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Refugee Protection and the Best Interests of the Child: An International and Indian Legal Perspective

ABSTRACT

Best interests of the child, is a principle that occupies a central position in the discourse of children's rights under international law. It recognizes that the interests, well-being and development of children should be of primary consideration in all decisions relating to children. In the context of forced displacement, refugee protection and asylum, this principle assumes particular significance since they face heightened risks of persecution, family separation, exploitation and exclusion. These concerns become even more complex in states where refugee protection lacks comprehensive statutory framework. India and its position on refugee status, particularly of a child in this present discussion, is a significant case, as it is although a party to The Convention on the Rights of the Child (CRC) but has not acceded to the 1951 Convention Relating to the Status of Refugees (Refugee Convention) or its 1967 Protocol. It also lacks a dedicated national refugee legislation. Therefore, it will be interesting to analyse the domestic implementation of international child right's standards, constitutional protection, and the judicial approach in this regard. This paper seeks to critically examine the scope of best interests principle under international law and its implications to refugee protection in India. It suggests that for the protection of a refugee child, what India requires is a coherent, child-centered framework incorporating individualized instead of a blanket assessment, meaningful child participation, access to essential services, and safeguards from arbitrary detention and unlawful return.

KEYWORDS

Best Interests of the Child, Refugee Children, Child Rights, Refugee Convention, UNCHR, Convention on the Rights of the Child

INTRODUCTION

It is often said, that "Childhood, once lost, is never recovered."[1]

[1] Jason Pobjoy, 'An Introduction: The Child in International Refugee Law' (EJIL: Talk!, 29 August 2017) <https://www.ejiltalk.org/an-introduction-the-child-in-international-refugee-law/> accessed 07 February 2026.

Displaced children face family separation[2], detention[3], educational deprivation[4], disappearance[5], and exclusion from child-sensitive asylum procedures. These circumstances raise a fundamental question: how should states balance immigration control with their obligation to protect the rights and welfare of children?

A perusal of the international human rights and refugee laws shows that in considering the implementation of child refugee claims, "the principle of best interests of the child ought to be respected at all stages of the displacement cycle and decisions at any of these stages, must be appropriately documented through a formal and thorough best interest determination (BID)[6] for each child."[7] Although the Refugee Convention does not expressly provide a separate definition of refugee children, nor does the category of children feature explicitly among the five elements of the refugee definition, and the CRC does not specifically define the term refugee child, the CRC Guidelines on Determining the Best Interests of the Child[8] provide practical guidance for applying the child's best-interests principle in protection decisions. They emphasize child participation, individual assessment, procedural safeguards and multidisciplinary decision-making, ensuring that relevant factors—including safety, family relationships and developmental needs—are carefully balanced when determining appropriate protection and care arrangements.

Determining what constitutes a child's best interests however, becomes particularly complex when decisions concern refugee status, family

[2] United Nations High Commissioner for Refugees, 'UNHCR Chief Filippo Grandi Calls on Australia to End Harmful Practice of Offshore Processing' (24 July 2017) < https://www.unhcr.org/news/news-releases/unhcr-chief-filippo-grandi-calls-australia-end-harmful-practice-offshore> accessed 18 March 2026.

[3] *Ibid.*

[4] Hannah Summers, 'Thousands of Syrian Children in Jordan's Za'atari Camp Missing Out on Education' (The Guardian, 29 July 2017) < https://www.theguardian.com/global-development/2017/jul/29/thousands-syrian-children-jordan-zaatari-camp-missing-education> accessed 12 January 2026.

[5] 'No One Is Counting Europe's Missing Refugee Children' (The New Humanitarian, 20 July 2017) <https://deeply.thenewhumanitarian.org/refugees/articles/2017/07/20/no-one-is-counting-europes-missing-refugee-children> accessed 13 February 2026.

[6] A Best Interests Determination is a documented, individualized assessment ensuring that decisions affecting a displaced child's life, protection, care and future priorities their best interests. UN Committee on the Rights of the Child, 'General Comment No 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin' UN Doc CRC/GC/2005/6 (1 September 2005).

[7] Ziba Vaghri, Zoë Tessier and Christian Whalen, 'Refugee and Asylum-Seeking Children: Interrupted Child Development and Unfulfilled Child Rights' (2019) 6(11) Children 120 < https://pmc.ncbi.nlm.nih.gov/articles/PMC6915556/> accessed 02 February 2026.

[8] UN Committee on the Rights of the Child (n 6).

reunification, detention or return to the country of origin. The difficulty is especially relevant to India, where refugee protection operates without a comprehensive national refugee statute, notwithstanding the country's obligation under CRC. The interaction between international children's rights standards and India's domestic legal framework therefore warrants closer examination. This article explores these tensions, focusing on whether existing legal and administrative arrangements adequately account for the distinct protection needs of refugee children.

REFUGEE CHILDREN, INTERNATIONAL LAW AND THE PRINCIPLE OF BEST INTERESTS OF THE CHILD

A well-founded fear of being persecuted,[9] is an important element for being recognised as a refugee, under the Refugee Convention. Despite its relevance, the term 'persecution' has not been defined by the convention, nor is there any universally accepted definition of the same.[10] This, is with the intention that "the term be applied to a wide range of situations and that it can adapt to changing faces of human rights violation that needs refugee protection."[11] An analysis by Nidhi Sahay in her thesis[12] suggests that "the term has increasingly been understood in terms of violation of human rights standards, under the refugee law discourse."[13] This understanding provides a basis for examining violations of children's rights under the CRC as potentially constituting persecution in determining children's refugee status.

"Children have been part of the international discourse since the 1920s,"[14] even then, refugee children have largely been neglected in

[9] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 1. Five elements as per the provision includes: (i) Outside the country of nationality/former habitual residence; (ii) well-founded fear; (iii) persecution; (iv) five grounds of persecution (race, religion, nationality, membership of a particular social group, or political opinion); and (v) unable or unwilling to seek that country's protection or to return there.

[10] UN High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees,* HCR/1P/4/ENG/REV.4 (April 2019) 51.

[11] Nidhi Sahay, *Seeking Refuge: A Study on Children's Rights Approach to International Refugee Law* (PhD thesis, University of Edinburgh 2024) <https://era.ed.ac.uk/server/api/core/bitstreams/5e0eec5a-4399-48cb-b572-1d9fcd66b6c9/content> 14 accessed 27 February 2026.

[12] *Ibid.*

[13] *Ibid.*

[14] *Geneva Declaration of the Rights of the Child* (adopted 26 September 1924) 21 LNTS 43 recognised that 'mankind owes to the child the best that it has to give'. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 along with its Protocols; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (adopted 8 June 1977,

international migration and asylum law. "The refugee definition is age-neutral and fails to differentiate between the protection needs of an adult and a child."[15] "The political climate and historical context in which the convention was drafted is what led to this deficiency."[16] Despite the limitations of the Refugee Convention's refugee definition in expressly addressing children's distinct experiences, UNHCR issued a guideline in 2009 on this issue.[17] The guidelines advocate a" child-sensitive interpretation of the refugee definition", recognizing that children may experience persecution differently from adults. They emphasise individual assessment, age-specific vulnerabilities, children's own experiences and appropriate procedural safeguards when determining asylum claims.[18]

CRC makes a reference to refugee children in expressed terms.[19] However, "refugee children" was not defined, leading to neither the Refugee Convention nor the UNCRC to provide a satisfactory basis for building durable solutions when it comes to refugee children.[20] The UNHCR has however stated in its guidelines that "various human rights instruments should be read together to provide a protective framework

entered into force 7 December 1978) 1125 UNTS 3, and *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, had 25 articles referring to special protection needs of children.

[15] Sahay (n 11) 3.

[16] *Ibid*.

[17] UNHCR, 'Guidelines on International Protection No 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees' (22 December 2009) UN Doc HCR/GIP/09/08.

[18] *Ibid,* para 4.

[19] United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 22. It states: "1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."

[20] Guy S. Goodwin-Gill, 'Unaccompanied Refugee Minors' (1995) 3 International Journal of Children's Rights, 407

for refugee children and the refugee definition should be read in a child sensitive manner consistent with the UNCRC."[21] There are three contexts where the UNCRC can be engaged to assist in determining the status of child seeking international protection.[22] It may be invoked as a "procedural guarantee;"[23] drawn upon as an interpretative aid;[24] "give rise to an independent source of status outside the traditional refugee protection regime."[25]

Despite the increasing recognition of children's rights, Nidhi notes that:

> *"Any system of protection can be effective only if both the substantive and procedural issues are given equal attention. There has been plenty of guidance and scholarship regarding the procedural aspects of Refugee Convention in the context of refugee children. However, there has been hardly any focus on the substantive issues in their qualification as refugees and what it means to be a refugee child. Even in this context, the research, policy, and jurisprudence have viewed the violation of children's rights from the perspective of Refugee Convention which is adult centric and disregards the rights specific to refugee children."*[26]

It is in this backdrop that the principle of best interests of the child becomes relevant. Article 3 of the UNCRC states:

> *"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
>
> *2. States Parties undertake to ensure the child such protection and care as*

[21] UNHCR, 'Child Asylum Claims' (n 17).
[22] Jason M Pobjoy, 'Introduction' in *The Child in International Refugee Law* (Cambridge University Press 2017) 1–12.
[23] To inform the refugee determination process. "The 1951 Refugee Convention is silent on the procedures that a state should implement in designing a domestic system of refugee status determination. In contrast, the CRC comprises a number of provisions that may inform the determination process, including the principle that a child has a right to express views freely and be heard in any judicial or administrative proceedings affecting her." Pobjoy (n 1).
[24] To inform the interpretation of the 1951 Refugee Convention definition. "International law, and in particular international human rights law, has grown exponentially over the past 60 years. Many of the relatively nascent precepts contained within the 1951 Refugee Convention have now been rearticulated, re-contextualised, and in some cases expanded in a comprehensive suite of international human rights treaties. It is now widely accepted that the 1951 Refugee Convention definition should be interpreted taking into account this broader international human rights framework." *Ibid.*
[25] "which may, in certain circumstances, provide a more appropriate and more child-friendly gateway for assessing the protection needs of a child seeking international protection." *Ibid.*
[26] Sahay (n 11) 5-6.

> *is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
>
> *3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."*

It is noteworthy that the other general principles applicable under CRC are also equally relevant.[27] They include; non-discrimination, the right to life, survival and development, and respect for the child's views. Together, with the principle of best interest of the child, they guide the interpretation and implementation of children's rights, ensuring equality, holistic development, meaningful participation and child-centred decision-making. In 2005, the Committee on the Rights of the Child recognises[28] other applicable principles in the context of treatment of unaccompanied and separated children outside their country of origin. They include respect for the principle of non-refoulement [29] and confidentiality.[30]

The Committee on the Rights of the Child emphasises[31] that the child's best interests must be a primary consideration at every stage of displacement. Decisions affecting unaccompanied or separated children require documented, individualised assessments of their identity, nationality, cultural background, vulnerabilities and protection needs. These assessments should be conducted by qualified professionals in safe, child-friendly environments. Prompt appointment of a guardian and provision of legal representation are essential safeguards, while children placed in care or treatment must receive periodic reviews of their circumstances and arrangements.[32]

According to the 1994 UNHCR Guidelines,[33] the best interests rule requires states to treat refugee children's welfare as a primary

[27] UN Committee on the Rights of the Child, 'General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1)' (29 May 2013) UN Doc CRC/C/GC/14, para 41-45.
[28] UN Committee on the Rights of the Child (n 6) 7-11. This document aims to guide States in protecting unaccompanied and separated children outside their country of origin, clarifying their rights and promoting child-centred care, asylum procedures, and durable solutions.
[29] *Ibid* 10.
[30] *Ibid* 11.
[31] *Ibid.*
[32] *Ibid. See also* Refugee Convention (n 9), art 25.
[33] UNHCR, *Refugee Children: Guidelines on Protection and Care* (1994).

consideration in policymaking and individual decisions.[34] It demands careful assessment of each child's circumstances, family relationships, cultural continuity and views. However, its flexible nature requires reasoned, child-centred decisions to prevent subjective or inconsistent application.

A detailed guidelines on determining the best interests of the child was adopted in the year 2008,[35] which provides the operational framework for applying the best-interests principle to refugee children and other children under UNHCR's mandate. It recognises that the Convention on the Rights of the Child establishes relevant fundamental principles.[36] It distinguishes between Best Interests Assessment (BIA)[37] and Best Interests Determination.[38] In this guidelines, UNHCR identifies three principal situations requiring a BID: "determining durable solutions for unaccompanied or separated refugee children; making temporary-care decisions in exceptional circumstances; and considering the possible separation of a child from parents against their will."[39] The process involves gathering and verifying information, hearing the child's views, consulting family members and relevant experts, and balancing competing considerations. Decisions should give appropriate weight to child's views according to age and maturity, prioritised safety, preserve family relationships where appropriate, and support the child's physical, psychological and social development.[40] Overall, the guidelines translate the best-interests principle into practical child-protection procedures. They emphasise individualised decisions, procedural safeguards, documentation and follow-up, while encouraging UNHCR and its partners to strengthen national child-protection systems.[41]

The 2021 UNHCR guidelines[42] adopt a broader operational approach by integrating BIA and BID into comprehensive child-protection case management, including identification, planning, coordinated services, follow-up and case closure. They also strengthen links with national child-protection systems and provide more detailed guidance for children facing varied risks. Thus, the 2021 Guidelines replace the 2008 framework and its 2011 Field Handbook[43], shifting emphasis from

[34] *Ibid* 21.
[35] UNHCR, *Guidelines on Determining the Best Interests of the Child* (May 2008).
[36] UN Convention on the Rights of the Child (n 19), arts 3, 2,6 and 12.
[37] Use before ordinary actions affecting an individual child.
[38] A formal procedure involving strict safeguards for particularly consequential decisions.
[39] UNHCR, *Guidelines on Determining the Best Interests of the Child* (n 35) 9-10.
[40] *Ibid,* 60-70.
[41] *Ibid* 26.
[42]UNHCR, *2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child* (May 2021).
[43] UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines* (UNHCR

determining best interests in specific situations to sustained, systematic protection outcomes.

In 2013, the Committee on the Rights of the Child elaborates[44] on the applicability of the principle by conceptualising it in three ways: as a substantive right, an interpretative legal principle, and a rule of procedure. Its applications extends to courts, administrative authorities, legislatures, public institutions and private organisations. Once again the committee emphasised that the best interests must be assessed individually, considering the child's views, identity, family relationships, safety, vulnerability, health and education. The child's views must receive due weight according to age and maturity, alongside the rights to non-discrimination, life, survival and development. Decisions must explain how the child's interests were assessed and balances against competing considerations. Overall, the comment transforms a broad principle into a practical, rights-based decision-making obligation.

REFUGEE CHILDREN IN INDIA: CONSTITUTIONAL AND JUDICIAL POSITION

The Refugee Convention, 1951 and its 1967 Protocol has not been acceded by India. The reason for the same cannot be found in a single official statement, rather than a reflection of history and political and practical concerns. In a parliamentary response,[45] several specific objections to the international refugee regime was identified. Those includes: the convention's Eurocentric origins; India's concerns of large-scale displacement rather than individual refugee cases that is primarily the issue addressed by the convention; national sovereignty and security; lack of burden-sharing under the international framework; the problem of distinguishing between refugees fleeing persecution from people migrating for economic reasons; and the lack of flexibility in addressing different refugee situations after being bound by convention's specific treaty obligations.

The absence of a comprehensive national refugee legislation leaves protection of refugees in the country, depend largely on executive procedures and case-by-case decisions. Consequently, refugee recognition and access to rights may vary across groups, creating uncertainty and gaps in accountability. Nevertheless, India remains

2011).

[44] UN Committee on the Rights of the Child, 'General Comment No 13 (2011): The Right of the Child to Freedom from All Forms of Violence' (18 April 2011) UN Doc CRC/C/GC/13.

[45] Government of India, Lok Sabha Unstarred Question on Refugees, response identifying the reasons for non-accession to the 1951 Convention and 1967 Protocol.

bound by applicable human rights obligations and the customary international law principle of non-refoulement.[46]

One such relevant core human rights treaty in relation to the present context is, the convention on the rights of child. India acceded to the convention on 11 December 1992 and is bound to uphold its obligations to prohibit discrimination;[47] to take into consideration the child's best interests;[48] guarantee children's opportunity to express their views;[49] and specifically providing protection and humanitarian assistance for refugee children, including family tracing and reunification.[50] These obligations apply regardless of a child's refugee status or nationality.

A perusal of the Indian Constitution reveals some of the important safeguards for refugees and asylum-seeking children, irrespective of citizenship. More specifically, it guarantees equality before the law and equal protection of the laws,[51] while also protecting life and personal liberty.[52] These protections however, does not create an unrestricted right to enter or remain in India.[53] Therefore, India retains immigration-control powers, but their exercise remains subject to applicable constitutional safeguards and judicial review.

V. Vijayakumar[54] examines the protection of refugee children in India by the judiciary despite its non-accession to the 1951 Refugee Convention and 1967 Protocol. He highlights *Khy-Htoon v State of Manipur*,[55] where the Gauhati High Court stayed the deportation of Burmese refugees, including children, and permitted them to seek the protection of UNHCR.[56] The landmark judgment of *National Human Rights Commission v. State of Arunachal Pradesh*[57] is also discussed. Particularly the protection of chakmas' constitutional and citizenship related interests by the Supreme Court, emphasising equality before law and the State's duty to protect life and liberty is relevant in this context. He also illustrates judicial concern for vulnerable children and the relevance of

[46] V. Vijaykumar, 'Protection of Refugee Children in India' (2002) Vol 20 (2) *Refuge: Canada's Journal on Refugees* 52.
[47] UN Convention on the Rights of the Child (n 19) art 2.
[48] *Ibid,* art 3.
[49] *Ibid,* art 12.
[50] *Ibid,* art 22.
[51] *Ibid,* art 14.
[52] *Ibid,* art 21; *See National Human Rights Commission v State of Arunachal Pradesh* (1996) 1 SCC 742, where the Supreme Court affirmed the State's duty to protect Chakmas' lives and liberty.
[53] Constitution of India, art 19 (e) which guarantees the right to reside and settle in India, is available only to citizens.
[54] Vijayakumar (n 46).
[55] Civil Rule No. 515 of 1990 (W.P. No. 515/1990).
[56] Vijayakumar (n 46) 53.
[57] *National Human Rights Commission* (n 52).

international child-rights standards.[58] The courts have helped to bridge gaps between international obligations and domestic law. However, it is noteworthy that there has been inadequate judicial engagement with CRC Article 22, which specifically concerns refugee children.

It is now clear that India relies heavily on executive policies, for refugee protection. Government guidelines, including the 2011 Standard Operating Procedure,[59] provide for case to case assessment and possible long-term visas following security verification. UNHCR also registers and determines the refugee status of certain asylum seekers under its mandate,[60] provides protection and assistance, and facilitates durable solutions. Its role though, does not replace the Indian Government's authority.

It is worth noting that currently the general legal framework, particularly the Immigration and Foreigners Act, 2025,[61] largely treats refugees as foreigners without a distinct statutory status.

Consequently, protection remains discretionary and uneven, making constitutional safeguards and judicial intervention important. However, in the absence of a comprehensive and dedicated legal framework, the central question should be whether these existing protections adequately secure the best interests of refugee children in India.

CHALLENGES IN APPLYING THE BEST INTERESTS PRINCIPLE: AN INTERNATIONAL AND INDIAN PERSPECTIVE

There are significant legal and practical challenges that comes in the application of the best interests of the child principle in refugee protection. Same is the case nationally and internationally. Although the principle is well founded in law and practice, its effective implementation depends on how protection claims are assessed, essential services are provided, and administrative decisions are made.[62]

Some of the challenges in applying the principle are as follows:

[58] By pointing to *Dr. Malvika Karlekar v. Union of India* Writ Petition (Criminal) No. 583 of 1992 and *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161.
[59] Ministry of Home Affairs, Government of India, *Standard Operating Procedure for Dealing with Foreign Nationals Who Claim to Be Refugees* (29 December 2011).
[60] Press Information Bureau, Ministry of Home Affairs, Government of India, 'Refugee Determination System' (5 May 2015) <https://www.pib.gov.in/newsite/PrintRelease.aspx?lang=2&reg=48&relid=121170 > accessed 17 February 2026.
[61]Immigration and Foreigners Act 2025 (Act No 13 of 2025).
[62] Milka Sormunen (ed), *The Best Interests of the Child: A Dialogue between Theory and Practice* (Council of Europe 2016).

i) The absence of definition of a refugee child or the inclusion of it under its refugee definition, as discussed earlier, is the first and foremost issue of concern that poses a big challenge. Consequently, children's claims may be assessed without adequate attention to age-specific persecution, dependency, family circumstances and their capability to articulate fear. Applying the best interests principle requires child-sensitive procedures and individual assessment.

ii) Refugee children are exposed to exploitation, psychological harm and insecurity, especially in situations of immigration detention, family separation and inadequate guardianship.

iii) Access to education, healthcare, birth registration and social protection are often a far-off dream for a refugee child. These are usually because of undocumented status, administrative barriers, language difficulties and uncertain entitlements. Such issues undermine their development and dignity which in turn have an effect on the applicability of the principle.

iv) In India in particular, as discussed, the lack of a comprehensive law creates reliance in executive policies and case-by-case decisions. Although constitutional provisions and judicial interventions offer safeguards, they are limited. Consequently, the issue of inconsistent implementation and limited institutional coordination arises. These issue prevent the effective applicability of the principle.

WAY FORWARD

In light of the above discussion, it is understood that a child-centred approach to refugee protection is a need of the hour in India. This requires moving beyond an ad hoc administrative responses towards a more coherent framework that places children's dignity, safety, development and individual circumstances at the centre of decision-making. To achieve this, the paper suggests a few proposals.

Firstly, India should consider adopting a comprehensive and dedicated refugee protection law supported by a clear national policy. Such laws and policies should expressly recognise the particular vulnerabilities and protection needs of children, irrespective of whether they arrive with their families.

Secondly, there is a need of child-sensitive procedures for assessing protection claims. These should take into consideration the age, maturity, gender, family circumstances and child-specific forms of persecution. Trained decision-makers, interpreters, confidential interviews and access

to legal assistance would help ensure that children's claims are assessed individually rather than solely through their parents' applications. This in turn, will ensure effective implantation of the best interests principle.

Thirdly, assessments should consider the child's views, family unity, safety, identity, health and developmental needs. Guardianship arrangements and appropriate representation should be provided for unaccompanied and separated children, with periodic review of their care and protection arrangements.

Fourthly, child-sensitive alternatives should be prioritised over immigration detention. Proposed return of the child should also undergo individual assessment of protection risks, family circumstances and consequences for the child. Decisions should be subject to appropriate review and safeguards against unlawful return.

Lastly, administrative barriers should not unnecessarily prevent refugee children from accessing essential services such as, education, healthcare, birth registration and social protection. All activities and decisions in relation to refugee children must be coordinated among the government agencies, UNHCR, civil societies and child protection institutions.

The progress of achieving and ensuring the protection of rights of refugee children can be measured by whether such children achieve meaningful, accessible and consistent protection or not. The principle of best interests of the child must operate as a practical decision- making standard and not merely a formal commitment.

CONCLUSION

The best interests of the child principle constitutes a fundamental standard in all actions concerning children. Same is the case for ensuring that refugee children receive protection responsive to their distinct vulnerabilities, rights and developmental needs. Its effective application however, remains challenging in the context of forced displacement. The absence of a definition of a refugee child under the 1951 Refugee Convention have led to the need of interpreting the existing refugee protection principles in a manner that is child-sensitive, taking into consideration persecution, dependency, family separation and insecurity.

Despite the absence of a dedicated framework within the international refugee law, the protection of a refugee child finds its foundation in the Convention of the Rights of Child. Nevertheless, gaps continues to exist between normative commitments and their practical implementation. Particularly in issues relating to immigration detention, family

separation and inadequate guardianship. The best interests principle must therefore operate not merely as a mere abstract legal aspiration but as an individualised and reasoned assessment that considers the child's views, safety, identity, family relationships, health and long-term development.

India in particularly is faced with a peculiar challenge due to the absence of a comprehensive and dedicated refugee statute. This has led to reliance in executive policies, administrative discretion and judicial intervention. Although constitutional protections for non-citizens are in place, their practical effectiveness however, depends on consistent administrative implementation. India has also acceded to the CRC which is relevant in this context. Judicial decisions are limited but offer some solace. However, litigation alone cannot substitute for a predictable system.

For the protection of rights, safety and dignity of refugee children, the meaningful way forward is to have a dedicated refugee protection framework for them. A child-sensitive status determination procedures, individualised best-interests assessments, safeguards against arbitrary detention and unlawful return and effective access to basic needs such as education, healthcare, documentation etc. can go a long way. These measures should be accompanied by institutional coordination, professional training, monitoring and accountability.

Ultimately, the effectiveness of refugee protection must be measured simply by the existence of legal principles or policy commitments, but by whether refugee child receives dignity, security and a genuine opportunity to develop.