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CAUGHT IN A MIRE : REFUGEES IN THE FACE OF COVID-19 CRISIS

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ABSTRACT

Forced migration and illegal trafficking of refugees has always been a pertinent human rights issue of international legal concern that has majorly impacted the economic, social and political policies of sovereign nations, intergovernmental organisations and civil society groups across the world. India is largely known for its porous national borders and accommodative policies, which makes it one of the countries with the largest refugee population. Despite not being a signatory to the 1951 Refugee Convention or having domestic legislation, the rights of refugees have found its place under the umbrella of the Constitution of India and other ad-hoc policy initiatives. Before the world was gripped with the life-threatening disease of COVID-19, the issues of migrants and refugees were given considerable importance but since then with government institutions being overwhelmed, the healthcare lying in a battered state with the paucity of essentials and the economy in doldrums; the plight of migrants and refugees has rather taken a backseat. Researchers and medical scientists have attributed intense population movements as the root-cause in the global spread of the virus and areas with high populations and clustered settlements are reportedly becoming hot-spots for the virus, thereby adding another layer of disadvantage to the hitherto troubled refugee crisis. Refugees are often left out from the epidemic preparedness planning and reaching out to these marginalized populations is a challenge. The purpose of this Article thereby lies in examining the existing legislative framework in India for the protection of refugees, observing the impact of COVID-19 on these vulnerable sections; applying the test of human rights to serve a broader picture with solutions which can aid the Indian government and other non-governmental bodies to come up with better policies in the long run to discharge its moral obligations towards the international community.

Keywords - *Refugees, COVID-19, Government Policies*

INTRODUCTION

The term ‘refugee’ has been clearly defined under Article 1 of the 1951 Convention¹ (modified by the 1967 Protocol²) as, “ A person who, owing to a 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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside his country as a result of such events, is unable or unwilling to return to it.” The fundamental rights of refugees are safeguarded by virtue of this Convention which bestows an obligation on states to accord rights to them that are largely on par with the rest of the population. Further, Article 14 of the Universal Declaration of Human Rights³ grants refugees the right to seek and enjoy asylum from persecution. This right, in addition to the right to leave one’s own country (Article 13), and the right to a nationality (Article 15) have given life-saving protection to millions of refugees who have been able to rebuild their lives or return back home once the danger has passed.

Although there are numerous international institutions which provide protection to refugees, the ultimate onus lies with the nation-states. A state acquires its responsibility to protect refugees through its active participation in international forums, signing of treaties and declarations and enacting domestic legislation that reflects its political or moral commitment and adherence to customary international law⁴. A dismal number of Asian States are signatories to these instruments. India, not being one of them, however, boasts of abiding by the principle of nonrefoulement and achieving refugee protection within the broad ambit of Article 21 of the Indian Constitution⁵ and by following the principle of “Vasudhaiva Kutumbakam” which signifies that the world is one family and upholds the values of compassion, brotherhood, tolerance and respect for human rights.

The hitherto deplorable plight of refugees has worsened further due to the devastating impact of the Covid-19 pandemic. The measures adopted by the Government to curb the spread of the virus restrict the freedom of movement and other such basic human rights. These guidelines

¹ Convention Relating to the Status of Refugees art. 1, Jul. 28, 1951, 189 U.N.T.S 137.

² Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

³ Universal Declaration of Human Rights, art.14, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), Dec. 10, 1948.

⁴ MANIK CHARKRABORTY, HUMAN RIGHTS AND REFUGEES- PROBLEMS, PRACTICES AND LAW 119 (2001).

⁵ INDIA CONST. art. 21.

inadvertently affect the livelihood and security of marginally impoverished groups such as migrants and refugees. Increased risks associated with health as well as other socio-economic issues have amplified the already existing disparity by a manifold.

This article seeks to highlight the apparent disproportionate harm suffered by refugees in jeopardy amidst the pandemic against the backdrop of the measures adopted by the Government and UNHCR to alleviate their precarity. Part I discusses the current scenario of refugees in India. Part II reviews the existing laws, regulations and judicial pronouncements pertaining to the protection of refugees. Part III analyses the impact of the pandemic on refugee's prospects of leading a normal life and the policies implemented by the Government for their benefit during the lockdown. Part IV attempts to post a viable solution to the existing refugee crisis.

CURRENT STATUS OF REFUGEES IN INDIA

Large populations flock the Indian subcontinent after fleeing their countries due to internal or external conflict, fear of persecution, or human rights transgressions. India under Jawaharlal Nehru refrained from signing the Convention due to the fear of international criticism and unnecessary interference in its “internal affairs”. Furthermore, it lacked the political, administrative and infrastructural capacity to enforce international rules and regulations with regard to the entrance and sustenance of these populations in the country. Despite not having specific legislation for refugees, India continues to receive refugees from in and around the country.

Tamil refugees from Sri Lanka, Jumma sect from Bangladesh, Tibetan refugees from Tibet and China and other tribal refugees from Burma, Afghanistan, Iran and even Sudan today comprise the bulk of India's refugee population⁶. Afghan refugees, mostly Hindus and Sikhs are granted citizenship through the programme operated by the United Nations High Commissioner for Refugees (UNHCR) in India⁷. Afghan refugees also receive subsistence allowance and residence permits under the UNHRC mandate. The Hindus and Sikhs of Pakistan have sought refuge in India

⁶ Arjun Nair, *National Refugee Law for India: Benefits and Road Blocks*, IPCS, 2007 at 1.

⁷Nayana Bose, *Afghan Refugees in search of Indian Identity*, UNHCR INDIA (May. 19, 2005), <https://www.unhcr.org/news/latest/2005/5/428c967e4/afghan-refugees-search-indian-identity.html>.

fearing religious persecution in their country. The minority religious groups of Bangladesh such as Bangladeshi Hindu families, Chakmas (Bangladeshi Buddhist Community) moved to India to escape repression in their country. States such as Himachal Pradesh, Karnataka, Odisha and other states have allotted lands for Tibetan settlements⁸. A Registration Certificate is given to the Tibetans as a permit to stay and travel in India, which is renewed annually⁹. During the Sri Lankan Civil War, more than 100,000 Sri Lankan Tamils settled in the southern states of Tamil Nadu, Kerala and Karnataka. Approximately, 195,105 (almost 2 lakhs) refugees sought shelter in India in the year 2019¹⁰.

The policies with regard to refugees are considerably flexible. The government adopts ad hoc policies instead of the model code of conduct. This is mainly due to the political set-up of the country and the origin of the refugees. The refugees who receive protection from UNHRC also enjoy services such as education, accommodation, psychological support, vocational training, legal aid and sensitization programmes as guaranteed by UNHRC's implementing partners.

LEGISLATIVE FRAMEWORK FOR REFUGEE PROTECTION

Indian law doesn't define the term 'refugee' and therefore, the term 'foreigner' is used to address them. They are categorized alongside immigrants and tourists. As per section 2(a) of The Registration of Foreigners Act, 1939¹¹, a foreigner is 'a person who is not a citizen of India'. Prevailing legislation such the CrPC, IPC, etc. applies to refugees as well. Due to the absence of a uniform national law specifically for refugees, the following Acts are construed widely and govern refugees: -

⁸ *Tibetan Refugees in India and Rehabilitation Policy*, GK TODAY (Sept. 10, 2020), <https://www.gktoday.in/gk/tibetan-refugees-in-india-and-rehabilitation-policy-2014/>.

⁹ *All Tibetan Children in India to be Registered as Foreigners for Residence Permit*, TIBETAN REVIEW (Feb. 19, 2019, 1:07 PM), <https://www.tibetanreview.net/all-tibetan-children-in-india-to-be-registered-as-foreigners-for-residence-permit/>.

¹⁰ *India Refugee Statistics 1990-2020*, MACROTRENDS, <https://www.macrotrends.net/countries/IND/india/refugee-statistics>.

¹¹ The Registration of Foreigners Act, 1939, No. 16, Acts of Parliament, 1939 (India).

- 1) The Registration of Foreigners Act, 1939 which is applicable to all foreigners - The Central Government may by notification in the Official Gazette make rules with respect to foreigners, subject to exemptions and modifications as and when required.
- 2) The Foreigners Act, 1946¹², which empowers the State to regulate the entry, presence and departure of foreigners in India.
- 3) The Passport (Entry into India) Act, 1920¹³ stipulates that the government can exempt certain people from entering India without a proper passport.
- 4) The Passports Act, 1967¹⁴ is a procedure established by law which states that no foreigner can enter and exit India without a proper passport. However, the Central Government can make exemptions depending upon the situation.

The Home Ministry deals with the formulation of policies and rehabilitation, the Ministry of External Affairs deals with bilateral international negotiations, and State Governments care for and maintain the refugees. The NHRC is entrusted with the task of ensuring the promotion of rights and freedom of the refugees. It has the power to take Suo moto cognizance of any human rights violation.

- **The Asylum Bill, 2015** - Three Bills to enact an asylum regime were introduced in the Parliament in the year 2015, out of which The Asylum Bill¹⁵ stood out to be the most comprehensive one. The Bill sought to do away with the ambiguity regarding the term ‘refugee’ and proposed to define it, set eligibility standards for seeking asylum, rights, entitlements and obligations and aimed at enhancing accountability and order, providing a balance between humanitarian interests and security concerns of the State. The Bill received appreciation from all parts of the country; however, there existed certain shortcomings. It lacked differentiated features, protection against statelessness, priority to mass influxes and there was no clarity per se with regards to any governance or management model¹⁶. No substantial action has taken place in furtherance of this Bill. It cannot be asserted that the

¹² The Foreigners Act, 1946, No. 31, Acts of Parliament, 1946 (India).

¹³ The Passport (Entry into India) Act, 1920, No. 34, Acts of Parliament, 1920 (India).

¹⁴ The Passports Act, 1967, No. 15, Acts of Parliament, 1967 (India).

¹⁵ The Asylum Bill, 2015, 334 of 2015, Lok Sabha (‘Tharoor’s Bill’).

¹⁶ Bhairav Acharya, *A Step in the Right Direction*, THE WIRE, (Oct. 31, 2016) <https://thewire.in/external-affairs/shashi-tharoor-asylum-bill-2015>.

Asylum Bill, 2015 would establish a firm asylum regime; but it can definitely be considered as the first step towards the right direction.

- **Citizenship (Amendment) Act, 2019** - On 11th December 2019, The Citizenship (Amendment) Act, 2019¹⁷ was passed by the Parliament amidst massive protests and representations. The Act provides Indian citizenship to illegal migrants and refugees who had fled persecution from the neighboring countries. The fact that citizenship was being granted on the basis of religion attracted large-scale agitations across the country. The Office of the United Nations High Commissioner for Human Rights termed this move as fundamentally discriminatory. Although India was praised for taking a concrete step in safeguarding the rights of immigrants and refugees, it was equally criticized for being discriminatory towards Muslims. The Citizenship (Amendment) Act, 2019 strives to be an apt refugee policy; although it needs certain changes to keep the secular fabric of India intact.
- **Constitutional Framework for Protection of Refugees** - The Constitution of India is broadly interpreted and guarantees basic fundamental rights to refugees also. Right to equality (Article 14), Right to protection in respect of conviction of offenses (Article 20), Right to life and personal liberty (Article 21), Right to protection from arbitrary arrest (Article 22), Freedom of religion (Article 25), Right to approach Supreme Court for enforcement of Fundamental Rights (Article 32) are available to refugees on par with citizens. In the landmark case of the *National Human Rights Commission (NHRC) v. State of Arunachal Pradesh*¹⁸, the government of Arunachal Pradesh was given the task of safeguarding life, health and well-being of Chakmas residing in the state and forwarding their citizenship applications to appropriate authorities concerned. It was held that fundamental right to equality under Article 14 and the right to life and personal liberty under Article 21 extends to all foreigners, including refugees and states are bound by it. Further, refoulement of refugees without any proper procedure of law amounts to a violation of Article 21.

¹⁷ Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

¹⁸ National Human Rights Commission v. State of Arunachal Pradesh, A.I.R. 1996 S.C. 1234 (India).

JUDICIAL PRONOUNCEMENTS ON REFUGEE ISSUES

Indian Courts have predominantly upheld the rights of refugees through a plethora of cases. In the cases of *Luis de Readt*¹⁹ and *Khudiram*²⁰, the Supreme Court held that Article 21 applies to all persons, including refugees. In *P. Nedumaran v. Union of India*²¹, the Sri Lankan refugees prayed before the court to permit UNHRC officials to check the voluntariness of the refugees in going back to Sri Lanka. They further asked the court to grant permission to the refugees who did not want to return to continue staying in India. It was held that the voluntariness of the refugees was to be ascertained by the UNHRC. Reliance on International Conventions was legitimized in the case of *Vishaka v. State of Rajasthan*²² which indirectly points towards the fact that India can refer to the 1951 Convention in interpreting domestic legislation. The Guwahati High Court by virtue of *Bogyi v. Union of India*²³ and *U. Myat Kayew and Nayzan v. State of Manipur*²⁴, held that even if asylum seekers enter India illegally, they should be allowed to approach the UNHRC to seek refugee status. The Supreme Court has also stayed the deportation of refugees in the cases of *Maiwand's Trust of Afghan Human Freedom v. State of Punjab*²⁵ and *N. D. Pancholi v. State of Punjab*²⁶ & others by holding that the principle of non-refoulment has acquired the status of jus cogens – a peremptory norm of international law. Indian courts have therefore time and again fulfilled its responsibility of keeping a check on the Government actions with respect to a violation of refugee rights.

THE 'INVISIBLE' CRISIS: REFUGEES AND COVID-19

The pandemic and its related restrictions have adversely affected the ability of refugees to meet their basic needs by pushing them on the verge of outright poverty, food insecurity and health

¹⁹ Luis de Readt v. Union of India, (1991) 3 S.C.C. 554 (India).

²⁰ State of Arunachal Pradesh v. Khudiram Chakma, A.I.R. 1994 S.C. 1461 (India).

²¹ P. Nedumaran v. Union of India, 1993 (2) ALT 291 (India).

²² Vishaka & Ors. v. State of Rajasthan & Ors., A.I.R. 1997 S.C. 3011 (India).

²³ Bogyi v. Union of India, Civil Rule No 981 of 1989 (India).

²⁴ U. Myat Kayew and Nayzan v. State of Manipur, Civil Rule No 516 of 1991 (India).

²⁵ Maiwand's Trust of Afghan Human Freedom v. State of Punjab, Writ Petition (Criminal) 125& 126/1986 (India).

²⁶ N.D. Pancholi v. State of Punjab, Writ Petition (Criminal) 243/1988 (India).

risk²⁷. The existing vulnerabilities will only deepen if left unaddressed. In order to enforce the rights enshrined in Article 14 of UDHR, people have to be allowed entry into another country and today, countries all over the world are slamming their doors shut fearing the spread of the virus, thereby keeping out refugees. The following are some of the issues faced by refugees in India during the pandemic:

- **Health risk** – Due to poor nutrition, their immunity is compromised and so refugee populations are at incredibly high risk for outbreaks of contagious diseases. Refugee camps are the hotspots for COVID-19 given their sub-standard access to healthcare, clean water and sanitation and the challenges of social distancing, self-isolation, etc. in over-crowded dwellings. Moreover, refugees typically face administrative, financial, legal, and language barriers to access health systems.²⁸ It is hardly feasible to follow the guidelines issued by the WHO for health and sanitization in refugee camps.
- **Movement Restrictions** – The Indian Government has adopted far-reaching measures to fight the spread of the virus, including border closures, curfews and movement restrictions through lockdowns. While these measures have been beneficial in controlling its spread, border closures deny those in need of international protection, an effective opportunity to seek asylum. It comes with inherent risks for those fleeing conflict and persecution often find themselves trapped at borders. It severely affects the mobility of humanitarian responders and volunteers who may wish to help these refugees.
- **Economic hardships** – Loss of income and livelihood among refugees, increasing depletion of scarce resources and high prices of essential commodities further impact their ability to meet basic needs such as rent payment, food, water, etc.²⁹ In order to cope with the loss, they may sell assets or engage in unsafe employment which will degrade their living conditions further. The brunt of business shutdowns and stay-home orders on jobs

²⁷ Vatsal Raj, *Refugees and their host communities in India hard hit by the Coronavirus Lockdown*, UNHCR INDIA (Jul. 1, 2020), <https://www.unhcr.org/news/stories/2020/7/5efc60224/refugees-host-communities-india-hard-hit-coronavirus-lockdown.html>.

²⁸ Sapna Goel and Reza Ehsan, *Afghan Refugees in India in the time of Coronavirus*, THE GEOPOLITICS (May 10, 2020), <https://thegeopolitics.com/afghan-refugees-in-india-in-the-time-of-coronavirus/>.

²⁹ Tapan Kumar Bose, *COVID-19: Rohingya Refugees in India are Battling Islamophobia and Starvation*, THE WIRE (May 1, 2020), <https://thewire.in/rights/india-rohingya-refugees-starvation-covid-19>.

during public health emergencies are borne heavily by these refugees who sustain themselves through informal work or daily low-wage labour.³⁰

- **Potential for Conflict** – Poor response and inadequate measures by the Government to protect refugees at a time like this will create additional grievances against their governance at both the national and international levels. Human rights organizations will prey on these issues to create conflict and undermine stability. This in turn increases the potential for destabilization in these susceptible areas.
- **Other issues** – Refugees are susceptible to stigmatization and violence on account of their perceived health status or their nationality and immigration status. They may be deliberately targeted due to their contact with foreign aid workers or because they belong to areas with high infection rates. In some cases, authorities use the emergency to introduce restrictions targeting such refugees and arbitrarily limiting their rights. Such differential treatment will be aggravated by the present conditions. Furthermore, the temporary suspension of UNHCR’s refugee status determination activities during the lockdown has severely affected asylum seekers whose cases are still pending, as well as those who have not yet registered with UNHCR.

REFUGEE POLICY INITIATIVES AMIDST LOCKDOWN

The UNHCR in India works with the government, NGOs and other civil societies to facilitate refugees and asylum-seekers in accessing public health, education and legal aid services. As a signatory, India has to fulfill its international responsibility under the Universal Declaration of Human Rights, the Convention on the Reduction of Statelessness, and the Convention on the Rights of the Child and hence has implemented policies at the Centre and State level to reduce the distress of refugees and provide them with protection since lockdown began. The Central Government, on May 12 2020³¹ proposed a \$260 billion fiscal package for the benefit of its most

³⁰ Kavita Muralidharan, *Sri Lankan refugees in Tamil Nadu brace for Coronavirus Crisis amid Challenging Circumstances of Camp Life*, FIRSTPOST (Apr. 22, 2020 10:38 AM), <https://www.firstpost.com/india/sri-lankan-refugees-in-tamil-nadu-brace-for-coronavirus-crisis-amid-challenging-circumstances-of-camp-life-8277311.html>.

³¹ Jeffrey Gettleman and Hari Kumar, *Modi Announces \$260 Billion Coronavirus Rescue Package for India*, THE NEW YORK TIMES (May 12, 2020), <https://www.nytimes.com/2020/05/12/world/asia/virus-india-rescue-package.html>.

severely affected citizens. It has also set up hunger centers and relief measures to benefit the socially disadvantaged sections of the population. While the relief provided by the Centre does not pertain specifically to refugees, its policies are wide enough to include them within its ambit.

UNHCR India distributed food packages and hygiene materials such as soap bars and toilet cleaners to refugee camps where vulnerable families had ceased to earn an income due to the lockdown. As part of the “Give As You Take, This Time” campaign, 40,000 homemade masks were made by refugee women and UNHCR arranged for the distribution of these masks for free to local administration, vulnerable refugees and asylum seekers. Remote registration and RSD interviews were conducted for persons with urgent protection needs. 10 tele-sessions on self-care (including psycho-social, emotional and physical aspects) were organized in order to create awareness among refugees.³²

The equal onus lies on the states with a large number of migrants to come up with their own refugee protection policies. The Tamil Nadu government’s efforts in providing timely health checkups and food supply to refugee camps amidst the lockdown were largely praised by the Sri Lankan refugees in Madurai.³³ The New Delhi government has undertaken to cover the rent of those unable to do so, thereby providing refugees a ray of hope.³⁴ The Andhra Pradesh government assured the Delhi HC that it was doing its best to provide adequate ration to the Rohingya refugees during the COVID-19 lockdown.³⁵ The Supreme Court of India has also kept a check on the government in ensuring that refugees are provided with basic amenities, minimum wages and access to free healthcare during these testing times.

³² Kiri Atri and Devika Nair, *Covid-19 Response Update - India*, UNHCR INDIA (May, 2020), <https://reporting.unhcr.org/sites/default/files/UNHCR%20INDIA%20COVID19%20External%20Update%20May%202020.pdf>.

³³ Sanjana Ganesh, *Sri Lankan refugee camp in Madurai becomes a Containment Zone*, THE HINDU (Apr. 29, 2020, 05:28 PM), <https://www.thehindu.com/news/national/tamil-nadu/sri-lankan-refugee-camp-in-madurai-becomes-a-containment-zone/article31463349.ece>.

³⁴ ANI Agency, *Government to pay rent if Tenants fails to do so: Delhi CM*, THE ECONOMIC TIMES (Mar. 30, 2020, 08:13 AM), <https://realty.economictimes.indiatimes.com/news/residential/government-to-pay-rent-if-tenants-fail-to-do-so-delhi-cm/74881255>.

³⁵ PTI, *Providing adequate ration to Rohingya refugees during COVID-19 lockdown: AAP govt. to HC*, THE HINDU (May 9, 2020, 03:31 PM), <https://www.thehindu.com/news/cities/Delhi/providing-adequate-ration-to-rohingya-refugees-during-covid-19-lockdown-aap-govt-to-hc/article31542922.ece>.

RECOMMENDATIONS AND CONCLUSION

India has dealt with the issues of a mass influx of refugees without a proper law in place for a long period of time, but with the growing population of refugees and asylum seekers in the country, a uniform law is the need of the hour to maintain the issue with more accountability and order. So far, India has fared well with the management of refugees, but a lot more is still required to be done for ensuring a hospitable climate for the refugees. The Indian Judiciary has also done a commendable job in upholding the rights and freedom of refugees with regard to the international legal regime. It has ensured that the human rights of refugees are protected at any cost. Further, NHRC metes out timely recommendations advocating for the need for a law in accordance with the articles of the 1951 Convention combining both humanitarian needs and security concerns. Currently, the world is gripped with the deadly disease of COVID-19 which has led to the prolonged lockdown. This pandemic has deepened the pre-existing inequalities in India's healthcare and socio-economic systems. Although the virus doesn't discriminate, its impact does. During these horrific times, the refugees find themselves in a worrying spot with minimal support from any institution. In such a situation, the government must adopt a broader view based on the approach of human rights and establish a comprehensive response mechanism. It serves as the best opportunity to overcome the structural weaknesses prevalent for long and come up with an efficient management system by a two-pronged strategy of finance and socio-medical well being. The Government must provide support to boost the resilience of affected groups through economic recovery activities in order to prevent the complete erosion of livelihood. The refugee groups must be integrated into the National Emergency Response Plans and Social Protection Schemes and should be covered under the active surveillance schemes of the government. Any barriers for refugees and other displaced people to move for medical emergencies must be removed. Further, it must be ensured that voluntary local groups and international organizations which are extending humanitarian support to refugees get continued access to the needy populations. Such acts of humanitarian assistance must be facilitated smoothly without any hindrance. Similarly, the needs of women and children must be given the utmost priority. Promotion of pure water, sanitation and good hygiene practices through awareness drives and different modes of communication is the need of the hour. The plight of refugees must not be dependent on any political agenda. India

desperately needs a strong refugee policy which is not discriminatory in nature and is aimed at protecting people fleeing from war, persecution and famine with a whole-of-society approach. Only inclusive approaches can help protect and promote everybody's rights and well-being. When the havoc looming due to this pandemic passes and normalcy returns, it is of profound importance to look back in time not merely to rectify the wrongs but to gauge and assess the somber state of affairs that hitherto prevailed. The lessons learned must not be forgotten and any effort to cripple the vulnerable refugees must be eschewed.