

THE CONSTITUTIONAL PROTECTION – LEGAL AND INSTITUTIONAL FRAMEWORK FOR REFUGEES IN INDIA

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ABSTRACT

The phenomenon of refugee influx into India is not a new occurrence. Amidst the 1947 split, individuals commenced evacuating their residences and embarking on a journey towards India. Despite India's non-signatory status to both the 1951 Convention and the 1967 Protocol, the Indian government has always demonstrated a commitment to promptly provide assistance and facilitate the reintegration of refugees who seek asylum within its borders. The principle of "*Atithi Devo Bhava*" serves as a foundational principle that underlies the rich cultural tradition of hospitality in India. The settlement of refugees within the borders of India is permitted on the basis of this principle. Consequently, this leads to the observance of the principle of non-refoulement, which has acquired recognition as a customary norm within the context of international refugee law. India lacks a comprehensive national legal framework that governs the entry, residency, and entitlements of refugees within its borders. The Constitution guarantees a limited number of fundamental rights that are applicable to "all persons," including foreign nationals residing in the United States. Apart from administrative directives and announcements, there are only a limited number of laws that specifically address the registration and extradition of foreign individuals currently residing in India. In the Article, the researcher examines the constitutional safeguards and legislative provisions that are applicable to refugees in India.

Key words:- Refugees; fundamental rights; constitutional safeguards; legislative provisions; non-refoulement

INTRODUCTION:

PRINCIPLE RELATED TO RIGHT TO EQUALITY

Article 14 embodies a basic value that is at the heart of our republican system and acts as a guiding light in our pursuit of a socio-economic order characterised by equality and the absence of social classes, a goal to which we committed ourselves upon the momentous occasion of adopting our Constitution. The equality clause aims to address significant and tangible inequalities as well as executive actions that lack a clear rationale and appear arbitrary. It would be inconsistent with the clause's purpose and intention to consider minor differences, varying degrees of severity, or hypothetical instances of bias as grounds for legislative inequality or executive discrimination.¹ The guarantee of equal protection or equal treatment under the law is enshrined in Article 14 of the Constitution. The concept of "equality before the law," believed to have originated in English common law, asserts that all individuals are considered equal in the eyes of the law, meaning that no one is granted special rights. The second phrase, 'equal protection of the laws,' is a logical consequence of the initial phrase and derives from the concluding clause of the first section of the 14th Amendment to the United States Constitution. This clause stipulates that all individuals within the territorial jurisdiction of the Union shall be ensured equal protection in the exercise of their rights and privileges without any form of bias or differentiation. The recognition of the right to equality is considered a key element of the Constitution.²

The principle of constitutionally protected equality extends to all individuals, irrespective of their citizenship status. Based on a strict interpretation of this clause, it is evident that the original framers of the Constitution intended for individuals, even non-citizens, to possess the ability to exercise this essential entitlement and challenge any alleged instances of bias while still being subject to other relevant provisions within the Constitution.³ The state would refrain from engaging in discriminatory practices against refugees with respect to the allocation of benefits or privileges based on their refugee status. It is important to acknowledge that, in the context of conferring citizenship in India, foreign nationals, sometimes referred to as aliens, are not entitled to the same rights as Indian nationals under Article 14.⁴

In *State of Arunachal Pradesh vs. Khudiram Chakma*⁵, the creative stand taken by Apex Court can be beautifully illustrated by the following observation:-

"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 the law and equal protection of the laws. 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, and it cannot permit anybody or group of persons...to threaten the Chakmas to leave the

1 Dr Subhash C Kashyap, Constitutional Law of India vol 1 (2nd edn, Universal Law Publishing 2015) 407

2 Chimni (ed), International Refugee Law: A Reader (Sage New Delhi 2000) 462

3 M Chhaganlal v Greater Bombay Municipality, AIR 1974 SC 2009; John Vallamattom v Union of India, AIR 2003 SC 2902

4 Indra Sawhney (II) v Union of India, AIR 2000 SC 498

5 AIR 1994 SC 1461

State..."¹

Therefore, the constitutional safeguard provided by Article 14 is also applicable to refugees who are now residing in India.

CONSTITUTIONAL PROVISION RELATED TO: RIGHT TO LIFE AND PERSONAL LIBERTY:

Despite the law's derogatory tone, Article 21 protects basic human rights like the right to live and the freedom to pursue happiness without interference from the government. 'Life' refers to more than just animal existence. The term can be understood in a broader sense than only the right to subsistence, including the pursuit of a better quality of life, safe working conditions, and time off from work. The right to life is commonly recognised as the most precious human right and is the bedrock of all other rights; therefore, it requires a thorough and complete investigation to fully comprehend. If we want this approach to continue to enrich people's lives and raise humanity's standard of living as a whole, we must adopt it.²

This was further expanded by Justice Bhagwati in *Francis Coralie vs. Union Territory of Delhi*,³ that:

*"We think that the right to life includes right to live with human dignity and all goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."*⁴

Both citizens and non-citizens are entitled to the protections stipulated in Article 21. The subsequent analysis pertains to the elucidation of Article 21, which establishes that "no individual shall be deprived, etc." The topic discussed in Article 19 differs from the subject matter examined in Article 21. The benefits of Article 19 are exclusively available to Indian citizens, whereas the provisions outlined in Article 21 can be utilised by individuals regardless of their citizenship. It is imperative to interpret Article 19 as a self-contained and autonomous composition. All individuals, regardless of their citizenship status, possess the entitlement to life and freedom as stipulated in Article 21. Consequently, the safety of all refugees within the country is guaranteed by Article 21 of the Indian Constitution.

This stand is ornamentally projected by Apex Court in *National Human Rights Commission vs. State of Arunachal Pradesh & Anr.*:⁵

"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 the law and equal protection of the laws. 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, and it cannot permit anybody or group of persons...to threaten the Chakmas to leave the State..."

RIGHT TO EDUCATION:

In the case of *Unni Krishnan vs. State of A.P.*,⁶ The interpretation of Article 21 by the Supreme Court has extended its scope to encompass the right to education, ensuring that every individual is afforded the opportunity to pursue learning. The constitutional provisions outlined in Articles 41 and 45 ensure that every child and citizen is entitled to receive a free education from the public sector until they reach the age of fourteen. Hence, an individual's access to education is contingent upon the economic prosperity and developmental stage of the state. The inclusion of Article 21-A in the Constitution occurred through the eighty-sixth amendment in 2002. The aforementioned amendment was enacted with the purpose of guaranteeing the optimal and streamlined implementation of the aforementioned right while also reasserting the nation's dedication and determination. According to the provisions outlined in Article 21-A, children falling within the age range of six to fourteen are granted the right to receive a compulsory and cost-free education within the public sector. In order to safeguard the entitlement of children to get an education, the Right of Children to Free and Compulsory Education Act was enacted in 2009. It is imperative to ensure that the children of refugees and asylum seekers are provided with equitable access to fundamental educational opportunities inside the host country.

OTHER SUBSTANTIVE RIGHTS:

Both citizens and non-citizens are entitled to various substantive rights, including safeguards against arrest and detention⁷, the prohibition of human trafficking⁸ and forced labour, the ban of child work in industries⁹, and the right to religious freedom. Refugees are also entitled to these rights, as they are encompassed within the category of "persons" as stipulated in the aforementioned provisions of the Constitution.

RIGHT TO CONSTITUTIONAL REMEDIES:

Article 32 of the Constitution ensures the entitlement to commence legal procedures before the Supreme Court by means of an original petition, with the aim of upholding and enforcing fundamental rights. Justice Gajendragadkar, who would eventually serve as Chief Justice, conducted an evaluation of the importance of this particular privilege thus:¹⁰

"The fundamental right to move this Court can therefore be appropriately described as the cornerstone of the democratic edifice raised by the Constitution. That is why it is natural that this Court should, in the words of Patanjali Sastri, J. regard itself 'as the protector and guarantor of fundamental rights' and should

1 ibid

2 Maneka Gandhi v Union of India, AIR 1978 SC 597

3 AIR 1981 SC 746

4 ibid, at p 753

5 AIR 1996 SC 1234

6 (1993)1 SCC 645

7 Article 22 of the Constitution

8 Article 23 of the Constitution

9 Article 24 of the Constitution

10 Prem Chand Garg v Excise Commr, U P, AIR 1963 SC 996

declare that “it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights (vide *Romesh Thappar vs. State of Madras*)¹. In discharging the duties assigned to it, this Court has to play the role of a ‘sentinel on the qui vive’ (vide *State of Madras vs. V.G. Row*)², and it must always regard it as its solemn duty to protect the said fundamental rights ‘zealously and vigilantly’ (vide *Daryao vs. State of U.P.*)³.”

Hence, it is within the purview of refugees to seek recourse from the Supreme Court in instances where their fundamental rights, as outlined in Part III of the Constitution, are infringed upon.

INTERNATIONAL SECURITY AND PEACE PROMOTION:

The Indian Constitution is considered a progressive instrument on constitutional rights among the world's leading nations due to its incorporation of key concepts enshrined in important international conventions, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. India, akin to the United States and the United Kingdom, has adopted a dualist approach whereby international law holds legal force solely upon its integration into domestic legal frameworks. According to Article 51 of the Constitution, it is required that we actively strive to advance international peace and security, foster fair and dignified relations among nations, uphold the principles of international law and treaty commitments in our engagements with other organised communities, and promote the resolution of international conflicts through arbitration.⁴

The principle of non-refoulement holds significant importance in customary international law, imposing a binding obligation on countries to adhere to it. While the principle of non-refoulement is recognised as a customary norm in international law, several experts have contended that its integration into India's constitutional structure may not be feasible. The research provides evidence to substantiate the widely held belief that the principle of non-refoulement can be employed as an interpretive tool for understanding the relationship between Article 21 and Article 51. No counterargument is presented. As a result, they may be trusted and executed with a high degree of accuracy.⁵

THE STATUTORY FRAMEWORK REFERS TO THE SET OF LAWS AND REGULATIONS THAT GOVERN A CERTAIN AREA OR FIELD. IT PROVIDES A LEGAL STRUCTURE AND GUIDELINES:

There are several pieces of legislation dealing with the entry, stay, and removal of foreigners in India. As there is no specific legislation that defines the term refugee or establishes provisions for dealing with refugee protection, India relies on laws dealing with foreigners to deal with refugees.

The first piece of legislation that should be analysed is the Passport (Entry into India) Act, 1920. This act mandates that every individual entering India by water, land, or air be in possession of a valid passport.⁶ Under this Act, any police officer not below the rank of sub-inspector or any customs officer empowered with the general or specific order of the Central government can arrest without warrant any person who has violated the rules or orders made or of whom a reasonable suspicion exists. The Central Government also has the exclusive power to make special or general orders to remove any person from the territory of India in case of a violation of the rules. To deal with the provisions of this Act, the government also enacted the Passport (Entry into India) Rules, 1950, which extend to the whole of India and require a proper visa in addition to a valid passport to enter India.

The Registration of Foreigners Act, 1939, was enacted to provide for the registration of foreigners entering, staying in, and departing from India. In this Act, for the first time, foreigner is defined as a person who is not a citizen of India. To operationalize the provisions of the Act, the government further enacted the Registration of Foreigners Rules, 1939, and further restructured them in 1992. In general, this Act and the Rules require every foreigner who enters and stays in India for more than 180 days to register as per the prescribed format and in time with the Foreigners Registration Officer (hereinafter mentioned as ‘FRO’) of that jurisdiction, and each time they change address or leave India, they must receive authorization from FRO. In case of contravention, attempts to contravene, or failure to comply with the provisions and rules of this Act, there shall be punishment in the form of imprisonment for a term of up to one year, a fine of up to one thousand rupees, or both.⁷

Another piece of legislation widely used in dealing with foreigners is the Foreigners Act, 1946.⁸ Under this Act, the Central government is vested with the power to make rules and order the prohibition, regulation, or restriction of the entry, stay, and departure of any foreigner or class of foreigner in India. With the power granted under Section 3 of this Act, the Central Government enacted the Foreigners Order, 1948. In this Act, for the second time, a foreigner was defined as any person who is not a citizen of India. The most important provisions affecting the life and liberty of any refugee or stateless person under this Act are those related to the determination of nationality. Under this Act, if a question arises about the nationality of a foreigner,

1 AIR 1950 SC 124

2 AIR 1952 SC 196

3 AIR 1961 SC 1457

4 *Prem Shankar Shukla v Delhi Admin*, AIR 1980 SC 1535; *Mackinnon Mackenzie and Co Ltd v Audrey D’ Costa*, (1987) 2 SCC 469; *Sheela Barse v Secy, Children’s Aid Society*, (1987) 3 SCC 50; *Vishaka v State of Rajasthan*, (1997) 6 SCC 241; *PUCL v Union of India*, (1997) 3 SCC 433; *D K Basu v State of W B*, (1997) 1 SCC 416; *Apparel Export Promotion Council v A K Chopra*, (1999) 1 SCC 759

5 UN High Commissioner for Refugees (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 BvR1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994

<<http://www.refworld.org/docid/437b6db64.html>> accessed 5 August 2023

6 Act XXXIV of 1920

7 *ibid*, S 3 (1)

8 *ibid*, S 3 (3)

the determination of nationality depends on the decision of the concerned authority as to which country the foreigner is connected with, and that decision cannot be challenged in any court of law.¹

The penal provisions of this Act are much stricter than those of the other two Acts mentioned above, as any contravention of the provisions, rules, or orders made under this Act is punishable by imprisonment of up to five years. Another provision that makes this Act central to the regime of entry, stay, and departure (or removal) of any foreigner in India is that the provisions of this Act or rules made under this Act shall be in operation along with the provisions of the Passport (Entry into India) Act, 120, and the Registration of Foreigners Act, 1939.

The significance of the Foreigners Act of 1946 in the development of the Foreigners Orders of 1948 lies in the recognition of the extensive powers vested in the Central Government. The amalgamation of various provisions from the Passport (Entry into India) Act of 1920 and the Registration of Foreigners Act of 1939 resulted in the formulation of the Foreigners Order of 1948. The Foreigners Order of 1948 imposes limitations on the admission of foreign individuals entering India, stipulating that they must possess a valid passport and visa. This decree additionally grants authorities the power to enforce admission restrictions in cases where it is deemed to be in the best interest of the public. Additional notable rules encompass limitations on residency in India, constraints on accessing restricted or safeguarded regions, limitations on employment or mobility, and analogous protocols.²

The Foreigners Act of 1946 had a significant impact on the development of the Foreigners Orders of 1948 since it acknowledged the extensive authority vested in the Central Government. The Foreigners Order of 1948 was created by amalgamating certain provisions from the Passport (Entry into India) Act of 1920 and the Registration of Foreigners Act of 1939. In order to gain entry into India, it is important to possess a valid passport and visa, as mandated by the Foreigners Order of 1948. This decree additionally confers authorities with the ability to restrict entrance in cases where it is determined to be in the best interests of the general public. Noteworthy aspects include regulations pertaining to residency in India, limitations on accessing restricted or protected locations, employment opportunities, freedom of movement, and related protocols.³

PROPOSED LEGISLATION CONCERNING REFUGEES:

India is not a party to the 1951 Convention and has any domestic refugee policy or asylum law. A limited number of Parliament members introduced private members' bills in Parliament with the aim of passing a national refugee law. These bills include Shashi Tharoor's Asylum Bill, 2015; Varun Gandhi's National Asylum Bill, 2015; and Rabindra K. Jena's The Protection of Refugees and Asylum Seekers Bill, 2015.

National Asylum Bill, 2015- The major goal of this act is to establish a set of rules governing the acquisition of citizenship for refugees and asylum seekers. The current version of the bill solely adopts the 1951 Convention's definition of refugee. The specified numerical value is 114. In India, there is a provision for the establishment of a Refugee Committee and a Refugee Registrar to register refugees upon their arrival in the nation. In this context, the number 115 is being discussed. This legislation also takes into account the issue of considerable population growth. The bill has a key provision that provides refugees who have been in India for five years or more, regardless of their location, the right to Indian citizenship. This clause also applies to the offspring of refugees who were born within India's borders. The specified numerical value is 116. The aforementioned legislation, known as the Bill,⁴ is a key piece of legislation that attempts to deliver positive outcomes for refugees who have been involved in a protracted effort to get citizenship in the country of India for several decades. This legislation developed a comprehensive legal and administrative framework to address issues concerning the citizenship status of refugees.⁵

The Protection of Refugees and Asylum Seekers Bill, 2015-

The encompassing meaning of the term "refugee" employed in this measure aligns with the definition utilised in the Asylum measure of 2015. The administrative framework of this law exhibits variations in comparison to the administrative structure of the Asylum law of 2015. The present legislation stipulates the appointment of the Commissioner of Refugees, Deputy Commissioner, and Refugee Committee for the purpose of adjudicating applications for refugee status in India.⁶ The comprehensive process of assessing an individual's eligibility for refugee status has been delineated to ensure the provision of requisite support during the asylum seeker's interview. The availability of voluntary repatriation has been provided as an option with regards to the rights and obligations of refugees.⁷

The Citizenship (Amendment) Bill, 2016-

The enactment of this legislation would offer the opportunity for those who are undocumented immigrants originating from Afghanistan, Pakistan, or Bangladesh and who self-identify as adherents of the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian faiths to initiate the process of seeking legal citizenship. The number is the subject of discussion. The Indian government has recognised the notion of 'religious persecution' as a substantial criterion for the conferral of citizenship. In line with the aforementioned legislation, a prerequisite for acquiring citizenship by naturalisation is that the petitioner must have maintained a residence in India for a duration of 11 years out of the preceding 14 years, in addition to the most recent 12-month period. The aforementioned limitation of eleven years is diminished to a period of six years for those who adhere to the identical six religious beliefs and originate from the corresponding three countries. This clause contravenes both the introductory statement

1 Passport (Entry into India) Rules, 1950, Rule 5

2 Act No XXXI of 1946

3 Asylum Bill 2015, S 4(1)(a)

4 *ibid*, S 4(1)(b)

5 *ibid*, S 4(1)(a)

6 National Asylum Bill 2015, S 2(d)

7 *ibid*, S 4

of the Constitution, known as the Preamble, as well as Article 14, while also conflicting with the principles of secularism.¹ The misapplication of the term "migrants" in the measure can be attributed to a limited understanding of its intended objective, which is to offer sanctuary to those who are vulnerable and facing religious persecution, thereby safeguarding their fundamental human rights. Therefore, it is advisable to replace the inaccurate terminology with the phrase "refugees." The present legislation exhibits discriminatory practises towards many refugee communities, namely Ahmadiyya Muslims from Pakistan, Rohingya Muslims from Myanmar, and Tamil Muslims from Sri Lanka. With respect to the conferment of Indian citizenship under this legislation, no apparent differentiation exists to selectively exclude particular religious communities.²

INSTITUTIONAL FRAMEWORK - NATIONAL HUMAN RIGHTS COMMISSION'S ROLE IN PROTECTING REFUGEES IN INDIA:

Upon the establishment of the National Human Rights Commission (NHRC) in 1993, organisations advocating for democratic rights and civil freedoms raised concerns over its aim and effectiveness. The National Human Rights Commission was often argued to represent the state's appropriation of rights, given the prevalent abuses of citizens' rights by state institutions throughout the country, with a special focus on Punjab. The establishment of the National Human Rights Commission occurred without adequate consultation with the bulk of democratic rights organisations, thereby justifying the prevailing mistrust against it. In alternative discourse, it has been contended that the Indian government faced international pressure to establish a human rights commission.

This pressure primarily originated from nations that linked trade and aid to human rights performance, as well as international organisations that raised concerns about human rights violations in Kashmir and Punjab during international deliberations.³ Nevertheless, it is important to note that the inception of an NHRC predates the 1990s. In its election programme of 1977, the Janta Party made a commitment to establish a commission dedicated to the promotion and protection of human rights.⁴ According to the author, there were emerging deficiencies in other entities, such as the commissions dedicated to addressing the needs of minority groups, linguistic minorities, and the Scheduled Castes and Scheduled Tribes.⁵

The concept resurfaced in the 1980s. In this instance, the individual responsible for suggesting the concept was Justice P. N. Bhagwati, who put forth the proposal within the framework of advocating for the establishment of alternate platforms for the facilitation of judicial proceedings. The concept in question seems to have aligned with the concept of cases that are of public interest and brought before the Supreme Court, as well as the potential for the promotion of human rights, including those safeguarded by international human rights laws, by an institution specifically established for this objective. The inclusion of a human rights commission in mainstream political discourse gained prominence during the 1990s, coinciding with the emergence of political parties that advocated for its establishment. Notably, the inclusion of a human rights convention in its 1991 election platform further solidified this development. The assertion that the Emergency played a significant role in the emergence of the contemporary civil rights movement enjoys widespread recognition. In the 1990s, the establishment of the National Human Rights Commission (NHRC) was accompanied by concerns and operational constraints due to the ambiguities present in the Protection of Human Rights Act. Consequently, the NHRC was considered insufficient in effectively addressing systemic human rights violations, particularly those stemming from the prevailing social, economic, and political power dynamics.⁶

The establishment of the National Human Rights Commission was facilitated by the enactment of the Protection of Human Rights Act in 1993. The NHRC is tasked with the investigation of petitions filed by victims or their representatives regarding allegations of human rights violations, either through a complaint or suo moto action. Additionally, the NHRC is responsible for evaluating the constitutional and legal safeguards in place for the safeguarding of human rights and providing recommendations for their efficient implementation. Furthermore, the NHRC is responsible for scrutinising international treaties related to human rights.⁷

CONCLUSION:

The article undertakes an examination and evaluation of the effectiveness of certain constitutional provisions in India pertaining to the safeguarding of refugee rights. Based on the research findings, it can be concluded that the constitutional framework demonstrates a high level of efficacy in safeguarding the rights of refugees since it affords them equal rights to those enjoyed by both citizens and non-citizens residing within the nation. This observation suggests that the constitutional system effectively upholds its responsibility to safeguard the rights of refugees. On the contrary, it is imperative to establish a comprehensive legal framework capable of accommodating the assertions of fundamental human rights made by this vulnerable population, with the aim of enhancing their entitlements and safeguarding their welfare. The government's objective of repatriating Rohingya refugees has raised concerns due to its concurrent stance on categorising Muslims as a residual group solely based on their religious connection, as outlined in the recently introduced Citizenship (Amendment) Bill. This particular role is associated with the recently introduced Citizenship Amendment Bill. To enhance the institutional framework, it is imperative to allocate further authority to the National Human Rights Commission (NHRC). This measure will empower the National Human Rights

1 *ibid*, S 8

2 The Protection of Refugees and Asylum Seekers Bill 2015, S 8

3 Ujjwal Kumar Singh, 'The 'Inside-Outside' Body National Human Rights Commission of India' (2018)

53(5) EPW <<https://www.epw.in/journal/2018/5/perspectives/'inside-outside'-body.html>> accessed 09 August 2023

4 Knox Thames, 'India's Failure to Adequately Protect Refugees, [1999] 7(1) Human Rights Brief 20,21; Mike Sanderson, 'The Role of International Law in Defining the Protection of Refugees in India' [2015] WILJ 46, 69

5 Shuvro Prosun Sarker, 'How Humanitarian is this' The Statesman (October 8, 2015)

6 Ram Narayan Kumar, Amrik Singh, Ashok Agrawal & Jaskaran Kaur, *Reduced to Ashes: The Insurgency and Human Rights in Punjab*, Delhi (South Asia Forum for Human Rights 2003)

7 Protection of Human Rights Act 1993, S 3

Commission (NHRC) to undertake the requisite measures aimed at safeguarding the rights of refugees. Based on this finding, the researcher comes to the conclusion that the existing legal and institutional structure is insufficient to safeguard the rights of refugees, despite the presence of a constitutional framework designed to protect them from discrimination by the state.