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Is a Developing Country like India's Citizenship Legislation Really: A Befitting Epitome to Decipher Immigrant's Fate Righteously

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ABSTRACT

India, a country that has an age old principle of practicing 'Atithi devo bhavah' , literally translates to 'Guest must be treated like Almighty himself' suggesting the underlying forces of the host–guest bond which exemplifies the customary Indian Hindu-Buddhist beliefs of worship of the guests just as God. India has hence applied the same principle of humanitarian safeguard to refugees and asylum seekers despite not being a signatory to international legal documents such as the Convention Relating to Status of Refugees, 1951 nor has a domestic, legal instrument to deal with the refugees. India has followed a very liberal refugee policy by implying provisions of existing acts in the state such as the Foreigners Act, 1946, Passport Act, 1920, Citizenship (Amendment) Act, 2019 along its own arbitrary arrangements. Nonetheless, the absenteeism of a refugee explicit regulation has attributed to the country's fickle standing in South Asian political affairs and the menace of terrorism encountered by it. India notwithstanding its legal apprehensions, chiefly in the past couple of decades, and the stress of over-population and demographic imbalance has attended to hamper economic balance in the state, as India carries on taking a humanitarian view of the problem of refugees dealing with them without constructing a mandate that is both in favor of the refugees and the state. The essence and subject matters of the United Nations and International Conventions on the topic have, by and large, are inculcated by both the executive and judicial involvement. India has progressed to maintain a practical equilibrium amid human and humanitarian commitments but has failed to evolve the security and national interest so far.

I. INTRODUCTION

With proper arithmetical calculations and analysis of dynamic societies, humankind has constructed laws, regulations, and proper administrative arrangements on both national and international levels. The migration of people is not a new concept. However, now the status, treatment, and rights of such migrants are governed by various international as well as national

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or regional instruments of law all over the globe. The concept of 'refugees' is as ancient as the formation of 'countries'. Refugees are such people who are compelled to escape and flee from their country due to mistreatment, war, vehemence, or violence. A refugee has well-founded dread of abuse because of his/her race, religion, sex, ethnic character, participation in a certain social group or political sentiment or attributable to external aggression, occupation, foreign superiority, grave infringement of human rights, or occasions truly disrupting public order in either part or whole of their Country[2].

After the World War-II, there was a dramatic increase in migration and movement of population. The office of United Nations High Commissioner for Refugees[3] (herein, UNHCR) was set up in 1950 after the failure of International Refugees Organisation (IRO) in the late 1940s to protect the refugees and their rights worldwide.

Asia serves as the largest haven to refugees. According to UNHCR, the Asia-Pacific region hosts 7.7 million refugees which include 3.5 million refugees mainly from Afghanistan and Myanmar[4]. However, quite a few numbers of countries in South Asia[5] including India are non-signatories to both the Convention relating to Status of Refugees, 1951 (herein, CSR) as well as Protocol relating to Status of Refugees, 1967[6](herein, PSR). 1951 Refugee Convention and its 1967 Protocol binds every state whether signatory or not to adhere to the principle of *non-refoulment*[7] *or exemption from force expulsion* but being non-signatory parties both the refugees and the hosting nation lose on the rights and principles of security provided within the convention.

India hosts the largest number of refugees in South Asia. However, India neither has a domestic law nor is a party to any regional South Asian framework. Hence, the lack of statute related to status of Refugees and their rights has led to a rather vague implication as to how the refugees in India may be governed. However, India is not disabled in a way that it has not been able to cope up with the influx of refugees on regular basis or in the case of the refugee population that

[2] Convention relating to the Status of Refugees, 1951 Article 1.
[3] Established by the United Nations General Assembly (UNGA) Resolution 319 (IV) December, 1949.
[4] Professor Susan Kneebone's RLI blog 'Why is Asia Known as the Region that Rejects the Refugee Convention?' published by School of Advanced Studies University of London < https://rli.blogs.sas.ac.uk/2019/04/15/why-is-asia-known-as-the-region-that-rejects-the-refugee-convention >
[5] Specifically Southeast Asian countries.
[6] On the recommendation of the Executive Committee of UNHCR, the High Commissioner submitted the draft to the UNGA, in the addendum to his report concerning measures to extend the personal scope of the Convention relating to the Status of Refugees <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5 >
[7]United Nations Human Rights, 'The principle of non-refoulment under international human rights law' <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf > Accessed on 27 June 2020.

has already taken the safe shelter in the country. India is a party to various international instruments that assist the Government of India on the treatment of refugees such as the Universal Declaration of Human Rights (UDHR), Genocide Convention 1948, The International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD), International Covenant on Civil and Political Rights, 1966 (ICCPR), International Covenant on Economic, Social and Cultural Rights,1966 (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), Committee against Torture, 1984 (CAT) and Convention on the Rights of the Child, 1989 (CRC).

To have a proper governance protocol, a state needs domestic instruments that are lawfully enforceable besides the International instruments because domestic instruments are more region-specific and are specially curated for the very citizens and situations of such state. Since India does not have a proper domestic statute for refugees and neither is a party to CSR, 1951, the status of refugees in the country is often questioned.

In India, with the passing of the Citizenship (Amendment) Act, 2019 (herein, CAA), the status of refugees, illegal immigrants, and asylum seekers has become more dubious. The CAA, 2019 was passed to provide Indian Citizenship to illegal immigrants belonging to specific religious minorities such as Hindus, Sikhs, Jains, Parsis, Christians, and Buddhists who escaped and took refuge in India from Pakistan, Bangladesh, and Afghanistan. The principle of equality as provided in Article 14 of the Indian constitution extends to all persons and provides such persons with equality before law. However, the Article does not mean that the same law should apply to different people under different circumstances[8]. It substantially means that the equals may be treated the same, without any bias. Therefore, the Government of India in 2003, of India proposed changes in the Citizenship Act, 1955 to present a class of "illegal immigrants" into the law, to keep from getting them from acquiring Indian citizenship keeping all unlawful transients at the same footing. With the passing of CAA, 2019, the ruling party which had formed the Government carried strict contrasts into the lawful system, ensuring only six non-Muslim minority refugees only from three neighbouring nations would be kept from being viewed as unlawful immigrants violating the very essence of Article 14 of the Indian Constitution.

Through this paper, the authors have attempted to bring into light the lack of domestic instruments that regulate the status and rights of refugees and how the Citizenship

[8] Subrata Roy Chowdhury 'Equality before the Law in India' The Cambridge Law Journal Vol. 19, No. 2 (Nov., 1961), PP. 223-238

(Amendment) Act, 2019 will change the status of certain groups of refugees. Broadly, this paper has majorly thrown light on three issues. Therefore, the first section of the paper is the protection of refugees under national administrative arrangements and the lack of legal instruments relating to the status of refugees in India and how it will change after the enactment of the Citizenship (Amendment) Act, 2019. The second part of the paper deals with compulsive detention of refugees in Assam and its relevance with the Assam Accord and the CAA, 2019 and the deportation of immigrants in India and its clash with the binding principle of non-refoulment. The fourth part of the paper deals with the solutions and recommendations by the authors to curb non-humanitarian practices against the migrants.

II. REFUGEES: CITIZENS TO BE OR NOT TO BE

'Refugees' is one such population that is most susceptible to cruel and degrading treatment almost everywhere in the world. The basic idea behind this research is to bring it to the readers' notice that all humans deserve basic human rights and the right treatment, and still, for centuries, the ill-treatment of 'refugees' has not received the acknowledgment it deserves. India was a British colony for about 200 years. India won its independence back in 1947. The partition led to the birth of two autonomous states – India and an Islam dominant country, Pakistan. India had a fair share of refugees borne out of the partition moving into the country then. Technically, before the partition, these refugees were citizens of the same nation[9], which is why the country had no reason to believe that these refugees would cause security issues.

The CAA, 2019 has exclusively ensured six non-Muslim minority refugees only from three neighboring nations would not be considered as unlawful immigrants. Considering external sources such as constituent assembly debates, while assessing the status of Indian Muslims right after the partition between India and Pakistan, the Constituent Assembly concluded that Indian Muslims were born Indian and that they shall continue to live as the respectable citizens of the country. In the past 70 years since then, the status of Muslims in India remains in uncanny similitude. In fact, at that time heated and extended debates followed on the two principles established for the basis of status of Indian citizenship – '*lex soli*[10]' and '*lex sanguinis*[11]. *However, the ruling government of the country elucidated that the CAA, 2019 is for only such minorities who do not have any other country to go to and does not by any means has its roots vested in the principle of 'lex sanguinis' but the provision of the Act shows otherwise.*

[9] India before partition i.e., 1947
[10] *Lex soli* means "the law of the place of birth" i.e., everyone born in the country.
[11] Lex sanguinis means "the law according to blood" i.e., on the basis of race, bloodline and religion.

(A) *Articulating Legal Framework in India*

India along with some other South-Asian countries refrained from signing the CSR, 1951 and PSR, 1967 because of the security issues. The CSR, 1951 is considered to be an instrument of the Cold War and that it does not cater to the needs of different regions in today's time.

India lacks domestic legal frame for refugees, as well. India practices arbitral authority and arrangements for deciding the status of refugees and their resettlement, thereupon.

Main concerns of India as a developing country is its pervious borders and financial strains. If the Strategic-level security of the country is closely inspected, India is excessively populous itself and already struggles with finance or its lack, thereof. The influx of refugees, as a statement of obvious, leads to increase in population of a country affecting the economic, social and political aspects. Even if the country tolerates that, the structural-level security of the country is compromised. Refugees flee from their nation in search of finding a safer home and unlike any other human, they expect job opportunities, survival necessities, and basic human rights. In a developing nation, where unemployment rates are still high[12] and resources are crunch, an addition to the existing population is rather a tenacious strain on the country.

The Government of India did not enter into an agreement with UNHCR accepting its assistance to deal with the concerned group either. It is only under the signed agreement of the United Nations Development Programme (herein, UNDP) that the country accepted assistance from UNHCR in the late 1960s. The UNHCR exercises severely retentive mandate in India. UNHCR is permitted to assist the refugees only from Burma, Afghanistan, Somalia, Africa, Middle Eastern countries, and Sri Lanka.

The UNHCR assists the Government of India, NGOs and civil societies to facilitate refugees in accessing health domain, edification and legal aid services. However, the grant to refugees to stay in the country due to fear of persecution at their homelands is determined by the Indian government as per its international relations policies.

While role of UNHCR in Canada is much free, it has led to an easy, fast, and just mechanism for dealing with and resettlement of refugees. Even in Germany, the role of UNHCR was comparatively restrictive to that in Canada until 2014. Germany subsequently permitted UNHCR to extend its services to Syrian refugees and issued urgent visas, the establishment of their status as German citizens, and awarded them all the rights of German citizens.[13]

[12]Centre for Monitoring Indian Economy, *Unemployment Rate in India in July, 2020* , https://unemploymentinindia.cmie.com/

[13] UNHCR, 'UNHCR welcomes Germany's decision to extend the Humanitarian Admission Programme to an

The alleged 'humanitarian relief' introduced by the Government of India in the disguise, the Citizenship (Amendment) Act of 2019 only really accepts certain religious groups of the refugee population in India eligible for Indian citizenship.

(B) Citizenship Act, 2019 Disguised as India's Domestic Instrument for Welfare of Refugees

The Citizenship (Amendment) Act of 2019 set off banter across the country followed several communal riots, protests, and criticisms.

Section 6 of the Citizenship Amendment Act, 2019 provides certain groups of refugees with the status of 'Indian Citizens'. It states that refugees who have resided in India for not less than 11 years out of 14 years and during the last 12 months rigorously, provided they are Hindu, Sikh, Parsi, Jain, Buddhists, or Christian from Afghanistan, Bangladesh, or Pakistan, are now only required to fulfil the aggregate of residence in the country for 'not less than 6 years' provided, such person has been residing for 12 months in the country rigorously by the Government of India. The Indian citizenship that earlier required 12 years of residence was deduced to 7 years making India much vulnerable to the entry of such refugees. CAA outright dropped out Muslim minorities. The Constitution of India, the supreme law of the land, is rooted with the principle of 'equality for all enumerated in its Article 14, justice to all'. However, the CAA violates it leaving out three Muslim minorities who often come to India to seek haven, namely – Rohingya Muslims from Myanmar, Ahmaddiya, and Shia Muslims from Pakistan, and Uighur Muslims from China without any convincing grounds, thereof.

Section 6A of CAA, 2019, further provides special provisions with respect to citizenship status of people who fall under the ambit of Assam Accord. Assam accord deals with the Bangladeshi immigrants who migrated into and settled in Assam between January 1, 1966 and before March 25, 1971 and CAA, 2019 considers the said immigrants eligible for Indian citizenship. However, any such individual who came after March 25, 1971 is promptly ordered expulsion from the state under the Assam Accord but, the CAA, does not provide any provision that dictates the treatment for the same. The disagreement of Assamese with the CAA to preserve their linguistic and cultural heritage in addition to the havoc that would be caused due to strain and pressure of limited availability of employment opportunities and other resources were adamantly ignored by the Government of India violating the United Nations Declaration on Rights of Indigenous Peoples (UNDRIP).

additional 10,000 Syrian refugees' <https://www.unhcr.org/news/press/2014/6/539afe256/unhcr-welcomes-germanys-decision-extend-humanitarian-admission-programme.html >

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The Act also permits the cancellation of Overseas Citizenship of India (OCI, herein), i.e., an individual who possesses the lifetime visa in the state. The Act only provides that the OCI may be cancelled or withdrawn, if the OCI cardholder infringes or violates laws, but the very meaning of it is ambiguous. There is no proper explanation as to what comprises of the 'laws'.

The biggest drawback for refugees is the failure of The CAA to meet with the provisions of International refugee law. The act considers other minorities and non-inclusive groups of refugees as 'immigrants' however the term 'refugee' has a wholly different meaning. Whereas, 'migration' typically means a voluntary and willing movement of people for better life standards concerning finance and job opportunities, 'refugees' are often compelled to flee from their homelands to seek a haven. It also leads to further discrepancies in the treatment of such refugees especially when they are dealt in accordance with the provisions of FA, 1946 and PA, 1967.

The problem with the stated acts is that these acts are outdated and are very vague to enable the Appropriate Authorities to derive the status of refugees. While 'refugees' have a wholly different meaning, it is technically incorrect to push under the umbrella of 'foreigners'. Above that, the definition and purview of 'foreigners' in itself is incomplete.

Foreigners Act, 1946 defines 'foreigner' under its purview as an individual who is not a citizen of India i.e., does not permanently or temporarily resides in the state. While a foreigner could migrate a state for 'n' number of reasons, the reasons that lead to movement of a refugee to another nation is rigid in that respect.

National Human Rights Commission of India has time and again requested required amendments and modifications in the Foreigners Act, 1946(FA, herein)

The issue with FA furthermore is the lack of the establishment criteria of differentiation between legitimate refugees and foreigners. In absence of a 'valid passport', these refugees are often detained and even arrested on the grounds of mere suspicion because that's a power that resides with the appropriate authorities under FA,1946 and PA, 1967.

India though on grounds of moral values both accepts these refugees and issue them proper valid passports and identity cards, provided that the box of 'public interest' criteria is checked or sometimes illegally deported on 'suspicions'.

The Passport (Entry into India) Amendment Rules allowed six non-Muslims minorities' refugees to stay in state if they were seeking a safe haven because of the fear of persecution and came to India before December 31, 2014, with valid documents, or papers which were valid but had lapsed. In lieu to not collide with CAA, 2019, it was also acknowledged that FA,

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1946 shall not be applied to the refugees to prevent them against harassment and illegal deportation. However, due to the problem of lack of distinction between 'foreigners' and 'refugees', the issue remains intact.

III. COMPULSIVE DETENTION AND ILLEGAL DEPORTATION

India may protect certain refugees from getting detained as under the FA, 1946 by enforcing the CAA, 2019 but the CAA, 2109 provides no provisions that deal with those refugees who are kept in detention camps specifically. Detention camps are set up in the Assam state of India. These detention camps are temporary prisons for refugees who come out to be as 'suspicious foreigners' to the appropriate authorities. These camps are designed to hold illegal immigrants, refugees and foreigners required to appear before a Foreign Tribunal but have unfortunately become tantamount to never-ending captivity only because of such individuals are illegal, undocumented transients who are not Indians. The detention camps were first built in Assam in 2008 on the judgement[14] delivered by Guwahati High Court delivered in a landmark case after 50 Bangladeshi refugees who had acquired Indian citizenship fraudulently were caught in Assam. What is off-putting is that most of the countries detain such illegal immigrants, refugees, and foreigners as soon as they cross the border and arrive in the nation however, the case with detention cases in Assam were different. People[15] were stripped off from their houses and villages and were put in the detention camps. Countries like Canada have their own border management system through Canada Border Security Agency (CBSA, herein) that regulates the movement of genuine travellers and trade & enforces about ninety acts of its own to facilitate security in Canada. CBSA supervises three immigration centers where the immigrants are not detained for longer than 48 hours unlike in India, where detainees are held indefinitely. In Canada, only such immigrants are held longer who deem to be danger to the security country in correctional facilities such as provincial jails. Although these facilities are separate for men, women and children implying families are separated but not indefinitely like in India, they are permitted to meet every day for short durations.

Followed by many blood-shedding riots, that led to formation of Assam Movement. This movement was against the illegal immigrants in Assam. The Assam Movement later led the leaders of the movement to form a political party, Asom Gana Parishad (AGP, herein). Subsequently, the Assam Accord was penned down. It was an agreement between the AGP and the Government of India (GoI, herein). The AGP accepted migrants who had come to

[14]Ajijur Rahman, vs. The Union of India, State of Assam, The Superintendent of Police of Morigaon WP(C) No. 3875 of 2013

[15] Mostly Bangladeshi Muslims

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Assam before January 1, 1966 and in turn, GoI ensured to check on the infiltration of illegal immigrants through international borders into Assam. AGP demanded that entrants who came to Assam between 1951 and 1961 will be awarded full citizenship rights, but those entrants who came between 1961 and 1971 will only be given citizenship rights except voting rights and those who migrated to Assam after 1971 would be expelled from the country and deported. However, deporting refugees is against principle of non-refoulment.

(A) Loopholes in Principle of Non-Refoulment and Assam Accord

The principle of non-refoulment may be understood as the principle of prevention from removal or expulsion or deportation of such individuals who are at the risk of being persecuted on return on the grounds of religion, caste, color, gender, political opinion, social community, or sexual orientation. The Principle of Non-Refoulment is not only limited to CSR and PSR, but also extends to various international instruments like Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (herein, CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (herein, ICPPED). Though India had signed both the conventions, it never ratified them. However, CSR holds non-signatory parties bound by the principle of non-refoulment. It is further decided by the United Nations that the principle of refoulment does not only extends to the refugees but also those individuals whose status has not been formally announced. This was further upheld by the Executive Committee of UNHCR. However, the principle is not strictly and officially binding on non-member states, it is germane to the construal and application of the refugee security regime[16].

Assam Accord deals with issues of foreigners explicitly, it says that such foreigners who entered Assam after 25th March, 1971 may be expelled and deported as per the provisions of law[17]. It is often debated that the principle of non-refoulment as suggested by customary international law is violated in its very essence as soon as an individual seeking haven is expelled and is left to a status of statelessness. However, India in its interpretation of the principle extends it to refugees and not foreigners. Most of the migrants who were strip off the rights of eligibility of Citizenship after decades of residence in Assam because these individuals never claimed the status of 'refugees', implying that essentially they are 'foreigners'.

[16] UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulment Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol' <https://www.unhcr.org/4d9486929.pdf .
[17] Assam Accord 15 August 1985 Clause 5

(B) Indefinite Detention in Detention Camps and Procedure of Hearings at Foreign Tribunals (Ft, Herein)

When an individual is not considered a citizen by any nation, such individual is given the status of 'stateless person'. Ambiguities in national instruments and lack of binding forces of international instruments sometimes lead to leaving the people 'stateless'. When the citizenship laws of two countries do not complement each other, it causes a havoc. In a case, an individual gives birth to his/her child on a foreign land, such child may be at the risk of not being given the nationality exclusively on the basis of birth and the country of origin also does not acknowledge nationality being passed on by parents, such child may end up being 'stateless'. A person may also be announced 'stateless' by his/her/their[18] nation if a person has crossed the number of days living outside the country.

Human Rights groups such as Amnesty International and National Human Rights Commission (NHRC, herein) have released numerous reports of indefinite detention of 'undocumented emigrants', hiatuses and delays in proceedings before FTs, and recommendations to GoI and Government of Assam time to time.

Amnesty upon taking reliable resources discovered that most of the inmates deemed to be 'foreigners' were detained without giving them rights of being heard, that even basic primary legal-aid had not been provided to these inmates. In the process, it was discovered that not only the access to human rights organisations and humanitarian organisations was prohibited but inmates were deprived of basic human rights such as education, political and social capital, and economic resources. The Constitution of India secures and protects all citizens and other individuals with right to life and personal liberty. Amnesty in one of its reports emphasized and reminded the GoI that these rights extend to the welfare of foreigners, too. It was also noted that the 'deemed foreign prisoners' were kept in same facility as convicts and undertrials. Amnesty also observed delayed and flawed legal procedures followed in FTs. Although after National Register of Citizens (NRC, herein) published on August 31, 2019, the ruling government set up 200 more FTs, Assam currently has only 100 functioning FTs creating indispensable weight on the FTs. The onus of proof lies with the accused to present that such individual is not a foreigner[19]. FTs are quasi-judicial courts that decide upon hearing whether an individual is a foreigner and must be expelled or is eligible for citizenship in India. However, these courts often arbitrarily decide delivering *ex parte* orders and strip these individuals off their eligibility for citizenship and at times do not even serve notice for the same leaving these

[18] Third Gender
[19] Foreigners Act, 1946 Section 9

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'irregular foreigners' to the status of 'statelessness'[20]. The detention centres separate inmates from their families, men, women and children are kept in separate facilities, often leading to cases of severe depression and emotional destruction. Such measures are not exercised even against criminals and these inmates suffer inhumane atrocities only because of lack of documents required to be eligible for the status of citizenship.

NHRC recommended that the GoI shall frame and adopt proper legal system that conforms to Article 21 of the Constitution of India and International customary laws along with international humanitarian laws, fair procedure followed by FTs in a way that non-contesting inmates may be declared as 'foreigners' and be release without any delay, families must not be separated, proper medical, educational and recreational services must be provided to the inmates, a proper legislation be framed for the time of detaining and that detention should be the last resort.[21]

In Canada, Immigration Division (ID, herein) hears the cases, the first review is taken under next seven days, and further the reviews are taken every thirty days. However, there is no limits set by the Canadian Government advancing the number of days a detainee may be held, Canada has been very careful with just and lawful detainment and resettlement of refugees. Canada has also set a mandate for itself wherein it deports immigrants to such countries with which it has entered into agreement with for the same. While, in India, when expulsion or deporting of refugees is talked about, the mandate as to where such refugees might be deported is non-existent in its very nature[22].

Unlike India, Canada has proper resettlement mandate for refugees postulated in Immigration and Refugee Protection Regulations[23]. Those displaced individuals who come to Canada for resettlement are assisted through - the central Government-Assisted Refugee (GAR, herein) Program which comprises of the Joint Assistance Sponsorship Program (JASP, herein) , domestic society groups through the Private Sponsorship of Refugees (PSR) Program, or Blended Visa Office–Referred (BVO-R) Program, which conglomerates both government and private support.[24]

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[20]Al Jazeera And News Agencies, 'Foreigners' Tribunals creating 'havoc' in India's Assam: Amnesty' <https://www.aljazeera.com/news/2019/11/foreigners-tribunals-creating-havoc-india-assam-amnesty-191127112920399.html>

[21]NHRC, 'Mission to Assam's Detention Centre from 22 to 24 January, 2018'
< https://cjp.org.in/wp-content/uploads/2018/11/NHRC-Report-Assam-Detention-Centres-26-3-2018-1.pdf>

[22] Andrea Morales Caceres, '7 facts about immigration detention in Canada' The Ploughshares Monitor Volume 40 Issue 3 Autumn 2019https://ploughshares.ca/pl_publications/7-facts-about-immigration-detention-in-canada/

[23] Immigration and Refugee Protection Act (S.C. 2001, c. 27)

[24] Sandra Elgersma, 'Resettling Refugees: Canada's Humanitarian Commitments' Publication No. 2015-11-2015-04-01<https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201511E >

IV. SOLUTIONS AND RECOMMENDATIONS

(A) Extention of Role of UNHCR

Since India neither has any explicit mandate for refugees nor is signatory to the CSR, 1951 or PSR, 1967, the involvement of UNHCR to assist refugees independent of GoI has become need of the hour. The restriction of extent of assistance by UNHCR in India and India Government's reluctance to agree to take any direct obligations by not signing and ratifying CSR, 1951 but India stands as a member of the Executive Committee of High Commissioner's Programme (ExCOM, herein) since 1995. India despite being a developing country, provides shelter to millions of refugees but does not take any funds from the World Bank for assistance and resettlement of refugees. India is not as economically strong as other largely accepting refugee havens across the globe. It is quintessential for the country to take help of international organisations to have more favourable options than it has. India, although, is giving shelter to many refugees, it has not been very successful in providing just and fair treatment or assistance to the refugees. Refugees in India face destitution whether it is indefinite detention in camps, expulsion by state in case such refugees do not fall within the ambit of refugees that are eligible for Indian citizenship, mental harassment caused due to separation of families or unjust and ex parte orders of FTs compelling these individuals to finding the middle ground with their basic human rights. The problem of assistance can be efficiently dealt by the UNHCR if the government permits access. The role of UNHCR does not end at mere assistance programmes but also to help out the Indian government and other appropriate authorities in the issues regarding the process of determination of status of refugees. Even so, UNHCR has join forces with several Non-Government Organisations and proposes assistance to the refugees. Even though, India prefers arbitral arrangements with respect to refugee treatment and assistance and does not deem it fit that UNHCR has an unrestricted ground of authority, it really is favourable for India that it extends explicit boundaries of practice of UNHCR. A very few religion-based categories of refugees are recognized under the CAA, 2019 and therefore the accountability of other displaced persons lie on the shoulders of UNHCR. The functioning of UNHCR is not flawless either, many refugees have grievances with the Refugee Status Determination (RSD, herein) process that it is not unambiguous and full of intricacies. Since, there is no official arrangement flanked by the Government of India and the UNHCR, India has granted protection to definite classes of refugees with regard to India's membership of the ExCom. The UNHCR manoeuvres *de facto* and has sound working relations with its concerned governmental authorities interferes as and when it deems fit in order to sustain international principles of refugee protection. Both the Indian Government and the UNHCR in India can retrieve

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refugees' faith in their working when they are able to approach refugees in maximum promising manner and be sensitive towards their requirements.

(B) Building Impenetrable Borders

India's major securities issues are its porous boundaries especially the one that runs along Bangladesh leading to illegal immigrants' influx from Bangladesh in India. The problem with India-Bangladesh border (IB, herein) apart from the border being porous is dense population in the demarcated areas. The entry of criminals through it is very easy, the population on both sides of the borders, Indians and Bangladeshis look alike, speak the same languages[25], and have akin attires and cultural practices. The crimes in these areas are well-organised and planned. To prevent and secure the borders, Indian Government deploys Border Security Force (BSF, herein) but the Government does not deploy BSF in large number because of sluggish route of land acquisition and border residents' resistance that turns violent[26]. The IB agreement is yet not ratified by India for the reasons that it wants to legally reacquire it portion of land and put a strict fencing between India and Bangladesh as it has put between itself and Pakistan. The main motive behind this is not merely to prevent illegal immigration but to also put a halt on criminal activities such as smuggling. The trying conditions at the border get ugly and overall security of the state is hampered.

The existing agreements related to border control such as Joint Indo-Bangladesh Guidelines, 1975 may also be reviewed and be modified according to the present day scenario by governments of both the states to facilitate the procedure.

Heavy lines of BSF may be instituted at the borders, drone security, electric fencing may also be put to monitor the security control. Watch houses may be constructed on distances of 250 meters along the borders and high-power binoculars may be made available in each of these watch houses. The population living on or near the borders may be provided with accommodation in the country by the Government and for the purposes of the act may be considered to avail the services of UNHCR, NHRC, etc. a fresh, mutual agreement with clear terms shall be constructed by India and Bangladesh and be duly signed and verified.

(C) Extending Scope of CAA, 2019 and FA, 1946

The CAA, 2019 only includes illegal immigrants belonging to specific religious minorities such as Hindus, Sikhs, Jains, Parsis, Christians and Buddhists who escaped and took refuge in India from Pakistan, Bangladesh and Afghanistan, eligible for Indian citizenship. Even if the

[25] Assamese and Bangla
[26] Mr. Vadithya Raju, 'India-Bangladesh Border – Issues and challenges' Vol-2 Issue-3 2016

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constitutional violation of 'equality of all' is let aside for a moment, the non-inclusion of Muslim refugees in the act of 2019 might lead to another full-fledged bloodshed between Hindus and Muslims. The CAA, 2019 inserted a tyrannical cut-off date[27] only covering six non-Muslim groups from three neighbouring countries leaving out the minorities. However, the provision shall be amended accepting all the people irrespective of their religion or nationalities who fled to India before December 31, 2014. There are no reliable statistics that show that persecution decreased dramatically since 2015, and GoI should provide with the explanation and reliable legal documents stating the reasons for taking December 31, 2014 as the cut-off date. Also, when refugees flee their respective nations, the circumstances are such that they do not have the time or resources to collect their identity proof documents and travel documents. Which is why, government's contention as to establishing when a refugee came to India based on such paper work is unfair and brutal. In fact, upon entry of refugees, if a proper reception agency is instituted by the government on recommendations of UNHCR, the nation would have a proper documented folder of the refugees in the country.

Initially, the Liaquat–Nehru Pact, 1950 was a bilateral jurisdiction entered into by India and Pakistan specifically to safeguard the minorities in Bengal, Assam and Tripura but refugees extend to whole of India and are not concentrated in just three states in India. Additionally, Indian government did not include Sri Lanka despite the fact that it's approximately 12 kilometres away from India however, Afghanistan that does not share borders with India has been included. Sri Lankan Tamils who fled to save themselves from religious persecution to India did not have, as a statement of obvious, the time to collect appropriate travel documents rendering them the status of 'illegal immigrants'. The ambit of a document that itself claims to protect rights of minorities cannot exclude certain groups of refugees for the sake of the human and humanitarian reasons. The Government of India despoiled the basic essence of constitution by violating Article 14, not treating everyone equally. Constitution is the supreme law of land, the need of the hour is that the government reviews the CAA, 2019 and carefully re-draft the document as per the present and tentative future requirements of the society keeping in mind that no individual's rights are compromised.

Author's recommendation regarding it is since CAA, 2019 excluded Muslim populations who are largely seeking asylum in India, too like, Ahmadiyya Muslims who follow a 19th-century prophet face persecution, Hazara refugees face persecution as well, in Myanmar, Rohingya Muslims and in Sri Lanka, Tamil Muslims face the wrath of Buddhist extremists and the

[27] 31st December, 2014

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military, the Central Government in India along with appropriate authorities taking recommendations of UNHCR should draft a proper mandate for refugees and include a proper definition of 'refugee' in the same. On the basis of that, proper provisions for status determination of refugees in the nation.

Even the refugees who are already residing in the nation and are given acknowledgement under CAA, 2019 for standing eligible for Indian Citizenship are not provided with proper resettlement schemes.

A definition for 'resettlement' may also be constructed that does not only include citizenship but also deal with various other aspects such as housing needs, health needs, safety, educational requirements and job prospects. The employment rates are already low in India because of lesser employment openings. However, specific surveys for collecting and storing all the data about refugees which shall explicitly include personal details, educational qualifications, technological skills, family details, etc.

Special time-restricted schemes must also be introduced for resettlement of refugees helping them to learn Hindi and English and understand India's culture and environment to melt in pots of vast diversity of the nation.

Government follows arbitral arrangements to deal with refugees, however, Government should position parallel authorities and call for private sponsors as well to help facilitate the conditions, status, reception, repatriation and resettlement of refugees in the country.

As far as the FA, 1946 is concerned, the definition of 'foreigners' is incomplete and restrictive. FA, 1946 is often referred to for dealing with refugees as there is no specific statute that defines or deals with 'refugees'. 'Foreigner' has been defined as 'an individual who is not a resident of India'. The problem with the definition is that a certain basis for considering that an individual falls in ambit of 'foreigners' is not being provided in the definition. The sector of population which are not not residents in India do not only constitute foreigners, but also refugees, asylum seekers and illegal immigrants. A lot of times, the appropriate authorities fail to draw a line between foreigner and refugee leading to unfair treatment. The FTs have been instituted by the Central Government for the detection of apparent foreigners in the state of Assam, individuals who charged with living in the state illegitimately, perchance for decades. These alleged foreigners are usually the individuals who do not have any apparent record of their entry into the country. These individuals are 'charged' with entering illegally into a nation. This charge is founded on their nationality, religious background and their linguistic background even if resemblance of both language and religious background is found on either

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sides of the border in Assam and Bangladesh. Declaration of 'foreigners' without any detection mechanisms providing the elaborate exercise of identification is unfair on many levels. Apart from drafting a new definition of foreigner that does not only include the residence of the individual but also the intention of the individual and proper travel documents, the act needs a proper detection mechanism of considering an individual a foreigner under FA.

(D) Funding and Detention Camps

The Indian government does not take funding from international organisations for refugees. The extent of role of UNHCR is limited to refugees from Myanmar (mostly Rohingyas) and Afghanistan, with smaller groups of asylum-seekers and refugees coming from Yemen, Syria, Somalia, and other African countries. With the Covid-19 pandemic, all organisations are low on funds because of economic disturbance that the months of lockdown has caused. The UNHCR has limited jurisdiction on Indian Territory, it can assist only a few specified groups of refugees. Indian government uses its own funds to receive refugees, resettle refugees, build detention centres and manage working of FTs. Concerned individuals to be assisted by UNHCR in India as of in mid-2019 were 206,601 out of whom, UNHCR could assist only 26,604. As per the statistical figures provided by UNs Funding Reports, India had 11,728 pending cases with respect to asylum seekers[28]. With strict lock downs, UNHCR has used its funds to support this vulnerable section of population with food packages, sanitary items wherever possible however, UNHCR has been able to reach out to only 930 of the neediest families. A lot of these families have been living in adverse conditions for years in India. Some are being held in detention camps indefinitely. The detention centres functioning at present are very low in number and refugees held in them are more than their capacity to hold. Apart from deteriorating living conditions, with Covid – 19 pandemic and lack of access of authorities that may help these conditions have led to health hazards, as well. Assam State Government on the approval of Central Government has sanctioned 200 FTs in Assam. However, the refugees are not concentrated only in the state of Assam but are scattered all over the nation. The State Government also appealed for building detention centres, apart from the six detention centres that already exist in the state but the same has not been approved by the Central Government yet. The government spends a fortune in building these detention centres and FTs. If a proper mandate regarding the legal procedure of dealing with refugees is constructed, the government will be able save money by not building more than required number of detention centres. If the government draws explicit provisions for - the time for which the refugees may be detained;

[28]UNHCR, Populations of concern to UNHCR by country/territory of asylum (Annex-IX) <https://www.unhcr.org/5e6a3c497.pdf >

time period in which first hearing before FTs is arranged; time period for which reappearing before FTs is arranged; the families are allowed to reconcile for decent hours every day; quality treatment in terms of health, food, water, accommodation, sanitisation, electricity, education, vocational opportunities, putting limitation of number of detainees who may be kept in one detention centre as per square feet measures; collection of personal details and special care for women, children, elderly and physically or mentally disabled individuals, the conditions of the refugees will improve and if they won't be detained indefinitely, there would be swift entry and exit of refugees in and from the detention centres, respectively. Provided, since India is already a developing country, economic balance is hard to maintain and finance is crunch. Being a member of ExCom, India should consider taking refugee funding from international organisations, private sponsors, Non-Governmental Organisations and UNHCR by extending its rights to deal with all groups of refugees.

Awareness drives and camps may be run by State Government with consultation and consent of the Central Government for helping and donating for the causes of treatment and resettlement of refugees involving general public. Job opportunities and special subsidiaries may be made available for vulnerable refugees, as well. Separate Refugee Agency and Refugee Declaration Council led by an Officer with required knowledge and experience in the field may also be appointed who are also empathetic in approach. The FTs may be refrained from giving an ex parte judgement without serving the notice and hearing the parties.

V. CONCLUSION

India's testimonial at several meetings of ExCom confirms that India has compassion for refugees. The maximum encumbrance of displaced persons is being borne by the developing countries. The need of the hour is the unison, joint support and regulations by international community and national assiduousness by which this subject matter can be fairly dealt with.

Indubitably, 'refugees' is one of the most vulnerable groups of the society all over the globe. In exacting position, internally and externally 'displaced persons' are the individuals who are compelled to leave their homes because of the fright of persecution, war or violence. By all means, refugees must be protected, like any other human. Although, many treaties have been signed, 'refugees' still stand vulnerable, poorly treated, devoid of their basic human and humanitarian rights. The international legal instrument that is the Convention Relating to the Status of Refugees, known as Geneva Convention (1951) lays out the basic norm that the refugees must not be expelled or sent back especially when it is treacherous to their precious lives. International law does not stand strictly binding to non-signatories however in the

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capacity of exercising Principles of Natural Justice and to maintain international relationships, countries follow these regulations

For refugees, irrespective of their ethnicity, political opinions, social communities, sexual orientation, and nationality and where they seek haven, they share a common conundrum: their human rights are periled, and they suffer real-world problems in retrieving the social and economic prerogatives. The disavowal or dearth of access to these privileges hampers the procedure of finding an effective robust solution. In truth, the triumph and sustainability of every durable elucidation requires that displaced persons are able to enjoy social and financial privileges. 'Voluntary repatriation'[29] is a favoured long-lasting and effective way out for the majority of refugees, both by the nation of refuge and by the refugees themselves since it is rather a difficult job to resettle and continue their lives as they were before . However, in mandate, for being a feasible solution, it is vital that the coming back of evacuees to their nation state of origin that they are safe, and that their social and economic situations are encouraging for their rehabilitation. In any refugee deportation provided it's intended by the refugees themselves, aid and assistance plays a burning role. The social and economic liberties with respect to employment and vocational opportunities, accommodation, nourishment, drinking water, health amenities, edification must be assured. For facilitating the same, UNHCR chiefly encourages an assimilated voluntary repatriation route encompassing 4 R's- repatriation, reception, recognition, and resettlement.[30] As a statement of obvious, this methodology entails corresponding efforts of both national government and international humanitarian organisations, and also demands monetary support from donors to cultivate a favourable social and financial atmosphere and expedite the sustainable voluntary repatriation.[31] But, the refugees who are shorn of social and economic liberties they deserve or they think they deserve, explicitly with respect to occupation and edification, in a nation of asylum will usually seek resettlement to grasp such rights.

In most of the refugee crises, efforts are made to institute a system of synchronization and harmonization amongst the governments of both the origin of refugee and the haven for refuge and immediately the appropriate provisions and the principal international organizations are expected to be applied and to be adhered to. Even though, such synchronization and harmonization has constructed on an extemporized basis for the respective emergency, it may

[29] Defined as 'a refugee to exercise the right to return home in safety and with dignity' HANDBOOK VOLUNTARY REPATRIATION: INTERNATIONAL PROTECTION 1996 United Nations High Commissioner for Refugees Geneva <https://www.unhcr.org/uk/3bfe68d32.pdf >

[30] Davis S Weissbrodt. The Human Rights of Non-citizens 165 (Oxford University Press, Oxford, 2008).

[31] UNHCR, 'Durable Solutions, Framework for Durable Solution for Refugees and Persons of Concern' 2003, < http://www.unhcr.org/3f1408764.pdf > (Accessed on December 2, 2019).

not be strictly bestowing to the pattern of preceding emergencies. A stable, strictly binding, formal arrangement shall be considered, designed by an international organisation in which Principles of natural justice and provisions with obtuse inclination towards human and humanitarian laws are vested. Communications may be made to government of every nation assisting them and guiding them as to how to deal with and treat refugees. If governments share the responsibility collectively, it would benefit the nations and the refugees and assuage the special refugee complications of "hard core" circumstances. Administrations that offer asylum and impermanent hospitality must not be left alone to deal with an innumerable refugee cases, in the conclusion. As a final point, all governments should work in unity and compassion to eliminate of the causes of refugee problems. Governed provisions keeping in mind security of the nation for free movement of individuals under frequently organized programs of expatriation, repatriation and immigration should be accentuated.

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