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Status of Rohingya Refugees in India: A Critical Analysis

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ABSTRACT

India continues in receiving refugees notwithstanding its overpopulation where millions of people are below poverty line and are debarred from basic amenities. In absence of uniform refugee laws in India and taking consideration of the political tactics, there's always a scope of discrimination. India's kindness for some refugee communities and ignorant behaviour for Muslim refugees specifically Rohingya Refugees has raised a doubt on its way of refugee dealings, and has posed question on the very secular face of the Indian state. The enactment of the CAA and NRC additionally raises a question whether the Indian government is partial towards one particular refugee group. Although, the government calls Rohingya refugees as 'illegal immigrants' and a threat to national security but there's still no proof of it. The people without any roof over their heads along with no source of income can not certainly be a threat to India's national security. Moreover, protecting and providing shelter to every persecuted minorities who is Buddhist, Hindu, Jain, Sikh, Parsi or Christian from certain states leaving Muslims is itself appears discriminatory and violates the basic structure of the Indian Constitution. The research paper is dealt under different segments with the introduction to India's refugee policy in the beginning, moving forward with who the Rohingya refugees are and their cause of migration to India, and how they're struggling for life and liberty and what's India's stand to it to give better understanding of the topic. The researcher further outlines the need for uniform Refugee laws in India in order to prevent discrimination and the secular nature of the Constitution, and few solutions to the current crisis towards the end of the paper.

I. INTRODUCTION

“There is no greater sorrow on earth than the loss of one's native land”

- Euripides

The word refugee is evocative, even powerful. Usually, images of fleeing population struggling with their belongings, crossing borders desperately, images of refugee camps, images of people

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living in juggis with no source of employment, women cooking on roadsides to feed their starving children, are few images which comes to mind when one talk about refugees. But in literal sense, the word refugee has a specific definition and social implications. Refugees are neither people who migrate in search of employment nor criminals but refugees are people who migrate in fear of being persecuted in their homeland. People become refugees, either on an individual basis or as part of a mass exodus, because of political, religious, military and other problems in their home country.

According to UN Convention on the status of Refugees, 1951,

“A refugee is a person who has fled his/her country owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality, and is unable or, owing to such fear is unwilling to avail himself/ herself the protection of that country.”

Refugee is not a new issue for India. India has been holding a great number of refugees from different countries for centuries without being a party to the Refugee Convention of 1951. India has always been quite tolerant to refugee. Dealing with this problem, India has taken it as a basic part of bilateral relation with other states, and applying the principles of Humanitarian Traditions, International legal obligations and the Constitution of India, 1950 alongside with other Non-Government Organisation NGOs and the United Nation High Commissioner for Refugee (hence forth to be known as “UNHCR”) have help to give protection, security and guarantee to the basic human rights of the refugees in India.

Apart from Sri Lankan Tamil, the Afghanistan, the Chakma and Hejong refugees, there are new refugees which set foot in India who came from Myanmar and are known as the Rohingya Refugee. The Rohingya refugee crisis is a very complex case. The Rohingya Community have been struggling for home and shelter for more than 35 years . After a riot and conflict broke up in 2012, the Rohingya Muslim have found to be in constant oppression and violence which can even be said as a case of genocide in which caused them to flee from their home land altogether. They have tried knocking the door to Thailand and Malaysia but due to high security measure could not harbour in their land, even though they did give them health and food benefit. This led them straight to Bangladesh and India, where they entered illegally through Bangladesh and into West Bengal and Assam to which they would travel up to Delhi and Jaipur to get themselves registered under the UNHCR refugee status. However, just a few were registered and most of them are considered by the Indian Government as illegal migrant. From the past few years there have been an increase of these Rohingya refugees which are recorded to be

more than 40,000 are in India particularly in the state of West Bengal, Jammu, Uttar Pradesh, and Assam.

The International community have been continuously trying to convince the Indian government not to deport the Rohingya refugee from the country as they are one of the most prosecuted groups at this time. Still, Indian government is insisting on deporting Rohingya refugees. Moreover, with the new Citizenship Amendment Act and NRC, Rohingya refugees are more likely to face deportation in near future. Also, the act raises a question on the very secular nature of the Country. Keeping aside the political agendas, it is time for India to show empathy to Rohingya refugees and it is an obligation to not to send them back until it is safe to do so as it is grounded by the principle of non-refoulement which is a customary law of all states.

II. INDIA'S REFUGEE POLICY

India has received a large number of refugees due to her unique geography, liberal democratic polity and multi-ethnic society. In addition, the conditions in many surrounding countries are such as to produce more refugees. This has resulted in the flight of refugee groups, who enter India via her porous borders to seek protection. Refugees enter and stay in India legally or illegally.

In India, there is no definition of refugee as there is no law regulating the protection of refugee. They may legally arrive in the country with a valid passport, on an Indian visa or an entry permit, like any other foreigner. Refugee in India are regarded as “**Foreigners**”, where it is defined under **section 2(a) of the Foreigners Act, 1946** simply as “a person who is not a citizen of India” but there are many different types of foreigners which may be distinguish from refugees, such as tourist or travellers, internally displace persons, illegal migrants, or in other words an “**alien**” which is very much define in the Citizenship Act, 1955, “ either *his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.*” Thus, the current status of refugee in India are the same as “alien” and are dealt under the same existing laws applicable to aliens whether general or specific.³

Moreover, they're governed by various other acts such as passport (entry into India) act, 1920, passport act, 1967, registration of foreigners act, 1939, foreigners act, 1946, foreigners order,

³ D.L Marshilong, *Refugees Status in India: A Special Reference to Rohingya Refugees* 8 *IJSR* 1357, 1358 (2019).

1948, the passport (entry into India) act, 1920 and the passport act, 1967 makes no distinction among genuine refugees and other categories of foreigners like financial migrants, tourists and college students. as a end result, the refugees run a massive danger of arrest by means of immigration authorities and illegal deportation in the absence of a legitimate passport.⁴

Constitutional Provisions Protecting Refugees

Foreigners are entitled to restrained constitutional safety. those encompass safety of the equality under article 14 of the Indian constitution and protection of life and liberty underneath article 21 of Indian constitution. they're additionally entitled to the protection under article 20, 22, 25, 28, 32. a lot of these articles are relevant for both residents and non residents.

Article 14 guarantees equality earlier than law and same safety of regulation. the executive distinguishes foreigners instep with their wishes and cope with them otherwise based totally on intelligible differentia having the nexus with the item.

Article 21 offers with the protection of life and private liberty. the splendid court has reinterpreted Article 21 to includes substantial due method law which is followed against the state motion.

Article 20 offers with ex post facto regulation, right against double jeopardy and right towards self-incrimination.

Article 22 offers with proper in opposition to arrest and detention.

Article 25-28 offers with right to freedom of judgment of right and wrong and loose exercise and propagation of faith.

Article 32 grants the proper to transport to the best courtroom for enforcement of those above fundamental rights.

Article 51 (c) of the Indian charter gives that the state shall endeavour to foster recognize for global law and treaty obligations inside the dealings of organised peoples with one another.⁵

Article 253 of the Constitution clearly states that "*Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, or convention with any country or countries or any decision made at any international conference, association or other body.*" Read with entry 14 of the union list of the Seventh Schedule, there is a clear understanding that the power to enter into treaties, conferred by Parliament, carries with it the right to encroach on the state list to enable the union to implement a treaty. Therefore,

⁴ *Protection of Refugees in India: A Critical Analysis* 3 IJARIIE 123, 124 (2017).

⁵ Id at 125.

any law made in accordance with this Article that gives effect to an international convention shall not be invalidated on the ground that it contains provisions relating to the state subjects.⁶

India is Not a Signatory to 1951 Convention

Therefore, although India is not a party to 1951 United Nations Refugees Conference, being it Eurocentric and it does no longer cope with south Asian countries. Being a developing country, it'll be a burden for India to be abided via the conference. it'll have an effect on India's safety and home legal guidelines. this convention is not relevant to the cutting-edge problems winning in India. Therefore, India has no longer signed 1951 convention still it's far applying positive articles of the 1951 convention which are the subsequent.⁷ Art 3, 3a, 4, 7, 16, 21, 27, 28 are some of the articles provided under the Indian constitution which are subsequent to 1951 convention on refugees and provides them protection under the same. Moreover, under Art 33 India is accountable to abide by the principle of non-refoulment, the principle being a significant part of customary international law. This principle is binding on every state irrespective of whether or not that state has ratified the 1951 Convention or its 1967 Protocol. The accountability is stronger due to India's commitment as a signatory to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention against Torture elaborately emphasises on the adherence for respect towards customary international law and also to the principle of non-refoulment.⁸

III. WHO ARE ROHINGYA REFUGEES?

The category of 'non-state persons' has come into existence with the concept of citizenship, which on the one hand indicates certain rights, and on the other hand encourages the beginning of miseries for those who are deprived of it. Rohingyas, a stateless Muslim ethnic group of western Myanmar who are treated with persecution, discrimination and exploitation in their homeland Rakhine, formerly known as Arakan state for years.⁹

Described by UN Secretary-General Antonio Guterres as "one of, if not the, most discriminated people in the world", the Rohingya are one of Myanmar's many ethnic minorities. The Rohingya people have faced decades of systematic discrimination, statelessness and targeted violence in Rakhine State, Myanmar. Such persecution has forced Rohingya women, girls, boys and men into Bangladesh for many years, with significant spikes following violent attacks

⁶ Swananda Banerjee, *Legal Status of the Refugees in India* SSRN (Mar. 4, 2021, 9:13 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129225

⁷ Protection of Refugees in India: A Critical Analysis 3 IJARIE 123, 126 (2017).

⁸ Dr. Yeshwant Naik, *INDIA'S REFUGEE POLICY: ISSUES AND CONCERNS* 3 ALPPR 104, 108 (2018).

⁹ Antoinetta Pagano, *The Rohingyas Refugee Crisis: A Regional and International Issue?* MEI (Mar. 4, 2021, 10:30 PM), https://www.mei.edu/publications/rohingyas-refugee-crisis-regional-and-international-issue#_ftnref5

in 1978, 1991-1992, and again in 2016.

In addition to the violence against Rohingyas in subsequent years—including the destruction of mosques and schools in Rakhine State—discrimination against them was institutionalized politically with the enactment of the 1982 Citizenship Law. The new law denied them Burmese citizenship making them stateless. Myanmar's government does not recognize Rohingyas among the national races (like it does for Barman or Arakanese) even if there is evidence proving they were born in the country, and thus refers to them as “Bengali,” illegal immigrants.¹⁰

By virtue of being deemed stateless, or even worse, regarded as illegal migrants, Rohingyas have no standing to protest against discrimination before national authorities. Their situation is further compromised by the fact that none of the surrounding states are signatories to the 1951 U.N. Refugee Convention, or its 1967 Protocol; nor has a regional refugee protection framework yet been developed.

The Rohingya community has suffered the abridgement of fundamental rights, such as freedom of movement, religion, employment, and access to education—a situation made worse by additional measures taken against ethnic identity that limit their rights to get married or even to have children. Consequently, over the years Myanmar, and especially the Rakhine State, has registered an increase in the number of people fleeing the country, mainly towards safer neighbouring States.¹¹

IV. ROHINGYA'S MIGRATION TO INDIA

The Rohingya fled Myanmar due to persecution and violence by state security forces that mounted a brutal campaign that included the destruction of Rohingya villages and the killing of thousands of people. The nature of all Rohingya migration is forced, as they cannot go back to Myanmar until conditions improve. Their main destination country has been Bangladesh, which is currently hosting more than 919,000 Rohingya. In addition to Bangladesh, the Rohingya tried to migrate to Thailand but were not welcomed. The Rohingyas also turned towards Malaysia thinking that a Muslim majority country would give them shelter. But, Malaysia adopted the same policy as Thailand.¹²

¹⁰ A. Tennery, *Why is no one helping Myanmar's Rohingya?* Reuters (Mar. 4, 2021, 9:50 PM), <http://blogs.reuters.com/great-debate/2015/06/17/why-is-no-one-helping-myanmars-rohingya/>

¹¹ Antoinetta Pagano, *The Rohingyas Refugee Crisis: A Regional and International Issue?* MEI (Mar. 4, 2021, 11:00 PM), https://www.mei.edu/publications/rohingyas-refugee-crisis-regional-and-international-issue#_ftnref5

¹² Prabhaskar K Dutta, *How Rohingyas reached India and why government is not ready to let them stay*, India Today (Mar. 4, 2021, 11:05 PM), <https://www.indiatoday.in/india/story/rohingya-muslims-myanmar-india-aung-san-suu-kyi-narendra-modi-1039729-2017-09-07>

When all the doors were shut, they turned to India in the hope that they'll be safe. Also, the harsh conditions in Bangladesh and other countries served as a push factor for Rohingya migration to India.

The other causes cited by the Rohingya people itself for coming to India are as follow:

- Most of these people have relatives in India. They are mainly in Jammu and Delhi. Moreover they tell that many of their relatives have refugee cards. So there is a prevailing concept among these people that in India it is very easy to have the refugee card.
- Good opportunity of work.
- There is no restriction of movement.
- They heard that India is full of opportunity.
- India is a secure place. It is a peaceful country.
- Indian Government helps foreigners.
- For better living.
- They know that some Rohingya people already live in Delhi.

Therefore, it's clear that the Rohingya people being stateless have no other intention to migrate in India other than to seek shelter under their heads. Favourable image of India have become the pull factor where as continuous persecution in Burma and an already developed negative image of Bangladesh serves as the push factor.

V. INDIA'S STANCE ON ROHINGYA REFUGEES

India is home to about 40,000 Rohingya refugees. Of these approximately 16,000 are registered with the UN Refugee Agency. While the United Nations has called upon the Indian government to provide Rohingya with the necessary protection, India maintains that they are a threat to its national security and have links with international terror groups. India has so far refused to exert any pressure on Myanmar. In India, the term 'Rohingya' is not used in public statements or documents. Citizenship (Amendment) Act, 2019 further cleared the government's stand, it provided that :

The Act has amended the 1955 Citizenship Act, to provide citizenship to illegal migrants from Afghanistan, Bangladesh and Pakistan, who are of Buddhist, Hindu, Jain, Sikh, Parsi or Christian.

India deported a few Rohingya refugees back to Myanmar in October 2018 by handing over them to Myanmar authorities. Supreme Court also denied acting against this step. Most recently

India has abstained from voting on a resolution backed by Bangladesh in United Nations Human Right Council (UNHRC), criticizing the Myanmar government over its dealing with Rohingya crisis.

According to the Indian government, India is not violating international law as it is not a party to the 1951 Convention and thereby not bound by the principles of non-refoulement. The UNHCR states that the principle of non-refoulement constitutes an essential and non-derogable component of international refugee protection. As per article 38(1) (b) of the statute of the International Court of Justice, “International custom is general practice accepted as law” and one of the sources applied by the ICJ when deciding disputes in accordance with international law. The UNHCR is of the view that the principle of non-refoulement constitutes a part of customary international law. Hence it is binding on all States, including those which have not yet become party to the 1951 Convention and/or its 1967 Protocol. The possibility that a provision in a treaty may constitute the basis of a rule which, when coupled with the *opinio juris*, can lead to the creation of a binding custom governing all states (not just those parties to the original treaty) was accepted by the International Court of Justice in the North Sea Continental Shelf cases, provided that the particular provision is ‘of a fundamentally norm creating character.’¹³

- **CAA and NRC – A Discriminatory Provision?**

The Citizenship (Amendment) Act (CAA), 2019, which was passed recently, updates the existing Citizenship Act, 1955, in -order to provide Indian citizenship to minority communities fleeing persecution from neighbouring countries. It seeks to offer citizenship to Hindus, Parsis, Buddhists, Sikhs, Jains, and Christians from Bangladesh, Afghanistan, and Pakistan. The clear intention behind bringing it, is to grant citizenship to Hindus fleeing persecution in Muslim-majority countries neighbouring India, which was clearly mentioned in the election manifestos of the present ruling party. However, this initiative could be seen as one of the -important Hindutva project, which has serious implications for both the Muslim immigrants as well as Muslims residing in India itself. The act has created a climate of tension in the country, as it violates the basic principles and secular values of the Constitution since it proposes to club religion and citizenship together. The CAA and NRC were strongly opposed not only by the Muslim population of the country, but also sparked several protests across the educational

¹³ Abhishek Tripathy, *India's Stance on the Rohingya Refugee Crisis: An International Law Perspective*, Cambridge International law Journal, <http://cilj.co.uk/2019/01/17/indias-stance-on-the-rohingya-refugee-crisis-an-international-law-perspective/>

campuses. Along with this, several states also passed resolutions against it.¹⁴

Moreover, implementation of such act will also intensify the persecution of already persecuted Muslim immigrants like Rohingyas, furthering their victimisation of statelessness.

VI. ARE ROHINGYA REFUGEES A THREAT TO NATIONAL SECURITY?

The Influx of the Rohingya refugees is not surprise but what they brought along with them was not welcome by India. With the step to deport the Rohingya refugees from the country, imply that India will not remain silent to issues such as national security of the country which it is non-negotiable to yield to. The threat of Rohingya is multifacets and it is noted by the Intelligence agency that noted since the 2014 Burdwan Blast, in West Bengal; in which Mohammad Kahlid a Rohingya was arrested who confessed to had been trained by Pakistani Taliban¹⁵ and suspected that Jaish-e-Muhammad chief Masood Azhar and Lashkar-e-Taiba founder Hafiz Saeed, both notorious terrorists who operate out of Pakistan and exclusively target India, have come out in support of the Rohingya. The threat arising from this backing can be divided into two parts: Ideological and operational, which gave aids to the Arakan Rohingya Salvation Army (ARSA) and some of them are hiding in the refugee's camp.¹⁶ Most of the Muslim terrorists have vowed to take revenge for Muslim people oppression in Myanmar.

However it is also seen that there is little truth to any of what is claimed by India, as Rohingya refugees are in no condition to have any access to any terrorist group, as they are poor and mostly uneducated with little access to basic needs while ISIS and other terrorist group would need technology and internet which is the main method to recruit them. There is no chance of them to direct contact the Rohingya refugee with the high security and surveillance by India. Moreover, the Arakan Salvation Army, ARSA seems to be perception-savvy and has rejected the jihadist label for fear of losing credibility on the world stage as well as condemned groups such as al Qaeda and ISIS. [32] There are no evidences or prove to such connections and the only crimes recorded so far are petty crimes of theft and fraudulent cases. Thus, to allege them of such hideous crime need strong prove and evidence before India deport them back to the place which will actually be a threat to their life.¹⁷

¹⁴ Prachi Raj, *Understanding Citizenship and Refugees' Status in India*, Economic and Political Weekly (Mar. 5, 2021, 1:08 PM), <https://www.epw.in/author/prachi-raj>

¹⁵ Mohammed Sinan Siyech, *India's Rohingya Terror Problem: Real or Imagine?*, South Asian Voices (Mar. 4, 2021, 11:30 PM) <https://southasianvoices.org/indias-rohingya-terror-problem-real-imagined/>

¹⁶ Sreemoy Talukdar, *Rohingya crisis: Humanitarian grounds cannot undermine national security; India must defy coercive pressures*, Firstpost (Mar. 4, 2021, 11:35 PM), <https://www.firstpost.com/india/rohingya-crisis-humanitarian-grounds-cannot-undermine-national-security-india-must-resist-unhrcs-coercion-4035877.html>

¹⁷ Ibid.

Struggle for Life And Liberty¹⁸

The hope in which they fled from other countries to India proved nothing more than an illusion. They're even struggling for the basic necessities of life. The protection provided under fundamental rights of the Indian Constitution to everyone including aliens residing in India appear nothing more than a written document. Its applicability is not what it claims to be. With the new citizenship amendment bill, Rohingya refugees are deprived of even basic human rights, including access to work, education, shelter, sanitation, healthcare, and basic human dignity, among others.

Most recently, Indian authorities ceased to recognise the UNHCR-issued refugee cards of Rohingya, effectively taking away the little amount of legal protection some 18,000 registered Rohingya refugees had in the country. At the moment, virtually all activities and services (including education, work, and healthcare) require a residency-based Aadhar card. According to Rohingya advocates and refugees, these were previously issued to some Rohingya who met the government's criteria, but this practice has since ceased.

Rohingya also face increased surveillance, at times going as far as harassment, with officials repeatedly collecting biodata, fingerprints, and paperwork. In areas where the police are most hostile – like Jammu and Hiriyana – refugees fleeing to other parts of the country or to Bangladesh report extortion, arbitrary arrests and detentions, and beatings are also on the rise. The government also bars Rohingya from owning property or building permanent structures. This limits them to either renting dirt patches in remote settlements and constructing jhuggis (slum-like shanties), or – for a fortunate few – renting urban flats from sympathetic landlords. Jhuggi dwellers typically face the greatest hardships, as most work in rag picking (waste collection) or other irregular, poorly-paid labour.

Rag picking in particular – perhaps the most common occupation among India's Rohingya – poses serious health risks, as constantly handling and living amidst waste causes workers – including children as young as five – to frequently contract myriad unidentifiable maladies, while dire sanitation conditions further exacerbate widespread illness. In the squalid settlement of Faridabad, for instance, 180 refugees all working as rag pickers have no latrine in the entire camp, while nearly all residents' income goes to healthcare.

¹⁸ *Rohingya migration to India: patterns, drivers and experiences*, Mixed Migration Centre (Mar. 5, 10:00 AM), https://www.google.com/url?q=http://www.mixedmigration.org/wp-content/uploads/2019/04/063_briefing-paper_Rohingya_India.pdf&usg=AFQjCNFsFEgNnsI0rGt6mxgEDDjbAqmvOQ

VII. INDIAN JUDICIARY AND THE DEPORTATION OF ROHINGYA REFUGEES

The Indian government seems determined to deport Rohingya refugees in India. Mohd. Salimullah v. Union of India (“Mohd Salimullah”) seeks to challenge the government’s order to deport 40,000 Rohingya-Muslim-refugees but has been pending before the Supreme Court of India (“SCI”) since 2017. Meanwhile, the government has deported some Rohingyas, potentially imperilling their lives.

The Indian government defends the deportations based on ‘national security’. Critics, however, believe the deportations are coloured with political motives and are linked to ideological shifts in the federal government since 2014. India’s attitude towards refugees appears to have transitioned from accommodative to ‘anti-Muslim’¹⁹. This is corroborated by the recent amendment to the Citizenship Act, which expedites naturalisation for persecuted minorities from selected countries but excludes Muslim minorities like the Ahmadiyas or Rohingyas. The case before the SCI is therefore ever more critical for the Rohingya refugees to remain.

In October 2018, India first deported seven Rohingya men to Myanmar. Furthermore, in January, it deported a Rohingya family of five - its second deportation. However, the Calcutta High Court, in the first week of this year, stayed the deportation of a Rohingya couple who had illegally entered India back in 2017 and was about to be deported. The bench had not only issued a stay order but also a notice to the Bengal Government to provide basic amenities to the couple to help them "live a life with dignity." The bench said that it was taking this decision to "uphold the spirit of humanity."²⁰

The principle of non-refoulement mandates that States must not return refugees to the territories where their life would be threatened on account of their race, religion, social group etc. It is recognised to have crystallised into customary international law. Accordingly, while India is not a party to the 1951 Refugee Convention, it remains, arguably, bound by the principle under customary international law. Indeed, despite India’s dualist traditions, Indian courts have adopted customary international law by subsuming them under the constitution’s guarantee of fundamental rights. In *Kataer Abbas Habib Al Qutaifi v. Union of India*²¹ (“Habib Al Qutaifi”), while dealing with the question on the deportation of Iraqi refugees from India, the Gujarat High Court interpreted Article 21 in light of non-refoulement. It noted that Article 21,

¹⁹ A.S. Kinseth, *India’s Rohingya Shame*, Al Jazeera (Mar. 5, 2021, 12:00 0M), <https://www.aljazeera.com/opinions/2019/1/29/indias-rohingya-shame/>

²⁰ Navashree Nandini, *United Nations files plea in SC on India's decision to deport Rohingyas*, Republic world, (Mar. 5, 2021, 1:05 PM), <https://m.republicworld.com/india-news/law-and-order/un-files-plea-in-sc-on-indias-decision-to-deport-rohingyas.html>

²¹ 1999 CRI.L.J. 919.

which included in its scope non-citizens, protected the refugees. The court held that the principle of non-refoulement is encompassed in Article 21. But it inserted a caveat: the protection will be available so long as the refugees' presence is not prejudicial to national security. A similar position was taken by the Delhi High Court in 2015, in *Dongh Lian Kham v. Union Of India*²², except no caveat was inserted therein.²³

Admittedly, the SCI has refused to recognise non-refoulement as custom in the past. It should, however, not dismiss this position so quickly, especially in light of these later decisions. Instead, the SCI should adopt the position in *Habib Al Qutaifi* and scrutinise the State's claim of national security to examine if the deportation-order meets the exception of 'procedure established by law'.

VIII. NEED FOR A UNIFORMS REFUGEES LAW IN INDIA:²⁴

India is one of the most prominent refugee receiving countries in the world. No doubt that the Indian state has treated a few refugee communities reasonably well but has not formulated a well-defined refugee law. The absence of clearly defined statutory provisions subjects refugees and asylum seekers to inconsistent and arbitrary government policies. The Foreigners Act of 1946 highlights the ad hoc -nature of refugee law and practice in India. The Indian state lacks a national refugee law due to which the refugees are not aided with specific rights and treatment. This lack has subjected different refugee communities to varying standards of protection. The Citizenship (Amendment) Bill, 2016 reflected this. Rationally, India seems to be committed to refugee protection, but practically it treats different communities differently. India, being a secular country should treat each and every refugee group equally. Every persecuted minority have some fundamental rights provided within the constitution of India itself and human rights provided by the UNHCR irrespective of any kind of discrimination. Although, India has not signed either the 1951 United Nation's Convention Relating to the Status of Refugees or the 1967 Protocol and it has been argued by many that the reason behind India's -refusal to sign the convention was that it was very Euro centric. Yet, India has recognised the right of refugees to non-refoulement and has maintained its basic commitment to humanitarian protection of refugees. Additionally, India has signed -numerous -human rights instruments and is a party to the Universal Declaration on Human Rights 1948, International

²² 2015 Delhi HC 1884.

²³ Debarshi Chakraborty, *The Indian Supreme Court and the Deportation of Rohingya Refugees: Constitutional Review and the Prospect of Success*, I Connect (Mar. 5, 2021, 12:30PM), <http://www.iconnectblog.com/2020/11/the-indian-supreme-court-and-the-deportation-of-rohingya-refugees-constitutional-review-and-the-prospect-of-success/>

²⁴ Namrata Gupta, *PROTECTION OF REFUGEES IN INDIA* 7 *IJMRA* 420, 432-433 (2017).

Convention on Civil and Political Rights 1966, etc, which demands an obligation to secure to refugees a right to status determination, and India did so.

IX. CONCLUSION: A WAY FORWARD

It may not be sufficient to say that the above-mentioned analysis has emphasised on the implications of India's approach in handling the Rohingya crisis. The issues regarding the protection of Rohingya refugees needs some serious and genuine considerations by the policy makers. It has become important for India to determine the status of the refugees and what role the country can play in facilitating long-term solutions to the crisis. Clearly, between quiet diplomacy and megaphone diplomacy, Delhi has favoured the former. The main question arises that how India can make its approach work more effectively to ensure measures for prevention of renewed conflicts in Rakhine, facilitating the safe return of the refugees to Myanmar, and mitigate any potential terror-related activities involving the Rohingya refugees. Active and effective role in these areas can help reposition Delhi in the lead role in finding an enduring solution to the crisis.

Moreover, it is to be ensured that no Rohingya refugees is deported back to home land until and unless it is safe to do so. It is high time that India follows the principle the non-refoulement as it is being continuously questioned by the UN. With the Rohingya refugees case now in the Supreme Court, any attempt to deport the Rohingyas will be complicated. At the same time, ensuring basic amenities in refugee camps will be critical. Definitely, like any nation India has the right to prioritise its national security. However, the security concerns need to take into account the comprehensive long-term consequences.

As an analyst has argued, the issue with India's Rohingya approach "*is not that it is placing security over humanitarian but that it is doing so in a way that is imprudent and likely to be self-defeating.*" Moreover, India has a history of protecting refugees, it has always welcomed refugees from every country and provided them shelter. It is time that India must rise again to the occasion and demonstrate that it is not driven solely by narrow domestic political interests.
