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Refugee Crisis in India and the Violation of Human Rights

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ABSTRACT

Human rights are the rights which are guaranteed to each individual from the time of their birth and something which they inherit by the virtue of being a human and cannot be taken away from them. However, these rights have been violated by numerous agencies time and again. The refugee crisis also poses as a huge violator of human rights. The source of the crisis itself is when the government of the country does not fulfil its duty of protecting the rights of its citizens and it self violates their rights. The rights of refugees are subsequently violated by the international community where they try to seek refuge. This paper aims to study the various sources that generate refugees that try to seek asylum in India and their treatment in India and also discuss the international standard for the same as prescribed by the United Nations High Commissioner for Refugees.

Keywords: *Refugees, Human Rights, United Nations High Commissioner for Refugees, policies, laws, India.*

I. INTRODUCTION: A BREIF HISTORY OF THE REFUGEE CRISIS

According to the definition provided under The United Nations Declaration of Human Rights adopted by the United Nations General Assembly on 10th December 1948, Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status². Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination. As per the definition so provided, International Human Rights Law lays down the obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. The recognition of these rights have also paved the way for The International Covenant on Economic, Social and Cultural Rights in 1976, The International Covenant on Civil and Political Rights and its First Optional Protocol, 1976 and Second Optional Protocol, 1989. In order to protect these rights and address their

¹ Author is a student at NMIMS Law School, Mumbai, India.

²<https://www.un.org/en/sections/issues-depth/human-rights/>, accessed on 21 July 2020 3:00pm

violation, the Human Rights Council was established on 15th March 2008. In wake of the ongoing refugee crisis, the Human Rights of refugees is at stake and is violated gravely by both the Governments of their country of origin and by the international community.

People today perceive the refugee crisis as a relatively new one occurring primarily in Africa, Asia, Latin America and the rapidly disintegrating Balkan and ex-Soviet Union. However, for the past few decades, most refugees have fled violent conflicts or persecution in the developing countries and this movement is neither new nor unique to the Third World³. Refugees have been a feature of the international society for a long time however without any international protection policy as available today. Citizens enjoyed the protection of their sovereign states and governments, but once they fled away from their home countries, they were totally bereft of protection except if private institutions or individuals decided to help. Asylum was a gift of the crown, the church, and municipalities. Refugees have been present in all eras. Religious persecution was carried out throughout Europe in the sixteenth and seventeenth century where Protestants, Catholics and Jews were expelled by some regimes and admitted by others based on their beliefs and ideologies.⁴ By the end of the seventeenth century, refugees of religious persecution made for the age of political upheaval and revolution during which people fled due to fear of being persecuted for their political ideologies and opinions. The nineteenth century produced a relatively small mass of refugees from revolutionary and nationalist movements in Poland, Germany, France and Russia.

(A) World War I

During the late nineteenth and early twentieth century, the cause and the dimension of the refugee problem changed rapidly. The changing nature of international warfare, dissolution of old Eastern European Empires and the Balkan region accompanied by nation-expansion, persecution of minorities and elimination of the ruling class and political opposition groups was the main cause for mass refugee movement in the last few decades of the twentieth century. War had often been known to create refugees however it was only in the twentieth century that it became an international conflict that affected the entire population. With the acceleration of World War, I (WWI), multiethnic empires were dismantled into nation states and masses of people were excluded from citizenship in the newly formed nations based on ethnic, local and language barriers. It was seen that countries like Austria, Czechoslovakia, Estonia, Hungary,

³ Cludena Skran, *The International Refugee Regime: The Historical and Contemporary Context of International Responses to Asylum Problems* (Penn State University Press, 1992)

⁴ Michael Marrus, *The Unwanted: European Refugees in the Twentieth Century* (New York: Oxford University Press, 1985)

Latvia, Lithuania, Poland and Yugoslavia aimed at making an ethnically and religiously homogenous states, eliminating a lot of minority groups.⁵ This concept caught up and the Turks carried out the genocide of over hundreds and thousands of Armenians while the remaining ones fled to Soviet Armenia, Syria and other parts of Europe and Middle East.

Post WWI, the Western powers drafted a lot of minor treaties in order to come to a solution for this refugee crisis however in this period, a lot of countries were redrawing their boundaries and deteriorating global economic conditions, these treaties bore no fruits. Meanwhile Russian was undergoing a civil war as a result of which several Russian, fearing persecution fled to Germany and France. By the early 1920's the Soviet Union revoked the citizenship of many of its people, invalidating their travel documents and making it difficult for them to seek asylum. Post WWI, the Western countries put into place, strict immigration policies and started closing up their boundaries and in response to the refugee crisis just started rounding up refugees and expelling them from their territory. Hundreds and thousands of people were consequently plunged into an endless cycle of illegal entry, clandestine existence and expulsion. This significantly affected the domestic relations of host and refugee generating states.

Seeing this situation, the principal humanitarian organization of that period, headed by the International Committee of the Red Cross prevailed on the League of Nations to create an international machinery to deal with at least some of the refugees. In 1920, Fridtjof Nansen a world-famous Norwegian explorer was given the task of negotiating the repatriation of the Russian prisoners of war and a year later he was appointed as the first High Commissioner for Refugee but given specific responsibilities for Russian refugees only. This appointment was the first step towards treating the refugee crisis as an international one. Refugees were also legally recognized under municipal and international law. The office of the High Commissioner was however provided limited funds and received limited support from the members of the League. However, Nansen had innovative ways of dealing with the refugee crisis and brought into picture the 'Nansen passport', a set of travel documents for stateless Russians.⁶ These helped not only Russian but also other refugees to seek refuge in Europe and else were. Nansen was also able to conduct exchanges in Bulgaria, Greece and Turkey and under his encouragement the International Labor Organization established a Refugee section that acted as a clearing house for information on employment opportunities for refugees. In the year 1933, a convention was drafted to limit the repatriation and grant rights to Russian and Armenian

⁵ Claudena Skran *The International Refugee Regime: The Historical and Contemporary Context of International Responses to Asylum Problems* (Penn State University Press, 1992)

⁶ Claudena Skran, *Profiles of the First Two High Commissioners, Journal of Refugee Studies 1* (1988)

refugees, recognizing the social, economic and political rights. These initiatives however proved to be insufficient as many few governments offered support. The refugee movement was then politicized by nations. Friendly nations provided asylum to refugees coming from enemy states as a political strategy. The Russians saw Nansen as a as a creature of the League of Nations and since the league had tried to isolate the Soviet Union, Russian refused to corporate. This imbalance between Political organization and humanitarian organization made it difficult to bring a definitive solution to the refugee crisis.

(B) World War II

The 1930's, in the WWII era saw a new surge of refugees fleeing fascist regimes in Spain, Italy and Portland. The refugees from Italy fleeing Mussolini's regime found refuge in France so did refugees from Spain. In contrast to this Jews fled persecution from Germany creating a mass movement of refugees. The guidelines provided by Nansen were unable to contain the Holocaust leading thousands of Jews to lose their lives. This was also due to the inability of the League of Nations to command International Corporation to deal with this situation. The only international effort to resettle these Jews was made in 1938 by Franklin Roosevelt who called a conference in Evian, France. Until then United States had failed to notice any international refugee structures already put into place by the League of Nations and neither ratified any of the conventions. In this convention also the US did not pledge any increase in intake of refugees or change its immigration policies. Ultimately the Inter-Governmental Committee for Refugees (IGCR) was created in Evian.⁷ This was made to negotiate the conditions of the Jews with Germany and was to work alongside the office of the High Commissioner. The IGCR came to an agreement with Germany to allow structured exodus of Jews allowing them to take their property and possessions, however this was still obstructed by Germany.

The post WWII was one of the greatest population movements of history to take place. Reports estimated about twenty to thirty million people were uprooted during the war while four million war fugitives fled before the oncoming Soviet and Allied troops. The Jews released from concentration camps in East Europe added to this list of refugees. The situation during the post war period was filled with crumbled economies, destroyed structure and millions of stateless people.

⁷ Tommy Sjoberg, *The Powers and the Persecuted: The refugee Problem and the Intergovernmental Committee on Refugees* (Lund University Press,1991)

(C) Decolonization and the Pre- UNHCR agencies

In November 1943, the Western powers set up the United Nations Relief and Rehabilitation Agency (UNRRA)⁸ for handling the refugee crisis. The UNRRA was under the direct command of the Allied military forces and had a limited mandate. The UNRRA had no power to resettle refugees and displaced persons to the third countries and its goal was to simply return all those people displaced by wars to their home countries and the relief provided to these people in Europe was a temporary solution. The refugee crisis was once again viewed as a political tool and got caught up in the ideological rift of the East and the West, being that of between socialism and capitalism. The Western European countries took in people fleeing from the Soviet and even gave them incentives like better economic prospects, better education and an overall better quality of life. This was done with the agenda of proving the failure of a communist government regime.

The United States was strongly critical of the UNRRA, particularly of its repatriation policy which was helping the Soviet consolidate power in the Eastern European states, hence towards the end of 1946, the US which was responsible for granting 70% of all funds to the UNRRA, refused to do so which in turn killed the UNRRA.⁹ To battle the opposition from the Eastern Bloc, the US worked towards creating a new International Refugee Organization (IRO). This organization was strongly opposed by the Eastern bloc who batted for the UNRRC due to its limited mandate and policy of repatriation which was helping the Eastern Bloc in consolidating its hold whereas the IRO allowed people to raise reasonable objection to repatriation on grounds of 'fearing persecution because of race, religion, language or political opinion.'¹⁰ This of course turned out to be a tool in the deep hostilities between the East and the West. The IRO was however not working as the US had hoped it would and had a total expenditure of \$400 million which was greatly exceeding the total of the rest of the UN organization. Though the IRO had a great rate at settling German and Austrian refugees, it was unable to deal with the new surge of some five thousand European refugees from Spain, Turkey, Portugal and the Middle East. In the backdrop of all this, the United Nations General Assembly and the United Nations Economic and Social Council discussed the creation of the office of the United Nations High Commissioner for Refugees (UNHCR) and drafting the 1951 UN Convention on Refugees. The aim of this was to become the crux of the post WWII refugee regime and find a

⁸ George Woodbridge, *The History of UNRRA* (New York: Columbia University Press, 1950)

⁹ Dean Acheson, *Present at the creation* (New York: Norton, 1966)

¹⁰ Annex to the Constitution of the International Refugee Organization, Part 1, Section C, Part 1(a), reprinted as Appendix to Senate Report 950, 80th Congress, 2nd Session (1948)

permanent solution to the refugee problem.

(D) United Nations High Commissioner for Refugees (UNHCR)

The UNHCR was formed during the aftermath of the Second World War and at the peak of the ideological tension between the West and the East. It was intended to be a temporary body with a life span of three year during which it was to provide relief and assistance to the refugees. UNHCR was provided funds only for administrative purposes and did not have the authority to enforce any international legal norms. The United States and the Soviet Union both did not provide full-fledged support to this organization as the US had foreign policies that focused on settlement of refugees in a third country while the Soviet Union opposed all efforts as its primary goal was not repatriation. The formation of UNHCR generated a worldwide debate. The US believed that the mandate of the UNHCR should not be wide and as it did not want to take the burden of uncertain responsibilities and international obligation, it also wanted to prevent UNHCR from taking voluntary contribution from governments. Belgium and France on the other hand had wanted to make the UNHCR a powerful body to combat the flow of refugees from Eastern European countries and non-European countries like India and Pakistan. Ultimately the US was successful in persuading the General Assembly to create a restrictive mandate and just administrative expenditure of \$300,000 and setting up an 'emergency fund'.

With the formation of UNHCR came the discussion of setting international responsibilities on countries regarding the refugees. The UNHCR defined a refugee as person who had "*well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.*"¹¹ This definition worked well for the western powers as it helped them to deal with refugees coming from the Eastern Bloc and label the governments of refugee generating countries as persecutors. Though the mandate of UNHCR did not pose any geographical restrictions, the definition was restricted to European refugees. There was a mass movement of people from the East to the West. The Eastern Bloc had adopted a Soviet-style economy, prioritizing heavy industry over consumer goods. A weakening economy and political upheaval was driving a lot of people to the Western countries who advertised a better standard of living, employment and economic stability. In the 1950's as many as 197,000 East Europeans applied for political asylum in West Germany.¹² In case of the US, the commitment to refugees in the 1950's was becoming increasingly regional and unilateral and UN foreign policies were not its priority.

¹¹ *Statute of the United Nations High Commissioner for Refugees*, 5 U.N. GAOR Annex 1 at 46, U.N. Doc a/1775(1950)

¹² Paul Tabori, *The Anatomy of Exile: A Semantic and Historical Study* (London: George C. Harrap, 1972)

In May 1948, the declaration of the State of Israel by the Jewish community of Palestine followed invasion of the region by the armies causing 700,000 Palestinians to flee or get expelled from areas under Jewish control. This created a chaos in the neighboring countries leading to the formation of United Nations Relief for Palestine Refugees in the Near East (UNRWA) which was supported by the US and was authorized to oversee the resettlement of refugees. A similar organization, United Nations Korean Reconstruction Agency (UNKRA) was made to help the people displaced due to the Korean War¹³ and though the UNHCR 1951 convention only included European refugees, the Koreans benefitted a great deal due to the UN relief efforts.

The first High Commissioner of the UNHCR was G.J van Heuven Goedhart who remained in poor relations with the American officials. The refugee crisis faced by the UNHCR was enormous and it supported local integration projects and emphasized on the financial cost to governments for maintaining refugees and providing a lasting solution for them. The US hostility towards UNHCR made its functioning difficult. As the UNHCR was not an operating agency, it required the support of other voluntary organizations and voluntary agencies of America like ICEM and USEP made minimal efforts towards the same.

UNHCR came to the center stage in the year 1956, by which time the membership of the UN had increased to eighty countries. During this period the concentration of the US and Soviet Union Cold War shifted from the European countries to the Third World. These countries were themselves trying to break the shackles of colonialism and had crumbling economies and unstable state of living. The Soviet Union in 1955 encouraged a lot of these nations to become a part of the UN and these states saw the UNHCR as a solution to their refugee problems. And hence in the autumn session of 1955, for the first time the Soviet Union abstained and did not vote against extending the activities of the High Commissioner's activities.

The importance of UNHCR was realized in the world community in the year 1956 owing to its rapid response in the Hungarian Revolution. Hungary was invaded by the Soviet army and the UNHCR was presented with the rare opportunity to prove that it was capable of handling large scale crisis. Approximately 180,000 Hungarians had entered Austria and other 20,000 had crossed over to Yugoslavia. None of these countries had the required infrastructure to deal with this mass influx of refugees. In this circumstance the UNHCR called upon governments to contribute towards the resettlement of these people. The nations were quick to response; Britain took in 21,000 Hungarians; West Germany, 15,000; Switzerland, 13,000; France

¹³ Gene M. Lynos, *Military Policy and Economic Aid: The Korean Case* (Columbus, Ohio: Ohio University Press, 1961)

13,000; Sweden 7,000 and Belgium 6,000. Other populated countries of Europe also stepped up¹⁴. Nearly 200,000 Hungarian refugees were permanently resettled in a span of two years. Subsequently the global society saw the efficiency of the UNHCR and its offices were expanded and funds increased. New pragmatic and provisions were put into force.¹⁵ In the 1960's, UNHCR was able to help the refugees produced by the decolonization of Africa.¹⁶

(E) Indian Subcontinent refugee situation

While the Western World was battling through the aftermath of WWII, the Indian Subcontinent was undergoing the process of decolonization. The Partition of India to form two dominions of India and Pakistan led to the first major surge of refugees in India in the year 1947. Based on the agreement between the Indian National Congress and the Muslim League, a Muslim Majority state of Pakistan was formed. The Pre-partition era saw a lot of communal riots all across India which was a bloody affair in which thousands were killed and millions left homeless. The most affected were the States of Punjab and Bengal.

Parts of Punjab were made a part of Pakistan and so a large number of people belonging to the Hindu and Sikh community came into Punjab to live in a society where their co-religionist was a majority. As millions of people crossed borders on both sides, the Punjab Boundary Force (PBF) was formed for getting a control on the situation. In Delhi as many as 470,000 people migrated from Pakistan.¹⁷ While Sindh was initially unaffected, the incoming Muhajirin community led a lot of Hindu and Sikhs to migrate to Bombay and Rajasthan. In the far north Kashmir was a constant point of friction between India and Pakistan and is a major issue till date. It saw several communal riots forcing Muslims to flee to West Pakistan and Hindus to migrate to India.

The partition of Bengal led to West Bengal becoming a part of India while East Bengal became East Pakistan. As many as 11.4 million Bengali Hindus were now a part of East Pakistan and only 3,44,000 were able to come back to India.¹⁸ According to the 2010-11 report of the Ministry of Home Affairs of India mentioned that 1.5 million people migrated from East Pakistan to India from 1947-1971.¹⁹ Later in 1971 when East Pakistan became a different

¹⁴ Deborah Anker and Michael Posner, *The Forty Year Crisis: A legislative History of the Refugee Act of 1980* (San Diego Law Review 19, Winter 1981)

¹⁵ Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford University Press, Incorporated, 1996)

¹⁶ UNHCR, 'History of UNHCR' <https://www.unhcr.org/history-of-unhcr.html>, accessed 24 July 2020, 3:00pm

¹⁷ Partha S. Ghosh, *Migrants, Refugees and the Stateless in South Asia* (SAGE Publications India, 2016)

¹⁸ Rizwana Shamshad, *Bangladeshi Migrants in India: Foreigners, Refugees or Infiltrators* (Oxford University Press, 2017)

¹⁹ Annual Report of MHA of Government of India, Chapter XIV: Registrar General and Census Commissioner, India

nation, Bangladesh, several people came into India, mostly West Bengal fleeing from the war conditions and a shattered economy in Bangladesh. Almost 10 million people crossed the boundaries.²⁰ The cultural similarities and stable conditions attracted migrants from Bangladesh to West Bengal. This migration still continues to this date.

In 1959, India saw a surge of refugees from Tibet when the Chinese army invaded Tibet. This invasion caused the Dalai Lama along with 80,000 Tibetans to enter Himachal Pradesh and with the permission of Jawaharlal Nehru; they established a “government-in-exile”²¹ at Dharamshala known as the Central Tibetan Administration (CTA).

Owing to the active discriminatory policies by the Sri Lankan Government, the Black July Riots of 1983 and the Sri Lankan Civil War, another huge group of refugees, the Sri Lankan Tamils entered India from Tamil Nadu. More than 1.34 lakh Sri Lankan Tamils crossed the Palk Strait to India between 1983 and 1987 and today more than 60,000 refugees are staying in 109 in Tamil Nadu alone.²² In the more recent times, India has housed refugees from Afghan, Rohingya Muslims fleeing from the oppressive regime in Myanmar and many from the Chakma and Hajong communities, who once lived in the Chittagong hill tracts, most of which are located in Bangladesh have been living as refugees in India for more than five decades, mostly in the North-East and West Bengal. According to the 2011 census, 47,471 Chakmas live in Arunachal Pradesh alone.

Though India is not a signatory to the 1951 Convention for Refugees and its subsequent 1968 Protocol, it has time and again fulfilled its international responsibility of providing refuge to anyone seeking the same at its border and the UNHCR has played an active role in India for working towards the same and managing the refugee situation in India. However even though India houses a huge refugee population, it does not have a distinctive set Refugee laws in place. It uses the provisions like The Passport (Entry into India) Act, 1920, The Registration of Foreigners Act, 1939, Foreigners Act 1946, and various provisions of the Indian Penal Code, 1860 and Evidence Act, 1872²³ for dealing with refugees. Refugee status is established by acquiring a certificate stating refugee status from the UNHCR quarters in the territory of India.

²⁰ UNHCR 2000 59

²¹ Tibetan Innovation Challenge, Background on Tibetan Refugees (25 July 2020 8:00pm) https://www.rochester.edu/tibetchallenge/background/#link_acc-1-2-d

²² Amaya Valcárcel Silvela, *Sri Lankan Tamil refugees in India: return or integration?* (25 July 2020 8:00pm) <https://www.fmreview.org/return/valcarcelsilvela>

²³ Shuvro Prosun Sarker, *Refugee Law in India: The Road from Ambiguity to Protection* (Palgrave Macmillan, 2017)

II. ANALYSIS: REGUGEES IN INDIA

(A) Refugees in India

India is not new to hosting refugees and has been doing so from the time of its Partition. India hosts refugees from Bangladesh, Myanmar, Tibet, Sri Lanka and Afghanistan and according to the UNHCR, a total of 244,094 asylum seekers and refugees are provided assistance and protection in India. Out of these 244,094 refugees, 203,235 refugees from Sri Lanka and Tibet are protected by the Government of India while 40,859 are registered with the UNHCR²⁴. In this section of the paper, we will be looking into the various refugee groups that India hosts and their status in the current scenario.

1. Refugees of the Partition

The partition of the densely populated Indian subcontinent in August 1947 led to one of the greatest mass migrations in the history of humanity. The partition was a result of prevailing tensions between the Hindu and the Muslim community in India who comprised of ninety-four percent of the total population of undivided India. The communal tensions between the two communities were at a rise from 1920 when the possibility of gaining independence from the British was an achievable feat. It was in 1940 that the declared for partition and the formation of an independent Muslim state. This was followed by nation-wide riots between the two communities and the Hindus ultimately agreeing to the partition as it was seen as the only alternative to a civil war²⁵. The worst affected states were that of Bengal, Bihar and Punjab with Punjab being the most affected. It was assumed that the partition would make situations better however it drastically deteriorated. The partition provoked a wave of unprecedented disorder. Hindus and Sikhs fled the Muslim dominated West Punjab, which was now a part of Pakistan and were met by Muslims trekking out of the Indian half of the province. People went through unimaginable hardships facing insufficiency of food, lack of shelter and facing epidemics. Some refugees were fortunate enough to travel by trucks, trains and airplanes however travels by these routes were not necessarily safe.

Outbreak of mass violence took place in other areas as minorities feared persecution, mass evacuations of non-Muslims was carried out in Western Pakistan Provinces of North West Frontier, Baluchistan, Karachi, Sind, Bahawalpur states and to some extents from East

²⁴ “World Refugee Day: What You Must Know About Refugees In India”(Amnesty International India, 20 June 2020)<[²⁵ Pallavi Chakravarty Ghosal, ‘REDEFINING THE PARTITION REFUGEE’ \(2014\)](https://amnesty.org.in/world-refugee-day-what-you-must-know-about-refugees-in-india/#:~:text=According%20to%20the%20United%20Nations,40%2C859%20are%20registered%20with%20UNHCR.> accessed on 29 August 2020</p></div><div data-bbox=)

Pakistan. Meanwhile Muslim refugees in large numbers fled from Kashmir, Delhi Province, other Northern states and Hyderabad to the safety of Pakistan. A great mass migration was in process the speed and numeric extend of which was almost unimaginable. The violence that took place as people crossed on both sides of the boundaries left several villages and towns blood soaked. It was estimated that by November 21, 1947 only after three months of the partition as many as 8 million people had crossed both sides of the boundary and the number reached to almost 12 million by the first year of partition. In 1950, unrest was seen in Bengal which led to 2.25 more refugees. According to the 1951 census of India and Pakistan, on March 1, 1951 there were a total of 7,150,000 Muslim refugees in Pakistan and non-Muslim evacuees in India on the same date amounted to 7,471,000 and about 15 million people were permanently uprooted²⁶.

The young governments of both the newly formed nations proved to be swift and efficient in taking actions towards dealing with this problem. Ministry of Relief and Rehabilitation and Ministry of Refugees and Rehabilitation was created by both India and Pakistan respectively to deal with this situation. At the end of November 1947 about 1,250,000 refugees were housed and fed in over 150 camps in India. India was faced with 7.5 million²⁷ refugees of which 5 million came from West Pakistan and 2.5 million from East Pakistan and about seventy five percent of these were completely rehabilitated by mid-1952 and similar numbers were reported by Pakistan. This was India's first stint at handling a refugee crisis where millions were displaced and 500,000 deceased however the efforts made by India were remarkable. Constructions were started, new towns were created, millions were fed and rehabilitated and none of them lost their nationalities as both India and Pakistan created provisions for refugees of the partition to retain and acquire citizenship under their respective Constitutions²⁸. Article 7 of the Indian Constitution specifically deals with citizenship of certain migrants to Pakistan²⁹.

2. Refugees of 1971 Formation of Bangladesh

The roots of the Bangladeshi Liberation war lied in the partition of India and Pakistan in 1947. Pakistan was formed by the Muslim majority states of the Indian subcontinent. The partition led to the formation of West Pakistan and East Pakistan with the Indian Union in the middle.

²⁶ Figures from Pakistan reproduced from *Census of Pakistan, 1951: Provisional Table of Population*, (Office of Census Commissioner, Government of Pakistan, Karachi, 1951)

²⁷ Figures on India adapted from provisional census returns, *The Indian and Pakistan year book on who's who* Volume 37, Bombay (1951)

²⁸ William Henderson, 'THE REFUGEES IN INDIA AND PAKISTAN' (1953)

²⁹ Byju's the Learning app, 'Citizenship in India' https://byjus.com/free-ias-prep/citizenship/?utm_source=Google&utm_medium=CPC&utm_campaign=IAS_Dynamic_Traffic_Chennai_April30&utm_term=&gclid=CjwKCAjwnef6BRAGeiwAgv8mQetXHzLK-NWMFvhtXwijrtZlUu4efEnuO4-TbN75A5e9mhr-YomwxxoCPmAQAvD_BwE accessed on 30 August 2020

East Pakistan was formed by partitioning of Bengal into West Bengal which was made a part of India and East Bengal to Pakistan which was renamed as East Pakistan in 1955³⁰. East Pakistan was more populous but the political power was vested in the hands of the West Pakistan elites who did not pay heed to the grievances of the people of the East.

Neglect of these grievances led to the formation of many political parties in the East. One of the prominent ones was the Awami League which was led by Sheikh Mujibur Rahman, who was able to garner the support of millions of Bengalis. In the 1970 general election of Pakistan, not only did the Awami League participate in the election but also won it by a clear majority, however the results of this election were dismissed by the West Pakistan based military government. Thus, instead of handing over the power to the elected government, mass killings of Bengalis were carried out in East Pakistan. The final move that led to the civil war was the 25th March 1971 killings of thousands of Bengalis and the subsequent arrest of Rahman for treason. Sheikh Mujibur Rahman declared independence from within the jail and thus another partition took place after 24 years of independence.

The gruesomeness of the war drove a lot of people towards India due to which India had to set up refugee camps along her borders in West Bengal, Bihar, Assam, Tripura and Meghalaya. As the violence in East Pakistan escalated more refugees sought asylum in India. The people of these regions were very sympathetic towards the refugees due to the ethnic and cultural connection they had with these people. They even called the “Bengali Brothers front the East”. India was hosting as many as 10 million and for a developing country India’s resources were spreading thin. The influx of refugees to India began in April 1971 and in one month alone as many as 3 million refugees came in. by June the number had reduced to below a million each month and by December it was 1,66,000³¹. In Tripura, the refugee population was almost as much as the local population. India allocated a fund of 2.6 billion to cater to the refugees however the estimated cost was 4.2 billion and the burden of this was felt by both the locals and the Government.

India time and again urged the global community to reprimand the actions of Pakistan and India’s spokesperson to the UN Samar Sen, also asked for global assistance and the assistance of the UNHCR and other global bodies, but despite the best efforts of everyone, India was overwhelmed by the costs. It was finding it difficult to provide the refugees with basic necessities. And hence to stop India could not tolerate this any longer and to stop this influx

³⁰ Kaleidoscope, ‘The East Bengal Refugees’ (31 August 2020) <https://web.archive.org/web/20090925052911/http://www.catchcal.com/kaleidoscope/people/east.asp>

³¹ Navine Murshid, ‘India’s Role in Bangladesh’s War of Independence: Humanitarianism or Self-interest?’ (2011)

India had to intervene in the civil war with its military and finally bring an end to the civil war and facilitated the formation of Bangladesh. Post 1971, migrants from Bangladesh that came to India were divided into two main categories, first were the Hindu Bangladeshi who came in as refugees fearing persecution and also became economic migrants and second were the Muslim Bangladeshi who came because of economic reasons³². These groups were and to this date are discriminated on the basis of their ethnicity, language and culture in the places they chose to settle, especially in Assam. These people have taken up minimal wage jobs and try to make a living, however are still a topic of conflict and exploited for political issues.

3. Refugees from Sri Lanka

Sri Lanka mainly comprised of the Sinhalese and the Tamils, where the Sinhalese comprised of seventy-four percent of the population and the Tamils occupying eighteen percent. The Tamils being in the minority felt that their grievances were not being addressed by the Sinhalese Government and this led to the formation of a militant group among the Tamils known as the Liberation Tigers of Tamil Eelam (LTTE). This group was heavily armed and resisted the Sri Lankan Government's army in the north-eastern region. Severe ethnic violence broke out in Sri Lanka against the Tamil due to the killing of thirteen soldiers by a faction of the LTTE in the Jaffna district. This led to the killing of fifty-three Tamil prisoners by the Sinhalese prisoners in Colombo which marked the onset of the Eelam war in between the Sri Lanka and the LTTE. The war took place in four phases. The first phase (1983-1988) led to the arrival of around 1334,053 Sri Lankan asylum seekers to the state of Tamil Nadu in India. The Indian Government made arrangements for the return of refugees when the situation in Sri Lanka became better. By 1987 as many as 34,429 refugees were admitted in 170 temporary camps where the state government provided the refugees with basic necessities.

The second outbreak of the war happened in 1990-1994 when there were about 5000 refugees in the Tamil Nadu camps which included 4,000 Tamils of Indian origin. The number eventually swelled up to 122,078 and 234 camps had to be set up. In 1991 the Indian Government was hostile in their treatment towards the refugees due to the assassination of the then Prime Minister Rajiv Gandhi by a Sri Lankan Tamil suicide bomber. This led to the state government reducing the number of camps from 243 to 132 and the refugees living under 24/7 police vigilance. The third wave forced 280,000 refugees to seek refuge outside their country. By the

³² Rizwana Shamshad, 'Are Bangladeshi migrants in India foreigners, refugees, or infiltrators, asks this new book' (*Scroll.in* 22 December 2019) <https://scroll.in/article/947343/are-bangladeshi-migrants-in-india-foreigners-refugees-or-infiltrators-asks-this-new-book>

end of the fourth wave of the war due to international intervention, around December 2009 over 20,000 people had died and 24,512 people fled to India and 300,000 people remained internally displaced³³

On entering India, the refugees had to go through thorough checking by police officials to make sure they were genuine refugees and not militants and members of the LTTE who if found were put up in special camps. Due to 1991 assassination, the movement of the refugees was restricted and hence they were provided with food instead of cash dole. The refugees garnered a lot of support from the locals due to their ethnic affiliation. The refugees are provided basic humanitarian assistance by the central and state government and even NGO's and international entities. Refugee household receive cash under the Tamil Nadu Governments Infrastructure Development Program for repairing house, street lights, provisions of drinking water, toilets and road facilities. Medical services are provided free of cost to the refugees in government hospitals and they can claim financial assistance for major medical treatment from the state government under the "Sri Lankan Tamil Special Relief Fund"³⁴. The Government also provided for free education of the refugee children and also provided them with uniforms and in case they want to pursue higher education in any university in Tamil Nadu that is also paid for. In total the Government of India spent a sum of Rs.500 crore for the Sri Lankan refugee relief program from 1983-2009. The refugees can also get a travel allowance issued by the UNHCR if they want to return to Sri Lanka. UNHCR has been actively working towards safe return of refugees from India to Sri Lanka though not actively encouraging. It has been helping refugees to acquire citizenship and get assimilated into the society.³⁵ In 2007, the Tamil Nadu Government also launched the 'Welfare of the Sri Lankan Refugees' scheme in order to improve the standard of living in the camps, under which the government provided Rs.42.14 crore. These efforts did not guarantee a smooth sailing life for the refugees who faced problems in terms of money, living conditions and facing epidemics within the camps.

4. Refugees from Tibet

The Tibetan emigration took place in three stages with all of it beginning in 1959 during the Tibetan Uprising. This uprising was a result of China's attempt to liberalize Tibet which led to the persecution of the native Tibetans in the way of attacking their culture in order to impose Chinese Marxist ideology and practices in the political and social culture of Tibet who were

³³ Akshaya Nath, 'The ignored plight of Sri Lankan refugees in Tamil Nadu', (*IndiaToday*, 9 June 2019) <https://www.indiatoday.in/india/story/sri-lankan-refugees-tamil-nadu-plight-camps-war-13168-2016-06-09>

³⁴ Valatheeswaran Chinnakkannu, Irudaya Rajan Sebastian Nil, 'Sri Lankan Tamil Refugees in India: Rehabilitation Mechanisms, Livelihood Strategies, and Lasting Solutions' (2011).

³⁵ Amaya Valcárcel Silvela, 'Sri Lankan Tamil refugees in India: return or integration?' (2019)

followers of Tibetan Buddhism³⁶. Due to the fear of persecution, the 14th Dalai Lama along with some of his government in 1959 fled to India. From 1959 to 1960 as many as 80,000 Tibetans followed the Dalai Lama to India through the Himalayas³⁷.

In the case of Tibetan refugees, Jawaharlal Nehru, the first Prime Minister of independent India came to their rescue. He showed personal interest in this refugee crisis and one of the main reasons for this was that his policies were severely criticized by China. Moreover, the Indians had widespread sympathy for the Tibetan cause due to the India cultural affinities with Buddhist Tibet. The Tibetan refugee crisis was high on the list of the domestic agenda in India. This also encouraged many refugees to come and settle in India. The Tibetan refugee community is also termed as the most successful refugee community in the world. The Central Tibetan Administration provides for a Tibetan identity certificate to all Tibetan refugees which helps them maintain and retain their identity³⁸.

The Tibetan refugee community in India already had a systematic leadership and power mechanism in place which they efficiently implemented. Along with the Dalai Lama his advisors also came with him and hence there was no absence of control on the community. The Indian Government along with NGO's and various Aid groups provided for assistance. The Tibetan settlements were set up in a way that the Tibetan culture retains its originality. This view was shared by both the India and Tibetan (exile) government. The Tibetans were self-reliant in many ways and with the support of the government able to earn their own living by putting up shops, managing schools and hotels. As the refugee community was situated in the remote parts of India where development was slow, the Tibetans were able to develop the region by opening up small business that promoted and preserved their Tibetan culture. The situation was such that Tibetans would employ the locals in their shops and fields. Places of Tibetan settlements like Dharamshala and Darjeeling have become popular tourist locations in India where people go to explore the Tibetan culture.

The support of the Government also allowed them to establish organizations like the Tibetan Centre for Human Rights and Democracy in India for investigation on human rights issues in Tibetan minorities in China³⁹. The Central Tibetan School Administration with a seat in New

³⁶ Manan Mehra, 'World's Most Successful Refugee Community – The Case of Tibetan Refugees in India', (*cjp*, 18 February 2020) <https://cjp.org.in/worlds-most-successful-refugee-community-the-case-of-tibetan-refugees-in-india/>

³⁷ Arjun Sawhney, 'A spot in the Mountains', (*gallery escape*, 9 May 2008) https://web.archive.org/web/20080509123005/http://galleryspace.com/about_spot_in_the_mountain.php

³⁸ Edward J Mills, Timothy H Holtz, et. 'Prevalence of mental disorders and torture among Tibetan refugees: A systematic review' (2009)

³⁹ The official website of Tibetan Centre for Human Rights and Democracy (TCHRD) <<http://www.tibet.org/Resources/TSG/Groups/tchrd.html>>

Delhi is an autonomous organization established in 1961 with the objective to establish, manage and assist schools in India for the education of Tibetan children living in India while preserving and promoting their culture and heritage. According to information on its own website, as of 2009 the Administration was running 71 schools in the areas of concentration of Tibetan population, with about 10,000 students on the roll from pre-primary to class XII, and with 554 teaching staff⁴⁰.

The government of India has always provided preferential treatment to the Tibetan refugees and they are the only refugee community allowed to take Indian citizenship. Even so there are hardly a few people who have done so as most Tibetans remain true to the cause of 'Free Tibet' and towards retaining their cultural identity. They claim their affiliation and loyalty to India as they grew up here and found it their home. Over the last seven years, the Tibetan refugee community in India has dropped by 44 percent, from around 150,000 in 2011 to 85,000, according to Indian government data. Tibetan authorities say most are going to countries such as the United States, Canada, Germany and Switzerland. Some are returning to Tibet⁴¹.

5. Refugees from Myanmar

The refugees from Myanmar are the Rohingya Muslims, a minority group which fears persecution at the hands of the Myanmar Government. The largest migration of this community took place in 2016 and 2017 when they faced brutal suppression by the security forces, including the destruction of Rohingya villages and killing of thousands of people⁴² and causing 723,000 Rohingya to seek asylum in neighboring countries. While a vast majority of the Rohingya fled to Bangladesh, there are an estimated 18,000 Rohingya asylum seekers and refugees registered with the UNHCR in India.⁴³ Though most of the refugee population is headed towards Bangladesh, despite the efforts of the Bangladesh Government and international efforts, the camps for the refugees are overcrowded, unhygienic and makeshift.⁴⁴ They are also subjected to several human rights violation, women face sexual violence, forced prostitution, forced marriages and human trafficking. Owing to these factors the Rohingya refugees enter India from two routes. One is from Bangladesh into West Bengal and second from the northeast into Mizoram and Meghalaya. From both the routes the refugees are

⁴⁰ Central Tibetan School Administration website <<http://www.ctsa.nic.in/>>

⁴¹ Rahul Tripathi, 'Tibetan refugees down from 1.5 lakh to 85,000 in 7 years', *The Indian Express* (New Delhi, 11 September 2018)

⁴² Eleanor Albert and Lindsay Maizland, 'The Rohingya Crisis' (*Council on Foreign Relations*, 23 January 2020) <https://www.cfr.org/background/rohingya-crisis>

⁴³ UNHCR Press Release: 'UNHCR seeking clarification from India over returns of Rohingya' (2019)

⁴⁴ 'One year on, Rohingya refugees live in dire camps, facing an uncertain future and legal limbo', (*Medecins Sans Frontiers*, 24 August 2018) <<https://www.msf.org/one-year-rohingya-refugees-live-dire-camps-facing-uncertain-future-and-legal-limbo>> accessed 7 September 2018

vulnerable to exploitation as they do not possess travel documents. The travel through these routes is also filled with hardships and they fear being detained by the Indian border security forces.

As most Rohingya do not have valid identification documents and hence cannot use official means of transportation to come to India, therefore to minimize the risks of irregular cross-border migration, they travel in groups of 10-25 people. They travel to India either with their family and community members and hire smugglers to arrange their journey and navigate the dangerous routes. While smugglers play a crucial role in facilitating cross-border migration, they are also involved in human rights violation against the Rohingya.⁴⁵ The smugglers charge fees as high as 400 USD per person and paying off of the border security force is very common.⁴⁶ The smugglers are also suspected to be labor contractors who entangle the refugee into labor agreements until they are able to pay off their debts. There have been reports in the media of Rohingya girl being trafficked and sold into prostitution or marriages in India.⁴⁷ The 18,000 Rohingya refugees in India are scattered over the country however two-third of them are settles in Hyderabad and Jammu, where there are large Muslim communities. They live in difficult circumstances and face numerous obstacles in terms for shelter, livelihoods, education and health. The Rohingya primarily reside in settlement clusters in unauthorized areas where they are charged rent. Sudden evictions and non-renewal of informal leases of Rohingya, and poor sanitation in settlement areas have been reported in the media.⁴⁸ The income earned by the households is also not enough for them to survive.

India's policy towards the Rohingya has grown to be exceedingly stringent over the past two years. Two characteristics of the Rohingya identity have been seen to influence this course of action by the Government of India. The first is their Muslim identity; this is because of the communal tension that has persisted amongst the Hindu and the Muslim community from the time of partition in 1947. The second factor is that the Rohingya are often confused with the Bangladeshi refugees and the migration of Bangladeshi refugees is also a politically sensitive topic in India. Due to these issues, Rohingya are often portrayed to pose a threat to the national security. A drastic turn of events was seen in 2017 when a PIL seeking the identification and deportation of the Rohingya and Bangladeshis was filed in the city of Jammu. The matter is still in the Supreme Court however ordered an interim order stating deportation was not

⁴⁵ Yermi Brenner, 'Rohingya migration to India: patterns, drivers and experiences' (2017) <

⁴⁶ 'Rohingya crisis: Security tightened along Mizoram border', *Economic Times* (13 July 2018)

⁴⁷ Thomson Reuters Foundation, 'Over half of Rohingya girls who fled violence became child brides - U.N. survey', *Reuters* (Kuala Lumpur, 4 May 2017)

⁴⁸ Bharti Jain, 'Centre to identify, arrest and deport Rohingya Muslims' *The Times of India* (New Delhi, 4 April 2017)

permitted.⁴⁹ However, in October 2018, seven Rohingya men were deported back to Myanmar, in violation of International Humanitarian Law.⁵⁰ Even on a diplomatic level the Indian Government has not been supportive of the Rohingya and also abstained from voting in the UN Resolution on the Situation of Rohingya Muslims and other Myanmar Minorities in 2017. The UNHCR in India tries to provide the Rohingya some protection and issue refugee cards or under consideration certificates. However, the Indian authorities do not acknowledge the documents issued by the UNHCR as legitimate identification papers⁵¹.

(B) Legalities with respect to Refugee laws in India

India hosts a large number of refugees and continually faces refugee influxes in large numbers and yet does not have a domestic law specifically designed for and pertaining to refugees. India is also not party to the 1951 Convention relating to the status of refugees nor to the 1971 Protocol, however it is party to several other human rights treaties such as the Universal Declaration of Human Rights, UN Declaration on the Territorial Asylum, International Convention on Civil and Political Rights and Convention against Torture and Cruel Inhuman or degrading Treatment or Punishment to name a few. The UDHR under Article 14 mentions the policy of non-refoulement which bars any country from deporting, expelling or forcefully returning back refugees to their state of origin against their will or if there is a reasonable threat to his life, liberty and freedom. This also protects refugees in India. These treaties along with the international obligations ensure that refugees can seek asylum in India and their human rights are protected.

1. Under the Constitution of India

Human rights law and Refugee law co-exist in nature and complement each other and aim at protecting life, dignity and liberty of each person and this is seen as a cardinal principle. These principles are also reflected in the Indian Constitution under various Articles which are also applicable to refugees or foreigners as India has no set definition adopted for refugees. In the case of *Visakha v. State of Rajasthan*⁵², the court upheld the co-existence of domestic law and international law when consistent with fundamental rights. The Government grants temporary protection to the refugees and some of the fundamental rights under the Constitution are guaranteed to non-citizens as well. The primary principle under Article 32 and 226 allows the

⁴⁹ Saugata Roy, 'Rohingya issue: West Bengal wants refugee policy before acting', *Times of India*, (Kolkata, 21 January 2018)

⁵⁰ Ishita Kumar and Nayantara Raja, 'By deporting 7 Rohingya men, Supreme Court and Government of India failed to uphold international humanitarian obligations' *The Leaflet* (6 October 2018)

⁵¹ UNHCR (2018) Fact Sheet- India

⁵² *Visakha v. State of Rajasthan* 1997(6) SCC 241

refugees to approach the courts of law in case of infringement of their fundamental rights. Article 14 ensures equality of law and equal protection under law guaranteeing fair and just treatment. Article 21 also guarantees the refugees the right to life. It was held in the case of *Louis De Raedt v. Union of India*⁵³ the court held that non-citizens have the fundamental right to life, liberty and dignity. This is followed by the right against arrest and detention. In another case of *Majid Ahmed Abdul Majid Mohd, Jad Al-Hak v. Union of India*⁵⁴, the court stated that food and medical care is to be provided to all detainees as they are bare minimum essentials for survival. Under Article 25-28, refugees also have the right to practice and profess their own religion with reasonable restrictions applicable to all citizens and non-citizens. These provisions in terms of refugees are however idealistic in nature and hardly seen on practical grounds. There are still many refugees detained unlawfully and unable to seek any recourse. Though the Constitution provided equal protection of laws discrimination is made between refugees of different nationalities, for example, the Chakmas and Sri Lankan refugees are detained in camps with their freedom of movement restricted within the boundaries of the camp where as Tibetan refugees have the right to residence.

2. Provisions under the Law

As stated before, India does not create a distinction between ‘foreigners’ and ‘refugees’ and hence domestic legislations that deal with foreigners also deals with refugees. These provisions are Passport (Entry into India) Act, 1920, Passport Act, 1967, Registration of Foreigners Act, 1939, Foreigners Act, 1946 and Foreigners Order, 1948.

Passport (Entry into India) Act, 1920 and the Passport Act, 1967 draws no distinction between refugees and other foreigners like tourists, economic migrants and students, putting the refugees at a risk of being arrested by the immigration authorities and illegal deportation in the absence of a valid passport⁵⁵. This puts the refugees at a disadvantage because they leave their place of origin in a state of chaos and run the risk of losing their document in the course of their travel. India is also very clear about the fact that refugees can seek only temporary protection in India and hence they are not issued valid passports and travel documents. Only Tibetan refugees have been granted valid passports, which is argued by a lot of critiques as being unconstitutional in nature as it brings out discrimination between different groups of refugees. Under the Registration of Foreigners Act, 1939 the Central Government has the powers to

⁵³ *Louis De Raedt v. Union of India*, AIR 1981 SC 1886

⁵⁴ *Majid Ahmed Abdul Majid Mohd, Jad Al-Hak v. Union of India*, Delhi High Court 1997, Criminal Writ Petition No 60 of 1997.

⁵⁵ Bimal N Patel, ‘India and International Law’, (2005 edn), accessed on 2 September 2020

make rules for foreigners in terms of where and whom to report, providing proof of identity and registration certificate⁵⁶. Again this law is unfair to refugees as they are already in a state of plight and these formalities add to their agony. This also gives the Central Government to exercise arbitrary power on genuine refugees. The Foreigners Act of 1946 restricts refugees in terms of who they can meet and the specific routes through which they can enter the country. This gives the authorities unlimited powers to detain and arrest any foreigner for non-compliance under this act. The Foreigners Order of 1948 gives the State government to “grant or refuse” entry to a foreigner into the Indian territory on grounds like invalid passport, safety or is detected suffering from a loathsome disease⁵⁷. This law in terms of refugees is seen as not to be coming from a place of humanitarian compassion as the conditions undergone by refugees are starkly different than those of other categories of foreigners. This act gives civil authorities the powers to refuse permission if the requirements under this Act are not fulfilled. This was largely used against the Sri Lankan refugees post the assassination of Rajiv Gandhi by a Sri Lankan Tamil refugee.

A lot of scholars argue that the Indian Penal Code must not be used for dealing with refugees as even the IPC does not create a distinction between nationals, foreigners and refugees and so refugees maybe unfairly charged with cheating, fabrication of documents and forgery⁵⁸ and considering the fact that refugees might have valid reasons for not possessing documents, this may be overlooked by concerned authority.

3. National Human Rights Commission

The National and State Human Rights Commissions and the Human Rights Courts are established in India under the Protection of Human Rights Act, 1993. According to the provisions of this Act, they have the same powers as a civil court and can Suo moto inquire into any petition and interfere in the judicial proceedings to protect the party from human rights abuse, study treaties and prepare reports.⁵⁹ These courts and commission are also involved in the protection of refugees. In 1994, the NHRC directed the Tamil Nadu Government to provide immediate medical treatment to Sri Lankan refugees in the camps.

In 1995 in the case of *National Human Right Commission v State f Arunachal Pradesh*, on behalf of the “Chakma” refugees, who are from Bangladesh, the NHRC filed a PIL in the

⁵⁶ R. J. S. Tahir (eds.) Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir: ‘Refugees and the Law’, 2edn, HRLN (2011)

⁵⁷ Nowhere in the act, has loathsome been defined. There should be specific names of disease else this provision is arbitrary

⁵⁸ Section 416, 420, 463, 464, Indian Penal Code, 1860

⁵⁹ Protection of Human Rights Act, 1993 Article 12 and 13

Supreme Court. . The NHRC founded that the State Government is acting in accordance with the AAPSU (All Arunachal Pradesh Students Union) and threatening Chakmas. The Supreme Court intervened with the liberal interpretation of law to suggest that refugees are the “class apart” from foreigners and they are to be protected under Article 21 of the Indian Constitution and they cannot be evicted from their domestic households. The court emphasised that the State is under an obligation to protect the life and personal liberty of every human being thus abiding the principle of non-refoulement.⁶⁰

The NHRC under the guidance of Justice PN Bhagwati proposed a model law for refugees in 2000, however till date the law has not seen the light of day. The commission also proposed changes to the Foreigners Act, 1946, which deprived refugees the rights guaranteed under the Geneva Convention of 1951 and the 1967 Protocol.⁶¹ Currently only the Refugee and Asylum (Protection) Bill, 2009 is an attempt at having a codified refugee law. The proposed law has clearly defined the rights and duties of refugees and obligations of the state to provide them with protection.⁶²

4. Role of the UNHCR in India

UNHCR plays an important role in the protection of displaced and uprooted people. India has been an executive member of UNHCR since 1995 and has availed the benefits of this membership since. UNHCR offices are located in New Delhi and Chennai. The refugees in India are divided in two categories; mandate and non-mandate. Refugees coming to India from non-neighboring countries and Myanmar like the Somalis, Iraqis, Palestinians, Chins and Eritreans are ‘mandate’ refugees, meaning they can apply for refugee status under the UNHCR and get most of their subsistence allowance and assistance from the agency. Other protection-seeking populations in India come from neighboring countries, including Sri Lanka and Tibet are excluded from the support of the UNHCR’s mandate and termed as the ‘non-mandate’ population⁶³. These people are provided protection under the Government of India.

The work of UNHCR begins the moment a refugee enters India. These people can apply for registration and refugee status at the UNHCR office. A legal officer is appointed to conduct interviews and procure relevant information from the asylum seekers. Considering there might be inconsistencies in the interview, such situations are handled with caution and care keeping

⁶⁰ *National Human Rights Commission v State of Arunachal Pradesh* (1996) AIR 1996 SCC 1234

⁶¹ Rajeev Dhawan, ‘On model law for refugees: A response to the National Human Rights Commission’, NHRC Annual Reports 1997-2000, (New Delhi, 2003)

⁶² Nimrat Kaur, ‘Protection of Refugees in India: A critical analysis’ (2013)

⁶³ ‘World Refugee Day: What You Must Know about Refugees in India’, (*Amnesty International*, 20 June 2020).

in mind the background and mental conditions of the refugees.⁶⁴ The UNHCR provides for many amenities which the Indian Government fails to in most cases. Because the refugee identity is well established by the UNHCR, they can procure valid travel documents authorizing them to travel abroad, valid passport, ration card and even open a bank account. They are also provided free legal aid to the recognized refugees. UNHCR has formal agreements with other NGOs to provide financial aid and legal aid to the poor and needy in government hospitals with special emphasis on women and child health care. The organization has a host of volunteers and interns who assist in providing vocational training helping the refugees become self-reliant, counselling for the distressed refugees in collaboration with organizations who have expertise in these fields. As of 2020, 40,859 refugees and asylum seekers of various nationalities in India are registered with the UNHCR. The UNHCR mainly works in collaboration with the Ministry of Home Affairs and Ministry of External affairs of the Government of India, Operational partners such as the Tata Institute of Social Sciences (TISS) and Migration and Asylum Project (M.A.P) and various NGOs like, Bosco Organization for Social Concern and Operation (BOSCO), Social Legal Information Centre (SLIC), Bal Raksha Bharat (Save the Children), Fair Trade Forum India (FTF-I), Development and Justice Initiative (DAJI), Gandhi National Memorial Society (GNMS)⁶⁵.

UNHCR has introduced the Biometric Identity Management System (BIMS) that allows includes iris scanning and fingerprints as an integral part of refugee registration, status determination and card renewal process. So far, 31,194 people have been enrolled constituting of 78% of the active refugee population. UNHCR and partners remain committed to strengthen children and women protection systems and services and advocate for access of refugees and asylum seekers to services. Action Aid advocated with the State Commission for the Protection of Child Rights in Nuh for the effective inclusion of refugees in education. UNHCR works with stakeholders to find local ways to overcome access gaps to educate and address school supplies, uniforms, textbooks and other school requirements fabrics. 110 refugees and asylum-seekers were part of the integrated UNHCR outreach program got security advice on issues relevant to telephone or face-to -face sessions. As of December 2019, through its partners, UNHCR provided cash assistance to 1,264 individuals, including 28 unaccompanied or separated children, 164 persons living with disability, 218 elderly, and 439 persons living with serious medical conditions. Other assistance included 228 persons supported to promote girl

⁶⁴ R. J S. Tahir (eds.) Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir: 'Refugees and the Law', 2edn, HRLN (2011)

⁶⁵ United Nations High Commissioner for Refugees, *India: Fact Sheet* (2020)

child education, and 69 persons supported to promote institutional delivery. UNHCR also helped in voluntary repatriation of Sri Lankan refugee and resettlement of refugees to a third country⁶⁶.

III. CONCLUSION

“Refugees cannot be stopped, but they can and must be managed better, more humanely, protecting migrants’ human rights whilst accepting states’ rights to control their borders”

– Kofi Annan

As stated, several times in the paper, the refugee crisis faced by India is not a new phenomenon. India has had to deal with refugees from the time of her independence back in 1947. Since then the only thing that has changed is the source of refugees however, the lack of domestic laws regarding refugees remains the same. The international community has time and again encouraged India to ratify the 1951 Convention however India insisted that the Convention caters to the need of the European community and does little to address and resolve the problems faced by India and by ratifying the same, India will just be taking upon herself international obligations she is not in a place to fulfill. India also emphasized on the fact that it was not present during the drafting of the Convention and does not fully know the context in which each article of the Convention is to be interpreted. India being a developing country is not able to fully provide for her own citizens due to the large population and the resources that have been spread too thin and wide. The refugee influx thus adds on an additional burden on the already strained resources. However, this cannot let the country give up on upholding the rights of the people who come at its doorsteps to seek asylum. The refugees seek refuge in another country because the government of their own nation has turned its back on them, therefore it is the obligation of the international community to take care of them and India has been failing at its duties in this case.

The situation of refugees in India is pitiful due to the lack of specific legislations for their benefit. There are still refugees living in pathetic conditions in the south and the east. Rohingyas have been deported back to Myanmar where they face a threat to their life and Bangladeshis are turned away and being framed as a threat to national security without verification. Each case is treated on a community level and not individual level. These situations need to be prevented in order to prevent gross violations of human rights that have already been taking place. Factors like communal tension towards one community of refugees

⁶⁶ *Ibid*

while cultural affinity towards another refugee community of the locals also shapes the refugee response of the country. The UNHCR also has minimal say in these matters is minimal and only concerned with the mandate refugees. If a codified domestic law is not formulated by India specific to refugees it will soon be overwhelmed.

IV. SUGGESTIONS

The primary need for a domestic law pertaining to refugees needs to be fulfilled. Refugees need to be formally defined in law and not have the same provisions applied to them which are applied to foreigners and migrants. The laws applied to foreigners and migrants cannot be applied in these cases as the reasons driving foreigners and migrants to the country are totally different from those of a refugee. Foreigners come to the country as tourists or students while migrants come to the country seeking better economic opportunities; however, refugees come to the country as they fear persecution in their own countries.

A domestic law should also define refugees to include ‘internally displaced persons’ who are displaced due to natural calamities, terrorist activities or internal disturbances. Housing and employment must be provided to the refugees in order to make them self-reliant and education must be provided to the refugee children. Civil society organizations should work in collaboration with the Government in order to improve their living conditions. A domestic legislation will make the procedure of granting refugee status simple, fair and transparent. It will also call for greater accountability and checks on the power of the officials. It will abolish discrimination which currently exists among refugees of different nationalities.

India must recognize the refugees who have been living in the country for a long time and maybe permanently staying as the prospects of situations coming back to normal in their country of origin is bleak, and allow them to apply for citizenship in India. This will help them gain security and get assimilated in to the Indian society and lead a normal life. Citizenship will improve the social and economic standing of the refugees and their future generations in the country and help them stand on their feet. They will also be able to contribute to the economy with the skillsets that they possess. This would not only be improving their standard of living but also safeguarding their basic human rights.

Since India is reluctant to ratify the 1951 Convention owing to the Western world centric policies of the same, India can use its influence in the Asian Community to come up with a regional law such as a ‘South Asian Refugee Convention’ which would allow the entire region to have specific guidelines that would cater to the problems of refugees in the region. This will also create a system of accountability among the Governments of the Asian countries and

develop a system of checks and balances amongst the nations. This would also help the countries frame their own domestic refuge law in line with this convention.

V. SCOPE FOR FUTURE

The refugee influx in India can only be seen to increase with current political scenario around the world. In case India does not employ an adequate refuge policy in the near future, it is going to face multiple challenges. In the absence of a codified domestic refugee law, the country will try and come up with specific laws for specific community of refugees like it has in the past and this will just aggravate the discrimination that already exists amongst refugees. ‘

Keeping the refugees as a separate community is also bound to spark differences between the locals and refugees, which has the potential of creating internal disturbances in the country. Depriving the refugees of basic needs and rights could also lead to a whole stratum of the society that has no access to basic amenities and does not have the ability to adapt to the changing world. Unregulated refugee influx could also lead to major issues in terms of border control where in the smuggling circle that already exists has the opportunity to strengthen its hold on the decision of which refugees get an entry into the territory and in the absence of a domestic law regulating this will also become difficult.

Absence of decent quality of living will also force refugees to cross the borders of India and move into the neighboring countries leading to a crisis there and this has the potential of deteriorating India’s relationship with her neighboring and in the absence of a regional refugee law, coming to a solution for this will also become difficult.

In case India is successful in establishing domestic and South Asian regional guidelines for the regulation of refugees, India will be able to handle this situation more efficiently and allocate the resources she possesses adequately. Assimilation of the refugees in the Indian society will allow a whole new generate of people to have an identity at birth and live under condition that protects their fundamental rights.

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