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INDIA'S APPROACH TO INTERNATIONAL REFUGEE LAW: CHALLENGES AND THE WAY FORWARD

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Abstract

India's approach to international refugee law has created a complex landscape characterized by significant challenges amidst evolving humanitarian needs. Despite being home to a substantial refugee population, India has yet to formally implement a comprehensive legal framework that aligns with international standards. This absence of a dedicated refugee law often leads to legal ambiguities and challenges in the protection of vulnerable populations. The nation's diverse socio-political context, coupled with historical, economic, and security concerns, further complicates its engagement with global refugee policies. In this paper, we explore the multifaceted challenges India faces, including issues of citizenship, integration, and the rights of refugees. Additionally, we assess the current policy responses and propose actionable strategies for reconciling domestic priorities with international commitments. By fostering collaboration among governmental, non-governmental, and international actors, India can enhance its capacity to uphold the rights of refugees, ensuring their safety and dignity while also contributing to global efforts in refugee protection. The discussion aims to highlight pathways for reform that not only address immediate concerns but also promote long-term sustainable solutions for refugees within India's borders.

INTRODUCTION:

Having not joined the 1951 Refugee Convention¹, India lacks a coherent domestic framework for refugee policy, while hosting over 200,000 refugees. India's response to international refugee law has been severely hampered by the lack of official legislation, leading to an ad hoc system that relies more on executive choices and judicial interpretations than on cogent policy frameworks.

One of the most urgent issues facing human rights in the modern era is the global refugee crisis. International refugee law has failed to offer consistent, sufficient, and compassionate protection

¹The 1951 Refugee Convention. <https://www.unhcr.org/in/about-unhcr/who-we-are/1951-refugee-convention>

as the number of people displaced by conflict, persecution, political instability, and environmental degradation continues to climb. The difference between the normative goals of international refugee tools and their actual application, particularly within national frameworks, is at the core of this legal dilemma. India, a nation with a long history of offering sanctuary but without a formal legal system to oversee refugee protection, is the place where this discrepancy is most noticeable.

Existing Legislation and Policy Defects:

Being Legislation and Policy blights India has a clear exile policy, and the maturity of its justice on exile protection is deduced from court rulings. also, India disregards the UNHCR's executive function on its soil and prefers to manage exile situations on its own. The 1951 Refugee Convention and its 1967 Protocol are n't ratified by India, which also does n't have a public exile enactment. India has neither a public policy nor a law pertaining to deportees rather, under the Nonnatives Act of 1946, India addresses all nonnatives, including those who are illegal emigrants, deportees or shelter campaigners, or those who are overstaying their visa permits. Section 3 of the Act gives the civil government the authority to identify, seize, and expel illegal foreign nationals. This results in a substantial legal void whereby the state can handle exile groups arbitrarily and ad hoc, driven not by philanthropic , transnational, or indigenous considerations but by domestic electoral authorizations, original sociocultural dynamics, and geopolitical and politic impulses.

International Refugee Law's Development:

International Refugee Law's Development After the World Wars, when wide deportation demanded coordinated international responses, the legal frame for exile protection started to take shape. Beforehand enterprise included the development of the Nansen Passport for stateless people and the appointment of Nansen as High Commissioner for refugees by the League of Nations in 1921. still, the 1951 Refugee Convention, which established the description of a exile as a Someone who" is outside the country of his nation and is unfit to avail himself of the protection of that country due to well- founded fear of being racked for reasons of race, religion, nation, class of a particular social group, or political opinion." By barring geographical and temporal limitations, the 1967 Protocol made the Convention applicable far and wide. The Convention is considerably condemned for being out of date despite its comprehensiveness, especially for its limited persecution criteria that do n't take into

account modern deportation causes like wide violence, profitable collapse, or climatic change. Other mortal rights documents outside of the Convention, like the Universal Declaration of The International Covenant on Civil and Political Rights (ICCPR), the Human Rights Convention (UDHR), and indigenous associations analogous as the Cartagena Declaration and the OAU Convention have all sought to broaden the protective net. still, these fabrics are still weakened by the lack of fairly demanded enforcement measures.

Important Normative Principles and Doctrines:

A. The Non-Refoulement Principle:

Article 33 of the 1951 Convention, which forbids nations from sending refugees "to the frontiers of territories where their life or freedom may be threatened," is a key component of refugee protection. This standard, which is enforceable against all governments irrespective of treaty ratification, is generally acknowledged as a component of customary international law.

State practice, however, frequently demonstrates infractions. Refugees are frequently turned away at borders, held in inadequate conditions, or deported for reasons related to national security. A moral and legal conundrum has resulted from the adoption of limited interpretations by even Convention-party governments.

B. Determination of Refugee Status (RSD)

Humanitarian duties and national immigration control must be balanced. Credibility evaluation is crucial in each asylum system, although political, economic, and cultural factors frequently have an impact. States have chosen prima facie recognition in cases of mass influxes, but this raises concerns about procedural justice and long-term legal certainty.

C. State Sovereignty and Asylum

Although Article 14 of the UDHR ensures the right to seek asylum, countries are not required to grant it. This legal gap prioritizes state sovereignty over humanitarian issues, often to the detriment of refugee rights. Therefore, seeking asylum is still regarded as a privilege instead of an entitlement.

Protection of Refugees in India: Ad Hoc Method: India has a politicized, informal, and inconsistent approach to refugee protection. Even though India has housed numerous refugee populations over the years, there are currently no rights or protections because of the country's unwillingness to enact a formal refugee law.

A. Judicial and Constitutional Framework:

Despite the absence of a specific refugee law in India, refugees are indirectly protected by certain constitutional provisions and court rulings. The right to life and personal liberty guaranteed by Article 21 of the Indian Constitution has been construed to encompass non-citizens. In *NHRC v. State of Arunachal Pradesh*², the Supreme Court ruled that everyone has the right to life and quality including deportees.

Abbas Habib Al Qutaifi v. Ktaer,³ the Gujarat High Court, representing the Union of India, stressed that the government should not send asylum seekers to nations where they might be persecuted.

B. India's refugee categories:

India divides refugees into three major categories.

1. **Government-recognized refugees** (e.g., Tibetan and Sri Lankan Tamil refugees), who receive material and legal support.
2. **UNHCR-mandate refugees** (e.g., Afghans, Rohingya), who depend on the UNHCR for documentation and basic services.
3. **Undocumented and unrecognized refugees**, who live in precarious legal conditions without formal recognition.

Equality before the law and non discrimination are violated when such classification leads to unfair treatment.

Discrimination and Differential Treatment:

The way that India handles various refugee groups exposes serious discriminatory trends that call into question the universality of protection principles. Due to India's fluctuating geopolitical and diplomatic interests, different refugee populations have been treated differently as a result of the lack of a standardized refugee policy. Although the government grants refugee certificates or long-term visas to groups like Tibetans, Sri Lankans, and Afghans, the majority of Rohingya refugees, even though they are registered with the UNHCR, frequently face arbitrary detention and criminal imprisonment. In interpreting a, the Indian Supreme Court and High Court have played a crucial role.

In the absence of legislative and executive commitments, the Supreme and High Courts of India

² The case National Human Rights Commission v. State of Arunachal Pradesh & Anr. can be cited as 1996 AIR 1234

³ Ktaer Abbas Habib Al Qutaifi And Anr. vs Union Of India (Uoi) And Ors. on 12 October, 1998

have played a crucial role in interpreting a provisional shield of protection for individuals who are already in the nation. This shield is based on a judicial endorsement of the non-refoulement principle, while the preferential acts of kindness strategy discriminates against different refugee groups based on their origin or religious beliefs.

Case Studies: Particular Groups of Refugees:

The crisis of the Rohingya:

The difficulties with India's current strategy are best illustrated by the way Rohingya refugees are treated. Persecuted Muslim minorities, like the Rohingya, are not included in the scope of the contentious Citizenship Amendment Act, 2019⁴. Another major solicitude is the dearth of aid and legal counsel for Rohingya deportees who are in detention. roughly 40,000 Rohingya, utmost of whom warrant attestation, live in slums and detention camps throughout India, including Jammu, Hyderabad, Nuh, and Delhi. Illegal emigrants are n't considered deportees under Indian law.

Geopolitical considerations and Afghan refugees:

The Afghan refugee crisis serves as an example of how geopolitical factors impact decisions about refugee protection. Large-scale refugee migration into neighboring countries has been made possible by the unstable handover of power from the Ghani government to the Taliban regime. Given this, it is necessary to examine how the Indian government has responded to the flood of Afghan refugees. Due to India's lack of a clear national refugee law and policy, Afghans seeking refugee status are handled randomly on a case-by-case basis. Additionally, India is not a signatory to either the 1951 Refugee Convention or the 1967 Protocol.

The effect of COVID-19 on refugee protection:

The COVID-19 pandemic has made India's refugee protection system even more vulnerable. The global population has been severely impacted economically by the COVID-19 pandemic. The prime minister of India issued a less than four-hour notice to declare a complete lockdown starting on March 25, 2020, due to concerns about the looming crisis. One of the biggest and most severe lockdowns in the world has occurred in India, and its effects have been disastrous, especially for more vulnerable populations like refugees and asylum seekers who have been unable to support themselves after losing their jobs.

⁴ The Citizenship (Amendment) Act, 2019

Emerging Problems and Current Concerns:

Displacement brought on by the climate:

Climate-induced displacement is a new issue that India's current framework is not prepared to handle. Climate refugees are still not legally recognized in India or internationally, despite the fact that displacement caused by climate change has been increasing for years in a technologically advanced world. The 1951 Refugee Convention states that refugees are people who are escaping persecution because of their race, religion, nationality, social group, or political beliefs, but it does not include people who are displaced by natural disasters like floods, droughts, rising sea levels, etc.

India urgently needs to reevaluate its policy frameworks and humanitarian obligations toward non-citizens in light of the economic collapse in Sri Lanka, the food insecurity in Afghanistan and Pakistan, and impending trouble posed by rising ocean situations to Bangladesh and the Maldives.

Dynamics of Regional Migration:

Given India's status as a regional power, larger South Asian migration trends must be taken into account. Because of the extremely poor and pathetic economic conditions in Bangladesh, Sri Lanka, Myanmar, Afghanistan, and even Pakistan, as well as the widespread political unrest, people from these countries are entering the country illegally.

Comparative Evaluation with Local Adjacents:

Acquiring knowledge from ASEAN experiences:

India can learn from the region's other non-signatory states. At the regional level, Indonesia can persuade ASEAN nations to follow the European Union's best practices in establishing sharing quotas to prevent the majority of refugees from fleeing to Indonesia—a model that could guide regional cooperation in South Asia.

The Parallel of Indonesia:

As a non-signatory state, Indonesia faces the same difficulties as India. Given that Indonesia is considered a conveyance country for deportees and has not ratified the 1951 Convention on the Status of Deportees, the complicated situation of transnational deportees has urged a reinterpretation of the principle of non-refoulement into colorful public measures and domestic programs. Indonesia has inconsistently applied the

principle of non-refoulement to fairly binding regulations. Because of shy backing and structure, the Indonesian government has paid much lower attention to deportees.

Customary norms and obligations under international law:

Nature of Binding Non-Refoulement:

India is still subject to the principles of customary transnational law indeed in the absence of formal convention scores. From the viewpoint of global justice, countries can only legitimately exercise the authority that transnational law grants them, including the autonomous power to control migration across public borders, if they do n't engage in refoulement. The transnational legal order must treat non-refoulement as a jus cogens norm in order to assert that it has licit authority over outlanders who are expatriated. The principle of non-refoulement has also been interpreted by a number of Indian High Courts as being essential to Article 21 of the Constitution.⁵

Analysis of Systemic Impact:

Vulnerabilities and Protection Gaps:

Vulnerable groups are disproportionately impacted by the substantial protection gaps created by the current structure. Women, children, and LGBTQ+ people are among the vulnerable groups that experience systemic discrimination and have less access to social services and the legal system.

Because of their precarious legal status and the quickly deteriorating protection environment, they have limited access to mainstream services and support.

Challenges of Social and Economic Integration:

Lack of official legal status makes it difficult to integrate and become independent. Refugees arriving in India may "have no access to basic facilities like healthcare, education, and employment" if they lack the necessary documentation.

⁵ Article 21 of the Constitution.

The Way Forward: Comprehensive Policy Recommendations

Legislative Reform and Institution Building:

The creation of comprehensive exile legislation is the utmost introductory prerequisite. For any meaningful interaction with refugees that goes beyond antiquated band-aid fixes, India must pass legislation. The Indian Refugee Act's legislation is urgently needed and needs to be completed as soon as possible.

An expert committee could revise model asylum and refugee laws that were created by the National Human Rights Commission (NHRC) decades ago but have not been put into effect by the government.

Creating Standardized Protection Guidelines:

India must think about creating a uniform refugee law in order to comply with both Indian constitutional law and international customary law, as well as to prevent the security risks associated with the presence of undocumented migrants. A standard refugee policy would offer legitimate routes to asylum and stop unfair administrative actions with judicial oversight, collaboration with civil and international organizations, and consideration for the international status quo.

Enhancing the capacity of the institutions:

India must create strong institutional safeguards for refugees. Adopting intersectional approaches, creating transparent asylum procedures, improving institutional coordination, and implementing digital systems to track claim evaluations are some of the solutions put forth in the literature.

Framework for Regional Cooperation:

India should take the lead in establishing regional cooperation mechanisms because of the regional character of South Asian refugee flows. Collaboration between host nations, civil society organizations in the countries of origin, and international organizations can result in innovative solutions that go beyond the international triadic framework if there is judicial oversight, collaboration with civil and international organizations, and attention to the global status quo.

Taking Climate Displacement Seriously:

The Model International Mobility Convention, climate humanitarian visas, and human rights

laws that safeguard displaced people are some of the potential remedies highlighted in the paper. This seeks to identify viable solutions for individuals seeking safety from displacement brought on by climate change by concentrating on the difficulties and complexities involved in addressing climate-induced displacement.

Strengthening Legal Protection Systems:

Human rights-based inclusive frameworks with special protections for underrepresented groups must be given top priority in policy reform. This entails removing arbitrary detention, guaranteeing access to legal counsel, and putting in place transparent appeals processes.

Alignment of Constitutional and International Law:

It's essential to have a comprehensive frame that adheres to both transnational customary law and Indian indigenous law. In addition to protecting vulnerable populations, this alignment would improve India's standing in the international community.

Timeline and Implementation Strategy:

Measures that are short-term (1-2 years):

1. **Immediate Legal Reforms:** Provide all asylum seekers with temporary protection status while comprehensive legislation is being drafted.
2. **Institutional Strengthening:** Within the current administrative frameworks, establish specialized units for determining refugees.
3. **Documentation Systems:** Put in place centralized documentation systems that offer fundamental service access and identification.

Mid-term Objectives (three to five years):

Comprehensive Legislation: Adopt the Indian Refugee Act, which includes clauses for determining status, defending rights, and finding long-term solutions.

Institutional Development: Create autonomous, well-funded, and capable refugee protection organizations.

Regional Cooperation: Create bilateral and multilateral agreements with nearby nations to share responsibilities and work together.

Long-term (5–10 years) vision:

International Engagement: Take into account implementing international frameworks for refugee protection gradually.

Integration Initiatives: Create all-encompassing integration initiatives that foster independence and communal harmony.

Prevention and Solutions: To address the underlying causes of displacement, make investments in development assistance and conflict prevention.

Conclusion:

India is at a turning point in its approach to international refugee law. India lacks the political will to develop a sustainable exile policy, concluding rather to act on eopolitical precedences and religious impulses, as the current BJP government appears to benefit from an unclear legal frame. Nonetheless, India needs to think about creating a unified refugee law in order to comply with both Indian constitutional law and international customary law, as well as to prevent the security risks associated with the presence of undocumented migrants.

India must balance its humanitarian customs with current international legal norms in order to move forward. India's refugee policy ought to prioritize.

Building equitable and responsive refugee protection systems that adhere to international legal norms requires these insights. India can become a leader in refugee protection while upholding its security interests and promoting regional stability by embracing comprehensive reform. Millions of displaced people in India are looking for safety and dignity, but despite the enormous obstacles, there is hope for positive change. It is impossible to overestimate how urgent this change is. India is leading the way in creating creative, inclusive approaches to refugee protection as regional displacement patterns change and new types of forced migration appear.