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India's refugee crisis: A legal scrutiny

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Abstract---This article is an attempt to shed light on the magnanimous crisis faced by Refugees in India. It talks about how the statutes and laws have attempted to minimize the effect of the crisis as well as how laws carve the way out for Refugees in India. The primary pillar on which refugees survive against atrocities in India is Article 21 of the Indian Constitution. Despite its overcrowding, India continues to allow refugees through various diplomatic means. However, there may not be a unified criminal framework in place to protect refugees. The 1951 Refugee Convention, which defines the term "refugee," is the principal source on the subject of refugee legislation. The conference's first objective was established in 1951. A person who has to leave behind a normal life and relocate to a completely new place and a new country because of political, demographic, or war-like scenarios becomes a Refugee. (Lentini, 1985)

Keywords---refugee, refugee convention, legislation, humanitarian protection, political migration.

Introduction

One-third of the world's displaced people live in Asia. In terms of refugee protection, India has a good track record. Even though India is not a signatory to the 1951 UN Refugee Treaty, and has no formal refugee policy, the United Nations High Commission estimates that India has two lakh refugees. One lakh Tibetans

from China and 60,000 Tamils from Sri Lanka are among them. In addition, India has started permitting refugees to enter the country for political purposes. During the 1971 war with Pakistan, India, for example, permitted East Pakistani refugees to enter the country. India also offered training and support to the freedom warriors throughout this conflict. Bangladesh was formed as a result of the conflict. (Shanker & Raghavan, 2020) One of the most important concerns confronting the globe in the last century has been the refugee crisis. People have been displaced in the last century as a result of different natural and manmade disasters such as earthquakes, floods, wars, and climate change. Various international and national attempts have been undertaken to deal with them, with UNHCR and the United Nations Refugee Treaty, among others, being key initiatives. Currently, the Middle East turmoil, the humanitarian crisis in Latin America, the refugee crisis in South Asia, and the Rohingya tragedy are the most pressing issues. Various nations, including India, have been affected by the aforementioned refugee crises. A comparable situation exists in India's Northeast area. Although it has generated crises in other nations, India's refugee crisis cannot be ignored. Internal strife and security crises have also occurred as a result of this in numerous locations. As a result, in light of the foregoing considerations, India may choose to investigate other options like economic aid, improving the conditions of the nations in question, and so on, rather than providing asylum to refugees.

Who is a refugee?

The word "refugee" brings up pictures of a crowded boat stranded in the Taiwan Strait, a bloated kid in Bangladesh, and a war-trodden city in Beirut reduced to ruins. It would appear that determining who is or is not a refugee is a reasonably straightforward thing philosophically, if not politically. A refugee is someone who is escaping life-threatening circumstances. This is approximately what refugeehood means in everyday language and for journalistic purposes. The meaning is far more limited in political and legal circles, particularly among those who establish refugee policies for governments and international organizations. (Shacknove)

What is the refugee crisis?

When a significant number of individuals are compelled to abandon their native country in an unpleasant or hazardous manner, a refugee crisis emerges. The phrase "refugee crisis" can allude to relocation in either the origin or destination country, as well as the challenges and risks that refugees encounter while on the route. A crisis might relate to the refugees' perspective, the nation to which they are fleeing, or, in many cases, both. (Loescher, 1993) Many refugees leave their belongings at their native place; they don't have food or clean water, and they just have the clothing on their backs. Just one change in the political scenario of a state can make millions of people in demography, refugees.

There are various aspects of refugees that are critical to both India and the refugees as well, notably in terms of the laws governing them. Taking into account the current situation of National Security in the country, particularly as a result of the actions of some country's borders in this field, a purely peaceful issue like

"refugees" has become influenced by matters of national security. It is a fact that we cannot afford to ignore this part of the situation in any dispassionate discussion of the topic under consideration in this piece. While the Indian Constitution makes law and orders a state topic, international border migration is solely the responsibility of the Central government. (Goodwin-Gill & McAdam, 2007)

India lies at the crossroads of South Asia, with a long history of migration to, from, and within its boundaries, its laws and regulations have frequently looked to be chaotic. Also, the nation saw massive forced relocation during the 20th century as people fled violence before, during, and after its separation from its South Asian countries, and it continues to be a haven for many refugees today.

History of refugees in India

People escaping persecution in their own countries have sought sanctuary in India for millennia. Parsis, a community belonging to the Zoroastrian religion, fled to India from Islamic persecution between the 12th and 16th centuries. According to Zoroastrian legend, once the Sassanid Empire was defeated, Zoroastrianism ceased to be a state-sponsored religion. As a result, several Zoroastrians relocated to Gujarat and Maharashtra to continue their religious practices. Irani people are the descendants of newer Zoroastrians who fled the persecution of non-Muslims under Iran's Qajar period (1794–1925). Parsis and Iranians were granted legal citizenship after India attained independence. (Extracts from the Citizenship Act, 1955)

In 1971, India accused Pakistan of transferring its "internal crisis" to India. Ten million East Pakistani citizens streamed into India beginning in March 1971 and continuing throughout the year. In Pakistan's election back then, the Bengali majoritarian Awami League took control in a country that had previously been ruled by the name of Punjab in West Pakistan. The Pakistani military then repressed the Bengali-speaking Eastern Wing, where the majority of the population lived and had primarily voted for the Awami League. In reaction to the electoral setback, India's Prime Minister Indira Gandhi's administration viewed the migration problem as an attempt by Pakistani President Yahya Khan to change India's demographic realities. According to the Indian administration, the refugees were full-fledged Pakistani nationals who had been denied citizenship.

India has never had a law in particular for refugees. This has been a deliberate attempt rather than being an accidental legislative deficit. In 1946, with its rejection of the U.N. Relief and Rehabilitation Administration, whose benefits were not extended to India. It was set aback by the refusal to join the International Refugee Organization due to an inordinate financial load, as well as the UN's 1951 Convention on the Status of Refugees' rejection to recognize the people who came to India during the partition as refugees. India has treated refugees always in the best interests of the country, enabling the definition to define who shall be considered an Indian citizen. The first persons to be classified for exclusion were Europeans who were evacuees and other types of people in India during World War II.

Dalai Lama, the Tibetan religious leader, is revered by his devotees as a living God. The legal status of Tibet is the subject of a dispute between China and Tibet. China claims Tibet has been a part of China since the middle of the thirteenth century, while Tibetans claim Tibet has been an autonomous kingdom for millennia. Tibet was taken over by the Chinese troops in 1951. With the help of a delegation from Tibet, a treaty for Tibet's accession to China was signed. On March 31, 1959, the Dalai Lama, Tibet's religious leader, arrived in India with millions of followers. At the time, India was supporting Tibetan refugees. Another refugee influx that our nation faced was in 1971 when 10 million East Pakistanis fled to India. India was obligated to provide safe shelter to the refugees because of its humanitarian obligations. Later, in 1983 and 1986, after a little silence before a crash, India was once again hurdled by the relocation of displaced people from Bangladesh and Sri Lanka.

Legal framework governing refugees in India

Indian authorities do not recognize documents issued by UNHCR due to the non-recognition of signatories to the 1951 Convention. In India, all foreign nationals, including stateless persons, refugees, and asylum seekers are subject to the provisions of the Foreigners Act 1946, the Foreigners Registration Act 1939, the Passports Act 1920, and the Citizenship Act 1955. The Foreigners Act criminalizes the physical presence of foreigners in India without a permit. India can pronounce any group of displaced people as immigrants of illegal nature - like the Rohingya, despite verification by the UNHCR - and decide to treat them as alien in accordance with the Foreigners Act or the Indian Passport Act. (Subramanian, 2021)

Constitutional aspect

Foreigners are entitled to constitutional protection, but only to a very finite extent. Foreigners enjoy Fundamental Rights under Article 14, Article 21, Article 20, Article 22, Article 25, Article 28, and Article 32 of the Indian Constitution respectively. All of these items apply to citizens as well as non-citizens. Article 14 explicitly guarantees, 'Equality before the law and equal protection under the law'. The executive categorizes foreigners based on their requirements and treats them differently depending on intelligible differentia that has a connection to the item.

Article 21 is the most important Fundamental Right among all. It has been interpreted by the Supreme Court to include a substantive due process provision that is applied in the face of state action. Retrospectively, the right against double jeopardy and the right against conciliatory are all included in Article 20. Article 22 addresses the right to be free of arrest as well as imprisonment. Article 32 guarantees the right to appeal to the Apex Court for the implementation of the aforementioned fundamental rights to displaced persons as well. (Ujjam Bai v. State of Uttar Pradesh, 1959)

According to Article 51(c) of the Indian Constitution, the government shall work to promote respect for international law and regulatory obligations in accordance with those laws. (Prasad, 2013) Article 253 of the Constitution provides the

capacity for the Central Government to enact legislation for the entire or a portion of India's territory to carry out any treaty, agreement, or convention with a different country's government or any decision taken up in any international conference, organization, or body.

According to the Supreme Court, international and Domestic laws when going in parallel, the principle of Harmonious Construction may be applied (*Vishakha v. State of Rajasthan*, 1997). Because there was no legislation in place to prohibit sexual harassment in this instance, the Supreme Court relied on the goal of an international convention on women's rights and their respective needs and established a guideline for the prevention of sexual harassment and other offenses specifically against women. It demonstrates that, in the event of a gap in domestic law, Indian courts are permitted to interpret any difficult instances in light of international conventions or treaties.

Foreigners act, 1946

According to the act, a foreigner is a person who does not hold the citizenship of India. Section 9 provides that if a person's nationality is not obvious as per section 8, that person bears the burden of establishing whether or not he or she is a foreigner. The Registration of Foreigners Act of 1939 and the Foreigners Act of 1864 was the only permanent legislation managing foreigners or refugees expressly before the passage of the Foreigners Act. The Act of 1939 mandated the creation of laws to govern foreigner registration and related processes, as well as their movement into and out of India. The Act of 1864 provided for the expulsion of foreigners and displaced persons, their detention until removal, and a restriction on their return to India following removal; the rest of the Act, which provides for a report on arrival, licence travel, and other incidental procedures, may only be implemented if an emergency is proclaimed. The Foreigners Act of 1946 was intended to control, limit, and ban the admission and exit of foreigners, but it makes no provisions for detecting or identifying foreigners. The individual whose nationality is being questioned, not the government, has the burden of evidence under this Act. (Navtika, 2013) The burden of proof in ordinary law of evidence is on the person alleging, not the person accused, but under the Foreigners Act, 1946, a person must prove both the authenticity of their citizenship and the authenticity of the documents used to build his or her case to justify that he or she is a citizen of India. (Ghouse, 1965)

Foreigner registration act, 1939

This Act is mainly enacted for the registration of a foreigner who comes to India. The legislation of this Act deals with how and by what process will foreigners be registered in India. Essentially, the law provides for the legal registration of foreigners who have lived more than their visa time in the nation. A registration officer is required to complete the registration process for them. It requires certain kinds of foreigners who want to stay in India for longer than the authorized duration or as mentioned in their visa authorization to register with the Registration Officer prescribed by the law.

Passports act, 1967

The Indian Passports Act, 1920, and the rules enacted under it in 1950, which were subsequently revised in 1952, comprise the legislative requirements about passports. "To assume the power to demand passports of anyone entering British India," the Act said. As a result, the Act and the restrictions enacted under it are intended to prevent anyone from entering India without a valid passport. As a result, there was no statutory provisions governing the granting of passports to Indian citizens planning to go overseas. Passports provided by the government provide identity to Indian nationals and Indian citizens residing outside of India. People from all around the world gain this acknowledgment when they go to various nations. Passports are extremely significant documents that are issued after extensive scrutiny by all governments across the world. Passport-related legislation was enacted in the Indian Parliament in 1967. The Passport Act of 1967 is one of these laws. It is central legislation enacted by the Indian Parliament that applies throughout the country. Also applies to Indian people living outside of India. (Law Corner, 2020) This Act was enacted to govern the exit from India of Indian nationals and other individuals, as well as to provide for the issuance of passports and travel papers, as well as other things related to or incidental to it.

Citizenship act, 1955

The Citizenship Act of 1955 governs the acquisition of Indian citizenship as well as citizenship determination. Along with the Indian Constitution, the Citizenship Act of 1955 contains detailed legislation on Indian citizenship. Articles 5 through 11 (Part II) of the Indian Constitution include provisions for granting citizenship to a person.

Changes were made to the Act in 2016 vide the Citizenship (Amendment) Act, 2016. To modify the Citizenship Act of 1955, the Citizenship Amendment Bill of 2016 was proposed. On July 19, 2016, this bill was presented. There is a clause in this that allows unlawful non-Muslim immigrants from India's three Muslim majoritarian neighbors, Bangladesh, Pakistan, and Afghanistan, to become citizens. On August 12, 2016, it was referred to the Joint Parliamentary Committee. The committee's report was due on January 7, 2019. The measure was then passed the next day, on January 8, 2019, in the Lok Sabha. However, this bill could not be tabled in the Rajya Sabha at the time. The government reintroduced the measure in the winter session.

Further, the much-debated, questioned, and argued Citizenship (Amendment) Act, 2019 came up, herein the citizenship regulations for migrants of people of faiths other than Islam such as Hindus, Sikh, Buddhist, etc. from the neighbouring Muslim majoritarian countries around Indian territory have been simplified by the Citizenship Amendment Act 2019. Previously, obtaining Indian citizenship required a person to have lived in the country for at least 11 years. By relaxing this regulation, the term for obtaining citizenship has been extended from one year to six years, allowing those who have migrated to India in the last one to six years of the six religions specified above to become citizens of these three nations. (Salahuddin, 2019)

Judicial approach

In India, the court has played a significant role in refugee protection. Several High Court and Supreme Court judgments grant a slew of rights to millions of refugees who have fled their home countries, crossed an internationally recognized boundary, and are now residing in Indian territories. To defend the rights of refugees, the courts have used a constitutional clause. There are other situations when the Supreme Court and different High Courts have taken proper actions to safeguard refugees and their rights that have gone unnoticed. In a handful of situations, a judge has ordered that the lives of refugees at risk may be protected. (Bhambri, 2012)

The Supreme Court suspended an order that was already passed by the concerned authority for deportation against a refugee from Burma and permitted him to apply for the status of refugee at the UNHCR headquarters in New Delhi in (*N.D. Pancholi v State of Punjab & Ors.*, 1988). The Supreme Court suspended the order of exile imposed against 21 refugees of Burman descent from the Andaman Islands (*Dr. Malavika Karlekar v. Union of India and Ors.*), allowing them to apply for UNHCR refugee status. The case of (*Hans Muller Of Nurenburg vs Superintendent, Presidency Jail Calcutta & Ors.*, 1955) gave absolute and full power to the government to hurl out a foreign person.

Recently, the Supreme Court again held its previous stand on Refugees in (*Md. Salimullah v. Union of India*, 2017) the Apex Court did not grant the interim relief prayed for by the Respondents to grant the Rohingyas in Jammu to be released neither did the Court completely halt the deportation of the Rohingyas from India. Although the deportation of Rohingyas was temporarily paused until the due process for the same was not devised by the Union of India.

Hence, the conclusion of the Indian Judiciary on the issue of Refugees has been left in the hands of the Legislature to regulate. The Supreme Court has consistently been of the view that the people who fall outside the definition of 'Citizen' (as defined in Part II, Constitution of India) are Illegal Immigrants. The lack of proper legal machinery to regulate the rights of refugees in India prevents them from using the Judicial machinery for their benefit. Although their basic rights have always been preserved by the Courts all across India.

Conclusion

Several reports claim that refugees get detained and then deported to their native place without consulting the UNHCR, many refugees in India, including Rohingya, are transported back to their home country. Given the contemporary world's efforts to defend human rights, the legal void in Indian refugee legislation cannot be overlooked. As a signatory to the UDHR, India should make an effort to better understand the breadth and character of refugees from adjacent countries, and it is critical that the Indian legal system differentiates between the subjects of foreigners, illegal immigrants, and refugees.

The debate over the refugee issue is not new, and neither is the idea that a specialized legal structure exists to tackle it. However, today's geopolitical realities

have changed dramatically, and the Citizenship Amendment Act of 2019 has signalled a significant shift. As a result, depending on the Foreigners Act or the CAA would not serve the refugees' interests and will only continue to deprive them of a sufficient standard of living, particularly for those who have been victims of war or genocide in their own country.

National refugee legislation would expedite the process of determining refugee status for all kinds of refugees and guarantee that they enjoy the rights, to which they are entitled by the UNHCR. It might also adequately address India's security concerns while guaranteeing that no unlawful detention or deportation is taken out under the guise of national security considerations.

In addition, a comprehensive system that recognizes the social and economic requirements of refugees must be put in place. The urgent necessity to ratify the Refugee Convention of 1967 will only serve as a basic security measure in evaluating the National Register of Individuals, which will be used to identify citizens. This action would not only foster a feeling of community and security among the refugees, but it would also enable them to access benefits, restoring their trust in the system. As a result, India's legal system must be modernized to comply with international human rights responsibilities and offer a strong and safe legal framework in which Indian citizenship is aligned with the human rights paradigm and the spirit of the Constitution of India is maintained.

Suggestions on the current crisis

We need a robust structure to ensure that refugees have access to basic public services and that they may lawfully pursue jobs and other sources of income. Without such a structure, refugees will be exposed to exploitation, particularly human trafficking. The Supreme Court of India in 1996 held that the state must safeguard all human beings residing in India, regardless of nationality, since they have the rights guaranteed by Articles 14, 20, and 21 of the Constitution to all, not only Indian residents. Refugee rights will be enacted and counted, reducing our reliance on judge-centric systems - or, worse, the whims of Home Ministry officials, police officers, and politicians.

Remarkably, the Indian judiciary has been standing in to safeguard refugees from deportation, expulsion, and forced repatriation regularly. India's Constitution protects the rights of all those living inside its borders, whether citizens or non-citizens. As a consequence, Indian courts have broadened the reach of constitutional rights in light of India's international human rights responsibilities. Article 14 guarantees protection against discrimination and arbitrary action, whereas Article 21 guarantees the right to life and liberty.

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