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NEED FOR DEMOCRATISING REFUGEE LAWS IN INDIA: A Turn Towards Refugee Protection or the Return to Eurocentrism

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NEED FOR DEMOCRATISING REFUGEE LAWS IN INDIA: A Turn Towards Refugee Protection or the Return to Eurocentrism

***Sara Maheshwari*[*] *& Amritanshu Pushkar*[**]**

[Abstract: *The human graduation to civilization and their understanding to migrate has largely, been vague. Throughout the course of human evolution, power struggles, conflicts, and wars have plagued nations, communities, and individuals. The eternal and relentless battles have left countless people without shelter, eatables and employment, with many forced to seek refuge outside their homeland. The predicament of refugees and their numbers are prevalently increasing with time, bringing grave concerns to the international-ideal models of governance and peace-loving countries shouldering off their responsibility from the sets of actual displacements. While there were displaced individuals in mediaeval centuries, the contemporary refugee issue is distinct in its scale of expansion, lack of sincere human efforts into neutralising the same. The estranged, involuntary migrants face unique, unprecedented challenges as they attempt to integrate into new societies, where their integration and challenges are dependent largely on the resources available with the host country and its willingness. This paper delves into the international conventions on refugee protection, emphasizing upon India's deliberate abstinence from becoming a signatory to the 1951 Refugee Convention and its 1967 Protocol; and critically examines the gaps and limitations within the current legal framework.*]

I

Introduction

India has lately joined the league of nations where asylum seekers are traversing wildly in their quest for accommodation and unconstrained entry. With exoduses come deeper worries of inadequate distribution of resources and the impending danger of an enhanced 'targeted country's unemployment rate', with India being no exception. The indubitable reminder suggests that providing refuge to asylum seekers is broadly a

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conferment, the discretion of bestowing of which is vested upon the State and its instrumentalities.[1] Manas Ray rightly quotes, "*The badge of a 'refugee' is a coveted one; available but to a fortunate few*."[2] Consequently, does it authorise the State to devise rules as per the availability of resources and discretion thereof? The answer perhaps if partially yes, for the nations who are not a signatory to the *Convention Relating to the Status of Refugees, 1951* (hereinafter referred to as '***the Convention***') or the *Protocol Relating to the Status of Refugees, 1967* (hereinafter referred to as '***the Protocol***'); the rule-making power is subject to the dynamic growing needs of the asylum seekers.[3]

On January 31st, 1967, the Protocol offered an extra layered protection by laying out the definition of a refugee and who all are exactly entitled to be benefited with the Convention being in place. With the promulgation and ratification of the Protocol, the High Contracting Parties to the Protocol are subjected to ensuring the protection, rehabilitation and temporary resettlement, *non-refoulement*[4], and the provision of the basic human rights to the individuals who have fled their homelands in fear of persecution and are bearing the following qualifications[5]:

1. The Refugee should be outside the country of his natural residence or former habitual residence,
2. The nature of his evacuation from his natural place of residence shall be the reason for fear of persecution on the grounds of race, religion, nationality, membership to any violent social group, or the belief in any particular political opinion, differentiating them from migrants who traverse away from their homelands in search of better job opportunities or avoid political unrest, gang violence without directly or indirectly facing any threat to their lives or fear of persecution.
3. The Refugee seeks no further assistance and feels no longer protected in his originating country or his country of natural residence.

While India has had a history of global exodus, the policies that shape its current refugee laws are ignorant of the unusual prominence of international law standards. Persecution on any grounds whatsoever insinuates India's ephemeral evaluation and

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[1] GUY S. GOODWIN-GILL ET. AL., THE REFUGEE IN INTERNATIONAL LAW 157-169 (Oxford University Press 2021).

[2] Manas Ray, *Growing Up Refugee: On Memory and Locality*, 28(2) IIC QUARTERLY 119, 130-132 (2001).

[3] Pirkko Kourula, BROADENING THE EDGES: REFUGEE DEFINITION AND INTERNATIONAL PROTECTION REVISITED 342- 471 (Martinus Nijhoff, ed. 1997).

[4] Joan Fitzpatrick, *Revitalizing the 1951 Refugee Convention*, 9 HARV. HUM. RTS. J. 229-253 (1996).

[5] *UN Action in the Field of Human Rights, United Nations 1994, available at:* https://digitallibrary.un.org/record/196562?ln=en

protection of interests. One of the primary reasons why it is believed[6] that 'Persecution' as a term remains undefined in the Convention or the Protocol for the security against the ingenuity of misinterpretation to impart unintended harm to the asylum seekers community. While persecution represents multifarious instances of oppressive and estranged conduct, some are brutal enough to trigger the infringement of human rights; which are bestowed upon every individual by virtue of being born a human.[7] The scope of this paper shall delve into the growing fret over the enactment of refugee laws in India in the subsequent sections.

II

Historical Perspective of Refugees in India: '*Athithi Devo Bhava*'?

Albeit, tolerance between various co-existing religions and the principles of secularism deeply embedded in the Preamble of the *Indian Constitution* cannot be ignored, it is pertinent to take note of the enriched refugee protection India has offered to the world since time immemorial. For generations, children in India are taught to treat 'guests' *(atithis)* as next to God and shower them with the affection one would if God visits their house. This couthly treatment envisages the rich cultural heritage and mythology that India believes in. In the *'Yudha-Kanda'* of Valmiki Ramayana, the heavenly treatment of *Vibhishana* (the younger sibling of '*Ravana'*) and his request to offer shelter in Shri Ram's camp was accepted with alacrity. Another Tamil Classic namely *'Periyapuranam'* mentions how a perpetrator was offered a pardon despite stabbing the Chola King (*Meyyaporul Nayanar*) in his house and arrogating himself as a Lord Shiva's devotee. A more recent archetype includes when Mahatma Gandhi was addressing the Indian community at Ceylon, Sri Lanka in 1927 to accommodate themselves humbly between the Sinhalese population of Sri Lanka evincing the goodwill and humility that Indians hold in the subcontinent and beyond.[8]

Keeping the mythological significance aside, India has been home to a little over two lakhs refugees who have migrated over the past seventy years and sought asylum, resources and employment opportunities[9]. The location, economic and social stability,

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[6] Atle Grahl-Madsen, *The Status of Refugees in International Law*, 62(1) AMERICAN JOURNAL OF INTERNATIONAL LAW 231, 236-237 (2017).

[7] Vera Gowlland-Debbas, THE PROBLEM OF REFUGEES IN THE LIGHT OF CONTEMPORARY INTERNATIONAL LAW ISSUES 83-132 (Martinus Nijhoff Law Specials, 1995).

[8] Ranabir Samaddar, REFUGEES AND THE STATE: PRACTICES OF ASYLUM AND CARE IN INDIA 1947-2000 15-49 (Sage India Publications 2003).

[9] UNITED NATIONS HUMAN RIGHTS COMMISSION RELIEF WEB, *available at:* https://reliefweb.int/report/india/supporting-refugees-india-what-we-achieved-2021 (last visited Mar. 04, 2022).

and cultural history of a country decide the migrations it may receive if a civil war breaks out in any of its neighbouring states. The history of India unfortunately, has been similarly exposed to instances of religious migrations and impulsive separation theories. While the Hindus and the Muslims fought the *1857-Great Uprising* together, the theory of a *two-nation theory* was for the first time proposed by *Syed Ahmed Khan* in the late 1880s.[10] The first instance of forced migration can be witnessed during 1905 and 1906 soon after the Bengal Partition where more than two lakh fifty thousand people are credited to have been displaced.[11] This was soon followed by the call for *Direct Action* by *Mohammad Ali Jinnah* in the year 1946 where several thousands of Hindus were assassinated and several few thousands displaced.[12] The post-independence era has been immensely gruesome displacing nearly twenty million people traversing to and from India/ Pakistan; more than ten million people sought shelter in the north-eastern parts of India during the atrocities subjected to the East Pakistani Bengalis;[13] around a million Afghanis sought shelter and protection from India during the Soviet-led and the US-financed military intervention;[14] the displacement of more than eighty thousand Tibetan refugees; the migration of fifty-three thousand Chakmas;[15] the successful rehabilitation of the Velupillai Prabhakaran's led *Liberation Tigers of Tamil Eelam* (Sri Lankan LTTE) who were offered shelter in Tamil Nadu when Sri Lanka was witnessing a Civil War[16] are all the examples of India's generosity and benevolence which the West has turned deaf ears to.

While *'Atithi Devo Bhava'* sounds magically pleasant to the ears they are spoken to, the wide-scale implementation of the same to accommodate refugees beyond the tolerable numbers is equally difficult and distasteful. While India has ambitions to maintain its diplomatic ties with the neighbouring countries, what India may resort to is the

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[10] Manoj Kumar Sinha, HANDBOOK OF LEGAL INSTRUMENTS ON INTERNATIONAL HUMAN RIGHTS AND REFUGEE LAWS, 175- 265 (Lexis Nexis 2014).

[11] John R. McLane, *The Decision to Partition Bengal in 1905,* 2(3) THE INDIAN ECONOMIC AND SOCIAL HISTORY REVIEW 221, 235-237 (2016).

[12] Muneera Lula, *1947 Partition: Indo-Pakistani Rivalries,* MANCHESTER HISTORIAN (June 12, 2016) *available at:* https://manchesterhistorian.com/2016/1947-partition-indo-pakistani-rivalries/

[13] Haimanti Roy, *Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947-65*, HISTORY FACULTY PUBLICATIONS 1, 1-29 (2012) *available at:* https://core.ac.uk/download/pdf/232825741.pdf

[14] Martand Jha, *Million Afghanis sought shelter and protection from India during the Soviet-led,* LIVE MINT (Jan. 09, 208 2:35 PM), *available at:* https://www.livemint.com/Sundayapp/clQnX60MIR2LhCitpMmMWO/Indias-refugee-saga-from-1947-to-2017.html

[15] K.C Das, Adidur Rahman, *Statelessness: A Study of Chakma Refugees of Arunachal Pradesh,* 1(2) CCIJHSS 50, 50- 54 (2015) *available at*: https://saspublishers.com/media/articles/CCIJHSS_12_50-54.pdf

[16] V. Suryanarayan, *Need for National Refugee Law,* 1 ISIL Y.B. INT'L HUMAN & REFUGEE LAW 254, 260-264 (2001).

adoption of a policy that provides temporary shelter to these refugees and envisages successful exchange or return to their originating homeland once the threat of their persecution has been eliminated. The policy though seems sound and adaptable is, however, subject to its own criticisms which may entail their originating homeland's demand for domicile proof.[17] India must, in these situations, keep a register of individuals to keep a count and the origin of each such refugee to help it in the extradition of the displaced. While keeping itself absolved from the controversial crescendo, it must aim to protect and safeguard its own interests imperatively by ensuring the maintenance of its close ties with the neighbouring countries, protection of its territorial integrity, and upholding the model of rectitude and compassion while dealing with the refugees and their extradition.

III

International Conventions and India's Deliberate Abstinence

The *United Nations Convention Relating to the Status of Refugees, 1951* (or "The Convention") happens to be the first international convention with multiple state parties that were bound by the principles of the *Universal Declaration of Human Rights, 1948.*[18] While Human Rights globally are considered to be a source of limiting sovereign authority, what matters is India's abstinence from signing the Convention and becoming a party to a Convention which not just protects human rights but also seeks to actively safeguard the interests of the asylum seekers globally. While the *High Contracting Parties* (parties to the Convention, as ideally named as) concur with the principles of the Convention as embedded therein, the story is not as beautiful as it seems from the surface.

Article 35 of the Convention and Article II of the Protocol are the rigid and robust provisions that deal with and demand cooperation from the High Contracting Parties (hereinafter referred to as '***the HCP***') in providing an active aid to the office of the UNHCR in exercising its functions[19]. The exception here, however, is the United States of America. The United States chose to extend its hand of help to the refugee community by ratifying the Protocol in the year 1968 and essentially undertake to comply with the

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[17] Saurabh Bhattacharjee, *India Needs a Refugee Law*, 43(9) EPW 71, 71-75 (2008), *available at*: https://www.jstor.org/stable/pdf/40277209.pdf?refreqid=excelsior%3A3fce2eaffddbaa8ffa1173fe9815553f&ab_segments=&origin=&initiator=&acceptTC=1

[18] James C. Hathaway *et al*., THE LAW OF REFUGEE STATUS 86-125 (Cambridge University Press 2014).

[19] Jai S. Singh, *Refugee Law and Policy in India: Efforts of Indian Courts,* 9 ISIL Y.B. INT'L HUMAN & REFUGEE LAW 211, 213-220 (2009).

provisions of the Convention and the Protocol voluntarily.[20] Subsequently, the Congress enacted the *Refugee Act, 1980*. The act however, depicts acute resemblance to the Convention; where *Article 33* of the Convention and *Section 241(b)(3)(A)* of the Act carry the same purpose of withholding refoulement of refugees to their homeland in case where a perpetual threat to their lives and persecution persists.[21] The statutory provisions when dovetailed with the obligation of the state to cooperate with the *UNHCR*, one would expect the US's startling adherence to domestic and international laws' compliance with the presence of a willingness to receptivity, the reality is however, exactly the reverse. Individual asylum claims are generally not referred to the *UNHCR* and the organisation itself does not partake in active administrative and diplomatic decision-making in the US.[22] This when coupled with their lack of coherence while deciding individual claims insinuates their views are not being taken seriously or made to appear bleak. The problem naturally gives birth to a blithe disregard for the provisions of the Convention in individual cases when *UNHCR* offers its '*Amicus Curiae*' position. As expected, the precedents so established are mixed in nature with no rigid compliance with either *Article 33* of the Convention or the Refugee Act of 1980 either. The Supreme Court of the United States agreed to accept and apply the request of the UNHCR's rigid structural application of the provisions under the Convention in *Cardoza-Fonseca*[23], the same request was rejected in *Stevic*[24], raising serious questions on the structural framework on which the pillars of the Convention and the Protocol are built upon.

Before deliberating upon India's stance on refugee laws, this essay shall discuss how other countries respond to the refugee crisis; thus, drawing inferences and commonalities of why nations often abstain from recognising refugee rights and passing laws in furtherance thereof. Japan, one of Asia's most developed countries; and a global economic power since the 1960s, has donated more funds than any other nation to aid in the relocation of Indo-Chinese refugees overseas in the past decade but has so far

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[20] Michael S. Teitelbaum, *Right versus Right: Immigration and Refugee Policy in the United States*, 59(1) COUNCIL ON FOREIGN RELATIONS 21, 21-59 (1980), *available at*: https://www.jstor.org/stable/pdf/20040652.pdf?refreqid=fastly-default%3A4e06ed8f3468d85654da989bc2143466&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results

[21] Jill Koyama, *For Refugees, the Road to Employment in the United States Is Paved With Workable Uncertainties and Controversies*, 32(3) SOCIOLOGICAL FORUM 501, 501- 521 (2017) *available at*: https://www.jstor.org/stable/pdf/26626042.pdf?refreqid=excelsior%3A49543d883aef326f8057a8d2d4e3a0ef&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=

[22] Mary Crock, *Apart from US or to Part of US? Immigrant's Rights, Public Opinion and the Rule of Law*, 10 INTERNATIONAL JOURNAL OF REFUGEE LAW 49, 49-76 (1998).

[23] *INS* v. *Cardoza-Fonseca*, 480 U.S. 421 (1987).

[24] *INS* v. *Stevic*, 467 U.S. 407 (1984).

hardly welcomed a handful to reside in its lands.[25] For instance, Japan granted refugee status to only 74 people seeking asylum in 2021[26]; despite ratifying the *UNHCR Refugee Convention and The Protocol in 1981-82*. Their justification for its fitful refugee policy is to obsessively protect their homogenous society and culture; thus, labelling refugees an extrinsic part of their societal structure. Concerns regarding status inequality and their already overburdened working-class sectors left little space for refugees to make room. In 1978-the 80s, when Japan faced widespread criticism, especially from America, it began accepting certain individuals for permanent residency, but with such strict pre-conditions that in the following year, only one family of 3 was able to qualify as permanent residents.[27] Contributing huge funds for relief work was only a way for Japan to buy its ways out.

India is neither a signatory to the Convention relating to the *Status of Refugees of 1951*; nor the *1967 Protocol*. It also does not provide clarity on its position on the non-refoulement principle, which obliges countries to not force refugees to return to their home countries which they had to flee in fear of persecution.[28] A number of scholars have attempted to understand why India has been unwilling to accede to the 1951 Convention, most of which blame the Convention's colonial roots and its bias to support Eurocentric practices (written by the Europeans for the Europeans) and their own interests.[29] Furthermore, the limited involvement of South-Asian countries in drafting the international statute; coupled with the intentional imbalance between the rights and obligations of the source nations vis-à-vis the harbouring nations has explained India's reluctance.[30] India is already burdened with its over-population and facing a dearth of resources for its people; legitimising refugees will only mean more pressure on the exhausted land of opportunities.

It is however pertinent to note that India, despite being a non-signatory country, has fairly contributed to the endorsement of the Global Compact on Refugees (GCR), which

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[25] Cornelis D. de Jong, *The Legal Framework: The Convention relating to the Status of Refugees and the Development of Law Half a Century Later*, 10(4) INTERNATIONAL JOURNAL OF REFUGEE LAW 688, 688-699 (1998).

[26] Kyodo, *Japan unveils first-ever guidelines on refugee status recognition amid global criticism*, SOUTH CHINA MORNING POST (Mar. 24, 2023, 8:13 PM) *available at*: https://www.scmp.com/news/asia/east-asia/article/3214783/japan-unveils-first-ever-guidelines-refugee-status-recognition-amid-global-criticism

[27] Thomas R.H. Havens, *Japan's Response to the Indochinese Refugee Crisis*, 18(1) SOUTH ASIAN JOURNAL OF SOCIAL SCIENCE 169, 173-174 (1990).

[28] Padmini Singh, *Refugee and the State- Practices of Asylum and Care in India, 1947-2000*, 5 ISIL Y.B. INT'L HUMAN & REFUGEE LAW 368, 374-381 (2005).

[29] Arjun Nair, *National Refugee Law for India: Benefits and Roadblocks*, IPCS RESEARCH PAPERS 1, 1-14 (2007), *available at*: https://www.files.ethz.ch/isn/129030/RP11-ArjunNair.pdf

[30] Maja Janmyr, *The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda*, 33(2) INTERNATIONAL JOURNAL OF REFUGEE LAW, OXFORD ACADEMIC PRESS 320, 327 (2021).

the United Nations officially endorsed in December 2018.[31] India's positive affirmative of the GCR, despite its biggest lacunae of not defining the term "refugee" in any of its domestic legislations, has demonstrated its willingness to cooperate and work towards accommodating refugee movements which are in tandem with the principle of "burden-sharing".

IV

Existing Legal Framework in India *vis-à-vis* The Citizenship (Amendment) Act, 2019: Discrimination or Discretion?

India is one of the largest host countries in South-East Asia, yet fails to define the term 'Refugee' in any of its statutes. India does not have a national legislation pertaining to refugees, which is why it deals with them on an *ad hoc* basis; sometimes under archaic laws like *The Registration of Foreigners Act, 1939,*[32] thereby treating foreigners and refugees alike; or via *The Foreigners Act, 1946,*[33] which regulates the entry, presence and departure of aliens; or lastly under *The Passport Act, 1920*[34] etc. The '*deportation-orientated laws*'[35] do not provide for a discernible distinction between foreigners, fugitives, migrants and refugees; which fails to serve the purpose of specific legislation to suit the individual needs of these groups.

The Constitution of India, in furtherance of its idea of a welfare state and an egalitarian society, provides for some fundamental rights which are available to '*all persons*' alike. These include the Right to Equali*ty* before the Law and Equal Protection of the Laws under *Article 14*,[36] the Right to Protection with respect to Conviction for Offences under *Article 20*,[37] the Right to Life and Personal Liberty as per *Article 21,*[38] *a*nd the Right to Protection against Arbitrary Arrest and Detention under *Article 22,*[39] etc. It shall be noted that though aliens shall not be deprived of Right to Life, *Article 21*[40] does not include the right to reside and settle in this country, as mentioned in *Article 19(1)(c),*[41] which is

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[31] Jessica Field *et al.*, THE GLOBAL COMPACT ON REFUGEES: INDIAN PERSPECTIVES AND EXPERIENCES 26- 78 (UNHCR India and Academicians Working Group 2020).

[32] The Registration of Foreigners Act, 1939, No. 16, Acts of Parliament, 1939 (India).

[33] The Foreigners Act, 1946, No. 31, Acts of Parliament, 1946 (India).

[34] The Passport Act, 1920, No. 34, Acts of Parliament, 1920 (India).

[35] *Hans Muller of Nuremberg* v. *Superintendent of Presidency Jail, Calcutta*, 1955 SCR (1) 1284.

[36] Constitution of India, 1950, Art. 14.

[37] Constitution of India, 1950, Art. 20.

[38] Constitution of India, 1950, Art. 21.

[39] Constitution of India, 1950, Art. 22.

[40] *Supra* note 38.

[41] Constitution of India, 1950, Art. 19, cl. 1(c).

applicable to Indian citizens.[42] Ironically, these rights were not enough to protect Rohingya refugees from being designated '*illegal*', and being arbitrarily arrested to be left languishing in jails. Indefinite detention in deplorable conditions without basic amenities of food, hygiene and sanitation characterised India's response to those seeking refuge in India in 2017-2020.[43]

In situations involving refugees, the reasoning used by Indian courts has been highly inconsistent. For instance, the Supreme Court refused to halt the repatriation of Rohingyas in April 2021, despite the fact that doing so would threaten their lives.[44] This order was justified on the grounds that India was exempt from enforcing the non-refoulement principle because it was not a contracting party to the 1951 Convention. The Manipur High Court, on the other hand, interpreted the concept of non-refoulement in accordance with Article 21[45] and reprimanded the government for failing to distinguish between immigrants and refugees.[46]

The refugee policy and its link to political whim became very apparent when the Union Government withdrew its promise to resettle Rohingya refugees in India in August 2022.[47] The Government's plan to relocate Rohingya refugees in Delhi was unveiled by the Union Housing and Urban Affairs Minister. A few hours later, the Ministry of Home Affairs made it clear that no such decision to provide any housing facilities to such '*illegal foreigners*' are being provided, which only fuelled fears of deplorable conditions in detention camps and the social stigmatisation that came along with it.[48] The problem seems more concrete when some light is shed on the Union Government's lack of action in deploying the influx of migrants as 'refugees'. Forced migrants once labelled as 'refugees' enable them to seek a Long-term Visa (or 'LTV') which further, enables them to seek education facilities, private jobs and even temporary resettlements.[49] While the

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[42] *Mr. Louis De Raedt* v. *Union of India*, AIR 1991 SC 1886.

[43] Hamsa Vijayaraghavan, *Gaps in India's Treatment of Refugees and Vulnerable Internal Migrants Are Exposed by the Pandemic*, MIGRATION POLICY INSTITUTE (Sept. 10, 2020), *available at*: https://www.migrationpolicy.org/article/gaps-india-refugees-vulnerable-internal-migrants-pandemic

[44] Aakash Hassan, *Supreme Court has signed our death warrant: Rohingya in India*, AL JAZEERA (Apr. 9, 2021) *available at*: https://www.aljazeera.com/news/2021/4/9/supreme-court-has-signed-our-death-warrant-rohingya-in-india

[45] *Supra* note 38.

[46] *Nandita Haksar* v. *State of Manipur*, 2021 SCC OnLine Mani 176.

[47] *Centre backtracks on relocation of Rohingyas; VHP says they are 'infiltrators',* HINDUSTAN TIMES (Aug. 17, 2022) *available at*: https://www.hindustantimes.com/india-news/centre-to-resettle-delhi-s-rohingya-refugees-from-madanpur-khadar-to-bakkarwala-101660727313332.html

[48] *Id.*

[49] Atul Alexander & Nakul Singh, *India and Refugee Law: Gauging India's Position in Afghan Refugees*, 11(2) THE LAWS 1, 3-4 (2022) *available at*: https://www.mdpi.com/2075-471X/11/2/31

authors have tried to address the reasons for India not waning before the alarm bells from the West to join the Convention, it is pertinent to note that India has forever willed to extend a hand of help in the times when the forced migrants faced the threats of persecution from China to Afghanistan[50]. The repetitive influxes have multifariously irked India, especially when no monetary aid or support was provided to India (for not being a signatory to the Convention and the Protocol and for not surrendering before the supposed Euro-Centric Laws). After all, India was never convinced about setting up an organisation for the sole purpose of ensuring the legal protection of refugees.

While the Assam Tripartite Agreement[51] signed in 1985 briefly demonstrates how tumultuous the local situation may become if the influx of forced migrants in a state is unchecked, what fuels the debate is the Citizenship (Amendment) Act, 2019[52] which has aimed to amend the Citizenship Act, 1955[53] making immigrants, who had entered India on or before 31st December 2014, eligible for an Indian citizenship if they belong to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community, and are facing religious persecution from their origin countries which included Afghanistan, Bangladesh or Pakistan. While this amendment brought laurels to many families from the aforementioned communities, what lacked was the deliberate exclusion of the Muslim Community from the immigrants being offered a Citizenship. While this behoved upon the Indian Government as a radical move of discrimination against the followers of Islam, the executive termed this exclusion the reason coupled with the majority of refugees belonging to the Islamic Community[54].

Among all these legislative dilemmas, the Judiciary has truly been ardent in savouring the sight through filing out legislative gaps, extending human assistance to the refugees and taking cognizance of cases filed by NGOs actively which are working for the betterment of the refugees and their legal status. The Hon'ble Supreme Court of India through its judgments in *Luis de Readt*[55] and *Khudiram Chakma*[56] have offered strong remarks to ensure the protection of the refugees and their human rights under Article

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[50] Jessica Field & Srinivas Burra, *The Global Compact on Refugees- Indian Perspectives and Experiences*, ACADEMICIANS WORKING GROUP & UNHCR INDIA 89, 89-101 (2020) *available at*: https://www.alnap.org/system/files/content/resource/files/main/The%20GCR%20Indian%20Perspectives%20and%20Experiences.pdf

[51] Saloni Agnihotri, *The Indian Citizenship (Amendment) Act 2019 vis-à-vis The Assam Accord: A Political Legal Commentary*, LSE UNDERGRADUATE POLITICAL REVIEW (Dec. 10, 2021) *available at*: https://blogs.lse.ac.uk/lseupr/2021/12/10/the-indian-citizenship-amendment-act-2019-vis-a-vis-the-assam-accord-a-political-legal-commentary/

[52] Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

[53] Citizenship Act, 1955, No. 23, Acts of Parliament, 1955 (India).

[54] Padmini Baruah, *The right to have rights: Assam and the Legal Politics of Citizenship*, 16 NLS SOCIO-LEGAL REVIEW 17, 20-23 (2020) *available at*: https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1086&context=slr

[55] *Supra* note 42.

[56] *State of Arunachal Pradesh* v. *Khudiram Chakma*, 1993 SCR (3) 401.

21 of the Constitution which is applicable to both citizens and aliens. In *Zothansangpuri* v. *State of Manipur*[57], the Guwahati High Court has held that the refugees cannot be subjected to refoulement if their lives are prone to an imminent threat in their homelands. It is an indubitable fact that the Indian Courts along with the National Human Rights Tribunal have actively sought and catered to the protection of the refugees in the widest possible ways. What remains insidious is the perpetual entry of refugees where all such cases before these courts are decided individually while the executive is charged with all the ground powers to deprave from the established legal precedents and work their mind out[58] and undoubtedly, not all refugees have the legal patience to battle their way out to seek an opportunity to be retained in India.

V

Towards Inclusive Citizenship: Challenges Posed by the Citizenship (Amendment) Act, 2019

Citizenship has majorly been viewed as a symbol of status, identity and the access to the bundle of rights that come associated, across the globe. Citizenship has been a matter of pride and identity against India's eternal commitment and unwavering adherence to constitutional ideals of equality, secularism, and freedom from discrimination, as envisioned by the framers of the Constitution in the past. The pillars of our nation's foundation rested upon the assertion that citizenship would not be conferred based on religious affiliation or ethnicity. The passage of time has however witnessed a departure from these towering ideals, with religious affiliation supplanting the rest as an advanced criterion for awarding citizenships. This alarming, abrupt and unexpected shift undermines the secular framework of the constitution and imperils the democratic ethos of India, a nation heralded as the world's largest democracy throughout history, eliciting the debates around the democratic processes that goes into the formation and promulgation of legislations.

The onset of nationwide disharmony arose subsequent to the enactment of the Citizenship (Amendment) Act, 2019 which introduced amended provisions for facilitating the acquisition of citizenship, exclusively for individuals from the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian communities originating from Afghanistan, Bangladesh, or Pakistan. This marked an unprecedented departure, wherein citizenship's eligibility became contingent upon religious affiliation and geographic origins, giving birth to widespread condemnation from marginalised religious minorities throughout the nation. The Act was seen as an attempt to target the non-

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[57] *Zothansangpuri* v. *State of Manipur*, 2018 SCC OnLine Gau 2342.

[58] Veerabhadran Vijayakumar, *Judicial Responses to Refugee Protection in India*, 12 INTERNATIONAL JOURNAL OF REFUGEE LAW 238, 246-250 (2000).

exclusive minority religious groups, which were excluded from the confines of the Amendment Act and the extension of its benefits. The Act has been decried as arbitrary, biased and discriminatory, deviating from the foundational principle of fostering unity amidst diversity, as envisioned by the framers of our Constitution.[59]

Constituent Assembly Debates vis-à-vis the Inclusion of Secularism

Numerous occasions arose during the sessions of the Constituent Assembly wherein assembly debates ensued regarding the incorporation of the term '*Secular'* or '*Secularism'* within the confines of the Constitution. It is evident from the Objectives Resolution, presented by Jawaharlal Nehru on December 13, 1946, outlining the Fundamental Principles upon which the Constitution was to be rested, that the Assembly was not keen on the inclusion of these terms. Neither the aforementioned Resolution nor the Draft Constitution contained any provisions or mention of the State's secular principles.[60] This omission was deliberate, reflecting the intent of the framers to refrain from undermining religious authority or evoking any perception of hostility towards religion through the use of the term 'secular'.[61] The framers were steadfast in their commitment to ensuring the relevance, significance and cultural importance of each religion within the constitutional framework.

On two separate occasions during the sessions of the Constituent Assembly, endeavours were made to incorporate the term *'secular'* explicitly into the Draft constitution. On November 15, 1948, Prof. K.T. Shah proposed an amendment to Article 1(1) with the intention of declaring India as a 'Secular, Federal, Socialist Union of States'. Despite his argument advocating for the explicit acknowledgment of India's secular status within the Constitution to mitigate potential misinterpretations, this proposition was dismissed without substantial discussions. Subsequently, on October 17, 1949, Shri Brajeshwar Prasad endeavoured to introduce the term 'secular' into the Preamble, with subsequent consistent emphasis by national leaders.[62] However, this effort was overshadowed by debates primarily revolving around the insertion of the term 'socialist', ultimately

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[59] Rajeev Bhargava, *The Distinctiveness of Indian Secularism*, THE FUTURE OF SECULARISM 20, (T.N. Srinivasan, 2006), *available at*: http://www.chereum.umontreal.ca/activaites_pdf/session%202/Bhargava_Distinctiveness%20of%20Indian.pdf

[60] Magdalin Sudhan, *The Citizenship (Amendment) Act: A Threat to Secularism in India?*, INDIAN STATISTICAL INSTITUTE, 17-19 *available at*: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=http://14.139.185.167:8080/jspui/bitstream/123456789/414/1/LLM_0120007_CAL.pdf&ved=2ahUKEwi5j7z0-_iFAxUQTmwGHTusC0UQFnoECBEQAQ&usg=AOvVaw1k8Jm_Sr5ihQHy2muDphGB

[61] Tanya Bansal, *Indian Secularism: Theory and Practice*, 1 LLM Dissertation, National University of Law, Delhi (2019).

[62] R.L. Chaudhari, *Concept of Secularism in Indian Constitution*, Ph. D. Thesis, The Marathwada University, Aurangbad 1987.

resulting in the rejection of the motion with minimal deliberation on the inclusion of the term 'secular'. The founding forefathers evidently lacked the intention to introduce 'secular' as a concept to spur national misinterpretations or religious tensions.

Despite this omission, other prominent Articles in the Constitution, endeavoured to offer the subliminal 'Secular Structure' to India with active assistance from Article 15[63] (discrimination against religious origins), 25[64]-28[65] (freedom of religion) and indirectly 325[66] (eligibility to cast votes irrespective of the religious origins or practices). The colonial exercise of separate electorates for differing religious groups was henceforth, abolished and political equality ensued.[67]

As a concept, the objective of the concept of a 'Secular State' is to introduce a system wherein both individuals and the state can engage without prejudice based on the religious practices adopted or practised by the individual. The paradigm of secularism envisioned by the framers of the Constitution finds its manifestation in the constitutional provisions even today. Regardless of the inclusion of the *term only through the Forty-Second Amendment, 1976,* nonetheless, irrespective of the form of secularism embraced by a nation, the prerequisite is the existence of some degree of detachment between religions and the state. A secular state is precluded from aligning itself with any particular religion; against such discriminations which may be fatal for the frictionless functioning of a democracy. Any manifestation of preferential treatment towards a religion, entails the state's alignment with a religion, thereby deviating from secular principles. Similarly, when the state engages in discriminatory practices against a religion, it strays away from the path of secularism, which is dangerous with the principle's concomitant with the ideals or pillars on which a constitution rests.

Arguably, through the landmark judgement of *Kesavananda Bharati* v. *State of Kerala*[68], Justice Sikri monitored the Constituent Assembly Debates to highlight the inclusion of 'Secularism' as a part of the Basic Structure Doctrine. This judgment subsequently expressly mentions that "*the secular character of the state according to which the state shall not discriminate against any citizen on the ground of religion only cannot likewise be done away with*"[69] thereby, securing the characteristics of secularism in India, placing it beyond the

[63] Constitution of India, 1950, Art. 15.

[64] Constitution of India, 1950, Art. 25.

[65] Constitution of India, 1950, Art. 28.

[66] Constitution of India, 1950, Art. 325.

[67] S. Biswas, The Poona Pact, Indian National Congress and the Descriptive and Substantive Representation of Dalits in Colonial India, International Journal of Asian Studies, 21(1) CAMBRIDGE UNIVERSITY PRESS 2024, 3-7 *available at*: https://www.cambridge.org/core/journals/international-journal-of-asian-studies/article/poona-pact-indian-national-congress-and-the-descriptive-and-substantive-representation-of-dalits-in-colonial-india/C0A2334CEAF6C10CEDE652CA240663E3

[68] *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225, p. 316.

[69] *Id*, p. 1480.

amending powers of the Parliament. Following the verdict in *S.R. Bommai* v. *Union of India*[70], the Supreme Court re-examined the principles of secularism to solidify its interpretation. Justice Sawant emphasised that within the Indian constitutional framework, secularism encompasses religious tolerance, equitable treatment of all religious communities and groups, and safeguarding their lives, asset property, and places of worship as fundamental duties of the state against all chances, opportunities or events of discrimination.

Dissecting the Citizenship (Amendment) Act: An Attempt to Re-examine What India Wants?

In 2019, the Citizenship Amendment Act (CAA) ignited a firestorm of debates in India. The legislation aimed to *expedite the process of acquiring Indian citizenship for certain religious minorities (including Hindus, Sikhs, Buddhists, Jains, Parsis or Christians) from Afghanistan, Bangladesh, and Pakistan.* However, the specific inclusion of these religious groups who had entered India by the end of 2014 cast a long shadow. The amendment to the Citizenship Act in 2003 *introduced the term 'illegal migrants*' within the defined parameters:

1. Section 3 pertains to citizenship by birth. Since 2004, off-springs born in India *'with at least one parent categorised as an illegal migrant'* were disqualified from birth right citizenship.
2. Section 5 addresses citizenship by registration for individuals of Indian descent. The amendment stipulated that only those *'individuals not classified as illegal migrants are eligible for citizenship'* through this Registration.
3. Section 6 regulated citizenship by naturalisation, which was also revised to exclude illegal migrants. Consequently, individuals deemed illegal migrants were precluded from citizenship by naturalisation, regardless of their duration of stay in India.

These modifications narrowed the pathways for illegal migrants and their progeny to acquire Indian citizenship by natural means. However, the 2019 amendment revised the definition of *'illegal migrants'* by excluding a specific category of individuals through an additional proviso to Section 2(1)(b), emanating from particular religious origins and particular geographic locations.[71]

Expedited Citizenship: A Beacon of Hope?

The CAA, 2019 offered a potential path to citizenship for these minority groups through registration or Naturalization. Notably, it reduced the residency requirement for

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[70] *S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1.

[71] Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016 (January, 2019), at 11. (Para. 1.6), (hereinafter, JPC Report).

Citizenship by Naturalisation from eleven years to five years.[72] The Indian government positioned and contended the CAA as a humanitarian measure, extending a hand of help to those who had allegedly endured religious persecution in their home countries.

The Amendment aims to create a more favourable situation for those covered by the new provision in Section 2(1)(b) to demand citizenship by naturalisation. They gain advantages compared to both illegal immigrants and legal residents. Additionally, the tribal areas of Assam, Meghalaya, Mizoram, and Tripura in the North Eastern States, along with areas covered under the Inner Line, are exempt from Section 6 B's application.[73]

Secularism Under Scrutiny: A Cause for Concern

Opponents of the CAA vehemently argued that it ran afoul of India's established principle of secularism, a cornerstone of the Constitution, which goes against the 'Basic Structure Doctrine'. They pointed to the glaring omission of Muslims from the list of eligible minorities, who could have been offered a similar protection under the Amendment Act, had the present government looked from beyond their religion-centred arbitrary lenses. This selective approach, they contended, was inherently discriminatory and a deviation from India's long-standing tradition of religious tolerance.[74] The CAA, in their view, threatened to create a two-tier system of citizenship based on religion, one favouring the religious minorities that the State supports, and secondly the remaining religious groups which the State wishes to eliminate.[75]

Critics further challenged the CAA's '*limited definition of persecution*'. The Act solely focused on religious persecution, neglecting other compelling reasons why individuals might seek refuge in India. These could include political dissent, ethnic strife, or even persecution based on sexual orientation.[76] The narrow scope of the CAA, they argued, failed to acknowledge the complex possibilities that drive people to seek asylum in separate countries. The replies to these attacks encompassed majorly the reference to the Standard Operating Procedure of 2011, which the Parliament and the Joint Parliamentary Committee found to be sufficiently answerable to; contending that religious faith or geographical origins had been the last thought they considered while

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[72] Amendment inserted by way of Section 6 of the Amendment Act, 2019.

[73] The Citizenship Act, 1955, S. 6B(4) as amended in 2019.

[74] An argument in this line was made by Shri P. K. Kunhalikutty in the Lok Sabha on December 9th, 2019, Seventeenth Series, Vol. VI, Second Session, 2019/1941 (Saka) No. 16, Monday, Dec. 9, 2019, at 119.

[75] Hilal Ahmed, *Making Sense of India's Citizenship Amendment Act 2019: Process, Politics, Protests & Visions*, 15 IFRI, 2020, *available at*: http://www.ifri.org/sites/default/files/atoms/files/ahmed_amendment_act_complet_2020.pdf/

[76] Speech of Shri S. Venkatesan in the Lok Sabha on Dec. 9, 2019, at 376.

introducing the amendment, eliciting subsequent tremors of debates around the non-exclusion of asylum-seekers from Sri Lanka and Myanmar.

Some argued that the CAA was superfluous, unnecessary and politically-motivated. The Government had an already existing Standard Operating Procedure (SOP) established in 2011 to handle refugee claims. This SOP offered a broader framework, encompassing refugees irrespective of their religious affiliation. The existence of this well-defined procedure, critics maintained, rendered the CAA unnecessary and potentially divisive.[77]

A Constitutional Clash: Equality and Religious Freedom

The crux of the legal challenge to the CAA lay in its potential violation of the Indian Constitution's emphasis on equality, religious freedom and Kesavananda Bharati's judgment on the non-amendability of the Basic Structure ('inclusive of secularism'). The Constitution guarantees equal rights to all citizens, and the CAA's attempt to create a religious divide was seen as a blatant disregard for these aforementioned fundamental principles. Additionally, the right to practise any religion is enshrined in the Constitution (under Article 25). The CAA, critics argued, created a preferential treatment system of acquisition of citizenship for certain religions, undermining this essential constitutional principle.

The CAA has become a highly contested issue in India, with rigid arguments on both sides. Proponents view it as a necessary measure to assist persecuted minorities, while opponents see it as discriminatory and a potential threat to the constitution's core values. The legal challenges to the CAA will likely determine its ultimate fate, but the debate it has spurred is certain to have a lasting impact on India's social, religious and political landscape.

VI

Relevance and Need of a Refugee Law in India: In the Eyes of the Beholder?

Statistics show that the 15 top-most refugee-hosting countries share international borders with at least 1 of the 15 top-most refugee-generating countries.[78] Thus, refugees

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[77] Dr. Nagendra Nagerwal, *Global Implications of India's Citizenship Amendment Act, 2019*, RESEARCHGATE, January 2020, *available at*: http://www.researchgate.net/publication/338673204_Global_Implications_of_India's_Citizenship_Amendment_Act_2019

[78] Hoon Song, *International Humanitarianism and Refugee Protection: Consequences of Labelling and Politicization*, 20(2) JIAS 1, 15-19 (2013).

are more likely to relocate to neighbouring countries, instead of moving far away from their country of origin. This further adds to the financial burden of host countries, which are mostly semi-industrialised and still developing. The number of policy factors determines why some nations are more welcoming than others, some of which include power struggles and bureaucratic inertia, the cost-benefit ratio of accepting international assistance, political relations with its neighbours, calculations about the local community's absorption capacity and national security concerns.[79]

India's response and treatment of refugees have been unstructured, inconsistent, and largely driven by political will since it lacks a defined policy for refugees and asylum seekers. The country's refugee population has been severely denied any substantive rights as a result of this arbitrary and inconsistent approach. These groups have been patronised without any legal framework to seek justice as a result of contradictory judicial interpretations, strategies, and exclusionary societal treatment. As a result, India's current policies are largely reactionary rather than normative and pluralistic.

Though India is neither a signatory to *The Convention* nor *The Protocol*, it is however, a party to other international agreements that seek to ensure protection of refugees. In April 1979, India became a party to the 1966, *International Covenant on Civil and Political Rights 1951* (hereinafter referred to as '***ICCPR'***) and in the 1966, to the *International Covenant on Economic, Social and Cultural Rights*. Article 13 of the ICCPR authorises India to retain the legal and political willingness over the illegal immigrants who reside within the boundaries of our country or formulate laws pertaining to the legalisation of the Foreign Nationals having sought shelter within India. In December 1992, India acceded to the 1989, *Convention on the Rights of the Child*, which hosts provisions like Article 22 addressing refugee children and the reunification of refugee families. Other relevant yet, non-binding instruments include the 1948, *Universal Declaration of Human Rights*, which emphasises on *Article 14(I)* favouring asylum seekers to seek asylum in any country away from their homeland of persecution. The principle of non-refoulement, encompassing the practice of non-rejection of individuals at the border, is incorporated into the *Asian-African Legal Consultative Committee's 1966 Principles Concerning the Treatment of Refugees,* commonly known as the "*Bangkok Principles*", to which India is a signatory. Furthermore, the *Declaration and Programme of Action of the 1993- Vienna World Conference on Human Rights* features a separate set of provisions on refugees, reaffirming the right of all individuals to seek and enjoy asylum in the times of their needs, along with safe and secure deportation of the refugees back to their homeland, once the threat of persecution ends.

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[79] Omar Chaudhary, *An Assessment of Non-Refoulement under Indian Law*, 39(29) EPW 3257, 3257-3264 (2004), *available at*: https://www.jstor.org/stable/pdf/4415288.pdf?refreqid=fastly-default%3A51e1338be0aac48686a53a8e671e6c26&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results&acceptTC=1

The Supreme Court and other subordinate courts across India have held refugee-favouring stances repeatedly, to build an indirect pressure on the Executive to bring home sound domestic refugee laws. In the case of *P. Nedumaran* v. *Union of India*[80], the Madras High Court expressed its unwillingness in forcing Sri Lankan refugees back to their homeland against their will. Further such an instance is reported from the Bombay High Court in the case of *Syed Ata Mohammadi* v. *Union of India*[81], where the Court refused the forceful deportation of an Iranian Refugee back to Iran in lieu of the identity of a Refugee held by him, endorsed by the UNHCR. Even the Supreme Court has consistently held that forceful deportation of refugees violates Article 21[82] of the Indian Constitution which is applicable to both the Indian Citizens as well as aliens[83].

The lack of designated refugee laws in India has translated to arbitrary procedures of granting/non-granting 'refugee' status to migrants, which in turn affects their protection, rehabilitation/deportation criteria. Recognising a forced migrant as a refugee is important, for it means being granted a long-term visa (LTV) by the Government, using which a person can apply for employment opportunities or enrol oneself in an educational institution. Since this certifying power lies with the executive branch of the Government, no concrete policy on refugees means a wide ambit of powers for the executive to decide whether a refugee shall be granted protection or not; often influenced by political whims as well. Statistics have shown how religious discrimination hides behind the '*calculated kindness*'[84] of Tibetans being the largest beneficiaries of LTV; while the Afghan community remains the smallest.[85] There is no straitjacket reasoning to explain why even among the Afghan community, Hindus and Sikhs are integrated much faster than others.[86]

It is pertinent to note within the Indian context that unless the above-mentioned legal covenants and human rights instruments are ratified and incorporated within the scope of domestic law through legislation(s), Indian Courts lack the legal authority to enforce them. Unfortunately, the signatures and promises to incorporate the above-mentioned provisions have largely been ignored since, the Parliament is not obligated to pass laws to give effect to a Treaty, and in the absence of such a legislation, it is impossible for the

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[80] *P. Nedumaran* v. *Union of India*, Madras High Court, W.M.P. Nos. 17372, 17424, 18086/1992 in Writ Petition Nos. 12298 & 12343/1992.

[81] *Syed Ata Mohammadi* v. *Union of India*, Bombay High Court, Criminal Writ Petition No. 7504/1994.

[82] *Supra* note 38.

[83] *National Human Rights Commission* v. *State of Arunachal Pradesh and Ors*., 1996 AIR 1234.

[84] B.S. Chimni, INTERNATIONAL REFUGEE LAW: A READER 147-165 (Sage Publications, 2000).

[85] Ashish Bose, *Afghan Refugees in India*, 39 (43) EPW 4698, 4698- 4701 (2004), *available at*: https://www.jstor.org/stable/pdf/4415703.pdf?refreqid=fastly-default%3A51e1338be0aac48686a53a8e671e6c26&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results

[86] Sitara Noor, *The Taliban's Ascendance in Afghanistan: Implications for Pakistan,* 13(4) COUNTER TERRORIST TRENDS AND ANALYSES 14, 15-16 (2021).

judiciary to compel the executive branch into complying with the treaty's obligations. While each state has a duty to align its domestic laws in line with the treaties it is signatory to, in good faith, non-compliance or omission of the legislative conduct is an excuse defying international law's global reach.

VII

Recommendations: For the Future?

Ever since the Convention in 1951and its 1967 Protocol, states have felt the need to modify the existing non-entrée principles and resolve the existing gaps in the Convention; especially in today's industrialised and mobilised world. Over the years, there have been a number of initiatives to alter the international protection mechanism for refugees; like the Convention, the '*OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa, 1969*' and '*Cartagena Declaration on Refugees, 1984*' to name a few. All the deliberations ultimately condensed to recognise three plausible solutions to deal with the refugee crisis: *(a)* repatriation to the place of origin; *(b)* local integration; and *(c)* relocation to a third country.

What India as a developing country should ween on how to differentiate between asylum seekers and refugees who need separate protection for belonging to a separate religion or territory. The current legal regime under The Foreigners Act, 1946[87] gives the Central Government the absolute power to decide on the deportation of refugees with minimal judicial assistance or intervention. While it will be difficult for the disquietingly weakened refugees to individually seek assistance from the Courts, NHRC or the NGOs working in this area, the untrammelled discretionary powers to the Executive sufficiently exacerbate the Constitution and International Human Rights Laws. With immensely varying judicial pronouncements at the Centre and at the State Level and especially keeping in consideration the Supreme Court of India's recent verdict[88] of refusing to put a stay on the forced deportation of Rohingya Muslims back into Myanmar despite the threat to their lives that persisted, India should now re-look into enacting a domestic refugee law in lines with the following reasons:

Firstly, with future antagonistic disturbances in regional geopolitics, more refugees are bound to cross borders and seek shelter. The lack of a one-law-fit-all approach is acting as a deterrent to domestic growth and frenetic decision-making. With an already confused executive, this debacle clears when a domestic refugee law categorises the immigrants into various types and the various degree of protection that may be offered. Domestic laws in the US and Canada can be referred to decide and pledge on the degree

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[87] *Supra* note 33.

[88] *Mohammad Salimullah & Anr.* v. *Union of India & Ors.*, 2021 SCC OnLine SC 296.

of humanitarian, economic and security assistance that can be offered with each category of immigrants' influx.

Secondly, an effective screening process for the existing and forth-coming refugees can be sought to ascertain the criminal records of a refugee and his propensity to deprave national security and peace. This will provide an active assistance to the Government in seeking wide-scale sympathy and aid for extending a hand of help to these refugees and also eliminate the cynicism about the future.

There needs to be a systemic response at the global level, spanning across state boundaries, for the sheer scope of the displacement crisis goes far beyond the capacity and expertise of a single agency. An inter-agency comprehensive effort by both developed and developing countries is required, for the multitudinous crisis affects all three- the country which faces persecution, the host nation as well as the neighbouring countries. Such a collaborative response shall allow for political support from Governments, mobilising resources and expertise of those who wish to contribute, and systematically involving Non- Governmental Organisations to join hands for an international response to help the displaced. Furthermore, it is equally important to ensure that measures reach their true potential and penetrate the ground levels. Improving accountability and commitment towards the cause; coupled with regular monitoring and evaluation of proposals, quality humanitarian coordinators and defining hierarchical roles to improve coordinated actions are some suggestions to achieve it.

VIII

Conclusion

Population movements are common, but their causes and effects have varied depending on the originating and hosting nations in terms of internal conflicts, allocation of resources, and health concerns. Traditional concepts of state security have become less relevant to explain the emergence and evolution of humanitarian regimes. The question which remains is what should be given a greater priority, and at what cost? With uncalculated socio-economic effects, India cannot be juxtaposed to countries like the US and critiqued outrightly for its inability to mark dimensions and offer regulations-free entry to asylum seekers. While it's undeniably true that introducing fetters, undefined and uncontrolled regulations on transboundary migration essentially implicate the relationship between two neighbouring states, the world needs to accept the argument of India's handcuffed position with alacrity that the expectations of India's conformity with the global and social consciousness are contingent on the *'numbers'* seeking asylum and not expressly on religious or originating factors of the refugees.

While the time has now come for the West to realise the gigantic contribution of India in the field of refugee management, a rule-based regime is going to help further. In developing countries, forced migrations are common and so is the case with India which insinuates the image India holds globally. The enactment of a domestic law is going to succour India in actively categorising, managing and dealing with the influx of refugees and enabling the Executive with quick decision-making capabilities. With vagueness, India is subjected to the limits of humanitarian and economic assistance each set of refugees can be offered; the enactment of domestic refugee laws, on the contrary, will be sufficiently capable of offering uniform human rights and privileges to the refugees and maintaining an active accountability and peace.