any person having the domicile and passport of India shall not be entitled to hold the domicile and passport of any other country, contravention of this provision will lead to the cancellation of his Indian nationality.

The term 'domicile' has not been defined under the Constitution of India, but it holds a great significance in the determination of citizenship. There is a clear distinction between 'domicile' and a 'residence' in article 5 of the Constitution of India. According to Lord Chancellor Cornwarth, "if the intention of permanently residing in a place exist, a residence, in pursuance of that intention, however short will establish a domicile, on the other hand, mere length of residence will not itself constitute domicile."¹ Intention to reside in a country is the prime factor for a domicile, speaking legally the *animus morandi* must be present. The basic idea underlying the principle of domicile is the permanent home or permanent address. As per the Indian Succession Act, 1925 every person has "domicile of origin" till the time he acquires new domicile. The Supreme Court of India in *Central Bank of India v. Ram Narain*² held that the essential constituent element for the existence of domicile in the country is the intention to reside forever in that country.

The Apex Court also reiterated the same theory in *Louis De Raedt v. Union of India*³ as :-

"For the acquisition of a domicile of choice, it must be shown that the person concerned had a certain state of mind, the *animus morandi*. If he claims that he acquired new domicile at a particular time. He must preserve that he had formed the intention for making his permanent home in the country of residence and of continuing to reside there permanently. Residence alone unaccompanied with this State of mind, is insufficient."

Concept of Fundamental Rights

Since the 17th Century, human thinking shifted to a theory that man possesses certain essential, basic, natural and inalienable rights or freedoms. With the view to protect and preserve human liberty, development of the human personality and the promotion of an effective social and democratic life, it is the function of the state to recognise these rights and freedoms and providing a scope of free play.

The philosophers of natural law emphasized over certain inherent rights of human. Natural law philosophers, named Locke and Rousseau sought to preserve these rights and propound the theory of

¹ Om Prakash Aggarwala and S.K. Aiyar, *The Constitution of India*, 1st edition, 50 (1950)

² AIR 1955 SC 36

³ AIR 1991 SC 1886, 1889

“Social Compact”. Thus, it can be stated that the concept of human rights traced to the theory of Natural Law.

According to Locke, man is born “with a title to perfect freedom and uncontrolled enjoyment of all the right and privileges of the Law of Nature” and he by nature has a power “to preserve his property- that is, his life, liberty, and estate, against the injuries and attempts of other men”.

The concept of human rights is to protect the individuals from the Superfluity of the State. An attempt to protect and preserve the interests of the individuals from oppression and injustice is conceived in the notion of human rights. In the present era the universally belief is that the right to liberty is the core spirit of a free society and thus it must be safeguarded every times. The notion behind guaranteeing certain rights is to certify that a person must have at least a minimum guaranteed freedom.

The hidden thought in entrenching certain basic and fundamental rights is to take them out of the reach of transient political majorities. It has, subsequently, came to be viewed as essential that these rights be settled in so that they may not be abused, tempered or meddled with by a oppressive government. With this end in see, some written constitutions ensure a couple rights to individuals and restrict governmental organs from meddling with something very similar. In that Case, an ensured right can be restricted or removed. Exclusively by the intricate and formal course of Constitutional revision as opposed to by normal enactment. These rights are portrayed as Fundamental Rights.

The entrenchments of Fundamental Right have a twofold aspect:-

1. They give justiciable rights on individuals which can be authorized through the courts against the governments.
2. It comprises limitations and limits on government move, regardless of whether it is take by the Centre or a state or a nearby government. The public authority can't make any move, regulatory or administrative by which a fundamental right is encroached.

The idea of fundamental Rights consequently addresses a pattern in the cutting edge democratic thinking. The requirement of human rights involves significant importance to present day constitutional jurisprudence. The fuse of Fundamental Rights as enforceable rights in the cutting edge protected records just as the globally perceived sanction of Human Rights exude from the charter of natural Law and natural rights.

Fundamental rights Under Indian Constitution

The fundamental rights were included in the Constitution of Indian with lot of enthusiasm, as the American idea of the ‘Bill of Rights’ was one of an inspiring factor while the Indians were struggling against the Britishers for freedom. Even during the British rule, the Indian nationalists were making demands for addition of a Bill of Rights in the Government of India Act of 1935. But the demand of the Indian nationalists could not get fulfilled as the concept of a written list of rights was not popular among the

Britishers. Sir John Simon, chairman of the Simon Commission opposed the idea of inclusion of bills of rights in the Act. They believed that the rights are created by the Parliament. It implies the sovereignty of the Parliament. Therefore, all rights in British Originates from the Parliament.

Secondly, the necessity of fundamental rights arises only where autocracy rules. But where there is parliamentary system of government there is no necessity of fundamental rights.

Thirdly, there can be only two possibilities with regard to fundamental rights, either they are justiciable or non-justiciable. Similar were the views of other Britishers. But there was a fundamental difference between British Constitutional system which has evolved itself in the span of a period of Centuries, and the India system was not a well-established system and social structure was a fragmented structure.

Finally, the Government of India Act, 1935 was passed without any mention of the Fundamental Rights.

In 1946, When the Indian nation got its Constituent Assembly, there was a strong demand for inclusion of a chapter on Fundamental Rights in the proposed Constitution. Under the chairmanship of Sardar Patel along with some members particularly representing the minority, a separate committee was formed which submitted a report to the Drafting Committee, which prepared the part on fundamental rights on the directions of the fundamental rights committee. The framers of the constitution carefully selected the rights to which the status of fundamental was conferred. While preparing the list of the fundamental rights the peculiar social fabric of India was kept in mind. There were problems like untouchability, caste based rankings in the society, diversities based on diverse factors like language, religion, culture, level of development, etc. prevailing in the Indian social structure. These rights were included under Part III of the Constitution of India, thus a place of prominence was specifically given to this part. This part was not only made 'justiciable' but also immune from any encroachment by the government. The makers of our Constitution tried their best to clarify the provisions of the fundamental rights and the limits for the enjoyment of these rights.

At the dawn of independence these rights were adopted by the Constituent Assembly as the Fundamental Rights after a lot of discussion. But the fact remains that these rights were adopted and had not grown in the Indian polity and Society.

The Constitution of India ensures the primary human rights in form of Fundamental Rights under Part III and furthermore Directive Principles of State Policy in Part IV which are key in the administration of the country. It was held in *Pratap Singh v. State of Jharkhand*⁴ that Part III of the constitution ensures substantive as well as procedural rights. So, fundamental rights must not be read in isolation but along with directive principles and fundamental rights. This was held in *Javed v. State of Haryana*⁵.

⁴ (2005) 3 SCC 551: AIR 2005 SC 2731

⁵ (2003) 8 SCC 369: AIR 2003 SC 3057

The fundamental rights in the Indian Constitution have been grouped under seven heads as follows:-

- Art 14 to Art 18, it talks about the Right to Equality.
- Art 19 to Art 22, it talks about the Right to Freedom
- Art 23 to Art 24, it talks about the Right against Exploitation
- Art 25 to Art 28, it talks about the Right to freedom of Religion
- Art 29 to Art 30, it talks about the Cultural and Educational Right
- Right to property , it has been diluted from this list.
- Art 32 to Art 35, it talks about the Right to Constitutional Remedies

The major threat which the Indian Judiciary faces while interpreting fundamental rights is to achieve a proper balance between the rights of the individuals and those of the state or the society as a whole, between individual liberty and social control. The reason behind is that the Fundamental Rights constitute a large number of limitation on the government. This is very challenging just as well as a fragile task without a doubt in these current days of development of a country into a social welfare state. All in all, in any case, it might be said that in the space of non-economic issues, similar to the right to speak freely with the freedom or the right to life, the line has been moving for the individual, while in the space of financial issues, the line has been continually moving for Social Control. This has been accomplished by judicial interpretation as well as through constitutional amendments.

The Fundamental Rights guarantee certain economic rights. Too much emphasis on these rights might have led to emergence of a laissez faire economy in India which is now an out of date concept. Accordingly, partly by judicial pronouncement, and partly by constitutional amendment process, emphasis has come to be laid on social control in economic matters leading to the emergence of a regulated economy.

The right to property also has had a chequered history. Originally it was secure by Arts. 19(I) (f) and 31, and the courts were prone to give these provisions a broad perspective thus giving property rights a better protection. But now the Fundamental Right to property has been diluted.

Further the Supreme Court of India articulated the doctrine of implied Fundamental Rights. It asserted that in order to treat a right as Fundamental Right it isn't required that it ought to be explicitly expressed in the constitutions Fundamental Rights. Political, social and financial changes happening in the nation might involve the acknowledgment of new rights and the law in its eternal youth develops to fulfil social needs. No such rule exists that except if a right is explicitly expressed as a Fundamental Right it can't be treated as one. Over the long haul, the Supreme Court has had the option to suggest by its interpretative cycle, a few Fundamental Rights, like freedom of press, right to protection the privacy, out of the expressly stated Fundamental Rights.

The Fundamental Rights are not even distinct and mutually exclusive Rights. Each freedom has various dimensions and a law might need to address the difficulty under different Fundamental Rights. Subsequently a law depriving a person of his own freedom might need to stand the trial of Arts. 14, 19 and 21 to be valid. Once, however, the court had applied the principle of only of Fundamental Rights and regarded each directly as a distinct and separate entity, however the view has now gone through a change, accordingly, giving to the courts a superior influence to test the legitimacy of laws influencing Fundamental Rights.

The Supreme Court assumes an exceptionally huge part according to the Fundamental Rights. In any case, the court goes about as the defender and the guardians of these rights. In the second place it goes about as the translator of Fundamental Rights. The Supreme Court goes about as the “Sentinel on the qui vive” in relation to the Fundamental Rights.

The Fundamental Rights assume an important part in the space of the Indian Administrative Law. A phenomenon commonly perceivable today is essentially every democracy is the vast growth in the functions, forces and exercises of the Administration under the effect of the cutting edge theory of ‘Welfare State’. A lot of discretion is left in the possession of administrative authorities. A significant issue of Modern Administrative Law is to look to fortify the methods to control the organization in the activity of its different forces. In huge number of cases, validity of laws giving discretion on the Administration has been scrutinized regarding the Fundamental Rights. For this reason, both substantive as well as procedural ways of the laws are taken into consideration.

Fundamental Rights for Non-Citizens

There are certain rights which every Human Beings are entitled to just by virtue of being humans. These are termed as human rights. These rights are entrusted irrespective of his nationality, and also the fact whether he holds the citizenship of the country he is residing in or not. It is enumerated in the Universal Declaration of Human Rights that “Whereas it is essential if a man is not be compelled to have resources, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”⁶ Irrespective of the fact whether an individual is an alien or a citizen in any country, are entitled to certain rights which are inalienable in nature. These are rights like:-

1. Right to life and liberty
2. Right to equality before law, irrespective of any discrimination on grounds of race, caste, sex, nationality, language, religion or place of birth
3. Right against forced labour
4. Right to effective remedy

⁶ The Universal Declaration of Human Rights At <http://www.un.org/en/documents/udhr/>

The Universal Declaration of Human Rights which is known as the Magna Carta of Human Rights in its 30 articles has laid down 30 such rights which are given to any individual without any discrimination.

The founding fathers of the Indian Constitution had taken great measures in determining as to which rights is to be given and which rights are to be abstained from the foreign nationals. Certain rights are given to the foreign nationals under the Indian Constitution. These are:-

1. Article 14 which talks about the right to equality before law and equal protection of laws.
2. Article 20 which talks about the right to protection in respect to conviction for offences.
3. Article 21 which talks about the right to protection of life and personal liberty.
4. Article 21A which talks about the right to elementary education.
5. Article 22 which talks about the right to protection against arrest and detention in certain cases.
6. Article 23 which talks about the prohibition of traffic in human beings and forced labour.
7. Article 24 which talks about the prohibition of employment of children in factories etc.
8. Article 25 which talks about the right to freedom of conscience and free profession, practice and propagation of religion.
9. Article 26 which talks about the right to freedom to manage religious affairs.
10. Article 27 which talks about the right to freedom from payment of taxes for promotion of any religion.
11. Article 28 which talks about the right to freedom from attending religious institutions or worship in certain educational institutions.

The above-mentioned rights are basically the fundamental rights enumerated under Part III of the Constitution of India. These rights are not only applicable to any individual group or community, but are applicable to each and every 'person' residing within the territory of India. In a current judgment, in light of the FIR enlisted by the Maharashtra Government, against three Ugandan residents, including the advisor to the President of Uganda, which was quashed by the Supreme court. It has reaffirmed that Article 21 of the Constitution is accessible even to the citizens of foreign nations. A vacation bench of Justice A.K. Patnaik and Ranjan Gogoi said "Article 21 of the constitution [right to life and liberty] applies to all citizens, whether Indian or foreign nationals. Their right to liberty cannot be restrained by police due to a business dispute. Our country gets a bad name because of the acts of few police officers, and it is unfortunate that the Mumbai Police, instead of protecting the rights of these foreign nationals, filed an FIR against them and the charges are baseless."⁷

⁷ Right to life, liberty available even to foreign nationals, says Supreme Court- The Hindu: mobile edition At <http://m.thehindu.com/news/national/right-to-life-liberty-available-even-to-foreign-nationals-says-supremecourt/article4831250.eco/>

Universal Declaration of Human Rights being a universal and egalitarian declaration provides the basic rights to the human beings, which is termed as human rights and lays down certain standards of human rights. It is suggested by the idea of Human Rights “if the public discourse of peace time global society can be said to have a common moral language, it is that of human rights.”⁸

In the context of India, Part III of the Constitution of India which deals with the fundamental rights provides its every citizen 6 basic fundamental rights, which are solely for its citizens. But except for fundamental rights enumerated in articles 15, 16, 19, 29 and 30 and the right to vote and constitutional posts, every other rights mentioned in Part III of the Constitution of India is available to the non-citizen, or to say precisely, available to every ‘person’ irrespective of his/her nationality.

India being a signatory to the Universal Declaration of Human Rights, has therefore taken great measures to be in accordance to its norms and guidelines. The rights enumerated as fundamental under Part III of the Indian Constitution are quiet similar to the provisions of Universal Declaration of Human Rights.

In *Kesavananda Bharati v. State of Kerala*⁹, the Supreme Court observed, “the Universal Declaration of Human rights may not be a legal binding instrument, but it shows how India understood the nature of human rights at the time the Constitution was adopted.

Why Fundamental Rights are not made available to Non-Citizens?

Witnessing the history of the Indian political system and the chronicle of India being under the English rule, the founding fathers of the Indian Constitution considered it necessary to put a restriction on the rights of the foreigners. This was done with a primary objective to make a constitution of a free and sovereign nation which would be free from foreign influences. It was very important to retain and reserve certain rights, to be specific certain constitutional rights exclusively for the citizens of the country, to come at par with several states of the world. The prime objective behind this step was to prevent any kind of foreign influences and uphold the sovereignty of the country.

For the citizens of India, the Constitution of India provides 6 basic fundamental rights under Article 19, which is exclusively reserved for them. Foreign nationals are concealed from these rights. Therefore, they have no rights such as

- Right to Freedom of Speech and Expression
- Right to Assembly peacefully and without arms
- Right to Form associations and unions
- Right to Move Freely throughout the territory of India
- Right to Reside and settle in any part of India
- Right to Practice any profession or to carry any occupation, trade or business.

⁸ Human Rights- at http://en.m.wikipedia.org/wiki/Human_rights

⁹ AIR 1973 S.C. 1461 at 1510

Apart for these rights they are also concealed from the right to vote.

Freedom of Speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. This right is regarded as the first condition of liberty. These rights are not given to the foreigners. Though they have the right to speak in case of judicial proceedings going against them, they do not have the right to criticize the government or take part in any political debate. When they are not given the power to form government, they must not also be given the freedom to criticize the government. Every rights that has been enumerated under Art 19 of the Indian Constitution forms the core rights which are solely granted to the Indian Citizens. Looking back to the horrifying 200 years British rule over India which only began due to granting of excessive rights than they deserved made it justified before the Constitution makers to reserve certain rights.

In *Maneka Gandhi v. Union of India*¹⁰ Bhagawati J. Emphasised on the significance of the freedom of speech and expression in the following words:-

“Democracy is based essentially on free debate and open discussions, for that is only the corrective of government actions in a democratic setup. If democracy means government of the people, by the people, it is obvious, that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion on public matters is absolute essential.”

From the above decision of the Apex Court, similar concept is reflected which says that a democratic set up is a set up by the people, of the people and for the people. Democracy requires the involvement of the citizens in various democratic procedures and also the participation of the citizen in the political structure of the state, which is only possible for the residents of the country, because the aliens or non-citizens do not have the right to hold any constitutional posts or to participate in the political sphere of the country. Only those who are the citizens have the right to debate or have their say in any procedure of democracy.

The right to assemble provided under Art 19(1) (b) of the Constitution of India, shares some common spheres with right to freedom of speech and expression under Art 19(1) (a). Certain terms like demonstrations, seminars, meetings, which forms the instances of Art 19(1) (a) are automatically covered under the scope and ambit of Art 19(1) (b). Conferring these rights to a non-citizen indicates providing them the right to speech, which should not be done. Though the non-citizen are allowed to take part in the meetings and assemblies formed by the locals of the State, but they do not posses the right to make their own assembly or meeting.

The prime motive behind granting the right to form association under Art 19(1) (c) of the constitution to the citizens is to enable them to form political parties. Without forming political parties it would be an impossible task to run a democratic form of government, especially of the parliamentary type. If these rights are conferred to the non-citizen, it would suggest that they will have equal rights in forming political

¹⁰ AIR 1978 SC 597, (1978) 1 SCC 248

parties and participate in the democratic set up of the country. Allowing this would violate the principles for eligibility criteria as provided under Part V and Part VI of the Constitution of India and would also pose a grave threat to the sovereignty of the nation.

Moreover, the right to settle and reside in any part of the country is not provided to a foreigner. Thus the government has unrestricted right to expel a foreigner. A foreigner who came to India in 1937 on a Belgian passport connected with himself in the Christian evangelist work, he had been remaining consistently in India since 1937. By an order dated 8-7-1987, his solicitation for additional stay in India was dismissed and he was advised to leave the country. He challenged the request through a writ petition under article 32 which was dismissed.¹¹ The court decided that he had not become a resident of India under Article 5 of the constitution as he has not gained his domicile in India ¹².

Classes of Non-Citizens

So far, I have discussed the rights that are granted to the non-citizens and the reason behind none conferring of certain rights under the Indian Constitution. But it is very important to discuss the categories of non-citizens for better understanding of its issues and challenges faced by them. The non-citizens who are residing within the territory of India are categorised into five different categories under the International Law.

Firstly, they may enjoy the status of being aliens or foreign nationals. In regard to this case no legally binding instrument is available for the purpose of their protection.¹³ The state receiving them posses the sovereign right to admit them within its territory and also relating to those who reside in the territory. Usually the states agree upon a bilateral or multilateral treaty in relation to specific regimes. Under the Constitution of India they are entitled to all those fundamental rights that are conferred on “all person” irrespective of their nationality. This category of non-citizens also enjoys diplomatic and consular protection.

Secondly, under certain circumstances, the non-citizens may be granted the status of “refugees”. The status of refugees is defined by the United Nations Convention Relating to the Status of Refugees¹⁴. A refugee is a person who “owing to the 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 unwillingly to avail himself of the protection of that country. The principle of non-refoulement has been enshrined in the Convention related to the status of Refugees which states that none of the contracting state shall expel or return any refugee against his or her will, in any manner.”

Thirdly, non-citizens may be categorised as ‘stateless’. The 1954 Convention relating to the Status of Stateless person plays a very limited role in the international sphere. This convention sets up a similar

¹¹ Prof. M.P.Jain, Indian Constitutional Law, 5th edition, 981(2008)

¹² Louis de Raedt v. Union of India :AIR 1991 SC 1886

¹³ UN general Assembly Resolution 40/144 of 13 December, 1985

¹⁴ Revised by the 1967 Protocol relating to the status of refugees

framework for stateless person as for refugees. In the 1954 Convention Relating to the Stateless Person, statelessness is defined as “a person who is not considered as a national by any state under the operation of its law.” Though most stateless people reside in the country where they are born, they often lack the privileges, services, and protection that are reserved for citizens or nationals. The laws protecting stateless persons ensure they will get legal recognition and protection.

Fourthly, the migrant workers and their family members also fall under the scope and ambit of non-citizens. The 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families defines a Migrant Worker as: “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” Migrant Workers for the accomplishment of their work, resides outside their home state. They are regularly not entitled to same rights and protections as national workers, and therefore they are both vulnerable to both at workplaces and in the community where they live if they lack proper documentation.

Fifthly, trafficked persons from other countries are also termed as non-citizens. Human trafficking is defined by the 2003 Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children¹⁵, and refers to: “the [action of] recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The flap and vent in Legal Protection

The above mentioned categories of non-citizens are not dealt distinctly and in an unrelated manner. Though they do not fit together in a convenient way, they complement each other. Rather, it should be perceived that individuals can move between these classes rapidly, or occupy more than one class. It is conceivable that a stateless individual could get up early in the morning as a migrant labourer, be constrained into a trafficked circumstance, and end up with refugee status that night. The outcome is that the security of non-citizens are loaded with loopholes, overlaps and grey which tends to make distinguishing proof and security troublesome. The prime example of this is in Southeast Asia concerning the Rohingya individuals of Myanmar who tends to occupy all the classes. In Myanmar the tale of Rohingya reflects the vulnerability of stateless population. The outcome of the recent civil disturbance is that many Rohingya has been killed in mob violence. If they try to avoid the systematic discrimination they witnessed in their own country, they can be exploited as migrant workers and they are regularly trafficked.

¹⁵ The Palmero Protocol

Refugee scenario in India

In regard to law enforcement, there are various dimensions relating to refugees, which are of great importance both to India as a country and to refugees.¹⁶ For centuries, India has been home to refugees. India, from the time the entire Zorastrian community took refugee to India in order to protect them from the persecution they were being subjected to on religious grounds in Iran has continued to receive a large number of refugees from different countries. These refugees not necessarily belonged to the neighbouring countries alone. It is very important to note that there were no single event when refugees originated from Indian soil except in 1947 the transboundary movement of people during the partition of India and Pakistan. But on many occasions India have received refugees which enlarged its culture and ethnicity. The Preamble of the Indian Constitution reflects the principle of secularism. To abide by with its secular policies, India has been providing shelter to refugees belonging to all religions and sects.

Ground Realities: Issues and Challenges

The Border Security Force which are responsible in guarding the India-Pakistan and the India-Bangladesh borders, the Indo-Tibetan Border Police Force which is sent along the India-Tibet (China) line and the Assam Rifles which is conveyed along the India-Myanmar line, are the first representatives of the Indian System which the refugees encounter when they enter or leave India via land border ways.

The international borders of India are so vast that it is very difficult to guard it physically every time. There are many spaces in borders which are left unguarded, and these areas are used by refugees to illegally enter or exit the country. The authorities may return the refugees across borders if they are caught entering illegally. The refugees faces 'forced return' to the country from where they left and sometimes the claims of persecution are even unascertained. This is followed by non conformity with the internationally acknowledged principle of non-refoulement.

When any person enters India through airports and seaports, the Immigration and Custom officials comes into scene. If a refugee is found to be entering without valid documents, he is immediately taken into custody by the authorised officers. In these cases generally the authorities take steps to deport the refugee immediately to the country from where he or she travelled. This is also done in non-conformity with the principle of non-refoulement.

¹⁶ Saikal Amin (ed.) *Refugees in the Modern World: A Reader* (Canberra,1989); B.S. Chimni, *International Refugee Law*(New Delhi,2000);.

Analysis of the Indian Legal Framework in relation to refugees

Various constitutional and legal provisions are present which deals with refugee issues rather than the issues of non-citizens under various situations. The Fundamental Rights of Right to Life and Personal Liberty enumerated under Article 21 of the Constitution of India is applicable to all persons irrespective of the fact whether they are aliens or Indian citizens. The Supreme Court of India and various High Courts in India have consistently adopted the rules of natural justice while dealing with refugee issues.

The Madras High Court in *Gurunathan and others v. Government of India and others*¹⁷ and in the matter of *A.C. Mohd. Siddique v. Government of India and others*¹⁸ has conveyed its hesitance to let any Sri Lankan refugees to be returned forcefully to Sri Lanka against their consent. The Sri Lankan refugees in the case of *P. Nedumaran v. Union of India* prayed for a writ of mandamus before the Madras High Court directing the Madras High Court directing the State of Tamil Nadu and the Union of India to permit the officials of UNHCR to check the willingness of the refugees in going back to Sri Lanka.

While managing the protection of the Chakma refugees, the Apex Court controlled the coercive ejection of Chakma refugees from the province of Arunachal Pradesh. Yet, while dealing with this case, the Apex Court of India has made a reasonable qualification between the key rights accessible to the residents and to the foreign nationals. It was held by the Supreme Court that the rights specified under Article 19(1) (d) and (e) are inaccessible to foreign nationals as they are prohibitively given to the residents.¹⁹

The Constitution of India in Part III of the constitution has given much scope for the protection of interests of the Non-citizens within the territory of India.

Conclusion

Various types of human rights have been entrenched in the Indian Constitution. It is one of the most intricate legal document which diligently constituted laws which does not infringe the human rights of person whether he is a citizen or a non-citizen, who is residing within the Indian Territory. The citizens and the non-citizens have been differentiated to ensure equal protection of laws which means equality in equal circumstances. It was held in a landmark case, in case there is a judicious nexus based on which separation has been made with the object sought to be accomplished by certain provision, then, at that point, such separation isn't discriminatory and doesn't disregard the principles of Article 14 of the Constitution.²⁰ In our country, the rights provided to the non-citizens by the Constitution of India is adequate for them to live their life with appropriate pride and furthermore to get to justice if there should be an occurrence of irrational discrimination which is being made on irrational grounds. It is all around mirrored that on one hand the Indian Constitution limits the non-residents from partaking in specific rights yet then again, they are invited with all the common liberties that they deserve.

¹⁷ WP No. S 6708 and 7916 of 1992

¹⁸ 1998(47) DR (DB) p. 74

¹⁹ State of Arunachal Pradesh v. Khudiram Chakma (1994) Supp. (1) SCC 615

²⁰ Union of India v. M.V. Valliappan (1999) 6 SCC 259, 269, AIR 1999 SC 2526