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COMPARATIVE STUDY OF CRIMINAL JUSTICE SYSTEM FOR THE REFUGEES IN INDIA AND TURKEY

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Abstract: -

Turkey hosts world's largest number of refugees with almost 3.7 million people. The major reasons behind turkey's such a huge number of refugees the political and armed conflicts in the neighboring countries. Most of the population consists of Syrians where almost 320,000 are asylum-seekers under international protection. According to UN Refugee Agency, Turkey is making considerable efforts to provide relief and basic needs such as providing Healthcare and education through its Temporary Protection Regulation. In other hand, India has refugee crisis since the partition of India in 1947 alike Turkey. The reasons behind consistent growth of refugees per year is same with the reason of Turkey. Both the countries are facing the refugee crisis in the matter of justice of the crimes upon them. The impact of crimes done by immigrants is a heated debate. Turkey's crime rate by refugees is obscure and not many ground reports or statistical reports are available. The research would be focusing on the comparative analysis of the Rights provided by the government of Turkey and The Government of India to the refugees and the It would also revolve around the type of criminal activities and the nature of the crimes done by the refugees and what are the judicial provisions for the same. The Research paper will discuss what are the procedural laws for aliens for seeking justice in both the countries As The research will conclude by criticizing and identifying the demerits of the refugee laws in both country and try to put a value towards society.

Keywords- Refugees, Refugee Justice System, Refugee Crisis, Criminal Justice, Constitutional protection, 1951 Convention, Human Rights, Principle of Non-refoulment

Introduction

The world in the recent past years has undergone major political catastrophic events and has seen an increasing number of refugees population all over the world. What needs to be noted is that not just political disturbances and war trigger the refugee counts but also climatic change and economy play a vital role. The major factors behind migration remain armed conflicts, political tensions, ethnic intolerance, climate change, economic depression and religious intolerance and for all this reason, the World is facing humanitarian crisis even in the twenty-first century, era of globalization. Even now there is a Refugee influx in world. The Goal of the UN's 1951 Refugee Convention has not been achieved yet as after the World War, there may be no war held further but there is massive refugee burden all over the world for some separate country.

Scope of the Comparative study of Refugee Justice System in Turkey and in India: -

The trend shows us that the refugee burden is usually more towards tolerant and resourceful countries. The world is evident that India and Turkey have received enormous number of refugees in the recent times and even in past repetitively. India has long history regarding acceptance of refugees. The refugee influx started since Independence and the partition in 1947. Whereas Turkey's refugee's influx started since the declination of Ottoman empire, in around the 18th century. Turkey has been the world's largest refugees holding host country since the past eight years and at present holds around 4 million people (about twice the population of New Mexico) from different countries. Turkey's refugee response is based on the Law on Foreigners and International Protection (LFIP) and the Temporary Protection Regulation. Under these laws the refugees from Syria and stateless persons have been granted with temporary protection since 2011. Refugees apart from Syria must apply for international protection applicants and must go through individual status determination. India was not part of UN's 1951 Refugee Convention but bounded by the principle of non-refoulment of recent International Law whereas Turkey is a part of the 1951 Refugee Convention and most of the laws there are in accordance with its guidelines.

Turkey is situated along a path for mixed migrant flows that also includes those who require international protection like India. Some of those who were intercepted and detained may require international protection in Turkey and in India both including unaccompanied minors, victims of human trafficking, and other vulnerable individuals. Although the borders are strictly controlled. large ongoing international conflicts and crisis like Taliban aggression in Afghanistan, Syria,

Russia-Ukraine War, in the Arunachal Pradesh and China border conflict, and even Rohingya Muslim crisis could lead to new population flows. The socio-political conflicts raise the vulnerability in the situation in Afghanistan, Pakistan, Tibet, Bangladesh, SriLankan and India.

People in Turkey are becoming more tolerant of refugees rather than being hospitable toward them. They are expressing their exhaustion at having migrants live in their neighborhood more frequently. There is a rising belief that the presence of immigrants is taxing the country's meagre services and resources, raising competition for jobs, and encouraging antisocial behavior. Facing the similar problems, India has formulated Citizenship Amendment Act, 2019 and NRC as a refugee policy. These policies are criticized in international forums till date as they are inclined towards the religious majority in India as India is Hindu Majority Country with secular in nature for its constitution. Refugee crisis in Turkey is similar with the Refugee Crisis in India by the nature. As like Turkey, India is an attractive and a safe shelter for the asylum seekers so internal security and the job market security for the natives is in question.

Comparative Analysis of Refugee Crisis in Turkey and India: - Refugee Crisis in Turkey

Population types	Countries of origin	Countries of Asylum
Countries of origin		
Türkiye 2023		
Country/territory of origin	Population	
Syrian Arab Republic	3,529,000	
Various	344,000	
Total	3,873,000	
<small>NB: 2023 figures are planning figures.</small>		
<small>Source: UNHCR Refugee Data Finder for years until 2022, UNHCR planning figures (COMPASS) otherwise.</small>		

Turkey has been paying a key role in being a host country for refugees. Since the 18th century with the dismal of ottoman empire turkey has been providing relief to the refugees. In 1980's crisis in middle east gave rise to the population of refugees in Turkey (majority from Syria). In 2010 turkey saw the highest number of refugee migration from Syria and ever since the count has been constantly increasing. According to UNHRC's 2018 report

Turkey held around 63.4% of total refugees from Syria. Turkey's stand with western allies have also been quite a debate. The 2015 EU-Turkey deal is a clear sign of the conflict. The agreement was a part of the EU's response to a substantial increase of persons travelling to Europe's coastlines in quest of safety and protection in 2015. Nearly 1 million refugees (about the population of Delaware) (about the population of Delaware) entered the European Union during that year, but

more than 3,500 tragically perished on the perilous trek. More than 75% of those entering Europe were fleeing war and oppression in places like Syria, Afghanistan, and Iraq. The influx of new arrivals dominated news stories, prompted contentious public discourse, and started to divide opinions. Even while there was a significant outpouring of sympathy and solidarity from various nations and communities, several populist political parties and movements around Europe also used strong anti-immigrant themes and images to advance their own agendas. To stop migrants from entering their borders illegally, EU member states started to close their borders on March 18, 2016. The EU started to exert more pressure on Turkey to reduce departures from its own coastline as the number of new arrivals in frontline EU states like Greece rose. The EU-Turkey declaration was released on March 18th, 2016, and it went into effect two days later. It was meant to be a "temporary solution" to halt unauthorized immigration to Europe. Impact of Russia- Ukraine was seen worldwide and Turkey's refugee population also increased considerably. As of October 2022, around 145,000 Ukrainian refugees have sought protection in Turkey.¹

Refugee Crisis in India

India has start witnessing of coming enormous number of refugees from its neighboring countries since 1947, time of Independence of India and the partition of India held in that very year. By the year 2010, India has hosted nearly 4.5 lacs refugees from the international territories. India was neither a part of 1951's UN's Refugee Convention nor of 1967 Refugee protocol to repute refugees. But Refugee laws and refugee rights are matter of human rights and humanitarian laws. The main sources of refugees in India are from Bangladesh, Pakistan, Tibet, Myanmar and Afghanistan. In the war with Pakistan in 1948, The partition refugees were served with refugee camps as the home of temporary shelter but after Independence, the partition refugees get citizenship of India automatically without any discrimination. The newly formed government of Independent India had faced problem regarding rehabilitation of partition refugees from East and West Pakistan. The next massive refugee influx started in the year 1959. Political persecution of Dalai Lama by China Government led the Tibetan community of 1,00,000 to flee from Tibet and seeking political asylum in India led by the great spiritual and political leader of Tibetan Community, Dalai Lama. The seat of Dalai Lama was settled at Dharamsala and the refugees from Tibet and Himachal Pradesh were settled across northern and north-eastern India states. The Tibetan refugees were basically followers of Buddhism, so they love to love with peace and harmony with other social and cultural

¹ Ukrainian refugees: Challenges in a welcoming Europe

Population types	Countries of origin	Countries of Asylum
Countries of origin India 2023		
Country/territory of origin	Population	
Afghanistan	19,338	
China	72,003	
Sri Lanka	87,831	
Myanmar	107,256	
Various	3,620	
Total	290,048	
<small>NB: 2023 figures are planning figures.</small>		
<small>Source: UNHCR Refugee Data Finder for years until 2022, UNHCR planning figures (COMPASS) otherwise.</small>		

communities of India. Another scenario of refugee influx was from Bangladesh during 1971's Bangladesh war of Independence. In 1971 War of Independence in Bangladesh forced approximately 10 million Bangladeshi Refugee to leave Bangladesh and settled in the north-eastern states, as Assam, Tripura and Manipur.

Another remarkable refugee influx was during the Sri Lankan Civil War where more than 1.34 lakhs of Sri Lankan Tamil Refugee took shelter in India in between the period of 1983-1987. Tamil refugees from Sri Lanka were settled in the southern part of India. In the contemporary time of Sri Lankan Civil war, Soviet invasion in Afghanistan was occurred in Afghanistan, for that reason only number of Afghan Refugees took shelter in India, and they kept coming in India for settlement even in subsequent years. Most of them have settled in Delhi. There is another heated debate existing yet about Rohingya Muslims since 2018. There are approximately 40,000 Rohingya Muslims who sought asylum from India², but India is cold shouldered to Rohingya Muslims as India is concerned about its internal security as India is suspecting the link between terrorist organizations and Rohingya Muslims. So, for that reason India has requested Myanmar Government to take back all the Rohingya back to their country as India would not accept the Rohingya Muslims and would not give them shelter in India.

Comparative Analysis of Legal Frameworks for Refugee protection in Turkey and India: -

Refugee laws in Turkey

Turkey is a party to the 1951 Refugee Convention and the 1967 Protocol. The country has been making considerable efforts by passing legislative and institutional reforms to build an effective national asylum system in compliance with international standards. In April 2013, the country took its very first initiative to address the issue, Law on Foreign and International Protection, endorsed from 11th April 2014, established the Directorate General of Migration Management (DGMM).

² From, Puneet Pathak, International Humanitarian and Refugee Law | 10. Refugee Protection in India https://www-ebcreader-com-christuniversityncr.knimbus.com/share/990975572_26_5312-5449

The DGMM is one of the main entities of policy making and proceedings for foreigners and refugees in Turkey. The **Temporary Protection Regulation** was passed on 22nd October 2014 to provide temporary protection for refugees as mentioned above it provided protection to the Syrian refugees of the Syrian civil war. Considerable efforts have been made by the government of Turkey to provide relief under different provisions.

As of 31st December 2022, around 3.6 million Syrian have fled to Turkey to seek asylum.³ Turkey being a party to the 1951 convention it has a geographical limitation only to the people originating from Europe. Despite this limitation, it provides temporary sanctuary and protection to non-European refugees, to which it is not obliged to⁴. Prior to the implementation of the **Law on Foreigners and International Protection³ (LFIP)** in 2014, Regulation No 1994/6169 on the Procedures and Principles linked to Possible Population Movements and Aliens Arriving in Turkey mostly governed asylum-related proceedings in Turkey.⁵ The 1994 Regulation had plenty of shortcomings and failed to provide adequate relief, it instead added to the hardships of the asylum seekers. There were no allusions to the fundamental human rights of asylum seekers and refugees in this regulation, which imposed a highly severe deadline for filing applications for international protection.⁶ In addition, the 1994 Regulation made no reference to the non-refoulement principle and offered no protections against the extended detention of refugees and asylum seekers. In a series of instances involving the deportation, custody, and treatment of asylum seekers and refugees, the European Court of Human Rights (ECtHR) has determined that Turkey has violated articles 3, 5, and 13 of the European Convention on Human Rights (ECHR).⁷ Subsequently, Turkey adopted its first law on asylum seekers and refugees that is the Law on Foreign and International Protection (LFIP). The Parliament passed Law No. 6458 on Foreigners and International Protection (LFIP) in 2013 (Official Gazette 11 April 2013-28615) that went into effect on April 11, 2014. This law was passed in response to the surge in the number of asylum applicants from Syria beginning in 2011. The asylum laws in Turkey today are based on this statute.

The LFIP introduces "international protection" for aliens and stateless persons who are not eligible for refugee or conditional refugee status but have a justifiable fear of returning to their country of origin or country of [former] habitual residence to comply with EU legislation in addition to

³ UNHCR, 'Syria Regional Refugee Response', Last Updated 31 December 2022, < <https://data2.unhcr.org/en/situations/syria/location/113>>

⁴ UNHCR Global Appeal 2008-2009 [304] <https://www.unhcr.org/474ac8e60.pdf>

⁵ Turkey, Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey <https://www.refworld.org/docid/49746cc62.html>

⁶ B Frelick, 'Barriers to Protection: Turkey's Asylum Regulations' (1997) 9 (1) International Journal of Refugee Law 8-34, 12; C Soykan, 'The new draft law on foreigners and international protection in Turkey' (2012) 2(2) Oxford Monitor of Forced Migration 38-47

⁷ Jabari v Turkey App No 40035/98 (ECtHR, 11 November 2000); Abdolkhani and Karimnia v Turkey App No 30471/08 (ECtHR, 22 September 2009); ZNS v Turkey App No 21896/08 (ECtHR, 19 January 2010).

refugee and conditional refugee status (Art 63). The LFIP's non-refoulement principle gives foreigners a measure of protection when it comes to issues with admission into Turkey under article 8.

In April 2013, the Law on Foreigners and International Protection (LFIP) was adopted, which prepared the path for increased access to justice for those seeking asylum, those given temporary protection, and safeguarding in Turkey. This included having access to legal representation during appeals for refugees and others seeking international protection, as well as having recourse to judicial review by the Administrative Court and the Criminal Court of Peace. Other pieces of legislation that offer the right to legal assistance to Turkish citizens seeking international protection supplement this provision.

Criminal Justice System:-

As a result of the almost seven-year-old civil conflict in Syria, immigrants from that country fight to enter other nations illegally to either save their own lives or seek a better social and economic existence. These initiatives not only subject immigrants to catastrophes that can never be repaired in terms of their lives and dignity, but also leave the countries dealing with immigrant issues that are unmanageable.

This issue naturally affects the countries who share a border with Syria, particularly Turkey, but it has grown to be a significant issue in even transnational nations like Europe.

The assessment of the Turkish Legal System on Migrant Smuggling Crimes is a crucial matter because of the drastic changes in national laws pertaining to migrant smuggling, including international agreements, such as readmission agreements, and updates to immigration policy. Turkish Law No. 4771 and Turkish Penal Code No. 765, with the extra regulation issued in Article 201/a dating back to 03.08.2002 via "Protocol," introduced the crime of smuggling migrants for the first time.

Based on the "United Nations Convention Against Transnational Organized Crime" convention, the "Action Against Smuggling of Immigrants by Land, Sea, and Air" initiative. Before this arrangement, the **Turkish Penal Code No. 765's** article 313 was used to determine guilt of creating an organization to commit crimes in the case that the activities relating to migrant smuggling were carried out as part of criminal activity. If there was no organizational structure involved in the smuggling of immigrants, **Article 36 of the Passport Law** was followed to create the procedure

for dealing with the offender (Canceled: 4.4.2013-6458 / 124)13 14.

With slight modifications to the regulation under article 201/a of the Turkish Penal Code No. 765, the present crime of migrant smuggling is covered in the section on "international crimes" in Article 79 of the Turkish Penal Code numbered 5237.

Constitutional Protection for Refugees in Turkey: -

The concept of non-refoulement and the right to asylum are not explicitly recognized by the 1982 Constitution. However, we may discover a constitutional justification for the non-refoulement concept as well as other rights of asylum seekers.

- Everyone has the right to life, as well as the freedom to safeguard and develop both their physical and spiritual selves, according to Article 17.1.
- However, no one shall be made to endure torture, cruel treatment, or punishment that is incompatible with treating people with dignity (Art. 17.3).
- Additionally, Article 5 places a duty on the state to remove all barriers to the exercise of individual rights and to create the conditions necessary for the development of the person's material and spiritual existence.
- According to Article 10 of the Constitution, everyone is entitled to equal protection under the law without being subjected to any kind of discrimination based on their language, race, color, sex, sexual orientation, political beliefs, philosophical views, religion, or any other factor.
- However, the Constitution makes no distinction between citizens and non-citizens when it comes to certain rights and freedoms, such as life, liberty, and security. As a result, under Article 10 of the 1982 Constitution, alienage in and of itself is not a justification for preferential treatment.
- However, the Constitution also specifies certain specific restrictions for foreigners. Some essential freedoms and rights, primarily political rights, that are specifically reserved for citizens are not recognized by the Constitution as belonging to foreigners. Additionally, aliens are granted various rights with some restrictions, such as the ability to petition (Art 74).
- However, Article 16 of the Constitution offers a special guarantee for foreigners. Therefore, laws may limit the fundamental liberties and rights of foreigners in a way that is compliant with international law. Because "international law" is mentioned in Article 16,
- it is important to quickly clarify where it stands in Turkish domestic law. The Constitution's Article 90.5 states that foreign agreements that have been properly implemented have legal validity.

If there are conflicting provisions between an international agreement and a domestic legislation on the same subject, this paragraph also provides that properly implemented international accords regarding fundamental rights and freedoms have precedence over domestic law. The international human rights systems include Turkey. It ratified important international human rights treaties such as the European Convention on Human Rights (ECHR), the 1951 Convention, and its 1967 Protocol with territorial restriction. Considering this, along with Article 16, we may assert that Article 90.5 of the Constitution offers a major constitutional guarantee for anyone seeking asylum or shelter.

Comparison of refugee rights in Turkey with 1951's UN's Refugee Convention: -

The concept of non-refoulement is unqualifiedly recognized in Article 4 of the LFIP. In contrast to the 1951 Convention, Article 4's non-refoulement clause includes both refugees and non-refugees who need international protection as well as other foreigners who entered Turkey lawfully or unlawfully. But Article 4 does not have an exception provision, in contrast to the 1951 Convention. Consequently, the LFIP fulfils the requirements set forth by the ECTHR for procedural guarantees.

The protection system in Turkey has been significantly influenced by the Refugee Convention. According to the Refugee Convention and the privileges that come with that status, those who fit the criteria of a refugee and are from Europe may be granted refugee status in Turkey. Contrarily, under Turkish law, persons who meet this description but are not natives of Europe may be granted "conditional refugee" status. Although the conditional refugee status is only transitory in principle, it is not in actuality. In other words, the creation of an exceptional protected status in Turkey with very few rights attached is the result of the Refugee Convention and the geographical restriction authorized by it⁸.

Without lifting the geographical restriction to the 1951 Convention, Turkey has established an asylum system that is legally capable of providing international protection to all those in need in accordance with the international standards set out in the 1951 Convention and reflected in the EU acquis.

⁸ Turkey: party or non-party state? <https://www.fmreview.org/issue67/skribeland>

Refuge Laws in India

The Refugee Laws and the definition of Refugee was come into existence only after the 1951's Un's Refugee convention to negate humanitarian crisis further after conclusion of World War II. Despite of having refugee crisis in South Asian countries, no country from that region was signatory to the 1951's Convention. Even India didn't take part in that convention as a signatory as India thought that the Un's refugee convention was basically Eurocentric. According to the Refugee convention 1951 and 1967's refugee protocol defines who is refugee and what are the duties of the hosting countries who are signatories to the 1951's convention. But as India was non-signatory to this convention there is no legal boundaries for taking refugees or not. So, there is no domestic legal system in India which describes the refugee laws and refugee rights. Despite not being a signatory to the convention, India has provided relief to massive number of refugees from its neighboring countries like Bangladesh, Pakistan, Tibet, Sri-Lanka and Afghanistan. It is quite impossible to ratify the terms and conditions of 1951's refugee convention for its geo-political location and its diversity in population. India had hosted refugee crisis before the refugee convention itself.

But India is bound by non-refoulment policy of international law which secure the human rights and interest of refugee. According to the non-refoulment customary principle, No Country shall deport, export or forcefully return the refugee back to his original territory against his will or if there is a reasonable threat to his life, liberty and freedom. The definition is not absolute as the countries have the authorization to scrutinize the matter of national security and national interest. India has long practice of the principle of non-refoulment as customary international law. Despite of not ratifying the principles of 1951's convention, India ratifies the legal framework of many international conventions like UN Declaration Territorial Asylum (1967), Universal Declaration of Human Rights (1948) and many more. The treaties impose the legal obligations in India for refugee protection.

Constitutional Protection for Refugees in India: -

There is no statute particularly which deals with refugee law and refugee protections but some of the statutes in India deals with the protection of refugee and its interest. India has regarded refugees as foreigner under the municipal laws and govern them under Foreigners Act, 1939, Passport (Entry to India) Act, 1920, Passport Act, 1967 and the Extradition Act, 1962. Refugees are entitled to have the fundamental rights under Constitution of India, 1950.

- Article 14 guarantees equality before law and equal protection of law to all citizens and eradicates all the discrimination between refugee and a citizen of Country.
- Article 21 defines that everyone in this country has right to life and right to life with dignity, so The Supreme Court had reinterpreted the wide scope of Article 21 and 14 in the matter of Refugee Protection.
- These reinterpretations of Article 21 and 14 opens a vacuum for implementing other fundamental rights protected by Constitution of India for refugee and immigrants also along with citizens of India. Article 20 of Constitution deals with Ex post facto Law which is a right against self-incrimination and right against double jeopardy.
- Any refugee or immigrant can claim his right against arrest and detention under Article 22 and it also secures the rights under Article 32 and 226 where right to seek justice to higher and apex Court of the land against any unjust arrest or detention by state. By Article 32, Supreme Court has authority to enforce the fundamental rights and special rights to the refugee.
- Any refugee from any other international territory can profess his/her practice religion and they got freedom of conscience under Article 25-28.

Comparison of refugee rights in India with 1951's UN's Refugee Convention: - As India was not party to the 1951's Refugee Convention, India don't ratify any laws or policy of the convention. India don't have any domestic legal framework specifically for refugee protection either, but as abovementioned constitutional rights are available to the refugees which are like the policies of the UN's Refugee Convention 1951 and Refugee Protocol of 1967. The Comparisons are like this convention. India don't have any domestic legal framework specifically for refugee protection either, but as abovementioned constitutional rights are available to the refugees which are like the policies of the UN's Refugee Convention 1951 and Refugee Protocol of 1967.

The Comparisons are like this --

- Article 7 as India provides refugees the same treatment as all aliens.
- Article 3 as India applies a policy of non-discrimination.
- Article 3A as no penalty is imposed on illegal entry.
- Article 4 where religious freedom is guaranteed.
- Article 16 as free access to the courts is provided.
- Article 21 allows freedom of housing and refugees need not stay in camps.
- Article 27 and 28 provides identity and travel cards to refugees.

- Article 33 provides the principle of non-refoulement⁹.

As demerits, Passport Acts makes no difference between a refugee and a foreigner so there is a loophole which opens the wide scope or risk to arrest refugees as illegal immigrant and deport them back as they don't have the valid passport. It can be used as a mechanism to abuse a particular community arbitrarily. The recent Citizenship Amendment Act 2019 deals with ad hoc administrative decisions regarding protection of refugees in absence of domestic legal framework for refugees. According to the CAA, it offers citizenships to Hindus, Parsis, Jain, Buddhist, Sikhs and Christians from Bangladesh, Pakistan, and Afghanistan. This clearly show the thick discrimination to the Muslims as India is not providing citizenships only to the Muslims who are coming from any country before 2019.

Comparative Study of Crimes against Refugees in Turkey and India: Crimes against Refugees in Turkey

After the civil Arab Spring upheavals, Syrians began to flee, and Turkey welcomed its first Syrian migrants in April 2011. The Turkish Disaster and Emergency Management Authority (TDEMA) was initially charged by the government with providing humanitarian assistance and emergency response, including establishing camps for the refugees. As the number of refugees mounted, many began fleeing the camps and settling in cities. The Turkish Directorate General for Migration Management (TDGMM), which was formed by the Turkish government in October 2014, is now in charge of registering refugees and coordinating all policies pertaining to them. The Syrian refugees' rights to access public health care, public education, and social security were specified under the Temporary Protection Regime that the Turkish government approved at the same time. Syrians have free access to public health and education services, according to this.

The data put forward by the Turkish Statistical Institute (TURKSTAT) states that majority of the crime done by Syrians are uneducated and poor. TURKSTAT provides a brief data on crimes categorically- assault, homicide, murder, theft, production and supply of drugs etc.

Let alone not just the Syrian refugees but also the citizens and public servants have been reported of doing crimes against the refugees.¹⁰ Reports from reputed international media houses have given

⁹ Abhipsha Gochhayat, Protection of Refugees in India, Pg: -7, 9 Nov 2011
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1957146

¹⁰ How killing of Syrian refugee marks an alarming trend in Turkey <https://www.aljazeera.com/news/2022/1/12/turkey-news-log-jan-12>

a ground reality check on how the Turkish authorities have been treating the asylum-seekers. A documentary on the Syrian refugees and their forceful detention by Al Jazeera clearly showcase how the refugees are thrown into miserable situations.¹¹ Individual NGOs in assistance with International Fund Raisers provide education and job opportunities to the Syrian refugees in Turkey.

Crimes against Refugees in India

Most of the refugees from the source countries belong to marginalized class who are living in poverty, so education and a life of minimum quality is a daydream for them. They can be easily manipulated and dominated by the elite or higher class of the society. There are many cases reported and many cases remained unreported in India which are of commencing unjust crimes against refugees. That will show the cruelty of the state towards refugee.

According to a news report of an online portal named India Spend, Noor Banoo, a Rohingya Refugee, 40-year-old lady witnessed the detention of her family including her husband Mohammad Sultan, 43, sons Nazrul (20), Rizwan (19) and Amir (12) for illegally entering the Indian Territory from Bangladesh as they didn't have valid passport in April 2017. They were arrested from Thakur Nagar railway station nearby Kolkata for travelling in train to Delhi. As Noor Banoo missed the train so she was not arrested along with her family.

Noor Banoo had tried her best for seeking justice and let their family free from the police. The lawyers demanded 1 lakh rupees for the case which was impossible for her. She run pillar to every post for collecting the lawyer's fee for the court case¹². The Crimes were mostly against the predominantly Rohingya Muslims, who are mostly religiously persecuted minority in the world. The Only Cause for constant growth to the refugee crisis for Rohingya Muslims is ethnic cleansing by the Myanmar Government. Most of the Rohingya Muslims has fled away from Myanmar only for ethnic cleansing and took shelter in Bangladesh's Cox Bazar. "On March 21, 2022, the [US Department of State](#) determined that members of the Burmese military committed genocide and crimes against humanity against Rohingya", It is reported in India Spend.¹³

¹¹ Syrian refugees in Turkey fear deportation
https://www.youtube.com/watch?v=gR_T-XMM9M4

¹² Shreehari paliath Children Separated From Mothers: Rohingyas in India Fear Detention, Deportation, 19 April 2022
(<https://www.indiaspend.com/welfare/children-separated-from-mothers-rohingyas-in-india-fear-detention-deportation-813642>)

¹³ Shreehari paliath Children Separated From Mothers: Rohingyas in India Fear Detention, Deportation, 19 April 2022
(<https://www.indiaspend.com/welfare/children-separated-from-mothers-rohingyas-in-india-fear-detention-deportation-813642>)

Despite of being a secular country, the cruelty by Indian Government towards specifically Muslim refugees from irrespective of source countries shows the islamophobia of Indian Governance. The repetitive detention of such illegal immigrants is human rights violation. The detention is being made to all refugees from Rohingya Muslims Communities irrespective of age including minor child. The Juvenile Justice Act, 2015 is contradictory with India's deportation policies of illegal immigrants who are recognized as refugees as the policies make conflict with present legal framework of the Constitution and other potential safeguards or the rights under statutes like Juvenile Justice Act, 2015.

Women from the Sri-Lankan Tamil Refugee community had witnessed the sexual and gender-based violence and additional hardships after coming India. Women were sexually and physically abused in the refugee camps. Alcoholism by men spoils the family with mental depression. The quality of life was not tolerant. The History of sexual and gender-based violence was existed in not only in Tamil Refugee Community but also, there are other communities like partitions immigrants in 1947 from Bangladesh and Pakistan.

Comparative Analysis of Judicial Justice System in Turkey **and India:-**

Judicial Justice System for refugees in Turkey

The LFIP has made it easier for the refugees and asylum-seekers access justice in Turkey. There are provisions of legal aid and access to judicial review by the Administrative Court and Criminal Court of Peace. In addition, the right to legal aid for persons seeking international protection in Turkey acts as a checkpoint and an umbrella protection for the refugees. The asylum seekers, refugees and persons having temporary protection in Turkey have their Constitutional Rights and Human Rights as guaranteed in the Constitution Court of Turkey and European Convention of Human Rights respectively. The refugees have all the right to challenge the fundamental rights in the court of law and seek justice.

Access to justice for refugees, capacity development of judges and lawyers (training in international refugee law, sharing of Its origin's information with courts and the Union of Turkish Bar Associations (UTBA), and creation of a case law database on refugee law), networking with

and sensitizing the judiciary, supporting the judiciary, and supporting the judiciary are all included in UNHCR Turkey's strategy, which is in line with the UNHCR Judicial Engagement priorities. In the future, the UNHCR will improve coordination and collaboration with the UNDP on issues pertaining to access to justice.

The individual who is the subject of a deportation order is given important procedural protections under Article 53 of the Constitution of Turkey. As a result, pending the outcome of the appeal processes and without limiting the alien's permission, the immigrant may not be removed during the judicial appeal term. We may argue that this clause offers more protection than the Constitution does around asylum. In fact, a court may order a stay of execution only in cases where the adoption of an administrative act would entail damages that would be difficult or impossible to compensate for and the act itself would be obviously unconstitutional, as stated in the Constitution (Article 125.5)¹⁴.

Principle of Non-refoulement and validation to refugee status: -

In this era of mass migration, where most of the countries are dealing with the issue of asylum seekers and providing them with basic human rights, it has become necessary to amend the laws of the land and bring provisions in the Constitution for this regard. The Right to seek asylum is an important right and acts as an umbrella right which covers all the basic rights such as right to life, right to liberty and security in an absolute manner. The principle of non-refoulement prohibits forced removal of refugees from a country.

Several international human rights treaties written after World War II acknowledge the right to seek refuge and the idea of non-refoulement, including the 1951 Convention Relating to the Status of Refugees (Article 33) and its 1967 Protocol (Art 1.1). The ECHR neither specifically mentions non-refoulement nor enshrines a right to asylum, a right to remain in the contracting state, or a right to subsidiary protection. However, the ECtHR has repeatedly held that the ban of torture and cruel or degrading treatment or punishment is implicit in Article 3 of the ECHR ever since the case of *Soering v. the United Kingdom*.

¹⁴ a. *Keshmiri v. Turkey*, Appl.36370/08, [fin] 13.07.2012;
b. *Abdolkhani ve Karimnia v. Turkey* App. 30471/08, 22 September 2009
c. *M.B. and Others v. Turkey*, Appl.36009/08, 15 June 2010
d. *Dbouba v. Turkey*, Appl. 15916/09, [fin] 13 October 2010
e. *Ghorbanov and Others v. Turkey*, Appl. 28127/09, [fin] 3 March 2014

Judicial Justice System for refugees in India

As India has not any domestic legal framework for refugee administration so Indian Judiciary has relied on the rights contained under the international treaties which describes the refugee rights, and which is authorized by our Constitution of India in Article 253. But The Supreme Court has not authoritatively determined whether the refugee rights according to the UNHRC are judicially enforceable under the rights given by Constitution.

Principle of Non-refoulment and validation to refugee status: -

In the case of Ktaer Abbas, the Gujrat High Court observed that the principle of non-refoulment is guaranteed by the Article 21, so no authority has right to deport him back to his own country until he feels safe at his own country¹⁵. There are many such examples where Indian Judiciary takes the humanitarian ground for adjudicating the case regarding Refugee like Malavika Karlekar v. Union of India, 1992, The Supreme Court directed a stay order on the deportation of Burmese Refugees in Andaman and Nicobar Island¹⁶. The prima facie of the case is whether the determination of refugee status of those people is determined. In the case of NHRC v. State of Arunachal Pradesh, (1996),¹⁷ The Supreme Court held that for protection of refugee that where the refugees had been in this country for long time, they can't be deported back to their own country until their cases are determined under Government Policy.

Right not to be deported back and right not to be repatriated forcefully: -

There is another remarkable case Bogyi v. Union of India, 1989, where Guwahati High Court granted the rights of seeking asylum and the rights not to be deported back to their country to Burmese Refugees, which status is determined by UNHRC.¹⁸ In the interest of the refugees like right not to be forcibly repatriated was held by the Supreme Court in the Case of P. Nedumaran v. Union of India, WP Nos. 12298 and 12343 of 1992 and Gurunathan v. Union of India, WP Nos. 6708 and 7916 of 1992. In This case Supreme Court gave a precedent for further cases where any refugee can be repatriated that Repatriation was not taken as valid until UNHRC found the repatriation is voluntarily done by the refugee. Justice Bhagwati guided the law drafting committee of NHRC for making a model law for refugees in India in 2000.

¹⁵ Ktaer Abbas Habib Al Qutaifi and ... vs Union Oo India (Uoi) And Ors. on 12 October 1998

¹⁶ Malavika Karlekar v. Union of India, 1992 SCC Online SC 249

¹⁷ National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742

¹⁸ Bogyi v. Union of India, 1989 SCC Online Gau 229

Right to life with dignity with basic amenities: -

As we all know refugees faced many socio-political-economical obstacles in the host countries. Refugees who have been living here since their coming period, they still faced challenges and discrimination in society economically. We know there are Sri-Lankan refugees in the southern part of India where they had faced many difficulties for continuing their bread and butter.

In the case of *Digvijay Mote v. Government of India*¹⁹, An NGO filed a public interest litigation as they had difficulties to run a school for Sri-Lankan refugee students in Karnataka. The Petition was taken into cognizance and Government was directed to assist the refugee students in the matter of economical help in study. After that Ministry of Women and Social Welfare of Government of Karnataka provide financial assistance to run the school.

Conclusion: -

Both the countries India and Turkey are geo-politically attractive for being a host country for refugee influx. The Comparative analysis of the domestic and Judicial justice system for sake of asylum seekers from many from their neighboring countries for various reason shows us the administrative grey area of both nations matter of refugee rights. But Turkey has ratified the policies of 1951's UN's Refugee convention and 1967's Refugee protocol. UNHRC has reported that Turkey has provided enormous number of privileges to the asylum seekers from Syria. We can conclude that both countries have different ideological governance which is key factor for the policy making regarding domestic refugee laws and both the countries have entertained large number of refugees according to their national interest.

¹⁹ VIII-Addl. Chief Metropolitan Magistrate v. Digvijaya Mote, 2014 SCC Online Kar 4907