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Indian Stance on Refugee Law vis-à-vis Exclusion of Illegal Immigrants

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This article is written to focus on refugees and illegal migrants in the state of India. The article contains information about the refugees, the reasons causing the refugee crisis, and the effects of the refugees and illegal migrants on Indian lands and its citizens. We have used the methodology of primary research and secondary research. The article goes into detail about the effects caused by the refugees and illegal migrants on the various factors of the country. It deals with current regulations, and the requirement of many concrete laws to regulate, monitor, and minimize the issues created by refugees and migrations in India. The article addresses the difference between Refugees and Illegal Immigrants, issues caused by each of the categories, and the laws in place. The article is written from a legal perspective, rather than the political one. The article aims to create thoughtful debates, and discussions on this topic to generate a solution that could benefit the general public.

Keywords: *refugees, illegal immigrants, indian perspective, refugee crisis, refoulement, indian laws.*

INTRODUCTION

Who are the refugees? Refugees are people who are persecuted or chased out of their own countries for political reasons or based on religion, caste, creed, etc. Refugees are people carrying the hope that they will find a secure place and be safe from the people trying to harass or harm

them. Refugees are people whose inherent human rights are violated and they are threatened if they do not flee their own countries. For e.g., Rohingyas from Myanmar.

India has been a home for refugees from various parts of the world. India has allowed many refugees to stay irrespective of their religion, class, caste, creed, or nationality. Refugees do not leave their countries of free will like migrants or immigrants. Refugees seek asylum or help from the Indian government and are called Refugees once that status has been granted to them. Refugees are forced to flee their motherlands in most cases after the violence or force is inflicted upon them and there is a tiny chance for them to return at all. Illegal migrants and immigrants are the people who choose to leave their country and enter some other country, in this case, India by way of illegal means for the sake of better opportunities. These are the people who can create security issues at local, national, and international levels, illegally avail benefits given to the citizens, or rightfully entered people or refugees.

It is very important to understand that the refugees coming to India with hope shall be granted help, but there needs to be a process in place to monitor their entries and their stay for potential misuse of good faith help provided by the government. Current, laws and policies in place are strict and effective but there is more scope to improve and make it better to fill out the loopholes. There needs to be a stringent process to filter out illegal immigrants from refugees. There needs to be a regular process of checking the legitimacy of refugees to weed out the people to pose threat to the internal security of the state. These processes should be well-thought and transparent, not allowing officials or authorities in place to act according to their whims and fancies. This is only a plausible political factor, but more factors need to be considered before providing refugees with a place to stay.

Refugees bring in more challenges for the Indian government in the form of sheltering them, healthcare, employment, opportunities, livelihood, education, etc. These facilities cost a fortune, and for developing countries like India, it is a major challenge. The facilities could cost more environmental damage because deforesting for making a place to stay for refugees, and create a share in resources like doctors, hospitals, employment, or medicines from its citizens. Refugees do not always bring in good apples, and therefore, some of the people from among them can

pose threat at local, national, and international levels. The migration, legal or illegal, or due to an increase in refugees of one community threatens the indigenous, or tribal communities staying in that area e.g. In Tripura, it is observed that the constant flow of migrants legal or illegal, and refugees has reduced the population of Tripura's local indigenous people. A large number of Bangladeshi Muslims enter the northeast states every day causing exponential population growth in these relatively smaller states. Therefore, refugees can be an obstacle in the environmental, economic, and social aspects, etc.

India has always been facing the problem of a large number of people entering through illegal means from Bangladesh, Myanmar, Pakistan, etc. People migrate illegally to save their time and money. Illegal migration also provides them more time to stay in India and near their home countries. When a person obtains a passport and stays visa, they get a limited amount of time to stay in India. It is also a very detailed and time-consuming process to get a passport and go through legal procedures. Unlike illegal migration, refugees don't go through this process instantly, when granted refuge they stay in designated camps, and they are given options to stay in India by obtaining citizenship or migrating somewhere else. Refugees go through legal processes with proper permissions from appropriate authorities.

ISSUES

1. Effects on the Environment

The influx of new populations in any kind of region alters the geographical area of that region. The trees and forests can be cut down to make space for them to live. Creating new infrastructures such as housing, medical facilities, places of devotion for different communities, employment opportunities, and transportation lead to deforestation, encroachment on the hilly areas, and alteration and pollution of rivers, streams, or coastal areas. It interferes with the environmental factors at large. The natural and local areas have trespassed for various reasons to accommodate the new population. When refugees are to be located or given accommodation it is at the cost of deforestation, and interference with natural environmental factors such as rivers, air, etc. The use of fuelwood increases with increased population. Illegal immigrants

become a major issue as most of the time they trespass the forests, riversides, etc. illegally in an unplanned manner. The pollution caused by them remains unaccounted unlike the planned accommodation provided to the refugees.

2. Economy under pressure

Refugees and migrants of any sort add more expenses to the state. The government provides subsidies and other benefits at its own cost which fundamentally comes out of the taxpayers, and its citizen's pockets. The illegal migrants through corrupt officials take advantage of the benefits without contributing anything out of their pockets to the development of India. The expenses for maintaining refugee camps, identifying, monitoring, and deporting illegal immigrants, and providing financial aid burden with the state's economy shifts its focus from more important initiatives to taking care of people other than its citizens. India is a developing country with a huge population and constant additions to it cause minimum spending on the existing human resources that is, its citizens.

3. The strain on the country's resources

The increase in the population by way of refugees and illegal immigrants makes the resources in the country insufficient for its citizens, e.g., the medical facilities especially government hospitals are overcrowded and it is difficult to identify legitimate citizens availing the services or illegal immigrants. The government bodies such as police forces face the burden of safeguarding a large amount of the population. The question of human rights is raised if such discrimination is to be done. Free ration and other government-offered benefits can be illegally procured by the illegal immigrants creating scarcity for the poor legal citizens of the country.

4. Cultural and Social conflicts

Illegal immigrants and refugees also lead to exposing local communities, tribes, or indigenous people of the regions to other cultural and social structures which may or may not be prosperous together. The communities might feel disturbed or interfered with for allowing others to live with them. India has many types of religions and cultures, and they are thriving together but a

forcible amalgamation might not achieve that kind of diversity. It so happens that their lands or employment can also be taken away by the refugees and illegal immigrants. The immigrants might agree to any kind of job at lower rates putting others out of competition. The social fabric of the local community might be threatened by cultural differences. It is important to look at this feature from a realistic perspective rather than a utopian unity in diversity in every situation. E.g., violence ensued between the Bodos and Bengali-Speaking Muslims from Bangladesh leading to the demand for Bodoland in 2012.

5. Political Upheaval

The issue of refugees and Illegal immigrants has always been a high-listed point of political activities in India. The right and left wings fighting over the laws and regulations on the refugee and illegal immigrant situations. The latest example of it is the protest that erupted in India after the Citizenship (Amendment) Act, 2019 also known as CAA, 2019. A practical example of how the laws and regulations curb the influx of illegal immigrants from a region in Assam. Assam is a live and central example of the political upheaval caused by the illegal immigrant crisis. On the one hand, the right-wing party trying to impose and potentially expand the National Register of Citizens (NRC) and other hand left-wing parties and parties have similar ideologies protesting it. Assam is also a great example to highlight the fake voter banks creation. After entering India illegally, the immigrants successfully register themselves on the voter list by taking help from corrupt officials or using fake documents. This activity jeopardizes the natural and legal right to vote of the citizens of that region. The fake voters practically help conclude visible results of 52 constituencies from the total 292 constituencies in West Bengal.[1]

6. Security and National Threats

The refugees and illegal immigrants entering India can carry some of the elements meaning people who might be a threat to the internal security of the state. Some of them can be active in supporting anti-national or violent actors. These elements can be functional in destabilizing the

[1] M Mayilvaganan, 'Illegal Migration and Strategic Challenges: A Case Study of Undocumented Migration from Bangladesh to India' (2019) 18(4) Artha-Journal of Social Sciences <http://eprints.nias.res.in/1951/1/2019-AJSS-Mayilvaganan.pdf> accessed 19 October 2022

national and international governments. There can be people who are a threat to general people in the form of trafficking women, and children, bringing in illegal and banned articles, and food items in the country to black-market them. These kinds of things fuel criminal activities in the state creating harm to the citizens, economy, government, and state at large.

THE CURRENT LEGAL FRAMEWORK ADDRESSING NON-CITIZENS

In India, we do not have a dedicated legal framework or an act to govern the refugees. We are not a signatory to the United Nations Convention Relating to the Status of Refugees, 1951, and the 1967 Protocol. It's an international or global framework established to protect the human rights of refugees. Though, not having a separate law or being a signatory of the refugee conventions, India has not insulted her "*Dharma*" of helping people in need. The refugees from Bangladesh, Myanmar, Afghanistan, Pakistan, Tibet, etc. have been given shelter in India. The issue with being too nice is that it costs heavily and negatively sometimes. Giving helping hand to people in need does not have to be infinite that you are unable to help yourself. A sovereign state like India has to keep its Citizens on top in return for their trust in the government. In an airplane, we are asked to help ourselves first with oxygen and then the person next to us. Some might call it a Selfish move but, where does one draw a line? Well, that's a point for discussion in philosophy class maybe. Presently, in India, we have the following legal framework "*governing people that are not citizens of India*". Following are some of the important legislations in force in India.

1) The Constitution of India

The constitution of India is the cardinal law of the land. It provides fundamental rights to its citizens. Fundamental rights such as Article 14[2] (Right to equality), Article 21[3] (Right to life and personal liberty), etc. Due to the lack of separate legislation, the most important and heavily argued right in the courts in the case of the refugees are the Right to life and personal liberty under Article 21[4]. This right applies to anyone who sets foot on Indian Soil. It does not limit its

[2] Constitution of India 1950, art. 14
[3] Constitution of India 1950, art. 21
[4] *Ibid*

power to only Indian Citizens. The crucial argument that limits the function of Article 21 in the case of non-citizens is a fundamental right under Article 19. Article 19 (Freedom of Speech and Expression) includes the rights to reside, move freely, and practice a profession that is only available to Indian Citizens. In the case of ***Mohammad Salimullah & Anr. v Union of India and Ors.,***[5] the respondents, Union of India, argued that the government has an unrestrained right to remove a foreign entity from its lands for the public interest.

2) Criminal Laws:

The criminal laws in India extend to all the citizens and non-citizens of the country. The immigrants after crossing the border if caught, are deported to their own countries by the border forces. If the border forces find them suspicious, they are detained through legal means such as an FIR filed and a formal court procedure filed to determine their intentions and status. If they are found to be immigrants fleeing their countries, they can be granted refugee status. After granting a refugee status which is usually granted on a case-to-case basis, if they try to leave India illegally, they are caught and the formal process of filing an FIR and producing it in front of the Judge is followed again. One such example is of an Iranian Man who was given refugee status through his registration with the United Nations Human Rights Council (UNHRC) but then ***tried to flee with forged documents and was caught and tried in the court*** under sections 419, 420, 468, and 471 of the Indian Penal Code along with Sections 3 and 6 of the Passport Act. He was also charged under Section 14 of The Foreigners Act.

The power to try and punish a non-citizen for any crimes committed by them in India is exercised by even the lower courts as mentioned above including magistrates. Though the magistrate does not have the right to order deportation. In the case of ***Bailly Gui Landry v The State of Telangana***[6]**,** a foreign national working in India having an employment Visa till 07/02/2020 was involved in criminal cases. He was ordered on 06/05/2021, to be deported to his origin country, Ivory Coast by Additional Metropolitan Magistrate (AMM) at Cyberabad before the expiration of his Visa. The process of deportation was delayed and the foreign

[5] *Mohammad Salimullah & Anr v Union of India and Ors* [2017] WP (C) 793
[6] *Bailly Gui Landry v The State of Telangana* Writ Petition (Criminal) No. 4396/2021

national moved the Telangana High Court against AMM, Cyberabad's order of deportation. The Telangana High Court upheld his right to be not deported and clarified that the Magistrate does not hold the power to order such deportation. It further stated that the Magistrate can only try and order acquittal or conviction against the crimes committed by a foreign national. It can extend its jurisdiction to order deportation.

3) The Citizenship Act, of 1955[7]:

The Citizenship Act, of 1955 was put in place for acquiring citizenship after the constitution came into effect giving citizen status to the people who were part of India when the constitution came into effect. After that, separate legislation was needed to determine citizenship paving the way for the act. According to the act, citizenship in India can be acquired through birth, registration, descent, naturalization, and territorial incorporation. It was amended from time to time from 1986 to 2019. Notable, amendments in the case of Refugees and Illegal Immigrants are from 2003 and 2019.

In 2003[8], it was amended to restrict the pouring of illegal immigrants from Bangladesh. These immigrants had to prove their citizenship only through blood relations irrespective of their stay in India for more than 7 years. The act bestowed the Principle of Nationality Law, in Latin, it is called ***"Jus Sanguinis."*** After that in 2019[9], it was amended to allow religious minorities persecuted from the neighbouring states to enter India and get citizenship. The amendment stirred violent protests in India for excluding Muslims from it. Leaving out the political perspective, the amendment was not targeted against Muslims but aimed at protecting the minorities that are persecuted on religious grounds in the neighbouring states. India is a secular country and accepts people from various religions, castes, and creeds. On a closer look, the 2003 amendment can be said to be harsh and stringent against persons entering from Bangladesh. It

[7] Citizenship Act 1955
[8] '75 Years: Laws that Shaped India The Citizenship Act, 1955' (*Drishti IAS*, 11 August 2022) <https://www.drishtiias.com/loksabha-rajyasabha-discussions/75-years-laws-that-shaped-india-the-citizenship-act-1955> accessed 15 October 2022
[9] Npradhan,'Persecuted refugee and the Citizenship Amendment Act, 2019' (*Legal Services India*) <https://www.legalserviceindia.com/legal/article-1436-persecuted-refugee-and-the-citizenship-amendment-act-2019.html> accessed 15 October 2022

was cruel in the sense that they are was no option for being a citizen through registration or naturalization.

4) The Foreigners Act, 1946 Act No. 31 of 1946[10]:

The Foreigners Act, of 1946, was passed in the pre-independence period. It facilitated the identification of citizens and foreigners. If held under this act, the person accused of being a foreign national has to prove Indian Nationality by providing legitimate documents. The act defines the term foreigner and the legal ways in which their presence is justified in India. The criminal procedure code is followed if the person is accused of being in India illegally. One such example is a person named *"Liton Kanti Das,"* a Bangladeshi migrant who failed to produce proper documents and a passport to prove his nationality. He was then taken into custody, a police investigation led to charging him under Section 14 of the Foreigners Act, of 1946.

5) The Passport Act, of 1967[11]:

In the long title of The Passport Act, 1967, the term "Other Persons" is mentioned. This term is added with the term "Citizens of India," giving it an extensive meaning. This is the only act that recognizes non-citizens and provides to issue passports and travel documents. This act recognizes the concept of "Statelessness," further explained in the case of ***Sheikh Abdul Aziz v State NCT of Delhi[12]***, the person was charged under section 14 of the Foreigners Act and had completed his sentence in addition to 7 years in prison. The Delhi High Court directed him to be provided with a passport despite proper documents and being a non-citizen.

Due to the lack of independent legislation for refugees, the current framework provides absolute authority to the governments at the state and central levels to regulate the cases of non-citizens. Further, it fails to clarify the refugee concept and does not provide any perfect definition. The judicial decisions have helped us gain more insight into the notion of refugees. Every non-citizen

[10] Foreigners Act 1946
[11] Passports Act 1967
[12] Palak Chaudhari & Madhurima Dhanuka, 'STRANGERS TO JUSTICE: A Report on Foreigners in Indian Prisons' (*Human Rights Initiative*, 2019) <https://www.humanrightsinitiative.org/download/1547551168Strangers%20to%20Justice%20FNP.pdf> accessed 21 October 2022

is considered a foreigner in India. They are treated as such under the present legal provisions. Various judgments are curtailing the absolute power of deportation and providing little clarity on the difference between illegal immigrants and refugees. The harmonisation of human rights and international law is encouraged and discussed at length in the superior courts in India. Some of the important judicial decisions are discussed below.

JUDICIAL DECISIONS

Three important judicial decisions might be able to conclude the Indian Stance on Refugee Law, they are explained as follows:

- This first case provides insight into the applicability of refugee status in India. India does not have a separate law for refugees. It is not a signatory to the Geneva Convention of 1951 relating to the status of Refugees and the Protocol of 1967 thereof. Further, the refugee status granted by United Nations High Commissioner for Refugees is not recognized in India. The duties and restrictions under this Convention or the 1967 Protocol do not apply to India. For that reason, in the case of ***WP Nos.6407/2022 & batch***, the 'Refugee Status' given by UN High Commissioner to a foreign national, entering India without possessing proper travel documents, would not make them any different than an Illegal migrant or Immigrant.

The Central Government has been empowered under the law of the land i.e., the Constitution of India and The Foreigners Act, of 1946. The Constitution of India under Article 239, makes a provision for the delegation of Central Powers to the State and Union governments. Owing to these inherent rights of the central, state, and union governments, they are free to exercise their authority as per the appropriate legislation. Accordingly, all the governments in India can enforce the provisions for detaining and deporting a non-citizen under section 3 of the Foreigners Act, 1967.

- The second case is of utmost importance in terms of the existence of the principle of non-refoulment in India. *What is refoulement?* Under the concept of refoulement, a person is sent back to his or her country despite fear of violence against them, religious persecution,

and threats that might be waiting for their country of Origin. A person leaving their country and taking shelter in India without proper documents and permission is considered a non-citizen entering India illegally. The legal process is followed to deport such a person back to the country they came from or possess the nationality of. India practices this principle. The illegal immigrants found in India are sent back to their own countries following a proper procedure. There is no law for non-refoulement in India.

In the case of ***Mohammad Salimullah and Anr. v Union of India and Ors.,***[13] the question of refoulement was raised by the petitioners on the grounds of Human Rights and Article 21 of the Constitution of India. Mr. Salve on behalf of the Union of India stated that the principle is not binding on India as it is not a party to the United Nations Convention relating to the Refugees in 1951. Therefore, no judgment of the International Court of Justices would not prevail upon sovereign India. Such questions would come under International Public Law.

- The third case is based on the **Principle of Humanity**. The enforcement of the humanitarian law principle in the case of granting refugee status in India is discussed at length in the case of ***Kater Abbas Habib Al Qutaifi and Ors. v Union of India and Ors***[14] the petitioners in this case prayed for the cancellation of their deportation on the principle of nonrefoulement. The principle of non-refoulement does not have binding force in the case of India as discussed in the previous case. In the present case, the petitioners, Ktaer Abbas and Taer Mansoori are minors ages 16 and 17, respectively who fled Iran after their life was threatened. The petitioners argued that if they are deported to Iran, it could put their lives at peril. Though India not being a signatory of the refugee conventions, it is part of the United Nations Human Rights Commission. The United Nations Human Rights Commissioner has the power to give refugee status and in the present case, the petitioners are granted such status by United Nations Human Rights Commission.

India as a sovereign country does not have to enforce international law over national law but, it has to respect it. It was further stated that the petitioners could be in the way of harm if deported

[13] *Mohammad Salimullah & Anr v Union of India & Ors* Writ Petition (Civil) No. 793/2017
[14] *Ktaer Abbas Habib Al Qutaifi & Ors v Union of India & Ors* [1998] SCA 3433

to their country of origin, i.e., Iran. Article 21 of the Constitution of India applies to the petitioners and therefore, their right to life could be put over the principle of refoulement. In the absence of refugee laws, India must follow international law in sync with the national laws for non-citizens. the respondent, Union of India represented by Usha Rani, Ministry of Home Affairs contended that the petitioner posed threat to the internal security of India and therefore, must be deported. The Gujarat High Court directed the respondent to stop the process of deportation and allowed more time for considering the requests made by the petitioners.

CONCLUSION

Refugees have been entering India for a very long-time, well-known communities such as Zoroastrians who fled Iran due to religious persecution found shelter in India and now, they are thriving. India has been a great host to many refugees of different communities that are expanding and protected in India without having any separate refugee laws. The existing framework can be amended and tweaked to include provisions for the process to enter, find shelter, and protection for refugees in India. As a secular country, India will need to have a non-discriminatory law to deal with it. The legal structure for refugee status shall be in such a way that it does not jeopardize the rights of the existing citizens.

The lack of single legislation has facilitated this subject to become a pawn in the hands of the politicians in India. It has become one of the factors directing the political discourse at national and international levels. The lack of differentiation in terms, of refugees and illegal immigrants, pushes a common procedure to be followed in dealing with them. Due to a variety of global crises such as religious persecutions in Myanmar, Pakistan, Afghanistan, Bangladesh, etc., war-like situations cause people to flee their nations. In Afghanistan when the United States withdrew its troops letting the Taliban control the territory, a lot of people tried to flee the country by any means possible risking their lives. Women in Afghanistan were in fear of losing their freedoms. In these scenarios, they were hoping to come to a country like India, and the Indian government successfully helped them with initiatives like quick emergency e-visas. India is a developing country and still, has managed to help refugees in the absence of appropriate

law. Single legislation for regulating the issue of refugees could facilitate helping the right people and appropriately managing the refugees by setting apart the illegal immigrants.