

## **LEGAL POLICY ON RIGHTS AND ISSUES OF REFUGEES IN INDIA**

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### **ABSTRACT**

According to the United Nations High Commissioner for Refugees in India, there are 70.8 million people who were forcibly displaced worldwide. Of these 41.3 million people displaced internally, 25.9 million were refugees, 3.9 million were stateless and 3.5 million were asylum seekers. Even if we live in the 21st century, it is a very sad situation where millions of people are deprived of their natural rights around the world. They experience various types of discrimination and torture based on race, religion, nationality, language, place of birth, membership of certain social groups or political opinion. Aiming to analyze the legal policies implemented by the Indian government for refugees, this research used juridical normative method with qualitative approach, literature yuridis normati and field studies, resulting in India having adopted an open door refugee policy without limiting itself to any legal framework and accommodating millions of refugees from various countries.

Keywords: Refugees, Refugee Recognition, India, UNHCR

### **ABSTRAK**

Menurut Komisi Tinggi PBB untuk Pengungsi di India, ada 70,8 juta orang yang mengungsi secara paksa di seluruh dunia. Dari 41,3 juta orang ini mengungsi secara internal, 25,9 juta adalah pengungsi, 3,9 juta tidak memiliki kewarganegaraan dan 3,5 juta adalah pencari suaka. Bahkan jika kita hidup di abad ke-21, ini adalah situasi yang sangat menyedihkan dimana jutaan orang dirampas hak-hak alaminya di seluruh dunia. Mereka mengalami berbagai jenis diskriminasi dan penyiksaan berdasarkan ras, agama, kebangsaan, bahasa, tempat lahir, keanggotaan kelompok sosial tertentu atau pendapat politik. Bertujuan untuk menganalisis kebijakan hukum yang di implementasikan pemerintah india bagi pengungsi, Penelitian ini menggunakan metode yuridis normatif dengan pendekatan kualitatif, studi pustaka dan lapangan, Menghasilkan India telah mengadopsi kebijakan pengungsi pintu terbuka tanpa membatasi dirinya pada kerangka hukum apa pun dan menampung jutaan pengungsi dari berbagai negara.

Kata Kunci: Pengungsi, Pengakuan Pengungsi, India, UNHCR

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## **INTRODUCTION**

India is not party to the refugee convention, it is not obligatory to India to implement the provisions mention in the convention (Janmyr, 2017). But even then, India is doing its best to protect the rights of all the refugees in India irrespective of their race, region, nationality, membership of any social group or political opinion. They are treated according to the local laws passed by Indian Parliament from time to time, see table 1.

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**Table 1. Asylum Seekers and Refugees in India till Jan, 2020**

Tibet	1,08,005
Sri Lankans	95,230
Myanmar	21,049
Afghanistan	16,333
Others	3,477

Source: (UNHRC, 2020)

Indian laws fall short to recognize refugees as a distinct category of persons and treat them at par with all other foreigners. Thus, it fails to understand the special circumstances under which a refugee flees his or her country of origin. The requirements of valid travel documents under the general Foreigners Act regime mandatory. The absence of a special laws on protection, rights and entitlements of refugees has resulted in the denial of basic protection to the large number of refugees. This denial runs against the spirit of India's human rights commitment under the international law and its own Constitution (Bhattacharjee, 2008).

As India is not the party to the Refugee Convention of 1951 as well as India did not sign the 1967 protocol (Sen, 2015). Hence, it is not mandatory on India to accept or not to accept the refugees coming from any country. So, the legal status of the asylum seekers and refugees in India is determined by the Registration of Foreigner Act 1939 which deals with all foreigners, Foreigners Act 1946 that empowers the state to regulate the entry of the foreigners, presence and departure of all foreigners from India, Citizenship Act 1955 and Citizenship Amendment Act 2019, which deals with conferring the citizenship to its own as well as foreign individuals who fulfill the criteria mentioned in the constitution.

All these laws including, Passport Act 1967, do not make any distinction between the foreigners or alien and genuine asylum seekers or refugees. The colonial laws and principles are still applicable to India even after the 70 years of its independence, e.g. Article 372 of its constitution, which says that "all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority (Nair, 1997).

Time has come to think how long we have to live with colonial laws and depend on them. In changed circumstance we should have our own laws to deal with the refugees. These laws treat all the individuals other than its own citizens as foreigners or they are at the mercy of Indian government to distinguish them as foreigners and refugees according to the situation and bilateral relations (Betts & Collier, 2017). There is no common national law to deal with the people seeking protection in India those have fled their country/countries due to the persecution on the grounds mentioned in the refugee convention. Therefore, these people run the risk of being declared as illegal persons present on the Indian soil, detention, arrest and deportation due to absence of valid permit documents or passport. So, the Asylum seekers in India for refugee status from different countries enjoy different legal status.

Research on refugees in India has been scrutinized by (Chowdhory, 2019) tentang discusses the idea of citizenship and membership among refugees and non-citizens in India, (Mayuran, 2017) menghasilkan With their determination to rein in an uncertain future, Sri Lankan refugees living in the Tamil Nadu camp, India, have made education a priority, (Field et al., 2020) This research highlights the historic and ongoing practice of refugee and other spatial exclusion of poor migrant groups in the Indian capital, as well as the various social (non-economic) networks and activities that have emerged as safety nets. From some of these previous research studies the researcher took a different point of view in this

study, the researcher took the point of view of the rights and issues of refugees and related to law in India. Aims to analyze the legal policies implemented in India for refugees

## **RESEARCH METHOD**

The research method used is juridical normative and is supported by juridical empirical research methods (Lawless et al., 2010). Normative juridical research is a research method carried out by examining the literature or secondary data, namely looking for legal norms contained in the applicable laws and regulations, as well as to obtain data and information contained in various library literature. Meanwhile, the empirical juridical research method, namely research on the laws and regulations that govern the topics raised, then looks at the suitability between the matters specified in the laws and regulations with their implementation in the field of enforcement and to obtain data and information (Wulf, 2016).

## **RESULTS AND DISCUSSION**

### **Legal Status of Refugees in India**

Tibetans have fled their own country to India under grave situation. They have taken refuge not as individuals but they came with bulk of population. They escaped it to avoid brutalities and the destruction in Tibet, and has sought and been given the protective mantle of a neighboring friendly country. Both, the people and cultural institutions have taken refuge in a host Country (Michael, 1985). The child born to the Tibetan refugee is eligible to obtain registration certificate once the child attains the age of 18 years. The Tibetan refugees have right to get permission from Indian government to travel abroad which is not permitted in the case of other refugees. Tibetan refugees are provided with residence permit which help them to take formal employment in India. As far as Sri Lankan Refugees are concerned, they can be divided into two groups: (a) camp refugees, or those who are living in 111 camps spread over 23 districts in Tamil Nadu, and (b) non-camp refugees, or those who have been living in cities and small towns, either in rented houses or with friends and relatives.

Under the Sirimavo-Shastri pact of 1964, India agreed to take 5,25,000 Sri Lankan Indians, while Sri Lanka agreed to grant citizenship to 3,00,000 (Dasgupta, 2003). The legal status of Sri Lankan refugees is governed by the Foreigners Act 1946 and Citizenship Act 1955 which deals with foreigners or aliens present on Indian soil without permission or any valid documents. They are considered as illegal migrants, but Indian government has taken into account the violent situation in Sri Lanka from time to time and accordingly provided protection to them. As far as refugees from Pakistan are concerned, the Citizenship Amendment Rule 2004 provides that they can apply for the citizenship those are consistently staying in India for 5 years instead of 12 years. Further, the Citizenship Amendment Act 2019, provides that the persecuted religious minorities from Bangladesh, Pakistan and Afghanistan those have enter in India before 31<sup>st</sup> December, 2014, are eligible to apply for citizenship. In respect of Rohingya, the UNHCR in India has given authority for refugee status determination after verification of documents and interviews. Those fulfill the criteria get the residential certificate from the UN HRC and are eligible to get small monthly stipend (Sida et al., 2018).

## **Refugee convention of 1951 and India**

The Refugee Convention of 1951 is the result of the Second World War. Millions of people were displaced internally in Europe as well as sought shelter outside of their own countries to escape the atrocities and avoid the conflict. The term 'Refugee' has been defined by the article 1 of the 1951 refugee convention. The article says, "as a result of events occurring before 1<sup>st</sup> January, 1951 and owing to well-founded fear of being persecuted for the reason of race, religion, nationality, membership of particular social group or political opinion, is outside country of his nationality and unable or unwilling to seek protection from that country and unwilling to return to it, is a refugee." The convention also clarified further that event occurring means, events occurring in Europe or elsewhere before 1<sup>st</sup> January, 1951. Initially, apart from the Europe, most of the non European countries had not shown any interest in the convention because of time limit and geographical restriction. But after receiving so much criticism from many countries, both the conditions were removed by the 1967 Protocol. Though, India has refused to sign the convention because India has expressed its reservation which has internal, regional as well as international aspects (Legg, 2014).

**First**, the Indian subcontinent region has very porous borders and the people of this continent in some way or other have deep common history and cultural. It has religious, linguistic, racial and ethnic linkages. This region has different political system and it lacks either political will or administrative and military capacity to enforce strict rule of people's entry into another country. **Second**, India has fear that the cross border population movement of displaced people will affect India's internal security and political stability. It will bring changes in culture, religion and demography which will result in local and migrant conflicts. India has already experienced this sort of conflicts in Assam in the years 1983, 2008, 2012, 2017, 2019, and paid huge cost in form socio economic, political and individual life. **Third**, India is more worried about interference by international community in the internal matter in the name of protection of the rights of refugees. The recent example, the United Nations High Commission for Refugee, Michelle Bachelet Jeria, has filed an intervention application in the Supreme Court of India as Amicus Curia (third party) in the matter of Constitutional Amendment Act 2019, to protect and promote the human rights of all sections in India. In this regard, the official spokesperson of Ministry of External Affairs, Raveesh Kumar, said that, "no foreign party has any locus standi on the issue of India's internal matter and sovereignty". **Fourth**, India has already overburdened by its own population and has limited resources to meet the needs of its own people. India won't be in position if it becomes mandatory to accept refugees and protect their rights according to the standard set by the refugee convention of 1951.

## **United Nations High Commissioner for Refugee (UNHCR) and India**

The UNHCR in India has played very significant role after the establishment of its office in India in 1981. With its limited mandate, it has to work in accordance with the guidelines of Ministry of External Affairs (MEA) and Ministry of Home Affairs. It has also sub-regional/ field office in Chennai to look after the Sri Lankan refugees in Tamil Nadu and the repatriation process incorporation with MEA. Unfortunately, UNHCR's presence in India is not guaranteed by law. UNHCR maintains operations in India due to a purely political agreement between India and UN (Chaudhary, 2004).

Since the UNHCR in India does not enjoy the full mandate, it cannot start, on its own, the process of identifying the people of asylum seekers for the refugee status from any country (Field et al., 2020). It is prerogative of the Indian government. The main function of UNHCR in India is the Refugee Status Determination (RSD) by verifying the documents and interviews of the asylum seeker for the refugee status. It also issues temporary residential certificates to the people those have fulfilled the criteria under

1951 refugee convention. The UNHCR in India is also closely working with NGOs like Don Bosco Ashalyam which provides vocational services and language training, counseling and job placement in local factories on daily wages. Zakat Foundation provides material for houses, legal aid and healthcare facilities to the Rohingya refugees. Young Men Christian Association (YMCA) regularly pays visits to the refugees camp and locality to assess the living condition, provides community healthcare facility, psychological support to the minors and unaccompanied individuals.

Apart from this, the UNHCR in India helps for voluntary repatriation of the refugees in coordination with concerned states, resettlement in third country and the local integration. In the voluntary repatriation process, it has played great role for Sri Lankan refugees. The UNHCR fights against sexual exploitation, abuse and harassment of the refugee women and children. It provides education, healthcare, shelter, safeguard and financial assistance in form of cash if so required. It looks after the livelihood, rehabilitation of internally displaced people due to disaster, environment and climate change. Another important function of the UNHCR is that it tries to end the statelessness. Nevertheless, the United Nations High Commissioner for Refugees has been disappointing in this regard, tending to under interpret its mandate for refugee protection in South Asia in general and India in particular. The Indian government compounds the problem by failing to provide access to local and international non-governmental organization (Nair, 1997). UNHCR and Refugees in India face many problems as follow (UNHCR, 2020):

1. Due to the lack of common national law or any common regional framework for refugee, it has to treat different refugees differently as per the guideline of the government of India. Hence, there is feeling of discrimination among the refugees from different countries.
2. The porous borders and flow of mixed population from neighboring countries in India during the conflict also makes UNHCR difficult to identify the real asylum seekers for refugee status and illegal migrants for economic opportunities.
3. The shortage of fund and human resources to deal with huge refugee population is big concerned for UNHCR in India. Lack of medical staff particularly during any pandemic makes UNHCR helpless. It has already expressed grave concerned over the emergence of corona virus (Covid 19) to assure social distance and provide medical facilities to the refugees staying in camps due to the lack of financial assistance and human resources.
4. UNHCR has very little or no access to the refugees living in remote areas, it is able to work only for urban refugees with limited mandate.
5. UNHCR finds it difficult to provide space for the refugees due to unavailability of land in urban area. Landlords frequently evict the refugees on the ground of late payment of rent, so they are forced to live in small, overcrowded houses, on railway station or under the bridges without proper water, electricity or sanitary arrangements.
6. The refugees' children do face the discrimination in the schools from the school fellows. They are looked upon down, they are unable to pay the school fees so they drop out from the school.
7. Most of the Rohingya asylum seekers for refugee status enter in India from the northeast states but very few of them reach to Delhi to register with the UNHCR. Most of them stay back in northeast states and they are considered as illegal migrants. So, they are subjects to violence, fine, arrest, detention and deportation.

## **Citizenship Amendment Act (CAA) 2019 and Refugees in India**

The passing of the CAA thus further strengthens India's unity, it is a historic and civilizational act which is not aimed at taking away anyone's citizenship but at granting it to the beleaguered minorities in India's neighborhood (Ayush, 2019).

The Citizenship Amendment Bill has been passed by the Indian Parliament in December 2019. It has made changes in the Citizenship Act, 1955, in section 2, in sub-section (1), in clause (b). It reads as the following proviso shall be inserted, namely:—

*"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31<sup>st</sup> day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made there under, shall not be treated as illegal migrant for the purposes of this Act"* (Ministry of Law and Justice, 2019).

The bill is aimed at conferring citizenship to the religious minorities from Afghanistan, Bangladesh and Pakistan. The bill has generated debate within the country as well as outside of the country among the intellectuals, journalist, academician, political community, religious groups and common people on the issue of millions of people are going to be stateless in India, particularly from Muslim community (Shani, 2010). The Prime Minister of India as well as the Home Minister, time and again said in the parliament and outside of the Parliament that this bill/Act is not applicable to the Indian citizens. It is applicable only to the communities mentioned above from Pakistan, Afghanistan and Bangladesh. India is a very responsible country and being the member of many international human rights treaties like UDHR 1948, Convention on the Rights of the Child, India signed it in 1992, Convention on the Elimination of All Forms of Discrimination against Women, India signed it in 1993, International Covenant on Civil and Political Rights, India signed it in 1979 etc., India won't make such legislation which shall make people stateless. The Government of India has always adopted generous approach and open door policy towards refugees and asylum seekers.

It has always respected the principle of non-refoulement. As mentioned earlier, India has ratified most of the international Human Rights instruments to protect and promote the human rights. India has always shown liberal and tolerant attitude towards refugees and asylum seekers by making changes in its domestic laws. Indian constitution permits refugees to approach the National Human Right Commission and the Supreme Court of India for the protection of their rights under the Indian law. The Citizenship Amendment Act 2019 is a positive step in the direction of liberalization of its domestic laws in respect of naturalization process of refugees. India has given citizenship to the millions of people over the period of time. Most of the states in the world started talking about the rights of refugees only after the Refugee Convention of 1951, but India had started protecting the rights of refugee when 'Refugee' word was rarely known to the world. In the 7<sup>th</sup> and 8<sup>th</sup> century when Arab invaded Persia (now Iran) and started persecuting the Parsi people on religious, cultural, linguistic grounds. The Parsi people had sought shelter in India, in Gujarat. Bombay is home to the great majority of the seventy-six thousand or so Parsis in India (Luhmann, 2017).

According to Qissa-i-Sanjan (Story of Sanjan) after their arrival, the king of Gujarat Jadi Rana had offered them with a full glass of milk conveying the message that there was no space in the glass. The Parsi people added a spoon of sugar in it and said we would live like sugar in a full cup of milk and not spoil it. Jadi Rana liked it very much and gave them shelter on the conditions that they would learn local language, wear local clothes and their marriage ceremony would take place in the evening only (Boyce, 2001)

. The Parsi people very quickly accepted these conditions and assimilated with the locals. Now they are very much integrated with locals and their contribution is immense in India's freedom struggle as well as in national development in post independent era. Other countries need to learn from India the process of naturalization and assimilation with local culture and people without legally tying its hands to any treaty. It is not only this, but the people who were displaced due to development project in the India's neighborhood sought shelter in India and in due process they also became the citizens of India e.g. Chakma people from the then East Pakistan now Bangladesh displaced due to Kaptai Dam project in 1962, which resulted in conflict between the State authority and the affected people, almost 100,000 people displaced, 45,000 crossed over to India. Nafees Ahmad says, according to the UN Refugee Agency, as of 2014, more than 200000 refugees were living in India from different countries (Nafees, 2017).

The CAA has generated debate within and outside of the country over the questions, why India is giving citizenship to the people of religious minorities only from Afghanistan, Bangladesh and Pakistan? Why it has excluded the Muslim community? These questions have created unnecessary fear among Indian Muslims. This has led to demonstration across the country which culminated in conflict in Delhi in February 2020. In the conflict 52 people have died including one IB officer, a police and common people. The European Parliament also initiated a resolution against the CAA (Times of India, 2020). Many countries in the Europe distanced from the resolution including France. The European Commission, which is the executive wing of European Parliament, said that the opinion expressed by the European Parliament is not the official position of European Union. It is purely an internal matter, "every society that fashions a pathway to naturalization contemplates both a context and criteria. This is not discrimination. In fact, European societies have followed the same approach," said New Delhi. International institutions like European Parliament can play constructive role in respect of protecting the human rights, rights of refugees, reduction of statelessness by encouraging the states those are giving the citizenship to the people who have left their own countries due to persecution and not to discourage them by such resolution (Anirban, 2020).

Does the resolution by European Parliament mean India should not give citizenship to the persecuted minorities from Pakistan, Afghanistan and Bangladesh? Should they continue with their suffering? Rather, European Parliament should have initiated resolution against the states those are source of conflicts, source of persecution, source of refugees, source of human rights violation by putting economic sanctions, technological sanctions, trade sanctions, political sanctions so that such states shall not dare to violate the rights of individuals irrespective of race, religion, language, nationality or political opinion. The question why only these three countries have chosen for, why not other countries such as the Rohingya from Myanmar, Ahmadis from Pakistan, Hazaras from Afghanistan, Madheshi from Nepal, Tibetan Buddhists from China have not included? First, these three countries are officially Islamic countries and people from other than the Islamic faith are unable to practice their own religious and cultural rights. There are many cases of forceful conversion of Hindu and Christian girls to Islam in Pakistan. There are cases of forceful marriages with the girls from religious minorities in Pakistan. Just an example, Huma was abducted by a man called Abdul Jabbar, married to her, converted her to Islam when she was just at the age of 14 years. When her parents approached to the court, the Sindh High Court gave verdict that even if she is under age but she had already first menstrual cycle so the marriage is valid! This approach of the Pakistan government, judiciary and executive has resulted in continuous declining of minority population in Pakistan.

Farahnaz Ispahani in her writing pointed out that at the time of partition, the minority population in Pakistan was 23 percent which today reduced to 3 percent. According to Minority Rights Group

International, in Bangladesh it is reduced from 14 percent in 1971 to 9.4 percent in 2018. The minority communities are continuously facing the discrimination in from of access to education, sanitation, transportation and health care, to discrimination in occupation. There are direct and indirect experiences of physical violence such as abductions and forced conversions, accusations of blasphemy, targeted killings, and frequent attacks on places of worship and war crimes. Hamoodur Rahman Commission Report says that there was an official order in writing to kill Hindus during 1971 Bangladesh liberation war (Government of Pakistan, 1971). This order was from Brigadier Abdullah Malik. This is complete violation of the Article 16 of Universal Declaration of Human Rights, 1948, which says, "men and women of full age without any limitations due to race, nationality, or religion have the right to marry and found family". Further, "marriage should be entered into only with the free and full consent of intending spouses". This is complete violation of the Convention on the Elimination of all forms of Discrimination Against Women, 1979, and UDHR, 1948, on the part of Pakistan.

Second, why it excluded Muslims, since these countries are Islamic states and majority population is Muslim so it is unreasonable to say they are subject to prosecution on the religious ground but if at all, any individual from these countries is facing well-founded fear of persecution on any ground can seek protection in India or even apply for Indian citizenship (Emon, 2012). Adnan Sami from Pakistan has got Indian citizenship though he is a Muslim or Taslima Nasreen is staying in India due to well-founded fear, she is also a Muslim. India's effort, through the legislation, is to provide the citizenship. It is very much in consistent with the Article 34 of the Refugee Convention of 1951 which says, "the contracting states shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings". Therefore, it is wrong to say that the Act is discriminatory, against the Muslim or Muslims are excluded from it. Third, in my opinion, If India finds this Act convenient in successful implementation, in future, India may extend this Act to other neighboring countries like Nepal, Myanmar, Bhutan, Sri Lanka and China too.

## **CONCLUSION**

India has adopted an open door refugee policy without limiting itself to any legal framework and is hosting millions of refugees from various countries. In addition, if India considers article 34 of the 1951 refugee convention law to be applied properly, in the future this policy can also be applied to a wide scope in other countries such as Nepal, Myanmar, Nepal, Myanmar, Bhutan, Sri Lanka and China as well.

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