

---

## **INDIA AND THE REFUGEES: A CRISIS**

---

Tanavi Trivedi, B.A. LL.B., The University College of Law, MLSU, Udaipur, Raj., India

### **ABSTRACT**

Consider this, you are living in a country since your birth, you have seen your older family members buried/cremated there, but there comes one fine day when the country is inhabitable for you and your family members and the only way to survive is to get out of that country and relocate. Now you decide to enter another country, you are now a refugee in the country. There are many reasons why a person would leave their home countries but the base of them all is same “safety”. Safety is the key reason why people flee from their home countries. There may be a conflict of race, religion, etc., or war/war like situation. But does the safety of individuals is all that matters? What about the national safety of the country that gets the influx of these refugees. What about the burden on the resources of the country? Does being a sovereign country mean that the country can ignore its human rights obligations? There is no straight answer to these questions, there is only compromise and adjustment.

## Chapter I: Introduction

*“Refugees are mothers, fathers, sisters, brothers, children, with the same hopes and ambitions as us - except that a twist of fate has bound their lives to a global refugee crisis on an unprecedented scale.” - Khaled Hosseini*

### 1. Background

The **1951 Refugee Convention**<sup>1</sup> defines a refugee as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”<sup>2</sup> Hence the term refugee can be understood as someone who has escaped inhabitable conditions in their home country and find a new home in another country. The refugees carry little to nothing when they flee from their countries to the safety of another country. Under the International law, refugees are given the human right status along with seeking asylum in any country.

The global refugee keeps on increasing because of the increase in the human rights violations. There are millions of people who have sought asylum and there are other millions who were forcefully displaced. As per the Mid-Year Global Trend Report of UNHCR, at the end of June 2024, 122.6 million people worldwide remained forcibly displaced due to persecution, conflict, violence, human rights violations or events seriously disturbing public order. This represents an increase of 5%, or 5.3 million people, compared to the end of 2023. For more than 12 years the number of people remaining forcibly displaced has continued to grow. By the end of June 2024, 1 in 67 people worldwide were forcibly displaced, almost double the 1 in 114 people a decade ago.<sup>3</sup>

### 2. India's Historical Context

This influx has significantly caused stress on India as well as there has been a significant number of refugees entering in India.

---

<sup>1</sup> Convention Relating to the Status of Refugees. July 28, 1951. Art.1. (UNHCR)

<sup>2</sup> *What is a refugee?* (Dec, 21, 2024) UNHCR. <https://www.unhcr.org/us/what-refugee#:~:text=Refugees%20are%20people%20who%20have%20fled%20war%2C%20violence%2C%20conflict%20or,possessions%2C%20jobs%20and%20loved%20ones.>

<sup>3</sup> *Data and statistics Mid-Year Trends* (Dec, 21, 2024) UNHCR. <https://www.unhcr.org/mid-year-trends>

India has been the host country to many refugees over the years. It has hosted the Tibetan refugees in 1959 when Dalai Lama was exiled during the Chinese takeover of Tibet. Dalai Lama came along with his numerous followers. It is said that approx. 80,000 Tibetans came in India and the diaspora keeps on increasing. In her book *“Women, War, and the Making of Bangladesh, remembering 1971”* Yasmin Shukla tells how multiple wars had broken in the East Pakistan, now Bangladesh. The civil war resulted in the making of Bangladesh,<sup>4</sup> but during that time many Bangladeshis fled to India for protection and better lifestyle. Another diaspora that fled to India were the Tamil refugees from Sri Lanka where there was a turf between the Sinhalese and the Tamil speaking population, diligent discrimination done in every sector towards the Tamilians made them flee to the state of Tamil Nadu.

The first Eelam War (1983–1988) led to around 1, 34,053 Sri Lankan refugees in the state of Tamil Nadu during the period between July 1983 and October 1987. Consequently, over 45,281 refugees went to Sri Lanka under an arrangement made by the Government. The second big flow of refugees took place in July - August 1990 when the Second Eelam War (1990–1994) broke out in Sri Lanka. In June 1990, there were only about 5,000 refugees in the camps in Tamil Nadu, including 4,000 Tamils of Indian origin, but the number increased to 1,22,078 by the end of April 1991. Half of the 48,000 refugees who were sent back in 1987 returned to Tamil Nadu<sup>5</sup>. Similarly, the group of Muslim Rohingyas based in Buddhist Myanmar have entered India in a large amount as they faced continuous discrimination in Myanmar. They are spread across India. These all incidents show India has hosted many refugees from neighboring countries over the years. But this has created strain on the economy of India and there has been difficulty in rehabilitating all of them.

### 3. Objective and Scope

Considering the strain, the refugees have put on the Indian economy it is important to also draw the balancing line between the sovereignty concerns with the morality and human right obligations of India. It is easier to think of it in a way that there is a house made for 2 people and 4 already live in it, but the owners are very welcoming and they keep on letting people in keeping their morality in check, a time comes when there are 40 people now in the house who live there in protection but now the house is suffocating for the owners to live in peacefully as

---

<sup>4</sup> Yasmin Shukla, *Women, War, and the Making of Bangladesh, Remembering 1971* (4) (Duke University Press)

<sup>5</sup> Valatheeswaran, C., & Rajan, S. I. *Sri Lankan Tamil refugees in India: Rehabilitation mechanisms, livelihood strategies, and lasting solutions*, 30(2) Refugee Survey Quarterly 24,30 (2011)

the rescores remain the same only the consumers increase. The conditions create such an atmosphere that these 40 people might try to overthrow the original 4 people and establish themselves as the original owners. This is why the sovereignty concerns cannot be overlooked over the morality of India. Moreover, India is as is overpopulated, allowing refugees in the country creates an overload.

## Chapter II: Legal Framework Governing Refugees in India

### 1. International Law

When it comes to the refugee laws, the first international law that is reviewed and tallied is the *1951 Refugee Convention*<sup>6</sup> and *the 1967 Protocol*<sup>7</sup>. By far it is clear that the refugees are a vulnerable part of the people. They flee from their home country to a completely new and different country just for safety. The Convention of 1951 and the protocols of 1967 are placed to protect them and their basic human rights. As discussed above the convention gives a unified definition of the term 'refugee'. It promotes the principle of *non-refoulement* which means that these refugees shall not be forced to go back to the same country where they fled from once they are in the host country.

There is a difference between the protocols and the Convention because prior to the adaptation of the protocols the refugee status was applied to only the European parts after the Second World War. Hence in 1967 the protocol was adopted as to remove the geographical barrier making it non-exhaustive in nature. Under the convention, the refugees have the right not to be expelled, punished for illegal entry, and have rights to work, housing, education, public relief, religion, access courts, and movement. They also have the right to identity and travel documents, protection from refoulement. The state cannot discriminate between the refugees. In return the refugees have the duty/obligation to the host country to not cause trouble or disrupt the public order.

While there are currently 149 countries who are signatory to the convention, India is not one of them. Although aforementioned it hosts refugees from various neighboring countries. The time when the convention was made, India was a newly Independent state, and it had to face the partition stress as well. During that time duration as well, the then Prime Minister

---

<sup>6</sup> Convention Relating to the Status of Refugees. July 28, 1951. (UNHCR)

<sup>7</sup> Protocol Relating to the Status of Refugees. October 4, 1967. (UNHCR)

Jawaharlal Nehru pointed out the security reasons due to which it might end up unfavorable for India to sign the convention. It is a point to be noted that even though India has not signed the Convention it does harbor large number of refugees, it has given voting rights to the Tibetan refugees as well now, which leads to the question that what is the need to sign it anyway. India's skepticism towards the UN stems from the organization's actions during past conflicts. The Rohingya Muslims have made it a debate on the religion, that they are getting discriminated just because they are Muslim. Although there has been no official statement by India.

## 2. Domestic Laws

There is no particular act or law that rules the refugees in India. There are no specific guidelines given that helps in regulating the refugees. *The Foreigners Act*<sup>8</sup> is an act that regulates the entry, stay, and exit of foreigners in India. Yes, it does include refugees under it but it also includes the foreigners that visit India. A foreigner according to it is a someone who is '*not a citizen of India*'. In case of the interest of the sovereignty and integrity and security of the country it allows the Central Government to prohibit the entry, stay, and exit of foreigners in India.

*The Citizenship Act, 1955*<sup>9,10</sup> banned the undocumented migrants from acquiring the citizenship of India. It also suggests that those undocumented foreigners are illegal migrants. But the 2019 amendment<sup>11</sup> allowed for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians for the refugees arriving from neighboring countries of Bangladesh, Afghanistan, Pakistan who arrived in India on or before 31 December 2014. But this law as well does not specifically and exclusively talk about the refugees but rather the citizenship status. India is in dire need of a specific legislation to curb with its refuge crisis while completing its human rights obligations. It will be strenuous to achieve it without formation of a specific act.

## 3. International Humanitarian Agencies

*United Nations High Commissioner for Refugees* better known as *UNHCR* is the leading or can even be remarked as the setting stone for the development of human rights for the refugees. Although India is a non-signatory to the Convention of 1951, there still is a presence of

---

<sup>8</sup> The Foreigners Act, 1946

<sup>9</sup> The Citizenship Act, 1955

<sup>10</sup> Professor Michelle Foster and Dr Adil Hasan Khan, *Citizenship (Amendment) Act 2019 and International Law*, IILAH, (1st APRIL 2021), [https://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0005/3769484/Citizenship-Amendment-Act-and-International-Law.pdf](https://law.unimelb.edu.au/__data/assets/pdf_file/0005/3769484/Citizenship-Amendment-Act-and-International-Law.pdf)

<sup>11</sup> The Citizenship (Amendment) Act, 2019

UNHCR in India. It has its offices in India and it regulates and assists the asylum seekers and the refugees in the cities it is located in. Many refugees have entered in India through the assistance of UNHCR. UNHCR states in its Global Update 2011, that it has limited way to help the asylum seekers and the refugees as India is a non-signatory<sup>12</sup> and UNHCR does not have complete control over the camps in which these refugees stay. India's security and sovereignty concerns have been the top most reason why she has not signed the convention. It might hamper the way she takes sovereign decisions in regards to the refugees and the asylum seekers. Since 2011 the number of refugees from these neighboring nations have only increased.

### Chapter III: Sovereignty Concerns

#### 1. Security Challenges

When talked about why India has not signed the convention yet even though it hosts numerous refugees, the answer lies in itself that in spite of being a non-signatory it has an influx of the refugees and the official take is her sovereignty concerns and security being the top most issue for her. India has been a victim to terrorist attacks for a long time. The illegal immigrants are on a vulnerable emotional standing and can easily be brainwashed into joining these forces, on the other side of coin, harmful agents disguised as refugees or asylum seekers might enter into India to cause terror attacks.

A letter by the Ministry of Home Affairs of India addressed to all the Chief Secretaries, All State Governments/UT Administrations, in 2017 read along the lines of *Infiltration from Rakhine State of Myanmar into Indian Territory specially in the recent years besides being burden on the limited resources of the country also aggravates the security challenges posed to the country*<sup>13</sup> clearly show how the illegal infiltration has caused security challenges India, making her decision rightfully as self-preservation. The Rohingya crisis is a well-known phenomenon at this given point. India has received backlash for the human rights organizations

---

<sup>12</sup> INDIA, UNHCR, (2011), <https://www.unhcr.org/sites/default/files/legacy-pdf/4cd96e919.pdf#:~:text=UNHCR%20will%20aim%20to%20protect%20and%20assist,Government%20at%20the%20national%20and%20global%20levels.&text=Through%20its%20limited%20presence%20in%20New%20Delhi,statelessness%20challenges%20in%20those%2C%20albeit%20significant%2C%20areas.>

<sup>13</sup> Order Letter from the Ministry of Home Affairs India, to All State Governments/UT Administration, (Aug. 8, 2017), available at [https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant\\_10092017\\_2.PDF](https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant_10092017_2.PDF)

regarding deporting them back to Myanmar<sup>14</sup>.

Moreover, the illegal entry is causing threat to the public security and order in the country. Rohingya Solidarity Organization, the Arakan Rohingya Salvation Army, and the Arakan Army, along with the Aqa-Mul-Mujahideen linked to Pakistan's Harkat-ul-Jihad Islami-Arakan (HUJI-A) and the Inter-Services Intelligence (ISI), are reportedly mobilizing Rohingya Muslims against Buddhists in Myanmar.<sup>15</sup>

## **2. Economic Strain**

With the large number of influx of refugees in the already populated country of India, it has created a widespread economic strain on its local resources, employment and infrastructure specially in the states located on the borders. There is going to be increase in the basic needs with the increase in the inhabitants of a particular state or city like sanitation, healthcare, education, etc. putting an overload on the infrastructure. There is an increment in the competition for the job seekers leading to the increase in the unemployment rates. For instance, the Rohingya settlements from who were refugees from Myanmar, in Jammu and Kashmir a place which in itself is low on the resources have further created a staggering strain on the economic conditions.

## **3. Political and Geopolitical Implications**

There is a rise of anti-refugee sentiment in the locals where there is large influx of refugees as they are having to share their local resources with the refugees. The intolerance is increasing per day with the increase in the refugees. This is also causing impact on the relationships that India has with her neighboring countries such as Bangladesh, Myanmar, etc. on the refugee policies.

## **Chapter IV: Human Rights Obligations**

### **1. India's International Commitments**

As a member of the International Community, India is subject to customary international law,

---

<sup>14</sup> Shailendra Upadhyay, *Rohingya Crisis: Security Concerns and Diplomacy Dilemma for India*, International Center for Peace Studies, (Dec 18, 2024), <https://icpsnet.org/issuebrief/Rohingya-Crisis-Security-Concerns-Shailendra-181224>

<sup>15</sup> Id at 14

which requires the observance of the non-refoulement principle in relation to refugees, regardless of its non-signatory status to the Refugee Convention of 1951. By merely being a member of it, India has implied obligations. Although India has not made any law that keeps the principle on the pedestal. The Foreigners Act allows it to expel or prohibit any foreigner if there is a security concern. India also became a part of the *UNHCR Executive Committee (ExCom)* in 1995 and the *International Covenant on Civil and Political Rights (ICCPR)*, becoming a state party to it in 1979. Being a part of ICCPR, it makes the provisions under it binding on India. Unlike Article 33(1) of the Refugee Convention of 1951, ICCPR does not expressly talk about the principle of non-refoulment.

## 2. Judicial Emphasis on Rights

Despite there being no particular act or law that regulates and/or protects the refugees in India, *Article 21 of the Constitution of India*<sup>16</sup> is available to everyone, even the refugees. While the legislature has been tone deaf in protecting the refugees and enacting laws to regulate them, the judiciary on the other hand has given judgments in favor of the refugees, enabling the access of human rights to them in India. Cases like *Malavika Karlekar v Union of India*<sup>17</sup> where the court had put a stay order on the deportation of 21 Burmese Nationals from the Andaman Islands while their refugee status determination was pending by UNHCR. *Maiwand's Trust of Afghan Human Freedom vs. State of Punjab*<sup>18</sup> case is another example of how the judiciary has acknowledged the human rights of the refugee and has insisted on the fact that '*The Detenuess will not be Deported pending Notice*'. These and many other cases' judgements showcase how the judiciary has believes in the human rights of the refugees and supports the point that the decisions should be taken in due course of the laws.

## 3. Ethical and Humanitarian Perspectives

This article has been talking about the perspective of the host country and the local communities that suffer due to the refugees. But to take a step back and think from the perspective of the refugees is also important. When it comes to the human right obligations, it

---

<sup>16</sup> INDIA CONST. art. 21

<sup>17</sup> *Malavika Karlekar v. Union of India and Another*, Writ Petition (Criminal No) 583 of 1992, India: Supreme Court, 25 September 1992, <https://www.refworld.org/jurisprudence/caselaw/indsc/1992/en/46409>

<sup>18</sup> *The Mailwand's Trust of Afghan Human Freedom v. State of Punjab and Others*, Writ Petition (Crl.) No. 125 and 126 of 1986, India: Supreme Court, 28 February 1986, <https://www.refworld.org/jurisprudence/caselaw/indsc/1986/en/8254>



can only be truly achieved when it is truly understood and it can only be truly understood when there is a non-prejudiced thinking about the challenges of the group. The refugees are living in unacceptable conditions. There are issues of basic necessities and facilities. Especially in camps, where they are overcrowded and lack of funding. Poor healthcare, sanitation further adds on to the misery of these refugees who fled looking for safety. The Rohingyas are being held in the detention camps<sup>19</sup> where they are called for interrogations even when they haven't done anything.

The refugees feel the identity crisis and rightfully so. Refugees in India often experience an identity crisis due to difficulty in accessing even the basic rights and facilities. They wait for the legal recognition so that they can also live a civic life alongside all the citizens of the country. There is no need for an extensive question and answer to understand the feeling of those living as refugees. They face discrimination based on their culture or ethnicity. They face social exclusion in the cities they are given shelter in by the local communities who view them as 'foreigners' or 'illegal migrants.'

These reasons make it necessary to view the situation from the viewpoint of humanitarian grounds. It becomes a moral responsibility for an empathetic approach.

## **Chapter V: The Balancing Act**

Now that there is an understanding as to what are the sovereignty concerns of India and what are its human rights obligation; it is important to draw the balancing line between both. *Sovereignty v/s Human Rights Obligations.*

### **1. Challenges in Balancing**

While the concept of drawing a balancing line looks a very easy solution, it is difficult to achieve. The tensions between the security concerns of India and the human rights obligations find no middle ground even after so many years. It is the top priority and duty of any government of any State to keep its citizen and boundaries secure and safe. In achieving that some human rights obligations get sacrificed. The government cannot excuse the security concerns just to fulfill the duty in the international community. For instance, the Citizenship

---

<sup>19</sup> Bibek Bhandari, Inside India's 'inhumane' detention camps for Rohingya refugees, South China Morning Post, (Dec. 29, 2024), <https://www.scmp.com/week-asia/politics/article/3291104/inside-indias-inhumane-detention-camps-rohingya-refugees>

Amendment Act of 2019 received a lot of backlash and was perceived as exclusionary towards the Rohingyas. But the security concern behind it was valid from the perspective of India.

## **2. Suggestive Solutions**

The balance can be achieved by making a specific refugee law as the first step towards achieving both the goals. When there will be everything codified document, there won't be gaps and lagging in how the refugees and asylum seekers should be regulated and dealt with. With that there need to be active and stricter steps taken to strengthen the border security. But this strengthening should be done while keeping in mind the human rights.

## **Chapter VI: Conclusion**

To sum the paper up, the necessity to make a specific refugee law is necessary. The law should be made while keeping the security concerns as well as the human rights obligations of the country towards the international community. This can be achieved only by establishing a committee and conducting surveys that would work on striking the balance between both sovereignty and human rights obligations. It has been the historical culture of India of having humanity and welcoming and helping those in need. With the current situations, neither the refugees are stopping from entering the country, nor they are getting the facilities to live by. They are fleeing from their countries and then either become part of terror groups or survive in the camps without legal recognitions or basic necessities to live with. It seems like none of the goals are getting achieved properly. Hence, creating it an immediate issue that needs to be looked into by the legislators and the leaders of the country. With that there also needs to be some kind of awareness workshops for the citizens of India so that they can also be aware and alert and be helpful to the refugees and the country itself. It has now become dual responsibility of India to protect the citizens and follow through the humanitarian commitment.