

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 4

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2023

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# The Indian Rohingya Question: A Study on The Legal Position of Rohingya Refugees in India

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## ABSTRACT

*With around 40,000 Rohingya Muslim refugees arriving in India amid the persecution by the primarily Buddhist state of Myanmar, the Indian government has been pretty non-committal to providing any relief to the same. The government has like a pendulum swung between providing these individuals with housing and other amenities at one end, to ensuring their deportation at the other end. The Supreme Court has also been unable to grant any relief to these individuals because of no citizenship provisions that might aid these individuals. Their status of illegal migrants makes the court adjudge them as being bound for deportation from India. The non-signatory status of the Indian government to the international convention and protocol on refugees means that India is not bound to treat these refugees at par with other refugees that it has decided to take in through the CAA of 2019. India considers these refugees to be a threat in terms of demography and security. This has led to them leading their lives and future under the cloud of uncertainty. The Indian state would still have to ensure their basic right to life with dignity even if the individuals are not citizens of the country. India also can't escape the principle of non-refoulement and decide to just deport them back to a persecuting regime. In such a state, India would have to utilise its diplomatic and geo-political strength in order to ensure that Myanmar stops with the persecution of the said group. At the same time, India would have to ensure that these individuals are not sent back devoid of their dignity and with uncertainty over their lives.*

## I. INTRODUCTION

The term Rohingya denotes people from Muslim community that populate the Rakhine (Arakan) state which is in Myanmar (Chan, 2019). The community is also considered to have spread in the neighbouring nation of Bangladesh as well as refugee population in other parts of the World. Chan further states that the community is considered to be one of the most prosecuted minorities in the subcontinent. According to Abdulkader (2017), the Rohingyas have been in

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Myanmar since around 1824 when the Britishers started ruling the country which was then known as Burma. The Britishers encouraged migrant labour for high profits without any threat of ethnicity-based resistance to colonialism. The same source reveals that the population of the community within the country tripled between 1871 to 1911. During the Second World these migrants supported the British position against the Japanese position that was officially supported by the then nation of Burma. This was on the basis of promise of a “Muslim National Area”. This led to further alienation of the people of this community once the war ended and the Britishers did not deliver on the promise. Eventually, the Citizenship Act of 1982, formally denied the citizenship of these people. Right from 1977, the refugees have been fleeing to various parts of the World including Bangladesh and India.

When it comes to the modern-day nation state of India, Rohingyas are believed to have started arriving in the 1970s (Sandhu & Sebastian, 2022). It is considered by the Human Rights Watch as quoted by Sandhu & Sebastian, that an estimated 40,000 Rohingya refugees stay in India. It is this population that faces uncertainty pertaining to whether they would be deported or afforded asylum. With no clear-cut refugee policy in place, the state of Rohingya refugees in India is not one that exudes confidence. They live in fear of deportation or even attacks by fringe elements that consider them as just illegal infiltrators (Firdous, 2022). Firdous further states that the children of these refugees are also not given the certainty of further education or a better future. At the same time, if they go back to Myanmar, they risk genocide at the hands of the militarist regime there. It is considered torturous for these individuals though, that they have to survive with an air of uncertainty hanging over them.

The present paper examines through published legal resources, the status of the Rohingya people in present day India. It also looks at the international laws and treaties that might pertain to the same. Through this study, what is aimed is to look at what can be the plausible solution to this crisis wherein the Rohingyas are put into a state of flux. What can also be considered is the possibility of a future legislation that might make the state of affairs clearer and also better for the individuals who live in the abject state mentioned already.

## **II. MAIN BODY**

### **(A) Rohingyas under the Citizenship Act of 1955**

The Act of 1955 clearly considers that the Rohingya refugees would fall under the head of “illegal migrants”. This is because these individuals enter India without valid passport or other travel documents as may be prescribed by or under any law on that behalf. This has been mentioned in Section 2 (1) (a) (i) of the given act. For a citizen of Myanmar, this would mean

that they would have to obtain a valid visa in addition to a passport. The tragic state of affairs for the Rohingya refugees means though, that they do not even have a passport as a Myanmar national. Section 5 and 6 of the given act talk about citizenship through registration and naturalisation. Both of these sections in the beginning itself, clearly state that in order to be eligible to become a citizen of India, the concerned individuals must not be “illegal migrants” from the country concerned. What this means is that as per the bare reading of the act, the refugees do not stand a chance of getting the rights of the citizens of India.

When it comes to the interpretation of the court of the citizenship provisions however, a landmark judgement was given by the Supreme Court in 1996 (Sik et al., 1998). The given case dealt with the issue of Chakma refugees. A large number of these refugees had been displaced from the erstwhile region of East Pakistan. This was as a result of the Kaptai Hydel Power Project in 1964. These individuals arrived to the Indian states of Assam and Tripura where Indian citizenship was conferred to a large number of these individuals. Since Assam expressed an inability to take the burden of the entire refugee population, some of the refugees were resettled in Arunachal Pradesh. The number of these refugees eventually rose to 65,000. When they faced persecution, the National Human Rights Commission of India approached the Supreme Court as per the Article 32 of the Indian constitution. The Supreme Court of India noted that these refugees did have a right to life under Section 21 of the Indian constitution even if they were not Indian citizens. Hence, they can't be evicted from Arunachal Pradesh except by due process of law. Since there had been a joint statement by the prime minister of both India and Bangladesh regarding the conferring of citizenship to these refugees as per the Article 5(1)(a) of the Citizenship Act, the court further directed that these individuals be given the citizenship of India without prejudice. The court also relied upon the amendment made to the Citizenship Act in 1987, whereby the children of these refugees born prior to 1987 in the Indian territory, were considered to be Indian citizens to begin with. The observations by the SC become relevant to the Rohingya crisis as well. It also indicates that the executive can cover broader groups within the ambit of the citizenship act through due procedure. Most importantly, the right to life and liberty is one that can't be snatched away even from aliens merely through the act of citizenship.

It is to be kept in mind though, that the applicability of this act also hinges upon two other acts. The 1946 Foreigners Act regulates the movement of foreigners to and forth from India. At the same time, the 1920s Passport Act states that no foreigner can enter India without a valid passport. What this means is that the individuals entering the Indian state have to generally abide by these two acts.

**(B) Rohingyas under CAA 2019**

The government of India brought in the Citizenship Amendment Act which was notified in 2019 and came into force in 2020. The pandemic however, meant that the rules for the given act have not been put in place. The said act does not cover the Rohingya refugees though. The given act clearly states that it is aimed at granting Indian citizenship to persecuted minorities that had entered India before December 2014. These minorities have to be from Pakistan, Bangladesh and Afghanistan. Though the act does not clearly state that religion is one of the criteria for granting such citizenship, such minorities emerge out as Hindus, Sikhs, Jains, Buddhists, Parsis and Christians. The given act thus, does not offer any relief to the Rohingyas on account of religion or region. Regions like Tripura, Meghalaya, Mizoram and Assam are excluded from the purview of the act. Areas falling under the Inner Limit as notified under the Bengal Eastern Frontier Regulation of 1873 have also been excluded from the purview of the given act.

The act does not include such a major persecuted group that has been taking refuge in the country since quite a while. This is one of the criticisms that is levelled against the act that it violates the fundamentals of the Indian constitution by distinguishing between immigrants on the basis of religion. It is considered that it might alter the demography of the indigenous communities within India and at the same time, naturalise illegal immigration. Considerations like that of the Rohingya refugees has led to multiple petitions challenging the implementation of the given act (Supreme Court Observer, 2023). While the supreme court has refused to stay the application of the act, it has directed the government to educate the people regarding the objectives and aims of the given act. It is clear though, that the act does not have any portion or section that can assist the Rohingya refugees in their citizenship endeavours.

**(C) 1951 UN convention and 1967 Protocol for refugees**

After the Second World War, Europe and the rest of the World was plagued by the refugee crisis emerging from the war. As a result of the same, the 1951 UN convention came about for refugees. The said convention that was initially meant for just European refugees, with the 1967 protocol became open for signature and ratification by other persecuted individuals apart from European refugees. The given convention defines who a refugee actually is. A refugee as per the given convention, is one who is outside his/her place of nationality or habitual residence. Such an abandonment has to be grounded on objectively reasonable and subjectively genuine fear of persecution. This persecution must be born out of the race, religion, nationality, social membership or political opinion. There should be no safeguards available for the individual within the country to which the individual originally belongs. The existence of a verifiable fear

is what leads to a perceived illegal immigrant transitioning into a legitimate refugee. The body that has been assigned the duty of overlooking this determination is the United Nations High Commissioner for Refugees. It would thus seem, that the Rohingya refugees can get their status safeguarded in India through the given convention and protocol. The relief route though, is closed by the fact that India is not a signatory to the same (Kalantry, 2020). As a result of not being a part of the said convention, Kalantry notes that India can pick and choose its refugees as has been demonstrated, even in two government notifications on the issue in 2015 and 2016. There are more than 150 countries including the United States of America, that have signed the convention. The convention would require India to not discriminate between refugees if they qualify as per the definition. Since India was not directly a part of the Second World War though (due to it being a British colony at the time), India has not signed or ratified the convention.

This further means that the relief that the Rohingya refugees could have garnered through the convention that would have bound India, is unavailable. Human rights groups and other organisations that deal with the Rohingya crisis have considered this to be a major issue which is not allowing relief to the Rohingya refugees within the country. On 8<sup>th</sup> of April, 2021 in fact, the SC of India relied upon the same in Mohammed Salimullah v. Union of India (Alexander, 2021). The court relied upon non-refoulement while denying any relief to the Rohingya refugees. The court also ordered the government to ensure that steps are taken for the deportation of the said refugees. It is argued that this decision is against the principle of non-refoulement as espoused by the United Nations of which India is also a member. According to OHCHR (n.d.), the principle of non-refoulement is a fundamental one when considering international human rights, refugee, humanitarian and customary law. This principle prohibits the state from transferring or removing individuals from their jurisdiction or effective control. This prohibition applies when there is a threat that such a transfer or removal would lead to torture, persecution, ill-treatment or other serious human rights violations. In addition, India is also a signatory to the United Nations Convention Against Torture which reinstates the principle of non-refoulement. As such, the decision of the supreme court puts India in a precarious situation when it comes to the deportation of Rohingya refugees.

#### **(D) ICJ Ruling on Rohingya**

The sad state of affairs of the Rohingya people attracted the attention of the International Court of Justice which gave a ruling on the same in 2020 (Berg, 2020). The case that was registered by Gambia, accused Myanmar of genocide against Rohingya in violation of a 1948 convention. The 17-judge panel unanimously directed Myanmar to take steps to prevent persecution of Rohingyas in the country. It was further asked that Myanmar should report back to the ICJ on

its findings within four months pertaining to the status of Rohingyas within the country. The ruling by ICJ is indicative of the acknowledgement that the group is in fact facing persecution on a large scale within Myanmar. The directions or findings of the court are not enforceable on states, but it does create international pressure to comply with basic human rights. It also makes it contingent upon nations like India to take note over the persecution. The denial of the status of Rohingyas as a persecuted minority does not seem a legally tenable stand post the verdict.

#### **(E) The stance of Indian government**

The Indian government does not have a clear stance on the policy related to Rohingya refugees within the country. While at one point, the housing and urban affairs minister had talked about provisions like accommodation for Rohingya refugees, the home ministry later clarified that the said refugees would be put in detention centres and eventually deported back to their country (Das, 2022). The present central dispensation has time and again also stated as per Das, that they would assure that the illegal foreign entrants would be deported back to their country of origin.

This clearly indicates that despite the international convention and pressure, there is a clear sense that the government is trying to avert actually acting out upon the same. While there are indications that the Rohingya refugees have been persecuted and are fleeing the said persecution, the Indian government is not attempting to provide relief to these refugees. This is also in addition to the fact that there have been litigations within the country on the matter. The government is standing on the stance wherein the non-existence of any laws to safeguard the said refugees, leads to it being non-committal and even averse to any Rohingya settlement within India. The act brought in force recently by the same government, also does not provide any relief to the said community. The reason for the same is rooted in the domestic sentiment of those averse to Rohingya settlement within India.

#### **(F) Domestic voices against Rohingyas**

It is considered that there are multiple reasons for not allowing Rohingya refugee within the state of India. For a country like India which has always been the home to refugees from a long-long time, this seems like a strange point of view. The natural affinity towards humanitarian causes also makes the Indian case against Rohingyas merely on account of scarcity of resources to share, unsustainable. There are some other concerns though.

A major reason that was even cited in the supreme court by the Indian government is that the Rohingyas threaten the demography of India (Nair, 2017). It is submitted that from Jammu in India to pockets in New Delhi, these refugees tend to settle in areas that are not already

populated by Muslims. In many cases, they settle in tribal areas that have a culture and tradition of their own. As such, the demography and social fabric of the society itself is under threat from these individuals who do not espouse values that are even remotely similar to the local residents. It is posing complex issues in border regions and is believed to be threatening the fundamental rights of “genuine citizens” who stay within these regions. This apparent narrow vision has deep local implications.

Another far more significant threat is the germination of terror links within the Rohingya community (Singh, 2017). Singh states that terrorist organisations like Indian Mujahideen and LeT have converted the Rohingya crisis to a jihad initiative with the active support of ISI of Pakistan. Indian, Bangladeshi and Myanmar authorities consider that leaders like Hafiz Tohar from AMM who has been trained by the LeT in Pakistan, is responsible for engineering clashes with Myanmar security forces and even incidents like that in Kokrajhar and Mumbai in 2012 and even the exodus of North Eastern people from Hyderabad and Bangalore in the same year. The radicalised element of the Rohingyas is considered to be a security threat specifically in border regions and areas like New Delhi. These are considered to be strategically important, and hence the perceived threat is amplified.

### **III. DISCUSSION**

It is clear from the foregoing investigation of various secondary resources that the existing citizenship laws of the country do not provide for a relief to the Rohingya refugee crisis. The court verdicts from within the country are also just indicative of the fact that there is no legal framework for granting citizenship to the refugees within the country. India also does not have direct international obligations that bind it to take actions to accommodate Rohingya refugees within the country. The political and the public discourse surrounding these refugees also does not portray them in a positive light. While the motives behind this might be more political in reason, there is a clear sense of social discord that would make the refugees feel susceptible to threats even if they continue to stay within the country.

It seems that a course of action that would appear to be beneficial to the persecuted group can be to champion their cause. What this would mean is that the Indian government just like the government of Gambia can exert pressure upon Myanmar to ensure that Myanmar does not create a state of terror for the Rohingyas. Being the most populous country in the World, a major trade partner within Asia and a geographically significant entity in the region; India can take advantage of its position. It can thus ensure that the state of torture that creates these refugees as per the definition given by the UN, is done away with. In the meantime, India also needs to

ensure that these individuals are provided with at least their basic rights that are guaranteed to all regardless of citizenship. This would mean taking steps to ensure that they are not persecuted or subjected to detention camps. A dialog also needs to be initiated with the community at the level of the state which appears to be completely lacking as of now.

#### **IV. CONCLUSION**

In conclusion, it can be stated that the citizenship laws of India as of now even with the latest amendment, do not provide any relief to Rohingya refugees. They continue to be illegal migrants while they are not even citizens of their home state. The SC also has not granted any relief to the community and even international conventions and decisions do not bind the Indian state. At the same time, the very definitions and explanations of the concepts related to refugee relief, make it contingent upon India to take actions in this regard. India cites issues like change in demography and security concerns to continue taking actions like deportation against the refugees. The Indian state has to take advantage of its position within the proximity of Myanmar to ensure that the latter does not persecute these minorities. At the same time, India also has to create a viable environment for their continued presence within India.

The present study is very time specific in nature and hence can't apply to rapidly transitioning geopolitical realities that might emerge in the near future. A more in-depth study on the fundamentals of the issue can perhaps create a more perennial source on the matter. At the same time, the study is contingent upon secondary sources and has to be supplemented by primary research in the future.

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## V. REFERENCES

### (A) Acts & Regulations

- The Constitution of India
- The Citizenship Act of 1955
- The Citizenship Amendment Act of 2019
- 1951 Convention and 1967 Protocol on Refugees by UN

### (B) Online Sources

- Abdelkader, E. (2019, May 18). *The history of the persecution of Myanmar's Rohingya*. The Conversation. <https://theconversation.com/the-history-of-the-persecution-of-myanmars-rohingya-84040>
- Alexander, A. (2021, August 15). *Supreme Court Of India And Non-Refoulement: A Tale Of Self-Imposed Limitations*. [www.livelaw.in](http://www.livelaw.in). <https://www.livelaw.in/columns/the-supreme-court-of-india-sci-non-refoulement-united-nations-high-commission-on-refugees-unhcr-179601>
- Berg, S. van den. (2020). *World Court Orders Myanmar to Take Steps to Protect Rohingya*. The Wire. <https://thewire.in/world/world-court-orders-myanmar-to-take-steps-to-protect-rohingya>
- Chan, E. (2019). Rohingya | Definition & Facts. In *Encyclopædia Britannica*. <https://www.britannica.com/topic/Rohingya>
- Das, K. N. (2022, August 17). India backtracks on support for Rohingya refugees, will deport them. *Reuters*. <https://www.reuters.com/world/india/rohingya-refugees-indias-capital-be-given-flats-security-2022-08-17/>
- Firdous, M. (2022). *Rohingya Refugee Children Face Uncertainty in India*. The Diplomat.com. <https://thediplomat.com/2022/06/rohingya-refugee-children-face-uncertainty-in-india/>
- Kalantry, S. (2020, March 12). *India should also accede to the UN refugee convention*. Hindustan Times. <https://www.hindustantimes.com/analysis/india-should-also-accede-to-the-un-refugee-convention/story-6XP68ZzpFZGBXkTFMGD6EM.html>
- Nair, H. V. (2017). *Rohingyas not only pose security risk, but also threaten India's demography, Centre says*. India Today. <https://www.indiatoday.in/mail->

today/story/rohingyas-security-risk-threaten-indian-demography-centre-tells-supreme-court-1047668-2017-09-19

- OHCHR. (n.d.). *The principle of non-refoulement under international human rights law*. <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>
- Sandhu, K., & Sebastian, M. (2022, August 19). Rohingya and CAA: What is India's refugee policy? *BBC News*. <https://www.bbc.com/news/world-asia-india-62573446>
- Sik, K. S., Pinto, M. C. W., & Syatauw, J. J. G. (1998). STATE PRACTICE OF ASIAN COUNTRIES IN THE FIELD OF INTERNATIONAL LAW. In *Asian Yearbook of International Law, Volume 6 (1996)* (pp. 203–232). Brill; JSTOR. <http://www.jstor.org/stable/10.1163/j.ctv2gjwvz2.12>
- Singh, R. (2017, September 12). *Why Rohingyas cannot be allowed in India*. Indian Defence Review. <http://www.indiandefencereview.com/news/why-rohingyas-cannot-be-allowed-in-india/>
- Supreme Court Observer. (2023). *Citizenship Amendment Act*. Supreme Court Observer. <https://www.scobserver.in/cases/indian-union-muslim-league-citizenship-amendment-act-case-background/>.

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