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Rights of Refugees under Indian Legal System and its Compatibility with International Law: A Comparative Study

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ABSTRACT

Refugees are individuals residing outside their home countries who require protection from foreign nations due to a grave danger to their life, physical well-being, or liberty within their home country, stemming from persecution, warfare, violence, or significant public unrest. This document outlines the functioning of the Indian legal framework in assisting refugees, along with the international legal standards and organizations that offer support to them. It further explores the alignment between the Indian and international legal systems for refugees, as well as global developments concerning refugees.

Keywords: *Refugees, Rights of Refugees, Indian Legal System, International Law, UNHCR (United Nations High Commissioner for Refugees), Compatibility.*

I. INTRODUCTION

According to the 1951 Refugee Convention, a refugee is someone who has a well-founded fear of being persecuted due to their race, religion, nationality, belonging to a specific social group, or their political views, and is outside their home country, unable to seek protection there, or, because of this fear, is not willing to do so. As of the 31st of January, 2022, over 46,000 refugees and individuals seeking asylum have been recorded by UNHCR India, predominantly from Myanmar and Afghanistan. In India, the majority of refugees and those seeking asylum reside in cities and neighborhoods where they are welcomed by the local population. Nearly half of these refugees are women and girls, and over a third are minors. For many years, India has been accommodating different refugee populations and has successfully found ways to help those who have been forced to leave their homes. The United Nations High Commissioner for Refugees (UNHCR) backs the work of the Indian government and its citizens in aiding refugees throughout 11 states, collaborating with a diverse range of partners such as government departments, community organizations, and non-governmental organizations. To date, with the

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help of UNHCR, 17,933 refugees from Sri Lanka have chosen to return home on their own (according to UNHCR records from 2002 to February 2022).

II. RIGHTS OF REFUGEES UNDER INDIAN LEGAL SYSTEM

Present Legal Structures for Refugees:

- i. **Foreigners Act of 1946:** In Section 3, the federal government has the authority to identify, imprison, and send back unauthorized foreign individuals.
- ii. **Passport (Entry into India) Act, 1920:** In Section 5, officials have the power to expel an unauthorized foreigner by coercion, as per Article 258(1) of the Indian Constitution.
- iii. **Foreigners Registration Act of 1939:** This law mandates that all foreign individuals (except those from India living abroad) who are visiting India for an extended period (over 180 days) must register with a Registration Officer within 14 days of their arrival in India.
- iv. **Citizenship Act, 1955:** This legislation outlines the processes for giving up, ending, and removing citizenship.
- v. **Citizenship Amendment Act, 2019 (CAA):** This act aims to grant citizenship exclusively to individuals from Hindu, Christian, Jain, Parsi, Sikh, and Buddhist backgrounds who have faced persecution in Bangladesh, Pakistan, and Afghanistan.

III. INTERNATIONAL LAWS & ORGANISATIONS FOR REFUGEES

The 1951 Refugee Convention and its 1967 Protocol serve as the primary legal frameworks for safeguarding refugees. They establish a global definition of a refugee and detail the essential criteria for their care. The fundamental principle is the concept of non-refoulement (Article 33), which asserts that refugees are entitled to avoid being returned to their home country if their life or liberty would be endangered. States that have ratified the Convention are required to follow the guidelines set forth. The United Nations High Commissioner for Refugees (UNHCR) encourages nations to join the Convention and assists in the conversion of its provisions into domestic legislation.

The United Nations High Commissioner for Refugees (UNHCR) safeguards refugees, champions their entitlements, and collaborates with governments and allies to secure sustainable solutions, enabling them to establish a secure residence. UNHCR aids in three primary methods:

- i. **React in crises:** During a crisis, we make sure that refugees are able to get to safety and

are not forced to return to a hazardous area. In collaboration with allies, we assist in supplying essential needs for survival, such as housing, water, and healthcare, and fight for their safety and the right to find refuge.

- ii. Protect their entitlements while on the move: Although the majority of individuals who seek refuge desire to go back to their homes, it frequently becomes hazardous to do so for extended periods, sometimes even decades. We assist the countries that host refugees in making sure they have access to their rights to education and healthcare. Additionally, we support them in finding ways to earn a living, enabling them to live more autonomously and give back to their communities, which is their ultimate goal.
- iii. Seek lasting answers: Concurrently, we gather and collaborate with the global community to discover lasting answers. This may involve assistance in returning to their native country when it becomes safe, becoming part of the local community in the host country, or moving to and becoming part of a new country.

IV. COMPATIBILITY OF INDIAN LAWS WITH INTERNATIONAL LAWS

India does not have dedicated laws to tackle the issue of refugees, despite the growing number of people seeking refuge there. India is not a signatory to the 1951 Refugee Convention and its 1967 Protocol, which are the primary legal frameworks for the protection of refugees. Nonetheless, India has shown exceptional performance in protecting refugees. The country has a long-standing tradition of integrating immigrants and their cultures. Furthermore, the Foreigners Act, 1946, does not adequately deal with the unique challenges that refugees encounter. It also grants the Central government excessive authority to expel any foreign individual.

The Indian Constitution also upholds the value of human life, freedom, and respect. In the case of the Supreme Court in the *National Human Rights Commission vs. State of Arunachal Pradesh* (1996), it was determined that citizens, including foreigners, have the right to equality and the right to life, among other rights. Moreover, Article 21 of the Constitution includes the protection against deportation. This principle, recognized under international law, asserts that an individual escaping persecution from their homeland should not be compelled to go back to their home country. Refugees who are officially registered by the Government, like those coming from Sri Lanka, are eligible for Aadhaar cards and PAN cards. This allows them to participate in the country's economic and financial activities. They can also benefit from national welfare programs and make significant contributions to the Indian economy.

V. GLOBAL TRENDS AT-A-GLANCE

By the close of 2022, a total of 108.4 million individuals were forcibly uprooted globally due to persecution, conflict, violence, or violations of human rights. This encompasses:

- 35.3 million refugees
- 62.5 million individuals displaced within their own countries
- 5.4 million seeking asylum
- 5.2 million individuals requiring protection from other countries, with the majority originating from Venezuela

By September 2023, over 114 million people had been forced to leave their homes globally. This represents the biggest one-year surge in forced displacement in the history of the United Nations High Commissioner for Refugees (UNHCR), driven by the Ukraine conflict and other lethal wars.

VI. CONCLUSIONS

Refugees are individuals who are transported from their native country to another nation without any legal framework, experiencing an identity crisis in their new homeland. Organizations such as UNHCR, in collaboration with various countries, assist these individuals in their well-being and seek permanent resolutions to their problems. The Indian government has consistently shown leniency towards refugees, offering them protection and various rights and resources through UNHCR. Despite not being a signatory to the 1951 Refugee Convention and its 1967 Protocol, India continues to offer extensive legal structures through various constitutional and legal protections to ensure refugees are treated equivalently to native Indian citizens. The worldwide trend indicates an increase in refugee populations due to conflicts such as the Ukraine-Russia war, the Israel-Palestine dispute, and ongoing crises in the Middle East and Africa. This situation is of concern to the international community as we progress towards the idea of a global village.

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