

REFUGEE LAW IN INDIA: THE ROAD FROM AMBIGUITY TO PROTECTION (2017). By Shuvro Prosun Sarker. Palgrave Macmillan, 152 Beach Road, #21-01/04 Gateway East, Singapore - 189721, Singapore. Pp. xxviii + 213. Price Rs. 6368/-.

THE MODERN world has graduated itself from savagery to civility. The current discourse of international law sets for itself a trajectory of high standards of justice based on principles of universal human rights.¹ Justice necessitates that refugees must be provided and extended better protection, particularly in consonance with the protection under international refugee law superintended by the United Nations High Commissioner for Refugees (UNHCR). Having said this, the influx of refugees to India is an ever-flowing phenomenon, yet it abstains from becoming party to the 1951 Convention relating to the Status of Refugees 1951 (1951 Refugee Convention) and the 1967 Protocol on the Status of Refugees (1967 Protocol). However, the country is party to various international human rights law treaties, which put some constraints on unequal treatment of non-citizens and refugees.² Also, the fundamental norms of refugee protection especially in South-Asian countries have not been developed and promoted by intra-regional institutions.³ There were suggestions for discussions by the governments at the South Asian Association for Regional Cooperation (SAARC) level. These were based on the Model National Law on Refugees (MNLR) and national-level dialogue among government agencies, human rights organizations and UNHCR. The idea was to find a durable solution for refugee protection. Yet, it remains unclear as to why none of the South Asian countries pursued these consultations. Perhaps to answer these and many related queries, the book is opted for the review.⁴

The book is authored by Shuvro Prosun Sarker, a distinguished young scholar who has to his credit multiple international publications.⁵ In the present work, the author embarks upon an inquiry into the existing refugee protection framework of India and thereupon poses the issue of responsibility as a critical counterpoint to the question of power. The author presents a case under the dominant discourse of ‘responsibility to protect’, as part of the global govern-

¹ Pierre Bertrand, “An Operational Approach to International Refugee Protection”, 26(3) *Cornell International Law Journal*, 495-504 (1994).

² B.S. Chimni (ed.), *International Refugee Law: A Reader* (SAGE, New Delhi 2000).

³ Stellina Jolly and Nafees Ahmad, *Climate Refugees in South Asia: Protection under International Legal Standards and State Practices in South Asia*, 124 (Springer Nature, Singapore, 2019).

⁴ ShuvroProsunSarker, *Refugee Law in India: The Road from Ambiguity to Protection* (Palgrave Macmillan, Singapore, 2017).

⁵ ShuvroProsunSarker (ed.), *Clinical Legal Education in Asia* (Palgrave Macmillan, New York, 2015); ShuvroProsunSarker (ed.), *Legal Education in Asia* (Eleven International Publishing, The Hague, 2014).

ance regime, to conceptualize responsibility in the post-colonial context. The book is divided into eight chapters along with well-structured bibliography. The content indicates that the text of the book has not merely tilted towards legal language; rather it involves philosophical arguments based on experiences gathered by the author.

In chapter 1, the author brings philosophical discussions regarding the position of refugees *vis-à-vis* the nation-state. The author argues for establishing the responsibility of democratic states towards refugees through a comprehensive rights-based regime of *just* membership for every refugee or asylum seeker.⁶

Chapter 2 makes an effort to list and analyse all the important judicial decisions that contribute to the conceptualization of the general trend of justice delivery in matters relating to refugee protection in India. On the perusal of multiple authorities from the apex court,⁷ the author opines that it will be incorrect to claim that refugee protection is mandated by article 21 of the Constitution of India. The author reveals that the inconsistency of decision-making by trial courts has given a space to refugees for further litigation in the High courts and the Supreme Court, resulting in a complex but binding jurisprudence.⁸

Chapter 3 reveals that on their arrival, refugees experience different conditions based on their nationality and the size of their population.⁹ The author opines that the issue of affording refugee status/asylum becomes one of exercising power on the part of India's political establishment.¹⁰

Chapter 4 is based on the findings of an empirical study conducted by the author. Sarker identifies certain pertinent factors such as arrival, status determination, settlement, livelihood, education, health care, detention, deportation, repatriation, third-country resettlement, feeling of discrimination and discriminative treatment, permanent stay and so forth. These factors touch upon many aspects of the life of a refugee in India. The answers given during the interviews have been analysed using the qualitative data interpretation software NVivo 11, which

⁶*Id.* at 25.

⁷See *Khudiram Chakma v. State of Arunachal Pradesh*, (1994) Supp (1) SCC 615; *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742.

⁸*Supra* note 4 at 54.

⁹*Id.* at 66.

¹⁰*Id.* at 67.

reveal that there are differences in treatment as well as discrimination in terms of entitlements based on country of origin of refugees.¹¹

In Chapter 5, the author examines the standards for refugee protection contained in the 1951 Refugee Convention, the 1969 Convention on Organization of African Unity (OAU), the 1984 Cartagena Declaration on Refugees (Cartagena Declaration), and the Common European Asylum System (CEAS). After careful examination, the author argues that there appears to be a need to bridge refugee protection and protection of human rights. In this regard, the author further argues that the CEAS provisions could be taken into consideration by those who are trying to formulate a refugee protection regime based on cosmopolitan traditions, human rights protection, and balancing security and state practice.¹²

Chapter 6 discusses the protection framework under the 1951 Refugee Convention, the OAU Convention, the Cartagena Declaration and the CEAS in negotiating/shaping national legislations amongst state parties. It has also been shown that these international standards were influential in the development of national refugee legislation in South Africa, Brazil and Canada,¹³ although each state modified the standards to fit their own administrative mechanisms.

In chapter 7, the author examines how initially governments across the world failed to deal with waves of refugee movement, however later on, nation-states acknowledged determination of *sui juris* people to construct their own future despite hardships and trauma. Realizing these facts, the author argues for visualisation of refugee law for India.¹⁴ The author demonstrates how 1997 draft of MNLR has yet not been given any significant consideration by the Indian government.¹⁵ The author argues that the text of the proposed law on refugee must take into consideration the initiatives proposed under the Asylum Bill, 2015; the National Asylum Bill, 2015; and the Protection of Refugees and Asylum Seekers Bill, 2015 along with recommendations of National Human Rights Commission (NHRC) and Indian judiciary through various judgments.

In the concluding chapter, the author opines that though it is not suitable for the Indian state to become a party to the 1951 Refugee Convention and the 1967 Protocol, at the same time,

¹¹*Id.* at 106.

¹²*Id.* at 134.

¹³*Id.* at 136.

¹⁴*Id.* at 161.

¹⁵*Ibid.*

there is an urgent need to formulate refugee law which can easily be understood by exploring the role of the NHRC, the Supreme Court and the high courts in extending and ensuring equal and fair treatment for refugees.¹⁶ The author argues that the basic structure of the national refugee law of India will confer upon India the moral and legal strength to maintain a dialogue for better protection considering history, cultural developments and the global north–south divide.

The book while acknowledging India’s reasonably good record of providing protection and hospitality to refugees; analyses the contradictions in the relation between these positive aspects and the manner in which state power has been exercised in post-colonial India. In examining the varied encounters between the state and refugees, the author demonstrates that India’s story of providing care is simultaneously one of ‘limiting care’ or ‘calculated kindness’ or ‘strategic ambiguity’.¹⁷ Under this scheme ‘calculation’ in the form of selective kindness is made to the admission of refugees into a state, particularly as a way of underlining a political message.¹⁸ The author, in detail, examines such an inconsistent and discriminatory policies adopted by the Indian state, and opines on the perusal of various discussions that “some refugee groups are well cared for and provided with relief, rehabilitation and other assistance, while at the same time others are refused, neglected or intentionally overlooked.”¹⁹

The book in hand is first of its kind, in the sense that, it binds in single chronicle writing, the discourse of refugee protection in India. However, the book lacks critical analysis of contemporary issues including the Rohingya crisis. Neither does it explain India and China’s soft-peddalling of Myanmar’s genocidal campaign for geopolitical interest; nor New Delhi’s selective rejection of the region’s most vulnerable refugees (though reference to such concept of strategic ambiguity is aptly made). The overall approach of the author appears commendable, especially with the detailed analysis of the complexities involved. The book is rich in content, therefore indispensable for scholars, law teachers, judges, and policy makers. The book is replete with references and appears thoughtful and comprehensive. Having said this, the pic-

¹⁶*Id.* at 197.

¹⁷*Id.* at 77-78.

¹⁸See generally B. S. Chimni, “Status of Refugees in India: Strategic Ambiguity”, in Ranabir Samaddar (ed.), *Refugees and the State: Practices of Asylum and Care in India, 1947–2000*, 443 (SAGE Publications, New Delhi, 2003).

¹⁹*Supra* note 4 at 66.

ing of the book seems unreasonable, especially keeping in mind the needs and requirements of SAARC nations.

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