

Why does India need a refugee law? : A Critical Study

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Abstract

India is not a signatory to either the Refugee Convention of 1951 or the Refugee Convention Protocol of 1967. These documents provide clarity on the definition of refugees as well as the obligation of host nations to protect those who are at risk of being persecuted. Both of these agreements came into existence as a direct response to the worldwide refugee crisis that started in the year 1951. The United Nations High Commissioner for Refugees (UNHCR) is not recognised as having administrative jurisdiction within India's borders since India maintains the attitude that it would handle refugee crises on its own. Only around 46,000 of India's approximately 200,000 refugees receive formal protection from the United Nations High Commissioner for Refugees (UNHCR) headquarters in New Delhi. The remaining refugees either have a status granted by the state or are not registered at all.

India urgently has to re-examine its policy frameworks and its humanitarian duties towards non-citizens in light of the recent economic collapse in Sri Lanka, the food crisis in Afghanistan and Pakistan, and the imminent threat presented by growing sea levels in Bangladesh and the Maldives. In light of these events, India must assess its humanitarian obligations. The current research piece makes an effort to perform an in-depth examination of the reasons why India has an immediate need for a domestic legislation in order to deal with the ongoing refugee crisis. This attempt is made in the context of the current study. In addition to this, the article explores the reasons behind India's reluctance to adopt such a regulation, despite the country's image as a "safe haven" for migrants. This is something that the study analyses.

Keywords- Refugee, migrant, immigrant, naturalization, humanitarian crisis, state recognition.

Introduction

India has been recognised for a very long time as providing "safe havens" for displaced people. Over two hundred thousand people are considered to be refugees in India. India has not ratified either of the two most significant legal instruments dealing to refugee protection, the 1951 Refugee Convention or its 1967 Protocol. Both of these documents were ratified in 1967. On the other hand, India has a stellar reputation when it comes to safeguarding the rights of refugees. Since ancient times, India has maintained a tradition of ethically tolerating individuals and cultures from other countries.

The partition of India in 1947 resulted in the forced migration that led to the founding of India; nevertheless, even at the time of its founding, India did not have a national or international refugee

policy. Because there are no formal regulations in existence, the state has the ability to deal with refugee groups in a manner that is ad hoc and arbitrary. The refugee strategy that the Indian government has in place has substantial holes in it. India's policy response is influenced in several ways, including domestic election mandates, regional socio-cultural dynamics, geopolitical and diplomatic incentives, and other factors.

Because India does not have a national refugee policy of its own, the country's stance on the influx of refugees can be somewhat strategic unclear. In 2020, India was home to 195,373 refugees, representing a 0.14% year-over-year rise over 2019. From the year 2020 to the following year, 2021, it rose by 8.72%, reaching 212,413. ¹ Given the surge in the number of people who are being forced to migrate as a result of war and climate change in the region, there is a pressing need for political will to produce updated refugee law in order to establish a policy that is administratively consistent, impartial, and predictable in its treatment of refugees.

Because of Aadhar and other recent advances, it is now more difficult for refugees to obtain continuous governmental recognition, establish their political and economic requirements, and gain access to basic necessities. The legislative framework of India has to be scrutinised quickly, as do the country's obligations to non-citizens in terms of humanitarian aid. It is imperative that India give serious consideration to the formulation of a uniform refugee legislation.

A typical policy for refugees would establish legal avenues leading to asylum, contribute to the prevention of unfair administrative procedures through judicial review, involvement with civil and international groups, and consideration of international obligations, and offer legal paths leading to asylum. In addition to that, this strategy would uphold our commitments to the international community.

Background of the Issue

Rohingya migrants have been pouring into India in waves ever since the 1970s. The bulk of them, on the other hand, had just lately arrived, having done so in response to the Myanmar military's "genocidal intent" in unleashing horrendous brutality against them in August of 2017. They arrived shortly after this. Human Rights Watch estimates that there are currently 40,000 Rohingya residing in India, although only 20,000 of them have registered with the United Nations High Commissioner for Refugees (UNHCR). ² They are unable to get refugee status, and as a result, they are not eligible for housing, work, or education. As a result, they are forced to live in deplorable conditions in slums in places such as Delhi, Hyderabad, and Jammu.

There are around 100,000 Tibetans now residing in India, with settlements located in Dharamsala, Bylakuppe, and other areas throughout the nation. ³

Over ten million people fled to India in the years 1970-1971, before and during the Bangladesh Liberation War, as the Pakistan Army ramped up its rape and genocidal atrocities against East Pakistanis. This took place in the lead up to and during the war.

Around 100,000 Sri Lankan Tamils migrated to the state of Tamil Nadu in southern India following the anti-Tamil riots that took place in Colombo in 1983. As the island fell into civil conflict, the number of people seeking sanctuary maintained at a steady pace for years. The Chakmas, originally from

¹<https://www.macrotrends.net/countries/IND/india/refugee-statistics>

²<https://www.hrw.org/news/2022/03/31/india-rohingya-deported-myanmar-face-danger>

³<https://centraltibetanreliefcommittee.net/>

Bangladesh, and the Chin, originally from Myanmar, are two examples of other people that have sought refuge in India and been granted it. ⁴

Over the course of its history, India has been witness to many different stages of the Afghan refugee movement. The movement was first sparked by the political unrest that prevailed in Afghanistan during the Soviet invasion in 1979 and the first Taliban administration in 1996. On the other hand, the first Afghan refugee naturalisations did not take place until more than 10 years later; by the year 2006, thirteen Afghan refugees had become citizens of India. ⁵

Twelve of them were members of the Sikh and Hindu religions. There are presently 19,338 Afghan refugees residing in India, according to data from the UNHCR. However, this number does not include the almost 13,000 Afghan students who have been stuck there since 2021, nor does it include the former members of the Afghan military who are currently in legal limbo in India. ⁶

In 2021, in response to the unexpected inflow of migrants from Afghanistan that occurred after the Taliban assumed control of the country, India began issuing emergency visas to Afghan citizens. They are valid for a period of six months, however they do not provide the right to engage in private work or pursue educational opportunities in India. Moreover, despite the fact that 60,000 applications had been received by the month of September, only 200 e-visas had been issued by the month of December 2021. ⁷

Some people feel that the adoption of a treaty that specifically acknowledges the rights of displaced populations would make the strain that continued migration currently places on local resources, infrastructure, and security considerably worse. These people hold the belief that the acceptance of such a convention would result in a significant increase in the severity of the burden. Others are of the opinion that holding such a conference would not change anything.

Already, India is taking action to provide aid and protection to asylum-seekers who are displaced from their homes. As a direct result of this, a significant number of people are under the impression that India is already capable of fulfilling all of its commitments and that the nation does not require membership in the Convention. In spite of these circumstances, India does not have any local laws that regulate the protection of asylum seekers or refugees. Because of this, these categories of people are not covered in any of the global treaties that are now in effect.

Instead, the provisions of the Foreigners Act of 1946 and other laws that restrict the presence of foreigners in the country apply to refugees and asylum seekers in the same way that they do to other foreign nationals in the country. It gives the government broad authority to limit the entry and exit of foreigners, particularly refugees from India, and to prohibit the movement of such individuals inside the country.

It is essential to bring attention to the fact that this Act does not acknowledge the rights of refugees or those seeking asylum to receive social assistance or to be safeguarded from being returned to their country of origin. Both of these omissions are important in their own way and should not be overlooked. In its place, Section 3 of the Act imposes a number of restrictions on those who are seeking refugee

⁴Xavier, J., & Moraes, S. (n.d.). (2013). Chin refugees in Delhi: Realities and challenges. A study by Jesuit Refugee Service, South Asia. Retrieved from <https://jrssa.org/Assets/Publications/File/ChinRefugeesDelhi.pdf>

⁵<https://www.unhcr.org/africa/news/news/>

⁶ <https://www.aspistrategist.org.au/>

⁷<https://economictimes.indiatimes.com/nri/migrate/>

status or asylum in the United States. These limitations include bans on "association with persons," "engaging in activities," and "restrictions on their movements," among other things."⁸

UNHCR and Refugees

As of the 31st of January in the year 2022, the United Nations High Commissioner for Refugees (UNHCR) in India has compiled a list of more than 46,000 refugees and asylum seekers in India. The majority of these individuals were originally from either Afghanistan or Myanmar. This statistic accounts for a sizeable portion of one-fifth of one percent of India's total population of refugees.

In India, it is usual for refugees and those seeking asylum to cohabit alongside the communities that sponsor them in metropolitan areas. Children make up 36% of the refugee population, while women and girls make up 46%.⁹

Over the course of many years, India has taken in a large number of refugee groups and assisted a great number of individuals in finding new homes after they were forcefully displaced. The United Nations High Commissioner for Refugees (UNHCR) supports the efforts of the government and its citizens to aid refugees throughout 11 states by working closely with a number of stakeholders such as line ministries, community organisations, and non-governmental organisations (NGOs). During the process of registration and RSD, the UNHCR places an emphasis on the necessity of protection while also encouraging solutions and independence. According to the data kept by the UNHCR between the years 2002 and February 2022, 17,933 Sri Lankan refugees have returned to their home country on their own accord with the assistance of the organisation.¹⁰

1946 Foreigners Act and Refugees

The Foreigners Act was enacted in 1946, which was a significant amount of time before India gained its freedom. The Foreigners Act was mainly enacted so that the government of India could keep track of and control the movement of foreign persons entering and leaving the country. If a foreign individual has entered India illegally, stayed in the country for a longer period of time than is authorised, or does not have the appropriate papers, the Central Government may take action against them. Additionally, the government has the ability to establish regulations for the departure, presence, or ongoing presence of any and all foreigners. Furthermore, the government has the ability to imprison any foreigner until he or she is returned to their own country.

This legislation does not contain a designated refugee category that outlines specific rights; rather than addressing refugees at the legal and judicial levels, it addresses refugees at the political and administrative levels.

This Act dates back to the time of the imperial legislative assembly, which served as the governing body for British India at the time. The Foreigners Act applies to all types of foreigners, including refugees and anyone who have entered the country illegally.

Salient features of the Foreigners Act, 1946

1. A person who does not have a permanent residence in India is considered a foreigner according to the Act.

⁸<https://legislative.gov.in/sites/default/files/A1946-31.pdf>

⁹<https://nhrc.nic.in/sites/default/files/>

¹⁰<https://www.unhcr.org/uk/countries/india>

2. In accordance with Section 9 of this Act, it is the individual's obligation to determine whether or not they are a foreigner when it is not clear what their nationality is in accordance with Section 8 of this Act before it is applied to them. ¹¹
3. The Foreigner Act of 1946 provides the government of India with some discretion in making judgements about the entry and exit of citizens of other nations. ¹²
4. The Foreigner Order, which is controlled by the Foreigners Act of 1946, also provides for the formation of tribunals to resolve matters pertaining to foreigners. These tribunals are tasked with resolving disputes that pertain to foreign nationals. The Tribunals for Foreigners are institutions that fall within the category of being quasi-legal. It is for those individuals whose names did not make it onto the final list compiled by the NRC or who were pointed out as being "D," which is an abbreviation for "doubtful." Those who are included in this group retain the ability to make a complaint to the Foreigners Tribunal. The authority to determine whether or not someone is a foreigner may only be exercised by Foreign Tribunals. On the other hand, "the burden of proof lies with the foreigner" in cases when individuals are classified as foreigners or put in a questionable category. ¹³
5. A civil court's power is equivalent to that of the Tribunal if it is hearing a matter that is governed by the Criminal Procedure Code of 1908. Any individual has the potential to be ordered to appear in court, compelled to do so under penalty of perjury, and questioned under oath.

Anyone might be requested to present the necessary papers at any given time. At any point in time, the Tribunal is permitted to conduct an examination of any and all witnesses. ¹⁴

According to the Foreigners Order 2001, which was made under the Foreigners Act 1946, it also stipulates that anyone with knowledge about a foreigner who entered India without sufficient documentation or who is staying longer than permitted has a duty to report that information to the nearest police station within twenty-four hours. This information must be reported to the police station that is the closest to the person's location. ¹⁵

The Foreigners Act 1946 would no longer apply to non-Muslim refugees who entered India from Bangladesh and Pakistan before the deadline of December 31, 2014, according to the Foreigners (Amendment) Order of 2015. This was done in an effort to reduce harassment and deterioration of the situation. After being argued before the Supreme Court, the outcome of the case has not yet been determined.

The 1955 Citizenship Act and Refugees

¹¹<https://www.ilo.org/dyn/natlex/docs/>

¹²Supra

¹³<https://indiankanoon.org/doc/>

¹⁴<https://pib.gov.in/newsite/PrintRelease.aspx?relid=190360>

¹⁵<https://upload.indiacode.nic.in/>

On December 30, 1955, the Citizenship Act was approved by the Indian Parliament after being debated for several years. The Act outlines the procedures for "acquiring and terminating" Indian citizenship and provides the rules. A person can become a citizen of India in a number of different ways, including being born there, having Indian ancestry, living there for a predetermined length of time, and so on. On the other hand, it is against the law for illegal immigrants to apply for citizenship in India. An individual is deemed to be an illegal immigrant if they either (i) enter the nation without the proper travel papers, such as a passport and visa, or (ii) enter the country with the proper travel documents, but stay for a longer period of time than is permitted.

According to Part II of the Indian Constitution, which specifies that citizenship is defined at "the commencement of the Constitution" (January 26, 1950), the Parliament possesses the ability to pass a legislation on citizenship. This authority comes from the provision that declares that citizenship is defined at "the commencement of the Constitution." The Citizenship Act of 1955 has been amended on many occasions, including in 1985, 1992, 2003, 2005, and 2015.

The larger, more generic concepts of citizenship based on birth have been condensed as a result of the passage of these modifications by the Parliament. In addition, the Foreigners Act of 1946 makes it exceedingly challenging for a person to establish that they are not considered to be foreigners in the United States.

The Citizenship Act of 1955 was brought back into effect for the first time in 1985 in reaction to the Assam movement. This act ensured that all migrants who entered the country before to 1971 were eligible for naturalisation while mandated that migrants who entered the country after 1971 be deported.

The Act was expanded by the 1985 Amendment to include Section 6A, which has particular rules for the citizenship of those individuals who are governed by the Assam Accord. The signing of the Assam Accord in 1985 by the Central government, the All Assam Gana Sangram Parishad, and the All Assam Students Union brought an end to a prolonged campaign of protest against the migration of immigrants from East Bengal into Assam. Those who arrived in Assam before to January 1, 1966, are eligible to be considered citizens of India, but those who arrived between January 1, 1966, and March 25, 1971, are eligible for citizenship only if they had resided in India and are considered "foreigners." "Illegal migrants" are those who arrived in Assam after March 25, 1971 and fall under the category of "illegal migrants." ¹⁶

In order to prevent infiltration from Bangladesh, the 2003 Amendment tightened the aforementioned requirement. For those born on or after December 4, 2004, the law now stipulates that, in addition to the fact of their own birth, both parents or just one parent must be Indian citizens and that other family members cannot be illegal immigrants.

With these limiting amendments, India has almost entirely adopted the constricting jus sanguinis (blood relationship) principle. This states that even if a person has lived in India for seven years, they cannot apply for citizenship through naturalization or registration.

The Citizenship (Amendment) Act, 2015 made several amendments to the sections of the Principal Act that dealt with Overseas Citizens of India (OCI). It has created a new programme that is termed

¹⁶<https://assamaccord.assam.gov.in/portlets/assam-accord-and-its-clauses>

"Overseas Citizen of India Cardholder" by combining the Persons of Indian Origin (PIO) card scheme with the OCI card scheme." ¹⁷

According to the 2019 Amendment, individuals from Pakistan, Bangladesh, and Afghanistan who had arrived in India before the 31st of December in 2014 would be eligible to remain in the country. These individuals belong to one of six religious groups: Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians. In addition to this, it brings the minimum age requirement for citizenship down from 11 years to only 5. Two notices state that the Passport Act and the Foreigners Act did not apply to these immigrants, therefore they were free from those laws as well. ¹⁸

This bill was met with opposition from a large number of Assamese organisations due to the possibility that it might offer citizenship to illegal Hindu immigrants from Bangladesh. Since Muslims, who make up the majority in Bangladesh and did not go to India to escape religious persecution, cannot use the same defence as Hindus and Buddhists since they did not flee to India, the justification for the Bill is that Muslims, who did not flee to India, cannot use the same defence as Hindus and Buddhists.

Need for one-size-fits all policy approach

Indian policy has always been marked by inconsistency, ad hoc decision-making, and ambiguity. The level of assistance that India provides to various refugee groups is also highly variable.

India did not mount a military challenge to China's sovereignty over Tibet in 1959; but, it did offer a cordial welcome to Tibetan refugees who had fled to India. In 1962, the primary objective of the Indian government was to mobilise patriotic feeling and popular support for the Tibetan cause in order to repel Chinese assault.

In 1971, India opened its doors to ten million Bangladeshi refugees in order to defend its own security interests during its war against Pakistan by having a "friend" on one side and a "rival" on the other. Pakistan was India's adversary in the conflict. In West Bengal, refugees were offered assistance and welcomed because of the shared cultural and linguistic affinities of the region. On the other hand, refugees in Assam met resistance due to rising worries about resource constraints as well as religious and linguistic disparities.

The Indian government views Myanmar as an important diplomatic ally. It offers raw resources for India's technological industry, links South and South-East Asia, and sends intelligence to India regarding insurgencies along its borders. Since that time, India has chosen not to act as a mediator between Bangladesh and Myanmar in regard to the return of Rohingya refugees. There is a strong argument to be made that the Rohingya are the most unfortunate of all the refugee communities in India.

Initial reception of Tamil refugees seeking asylum from Sri Lanka was positive, and local political parties vied with one another to lend their assistance. However, as a result of the assassination of former Prime Minister Rajiv Gandhi in May 1991 by the LTTE, the community of Tamil refugees came under increased scrutiny.

¹⁷<https://indiancitizenshiponline.nic.in/UserGuide/E-gazette.pdf>

¹⁸<https://pib.gov.in/PressReleasePage.aspx?PRID=1744875>

It was now thought that Tamils from Sri Lanka posed a threat to national security. They were subjected to a variety of limitations, and they were denied access to some resources that they had previously made use of. In addition, Sri Lankan security organisations attempted to coerce them into returning to the country.

Tibetans have been effectively integrated into Indian society, according to Indian officials. The situation in Tibet provides a context-specific illustration of how international organisations, domestic civil society groups, and host states might collaborate to discover creative solutions outside of the traditional international triadic structure.

The legal framework of India, as well as its duties to non-citizens in accordance with international law, require an immediate review. It is important to give some thought to establishing an international humanitarian framework so that countries that take in refugees may provide assistance to those seeking to either return home or start a new life in another country. The cooperation between India and semi-autonomous organisations such as the Central Tibetan Administration (CTA) makes it possible for Tibetans to self-organize politically, preserve their culture, and have a feeling of coming home.

India is required by international law to uphold the non-refoulement principle since it is a signatory to a number of international legal treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination. This stipulation gives rise to India's legal obligation to fulfil its commitment.

Issues Ahead

1. Economic collapse in Sri Lanka

At the beginning of the year 2022, residents of Sri Lanka began to face power disruptions as well as a lack of essentials such as petrol. The percentage of yearly inflation reached a new high of 50%. The country ran out of gasoline for emergency vehicles, buses, trains, and other forms of transportation that were vital to the functioning of the nation because it did not have sufficient reserves of foreign money to continue importing fuel. In recent years, Sri Lanka has been unable to successfully import the necessary goods.

In addition, in May of 2022, it failed to make an interest payment on its external debt for the very first time in its history. China is owed around \$7 billion (£5.7 billion) by Sri Lanka, and India is owed approximately \$1 billion.¹⁹

Following the conclusion of its civil war in 2009, Sri Lanka came to the conclusion that it would not make any efforts to expand its commercial activities in foreign countries but would rather concentrate its attention towards satisfying the demands of its domestic market. Despite the fact that the cost of imports continued to climb, this meant that the country's income from exports to other nations remained low. This was the case even if import prices continued to rise. As of right now, Sri Lanka's annual imports are \$3 billion higher than its annual exports. As a result, the government has exhausted its supply of readily available foreign currency.²⁰

At the end of 2019, Sri Lanka's foreign currency reserves were \$7.6 billion; however, those reserves have since dropped to around \$250 million. Because of significant shortages of foreign money in the beginning of 2021, the government of Sri Lanka tried to solve the problem by making it illegal to import

¹⁹Supra

²⁰<https://www.bbc.com/news/world-61028138>

chemical fertilisers. This was one of their first steps. It suggested that farmers use organic fertilisers that came from their own area instead. This resulted in the failure of crops across the board.

In order to boost its local supply, Sri Lanka was forced to import food, which made the country's shortage of foreign money even more severe. Fears associated with a changing climate and the ongoing economic crisis might combine to create a refugee problem in nations that are nearby. India is in need of stringent internal laws to protect its territory, since the country bears its fair share of the responsibility for the care of the world's second biggest population.

2. Food insecurity in Afghanistan and Pakistan

After foreign forces departed and the Taliban acquired control of the whole nation more than a year ago, the economy of Afghanistan has worsened, and most development aid and assets are still blocked. This situation has persisted for the most part. Because of this, Afghanistan is currently facing the gravest threat of starvation it has faced in the last 20 years.

The nation's dire predicament has been rendered significantly worse by the ongoing economic crisis that the world is currently experiencing. Programmes that provide assistance to families and communities in the process of building self-sufficient means of sustenance are more important than they have ever been. Climate shocks bring to the collapse of Afghanistan's already weak economy, the loss of employment and ways of making a living, and the destruction of houses and ways of life.

Earthquakes and large floods have wrecked devastation in Afghanistan and are now in Pakistan, worsening an already terrible disaster and placing the Afghan people in a tough situation because they rely significantly on their neighbour for commerce. Pakistan is now the most hit country in the region.

This might prompt individuals to escape to other nations, potentially crossing borders in the process. India, which already provides shelter to thousands of refugees within its borders, has reason to be concerned about this subject.

3. The imminent threat of rising sea levels in Bangladesh and the Maldives

South Asia is particularly at risk from both the immediate and longer-term effects of an imminent climate disaster that has been brought on by rising average temperatures throughout the world. Countries in this region are experiencing a disproportionate amount of damage as a result of global warming and climate change. This is due to the region's high population density as well as its reliance on agriculture.

According to estimates provided by the World Bank, natural catastrophes such as droughts and floods have had an effect on around 700 million people in South Asia during the previous 10 years. This is approximately half of the region's total population. These contribute to making the poverty-related issues that are currently there more worse.²¹

There are numerous low-lying locations, particularly in Bangladesh, Sri Lanka, and the Maldives, which are among the key areas that are suffering the most from climate change as a result of increasing sea levels. This is because low-lying areas are more susceptible to flooding. The South Asia Centre of the Atlantic Council convened a group of highly qualified individuals to examine these challenges, which include the impact that climate change is having on the economies, the safety of food and energy supplies, and migration patterns in the aforementioned three South Asian countries. It is imperative that India enact stringent domestic legislation in order to effectively handle the looming refugee crisis and protect the requirements of its own people and resources.

²¹<https://blogs.worldbank.org/endpovertyinsouthasia/south-asia-needs-act-one-fight-climate-change>

4. Manipur crisis

A number of different tribes, including the Kuki, the Nagas, and the Meities, are engaged in violent conflict with one another. At this time, Manipur is being torn apart by violent confrontations, which are resulting in loss of life and damage to property. Both the state and the central administrations are working hard to find a solution that would allow them to escape the current predicament. It is unreasonable to expect India to resolve issues pertaining to refugees while the country is experiencing such challenging circumstances and internal unrest inside its own borders.

Both Bangladesh and Myanmar are located along Manipur's shared border. People are attempting to leave and enter their country illegally in both of these nations. These kinds of predicaments are difficult to deal with and might spark future acts of violence across the state. It is of the utmost importance to find a solution to the refugee problem as quickly as possible, not only to ensure the safety of the country's borders, but also to ease tensions among the many communities that already exist inside it.

Conclusions

In India, there has to be devised a legislation that applies consistently to refugees. There is an urgent requirement to maintain international customary law as well as Indian constitutional law, and most crucially, there is a need to prevent the security dangers connected with immigration that is not recorded.

Those who are running away from violence and seeking asylum in India as a consequence of it will be shielded from the whims and preferences of India's political parties as a result of this policy owing to the fact that it was put into place. Applicants for asylum ought to be granted refugee status in line with the precise requirements indicated in the relevant legislative provisions of the applicable laws in accordance with the laws that are applicable. Instead of having access to education, housing, food, and safety as a result of the kindness of others, refugees need to have that kind of access as a matter of right rather than as a result of the goodwill of others.

Because of the global nature of the current refugee crisis, it is necessary to enact laws that pertain to the protection of refugees as well as their legal status. This is because the refugee crisis has an effect on the links that individuals have with states as well as the connections that nations have with one another. Because of the international scope of the refugee crisis, these regulations are very essential.

In India, it is the role of the United Nations High Commissioner for Refugees (UNHCR) to examine the charges made by persons seeking asylum and to produce documents authenticating their status as refugees. In addition, the UNHCR is responsible for issuing documentation to those who have been granted asylum. The rights associated with refugee status are reliant upon the political will of the Indian government and its conversations with UNHCR. This is because there is no domestic legislation that acknowledges these certificates or offers any legal legitimacy to UNHCR's actions. This is owing to the fact that there is no national legislation that provides the UNHCR's operations with any official legitimacy in any way, shape, or form.

In spite of the fact that courts have repeatedly acknowledged the certification process in particular circumstances, because it is not recognised by legislation, these certificates only have persuasive value. This enables the government to be strategic when drafting legislation to control the status of refugees. These certificates make it feasible for the government to operate in a strategic manner, which enables this possibility.

When constitutional rights are violated by the centre, there are very few cases in which the courts step in, and when they do, the scope of their involvement is often quite limited. There is a need for legally binding definitions that are quite explicit.

Many persons who are looking for refugee or asylum status are compelled to live in appalling conditions because they do not have a clear understanding of their rights. For instance, due to the fact that they do not have the legal right to work, refugees and those looking for asylum frequently engage in activities that are part of the informal labour market.

Although the government has devised rules for some refugee groups, such as granting Tibetan refugees employment permission in certain sectors, these policies are based on political whims and are not expressed in any legislation. One example of this is the fact that the government allows Tibetan refugees job authorisation in certain areas. One example of such a policy is that the government allows Tibetan refugees to work legally in specific businesses. This is only one of many similar examples.

As a consequence of the lack of a national law dealing to the protection of refugees, the courts in India have been forced to intervene on a number of occasions in order to safeguard the rights of asylum seekers and refugees. This is done in an attempt to fill the legislative holes that have been generated as a result of the changes that have been made. On several occasions, the courts have decided that some basic rights do, in fact, extend to refugees and have ordered state governments to adopt protective measures for the persons who fall under this category. For example, Indian courts have concluded that life and liberty-guaranteeing Articles 14 and 21 of the Indian Constitution, which apply to all persons including those who are not citizens of India, are applicable to all individuals. Articles 14 and 21 of the Indian Constitution apply to all persons including those who are not citizens of India.²²

The non-refoulement principle, which states that no refugee or asylum seeker should be expelled from or sent back to a country where there are strong grounds to believe that their life or freedom is in danger, has also been upheld by the courts. This concept states that no refugee or asylum seeker should be expelled from or sent back to a place where there are good grounds to believe that there is a threat to their life or freedom. According to this concept, no refugee or asylum seeker should be expelled from or sent back to a nation where there are solid reasons to think that there is a threat to their life or freedom. This includes both countries in which they sought sanctuary and the country from which they sought asylum. In addition to being incorporated in Article 33 of the Refugee Convention, this principle may also be found in a number of other international treaties to which India is a party. Some argue that international law has now acknowledged this principle as a universally obligatory standard. The Geneva Convention on the Status of Refugees and the Convention on the Rights of the Child are two examples of other international treaties that enshrine this notion in written form.

In spite of this, there has been inconsistency in the way that Indian courts have interpreted and applied this principle in the recent past. The Rohingya are a persecuted minority ethnic group that originates in Myanmar; nonetheless, the Supreme Court of India did not postpone their deportation in April 2021, despite the fact that doing so would put their lives in danger. This is despite the fact that doing so would put their lives in danger.²³

²²*Malavika Karlekar v. Union of India and Another*, Writ Petition (Criminal No) 583 of 1992, India: Supreme Court, 25 September 1992

²³*Mohammad Salimullah v Union Of India*, Interlocutory Application No. 38048 of 2021 in Writ Petition (Civil) No. 793 of 2017

However, the Manipur High Court only recently declared that non-refoulement is a crucial value that is inscribed in Article 21 (right to life and liberty) of the Indian Constitution, and it permitted seven people from Myanmar who entered India to escape the recent military coup to be registered with the United Nations High Commissioner for Refugees (UNHCR).²⁴

The court reprimanded the government for referring to these people as migrants rather than as refugees or asylum seekers who were compelled to flee their country in order to avoid being persecuted for their political or religious beliefs. The court characterised India's policy on refugees as lacking clarity.²⁵ This is only one example that highlights the requirement for legislation that defines migrants, refugees, and asylum seekers in precise terms in order to safeguard the rights of these groups of individuals and make the boundaries between these phrases obvious to law enforcement.

Suggestions

The government of India has a duty to uphold the international obligations to which it has committed and to bring a degree of predictability to the entire operation by establishing a transparent legislative framework that outlines the process for registering refugees and specifies the rights and responsibilities of refugees and asylum seekers. In addition, the Indian government has a responsibility to uphold the international duties to which it has committed and to maintain the international obligations to which it has committed.

Because India is now offering special e-visas for Afghan citizens that are valid for a complete year, it is unclear what will take place to visa holders once the validity of their six-month visas has passed. This is because India has opened up special visas for Afghan people that are valid for only six months. It is not clear at this time if they will be permitted to reapply for visas or renew the visas that they already hold. Even while the government is striving to find solutions to the problem one step at a time, it is challenging to anticipate what the subsequent step will be.

It is extremely unlikely that India would ratify the Refugee Convention given that it has already been in existence for close to seven decades; therefore, it is quite unlikely that India will do so. However, this should not be a hurdle for India when it comes to the process of developing special national legislation on asylum seekers and refugees.

Even if Indian courts have, on occasion, interpreted domestic law in a way that safeguarded refugees and asylum seekers, this cannot, in the long run, be a solution to the situation. It is not acceptable to leave the destiny of refugees and individuals looking for asylum up to the discretion of ad hoc laws, which are susceptible to change with the installation of a new administration. Rather, specific law is what is required in this situation.

A standard refugee policy would provide legal avenues for those who are seeking asylum, put an end to unjust administrative procedures through judicial scrutiny, coordination with civil and international organisations, and attention to international duties, and give legal paths for those who are seeking asylum. a standard refugee policy would provide legal avenues for those who are seeking asylum. a standard refugee policy would provide legal avenues for those who are seeking asylum.

²⁴<https://www.hrw.org/news/2021/07/28>

²⁵Supra

India has the chance to address the need for enhanced laws and institutions by taking advantage of the current refugee crisis in Afghanistan. These laws and institutions should more clearly spell out the rights, duties, and registration processes of refugees and asylum seekers. These alterations have the potential to contribute to more consistency in the policies of the government and greater openness in the procedures. Both of these outcomes would be beneficial.