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# **The Role played by the International Laws and National Laws on Refugees in Dealing with the current Rohingya Refugee Crisis in India**

Authored By- Shivangi Yadav

## **Abstract**

In this article, the author tries to look the Refugee Crisis that has been happening in the State of India with special reference given to the current situation of the Rohingya Muslims Refugees who have fled Myanmar after facing communal violence and atrocities in the country and where their future lie in seeking asylum in the country. The article is with the intent of analyzing the country's Refugee Laws and the country's obligation towards international standards set by various treaties and conventions to which it is a signatory, legal theories relating to the present refugee laws and the role of the Indian Judiciary in determining the status of refugees in India. It also gives an in-depth study about the implication of domestic laws the Refugee seekers coming from Myanmar especially since the laws have become stricter for those seeking refuge from bordering nations. It gives the detail about the country's stance on providing them with asylum, the 'possible national security threat' and the linkage of the refugees with radical extremist terror organizations. The article lastly studies India's National Security Policies and how they determine the Rohingya Community's future in India and what does it mean for India with respect to having and improving inter-border relations with the neighboring country whose interest in the Rohingyas is very much there.

## Introduction

With the current events occurring in the world, one of the most important crises the world is witnessing is that of the Refugee crisis. With nations at war many people are left displaced with nowhere to call their own. According to the UNHRC, the term Refugee is defined someone who has been forced to flee his or her country because of persecution, war or violence. “A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries”<sup>1</sup>.

Rohingya Muslims are one of the ethnic minorities existing in the state of Myanmar, described as “one of the most discriminated people in the world” by UN Secretary General, Antonio Guterres. The Rohingya Muslims who are descendants of Arab traders who came and settled in Myanmar in the 12<sup>th</sup> century<sup>2</sup>. However, even though they have been living in the country from centuries their citizenship has not been recognized by the State since the Citizenship Act was passed in the year 1982, where they were not included in the 135 ethnicities recognized by the State<sup>3</sup>. Since then they have been left Stateless. Reports of violence against them were first reported in 2012 but persecution against the Rohingya reached its epitome in the year 2017 when they started fleeing to neighboring countries of India, Bangladesh, Thailand, Indonesia and Malaysia. It started when it was alleged by the Government that armed militant Rohingyas were responsible for the killing of 9 border police personnel. Since then the troops started to influx the Rakhine state and committed many extra-judicial killing, and committed crimes against women.

## Data

As per the census conducted in 2016 by Thawngmung, there are approximately 1.3 million Rohingyas in Myanmar. And since the commission of the various acts of atrocities towards them around 40, 000 Rohingyas have fled their country and are trying to get refuge in India as per the data released by the Ministry of Home Affairs of India. The UNHRC has also confirmed in its

<sup>1</sup>Convention Relating to the Status of Refugees, Art. 1, July 28, 1951,189 U.N.T.S. 150,<https://www.refworld.org/docid/3be01b964.html>

<sup>2</sup>Myanmar Rohingyas: What you need to know about the crisis, BBC NEWS (Jan. 23, 2020), <https://www.bbc.com/news/world-asia-41566561>

<sup>3</sup>Al Jazeera Staff, Who are the Rohingya?, AL JAZEERA (Apr. 18, 2018), <https://www.aljazeera.com/features/2018/4/18/who-are-the-rohingya>

report about the presence of about 18,000 Rohingyas in India as per the census conducted in 2019<sup>4</sup>.

## **The Link Between Human Rights Laws And Refugee Laws:**

The Refugee Rights takes its very essence from the Human Rights Law. As Human Rights apply to all of the human beings regardless of any discrimination, it is right to say that it is applied to refugees as well. Thus the human rights theory helps in ensuring quality asylum for refugee seekers and ensuring that those seeking refuge are not turned away by the host countries that aren't signatory to the Refugee Convention of 1951 but are signatory of United Nations Human Rights Council (UNHRC)<sup>5</sup>.

## **Impact Of Indian Law And International Law On The Conditions Of Rohingyas In India:**

India has had a long history of receiving refugees and being a host to them on humanitarian grounds despite not actually being legally bound to do so. Since the time of partition, India has been a host to many refugees from the neighboring countries of Pakistan, Bangladesh, Sri-Lanka, Burma, Tibet, Afghanistan and many more. However, this traditional trend has taken a different path since the past few decades, with the government putting a firm step against speculations of threat to national security and terrorism, economic development and many other factors caused by the influx of refugees and illegal migrants. In this section, one can see India's position of the subject of refugees and the many laws applicable here both International and Domestic and how it decided the future of Rohingya Muslims in seeking refuge in the country.

<sup>4</sup>Report by Stichting the London Story, *Rohingyas in India: Status of Rohingya Muslims in India in the Absence of Refugee Law*, 3, <https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Civil%20Society%20or%20Individuals/RitumbraM1.pdf>

<sup>5</sup>Gizachew Admassu, *Refugee Law Teaching Material*, pp-21-22, <https://chilot.files.wordpress.com/2011/06/refugee-law.pdf>

## **1. India's Obligation To International Laws And Principle Of Non-Refoulement:**

The Principle of Non-Refoulement means that “No Contracting State shall expel or return (“refouler“) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”<sup>6</sup>. The same is also provided by the UNHRC. However, India has always had a strong opinion that it is not obliged to entertain refugees and follow the principle of non-refoulement as it isn't a signatory to the Refugee Convention of 1951. However, India is a signatory to many other international conventions that require it to work on humanitarian principles. Being a member of Universal Declaration of Human Rights (UDHR), India is required to provide freedom and liberty and protection by law to all irrespective of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. These standards are to be followed by everyone, regardless of the fact that whether or not they are a member of the Refugee Convention, 1951 or not<sup>7</sup>.

India is also a signatory to the International Convention on Civil and Political Rights (ICCPR) 1976, which provides for enjoyment of civil and political and social, cultural and economic rights without any fear<sup>8</sup>.

Being a member of the Convention on the Rights of the Child (CRC), 1989 India has the obligation to provide all children with basic necessities required to live a quality life regardless of their religion, race, and gender, place of birth or nationality. The Convention under Article 22 specifically provides that a child seeking refugee status or who is considered a refugee in the State is entitled to receive appropriate protection and humanitarian assistance in order to enjoy their rights specified under the Convention and in other international human rights or humanitarian instruments to which the said States are Parties to<sup>9</sup>. By this, even India is required to work on these principles.

India ratified to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 on 9<sup>th</sup> July 1993. By being a signatory to this Convention, India is required to take all measures to ensure that the rights of women are protected, and their human rights are not

<sup>6</sup>Convention Relating to the Status of Refugees, Art. 33, July 28, 1951, 189 U.N.T.S. 150,<https://www.refworld.org/docid/3be01b964.html>

<sup>7</sup>Universal Declaration of Human Rights, Art. 2 & Art.3, Dec. 10, 1948, U.N. Doc. A/810, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>8</sup>International Covenant on Civil and Political Rights, Art. 2, Dec. 16, 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>9</sup>Convention on the Rights of the Child, Art. 22, March 30, 1990, 1577 U.N.T.S. 3, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

threatened. They are also required to ensure that women get economic, social and cultural security without any discrimination<sup>10</sup>.

Apart from the above mentioned Conventions, India is also party to several other Conventions like International Covenant on Economic, Social and Cultural Rights (ICESCR), 1979, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1968, Nations Declaration on Territorial Asylum on 14 December 1967 all of which work on the principle of Human Rights and that of Non-Refoulement which either directly or indirectly puts an obligation on India to provide protection and asylum to refugees.

## **2. Indian Laws On The Matter Of Refugees:**

The three most important laws that deals with 'Refugees' per say in India are: the Passport (Entry into India) Act, 1920, Foreigners Act, 1946 and the Citizenship Act. These acts provide instructions on how to deal with people entering the Indian premises without proper documentations. The provisions of the acts do not differentiate between a 'foreigner', an 'illegal migrant' and a 'refugee'. All of them are clubbed together under one category regardless of their purpose of coming to India<sup>11</sup>. Paragraph 3(1) of the Foreigners Order, 1948 lays down the power to grant or refuse permission to a foreigner to enter India. This in simpler terms means that all foreigners require a passport to enter India and the Indian authorities have outright authority to deny any foreigner a right to enter the Indian premises. This rule was made to deal with infiltrators and illegal migrants. However, even refugees are put into the same category and painted with the same brush. The rule states that unless exempted by law, all foreigners must hold a passport. And in case of violation of entry rules the refugees can be deported just like any other foreigner<sup>12</sup>. The Foreigners Act, 1946 places some more restrictions on refugees like defining whom to meet and the routes only through which they can enter the country<sup>13</sup>. And because of this grey area of who can be exempted or given refugee status, the Rohingyas are denied asylum and ordered to be deported. The

<sup>10</sup>Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

<sup>11</sup>Snehal Dhonte, *Right to Life Encompasses Non-refoulement: Indian High Court Advances Refugee Policy*, JURIST: LEGAL NEWS AND COMMENTARY, (June 30, 2021, 12:30 AM), <https://www.jurist.org/commentary/2021/06/indian-high-court-advances-refugee-policy/>

<sup>12</sup>Omar Chaudhary, *Turning Back: An Assessment of Non-Refoulement under Indian Law*, 39 Economic and Political Weekly 3257, 3262-3263 (2004), <https://www.jstor.org/stable/4415288>

<sup>13</sup>Nirmat kaur, *Protection of Refugees In India: A Critical Analysis*, SSRN, 8-9, Feb. 9, 2013, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2214274](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214274)

2017 guidelines issued by the Government of India on illegal migrants also works counter to the efforts of providing refuge to the Rohingyas as it allows the police to arrest any foreigner residing in India without proper documentation categorically. This means that refugees coming from the Rakhine State also come under the same category. The Citizenship (Amendment) Act, 2019 is another law which deals with the matter of refugees in India. However, the act itself is a bit of a concern for Rohingyas, who are a Muslim ethnic minority. According to the CAA, 2019, “a person belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community y from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 will be provided with the Indian Citizenship”<sup>14</sup>. this done to provide refuge and asylum to the minorities who were persecuted belonging to the neighbouring countries. However, this act is not applicable to Rohingyas or for that matter any Muslim, seeking asylum because of the persecution faced by them in the same neighbouring countries such as the Ahamdiyya sect of Islam in Pakistan. Such a law goes against the spirit of Article 14 and Article 21 of the Constitution of India and discriminates those seeking citizenship and refuge on the basis of religion.

Another important law is the Protection of Human Rights Act, 1993. By the virtue of the Protection of Human Rights Act, 1993, a National Human Rights Commission, State Human Rights Commissions and Human Rights Courts can be established for the purpose of protecting human rights within the State. The act also provides that the judiciary can take up *suo-moto* cases in case of violation of any Human Rights in the State as given under Article 12<sup>15</sup>. This is an important piece of legislation in establishing the rights of refugees and ensuring that the judiciary takes up action in case of any violation against them due to lack of legislature upon this matter. India has been generous enough to accept several refugees over the years however it is not the case when it comes to refugees coming from Afghans, Iranians, Iraqis, Somalis, Sudanese and Rohingyas from Myanmar who are denied refuge in India since a lack of legislature means it is up to the government’s discretion to decide who gets a refugee status and who doesn’t<sup>16</sup>. Due to this differential treatment of those seeking asylum, the role of the UNHRC, NHRC and SHRC becomes even more important as it helps in establishing a standard for all those seeking refuge without any biases.

The Constitution of India provides several provisions which uphold the spirit of Human Rights in

<sup>14</sup>Citizenship (Amendment) Act, No. 47 of 2019

<sup>15</sup>Swananda Banerjee, *Legal Status of the Refugees in India*, SSRN, 26-27, Aug. 14, 2012, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2129225](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129225)

<sup>16</sup>Brian Gorlick and Sumbul Rimi Khan, *Refugee Protection as Human Rights Protection: International Principles and Practice in India*, 16 Canada’s Journal on Refugees 39, 41-42 (Dec. 1997), <https://refugee.journals.yorku.ca/index.php/refugee/article/view/21951>

India and influences the situation or condition of Refugees in India. Article 14 of the Constitution of India states that all persons are equal before the law and that everyone shall be provided with equal protection by law without any differentiation<sup>17</sup>. It does not differentiate between citizens and non-citizens. Therefore even refugees are to be considered equal in the eyes of law. Therefore the provisions of the Passport (Entry into India) Act, 1920 and Foreigners Act, 1946 of giving outright power to the State to deal with the Refugees in the way they deem fit is actually against the spirit of Article 14 which provides for equality. Another important Article to establish Refugee Rights in India is Article 21 of the Constitution of India. Article 21 provides that no person shall be deprived of his life or personal liberty except according to a procedure established by law<sup>18</sup>. This is an important provision as it establishes that even refugees have a Right to life and Liberty and they cannot be denied that without due process. In the case of *Maneka Gandhi v. Union of India*<sup>19</sup>, the Supreme Court had held that the State doesn't have unlimited power in imposing laws and that laws which are contrary to Article 21 are void. It held that the procedure laid down by the law should be just, fair and reasonable. Therefore, when it comes to deportation of refugees, it should be kept in mind that whether the procedure established by law is just or not<sup>20</sup>. This is an important judgement as it ensures that the Rohingya Refugees are not deported because of the mere suspicion of threat to national security, whereas, treating other refugees differently. Article 51 of the Constitution of India provides for the obligations that the nation should make in order to meet the standard of International laws and Conventions and Treaties to which it is a party<sup>21</sup>.

### **3. Role Of Judiciary In Interpreting Laws Relating To The Subject Of Refugees:**

Whenever there is a lack of statute on a particular subject matter, the judiciary plays an important role in laying down guidelines about the same. This is the reason why the Indian Judiciary plays an important role in ensuring that the rights of the refugees are protected and based on those principles only the future of those Rohingyas seeking refuge in India can be determined. In the case of *Visakha v. State of Rajasthan*<sup>22</sup>, the court held that there must be a harmony between the International Law and Domestic Laws. This is an important judgement since currently the Indian

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<sup>17</sup>INDIA CONST. art. 14

<sup>18</sup>INDIA CONST. art. 21

<sup>19</sup>AIR 1978 SC 597

<sup>20</sup>Saurabh Bhattacharjee, *India Needs a Refugee Law*, 43 Economic and Political Weekly 71, 73-74 (2008), <https://www.jstor.org/stable/40277209>

<sup>21</sup>INDIA CONST. art. 51( c )

<sup>22</sup> 1997(6) SCC 241

laws aren't consistent with the International standards. And this judgement rightly highlights the importance of the link between the two. In the case of *Ktaer Abbas Habib Al Qutaifi v. Union of India*<sup>23</sup>, the Gujarat High Court held that the principle of Non-Refoulement can be widely interpreted under Article 21 of the Constitution of India. This judgement helps in establishing the right of refugees including that of the Rakhine to seek asylum. In both *Louis De Raedt v. Union of India*<sup>24</sup> and *State of Arunachal Pradesh v. Khudiram Chakma*<sup>25</sup>, the court held that the rights guaranteed under Article 21 of the Constitution of India are applicable to non-citizens of India also, which would also include refugees. An important judgement that directly impacted the deportation of refugees was the case of *National Human Rights Commission v. State of Arunachal Pradesh*<sup>26</sup>. In this case the Supreme Court held that the Chakma Refugees shouldn't be forcibly deported. It held that even they have the Right to Life and Personal Liberty guaranteed under Article 21, and there deportation or treatment should be in accordance with the law. In another case of *Zothansangpuri v. State of Manipur*<sup>27</sup>, the Guwahati High Court held that the refugees have the right to not be deported in case there is a threat to their life in case they return back to their home country. Other cases where the Supreme Court held that those refugees seeking refugee status from the UNHRC should not be deported till a decision is made are *D. Pancholi v. State of Punjab*<sup>28</sup> and *Dr. Malvika Karelkar v. Union of India*<sup>29</sup>.

*The various judgements and interpretation of domestic laws establishes that Indian laws lays down a scope for developing a central law on Refugees and their rights can be directly derived from the Constitution of India. The judiciary in its capacity has tried to ensure that Refugees aren't treated with discrimination and has ensured that their treatment is in accordance with the due process.*

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<sup>23</sup> 1999 Cri LJ 919

<sup>24</sup> 1991(3) SCC 554

<sup>25</sup> (1994) Supp (1) SCC 61

<sup>26</sup> 1996 [1] SCC 742

<sup>27</sup> Civil Rule No 981 of 1989

<sup>28</sup> Writ Petition (Crl.) No.243 of 1988

<sup>29</sup> Writ Petition (Crl.) No.583 of 1992

## **The Government's Stance On Providing Refuge To Rohingya Muslims And On Probable National Security Threat:**

The subject matter of national security cannot be concretely defined. Currently the concept of national security includes factors such as politics, economics, social and culture factors, ecology, internal and external forces and not only the traditional understanding of national security which included the military. Ever since the Government of India addressed the presence of the Rohingya Muslims in India, they have held their stance very strong about not granting asylum or refugee status to them citing security concerns and presence of several militant organizations who might take advantage of the situation in recruiting them and expanding their base in the sub-continent. There has always been concern about the presence of Muslim Extremist Networks in the State of Myanmar. There has been history of presence of Mujahidin insurgency in the Rakhine region and the support given to jihadist movements there. There have been threats made by the Islamic State (IS) of taking revenge against the Myanmar authorities for the atrocities inflicted upon the Rohingya Muslims. There is also evidence of people from Myanmar fighting with the Taliban in Afghanistan in 1999-200, and similar threats being made by other terrorist organisations like AL-Qaeda and Tehreek-e-Taliban<sup>30</sup>. Myanmar has also blamed domestic insurgent group Rohingya Solidarity Organisation (RSO), for carrying out attacks on the Myanmar Border Guard Police. However, there was no substantial evidence to support this claim or to actually establish that this organization is big enough to actually pose a threat. It is also established that many fundamentalist groups are seeking advantage to strong their base in Myanmar, however there is very little evidence that there is a plan for insurgency underway by the Rohingyas alone per say<sup>31</sup>.

For the very first time when the Rohingya Refugees were linked with national security concerns in India was in 2013, when the National Investigation Agency had when a serial bomb blast took place at the Mahabodhi temple in Gaya, Bihar which was linked to the terror organisation Lashkar-e-Taiba (LeT) and that the operations were carried out by the Rohingyas present in India. It was then in the subsequent years that various 'speculations' were made about the link between ISI of Pakistan and Rohingya Refugees to promote their motives in India which led to the government refusing asylum to those refugees coming from Myanmar and being in talks with Bangladesh to

<sup>30</sup>Myanmar: *Regional and International Concerns*, International Crisis Group, 24- 26 (2014), <https://www.jstor.org/stable/resrep31972.9>

<sup>31</sup>Paul Vrieze, *Experts Reject Claims of 'Rohingya Mujahideen' Insurgency*, THE IRRAWADDY, July 15, 2013, <https://www.irrawaddy.com/news/burma/experts-reject-claims-of-rohingya-mujahideen-insurgency.html>

deport 40,000 Rohingyas to be deported<sup>32</sup>.

While India's policy of welcoming new social groups in India has only helped it become a diverse democracy and come into the global attention, it has also lead to the grabbing of attention of regional security threats from the neighbouring countries of Nepal, Bangladesh, Burma, Sri Lanka, Pakistan and Afghanistan because of being landlocked from almost the entire upper half of the nation and having permeable borders. This has increased domestic and regional security challenges since the late 90s – early 2000s. with 6 of India's neighbouring countries being included in top 25 dysfunctional states in the world, the regional security issues does take a toll and makes it easy for the government to make more such legislatures which gives authorities unconditional authority to deal with 'threats' which are very ambiguously described. With most of the refugees arriving from Myanmar are of Muslim ethnicity, it has only deepened the religious conflict in India. With the current political scenario of the country proving to have connection with radical Hindu organisations while being in power from 1998 - 2004 who have resentment against the Muslim and Christian population of the country has only made their ideology of a Hindutva Rahtriya more prominent in the past few years<sup>33</sup>. This has made it even more difficult for the Rohingyas to seek asylum in India. The narrative of security concerns is in line with the generalization of Rohingyas being a part of terrorist organizations and hence being unwanted in a country which in past has welcomed many refugees<sup>34</sup>.

In India's response to the ongoing Rohingya Crisis, the authorities stated that they have to strike a balance between India's own Security Concerns and Humanitarian and Moral obligations. They have stated that the Indian intelligence has been keeping a tab on the increasing presence of "like – minded" Radical Islamic Groups in the Rakhine State, and more specifically having influence on the Rohingya population including some refugees seeking asylum in Jammu, Hyderabad, Mewat and Delhi in India. Even though 'Security Concerns' remains one of the primary reasons for being apprehensive of Rohingyas living in India and refusing to providing them with asylum, another very important reason is the strategical importance of the relations between the Myanmar Military and that of the Indian Military. The relation is important in counter – terrorism activities against the

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<sup>32</sup>Nongmaithem Mohandas Singh and Indrajit Sharma, *Refugee Management and National Security of India*, Koninklijke Brill NV, Leiden (2020), [brill.com](http://brill.com)

<sup>33</sup>Rohan Mukherjee, and David M. Malone, *Indian foreign policy and contemporary security challenges*, 87 *Indian foreign policy and contemporary security challenges* 87, 94-96 (2011), <https://www.jstor.org/stable/20869612>

<sup>34</sup>*Supra* note 4, at 2

insurgent groups in the Northeast part of the country who is the past found safe haven at the other side of the border. In such a case India's open criticism against the condition of Rohingyas will

only strain the inter – border relationship and conditions in the Northeast with China also having influence on Myanmar by supporting the sanctions against Rohingya's involvement in terrorism<sup>35</sup>.

In the 2017 advisory issued by the Government of India on the illegal migrants, had addressed the political turmoil in the State of Myanmar because of which the Rohingyas have come to India to seek refuge. However the advisory stated that their presence infringes the rights of the Indian citizens and are threat to the nation and pose as an economic burden. Due to this, the government had ordered the arrest, detention and deportation of all the Rohingyas who has entered India without proper procedure and take 'prompt steps' with the respect to the same<sup>36</sup>. Such notices and advisory from the State itself, generalizes all those seeking refuge without proper and thorough background check of those seeking refuge of whether or not they have a criminal history or not.



<sup>35</sup>Baladas Ghosh, *India's Responses to the Complex Rohingya Crisis in Myanmar*, East-West Center, Nov. 9, 2017, <http://www.jstor.com/stable/resrep17388>

<sup>36</sup>*Advisory on Illegal Migrants*, Ministry of Home Affairs, Government of India, No.24013/29/Misc./2017-CSR.III (i), Aug. 8, 2017, [https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant\\_10092017\\_2.PDF](https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant_10092017_2.PDF)

## Conclusion

Even though in the past the Indian Judiciary has taking up cases regarding refugees and their rights and the courts have given judgments in their favor, however it is not the case this time. The Government in its affidavit to the Supreme Court in 2017 in the case of *Mohammad Salimullah v. Union of India* had clearly stated that Rohingyas are a 'cause of concern' and it won't be providing them with refuge. While rejecting the writ petition, the then Chief Justice of India (CJI) SA Bobde had mentioned that the deportation of Rohingyas to their country will probably pose a threat to their life, however India cannot be in control of it and neither are they in a position to condemn it<sup>37</sup>. With judgements like this, it only makes it more difficult for the refugee seekers to ascertain their rights and because of a constant threat to their life and human rights is maintained. Even though, it is admitted that they are at the verge of being killed if they return back to Myanmar and there is a possibility of ethnic cleansing, the Center has refused to take any positive steps towards them. Another cause of concern is the enactment of the Citizenship (Amendment) Act, 2019, which does not include Rohingyas in the list of persecuted minorities seeking citizenship, an ethnic group described by the U.N as "the most persecuted minority in the world." With the Home Minister of India, Shri Amit Shah, making statements like "Rohingyas will never be accepted as citizens of India" in the Parliament, many Rohingyas living in New Delhi with the refugee card issued by the UNHRC fear of being deported back to Myanmar<sup>38</sup>. Such laws and government advisories sparkles the debate of not letting Muslim minorities seek refuge in India because of communal differences and because of the generalization of Muslim refugee community of being part of terror outlets and organization, hence giving birth to Islamophobia among the common population.

Even though it is true that the Indian Judiciary in the past has given judgements and guidelines on the treatment of refugees based on the interpretation and application of the International laws and conventions and the Human Rights theory and the Constitution of India, all of it is based on case to case basis and there is no concrete law to uphold their judgements as of now. The current need of the hour for the Indian legislature is to make a concrete, unambiguous and central law pertaining to the matter of "Refugees" in India which needs to be non -discriminatory in nature and is based on

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<sup>37</sup> Dr. Subhadipta Sarkar, *Deporting Rohingyas to the slaughter house: Dilution of the "Non-Refoulement" Principle*, THE TIMES OF INDIA, (Apl. 18, 2021,01:04 PM)<https://timesofindia.indiatimes.com/blogs/sarkari-thoughts/deporting-rohingyas-to-the-slaughter-house-dilution-of-the-non-refoulement-principle/>

<sup>38</sup> *Rohingyas wary of future after CAA, don't want to Myanmar*, THE HINDU, (Dec. 22, 2019, 02:49 PM)<https://www.thehindu.com/news/national/rohingya-wary-of-future-after-caa-dont-want-to-return-to-myanmar/article30372210.ece>

the International Conventions which India is a part of, principles laid down by the Constitution of India, the landmark judgements given by the Indian Judiciary regarding the same and under the guidance of the National Human Rights Commission.

Even though, security concerns could be a reason to not entertain the Rohingyas as refugees, India has had a long history of accepting refugees in the past who could have posed a security threat for India. Be it in 1959, when the Tibetan refugees first came to India to seek asylum, even though India was well aware of the repercussions it will face from China and that this decision will strain the inter – country relations. They were granted legal asylum and are eligible for applying for Indian passport and Citizenship<sup>39</sup>. Or be it the ones who arrived from other neighboring countries. Hence to associate the entire population of Rohingya refugees as members of a terror organization is unfair and doesn't go with the previous precedents established. More than security concerns it involves diplomatic relationship with Myanmar which the Government of India does not want to strain. With the current evacuation of the religious minorities and others from Afghanistan ever since the Taliban took over Afghanistan and established their rule in the State on 15 August 2020 on 'Humanitarian Grounds' and with the Government of India abiding by various International laws to accept them as refugees, it makes one question the blatant discrimination and partial selection policy followed by the State in granting asylum. It makes one question that on one hand, the government advisory states that Rohingya refugees will be an economic burden on India and that India doesn't have the resources to cater to them as refugees but on the other hand it is willing to accept other refugees.

With no proper law in place to deal with such sensitive matter and the State having full control to determine whom to give the Refugee Status and whom not to and the growing generalization of the population, the state of the Rohingyas remain to be one of the worst in the human history with no access to Human Rights and no asylum on humanitarian grounds.

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<sup>39</sup>60 years after fleeing Tibet, refugees in India get passports, not property, INDIA TODAY, June 22, 2017, <https://www.indiatoday.in/india/story/tibet-tibetan-refugees-india-passports-984080-2017-06-22>