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INDIA'S REFUGEE POLICY: BETWEEN GLOBAL NORMS AND NATIONAL SILENCE

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The Ministry of Home Affairs issued a notification on May 28, 2021, inviting people of specific religious minority groups in Afghanistan, Bangladesh, and Pakistan to seek Indian citizenship, provided they were living in certain districts of Gujarat, Chhattisgarh, Punjab, Rajasthan, and Haryana. This was done under the Citizenship Act of 1955¹, after the 2019 amendment to the law. While the effort showcases a structured approach to citizenship extension, it also highlights the contradictions in India's approach to refugees and asylum seekers.

Countries such as Somalia, Sudan, Iran, and Iraq², along with refugees from other South Asian countries, have sought to relocate to India, given the country's geopolitical position in South Asia. Despite the influx of refugees, the Indian government has refrained from signing the 1951 Refugee Convention and its 1967 Protocol. This has been attributed to the country's attempt to maintain a neutral stand during the Cold War, along with from the Eurocentric notions in the design of the Convention.³

When considering South Asia, the shortcomings of the 1951 Convention become clear. It caters to individual cases of persecution, which is convenient for India, but fails to address collective displacement or mixed migration, the latter of which is quite common in India.⁴ This is further

¹ Citizenship Act, No. 57 of 1955, § 6B (India), amended by Citizenship (Amendment) Act, No. 47 of 2019.

² Uditi Sen, *Stateless in South Asia: The Chakmas Between Bangladesh and India*, 40 REFUGEE SURV. Q. 384, 386 (2003).

³ B.S. Chimni, *The Geopolitics of Refugee Studies: A View from the South*, 11 J. REFUGEE STUD. 350, 444 (1998).

⁴ Niraj Saxena, *Indian Refugee Law and the 1951 Convention: A Critical Appraisal*, 45 JILI 142, 147 (2007).

complicated by the Convention's protection focus which safeguards civil and political rights. Refugees fleeing developing countries are often escaping hostile social, cultural, or economic threats—contrary to the Convention's standards for refugee eligibility.⁵ As a result, people from the Global South are often vulnerable and exposed to hostile protection regimes, but lacking access to genuine international refugee protection frameworks.

The 1951 Convention defines a refugee as a person who: “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”⁶

There is a marked difference between asylum seekers and refugees. “Asylum seekers” are persons looking for protection outside their country against persecution in their own country. They are, however, not yet recognised as ‘refugees’ by the countries they seek refuge in.⁷ Under the 1951 Convention, States have an obligation to grant asylum, entry as well as protection, to persons fleeing from their country of origin owing to persecution.⁸

According to current laws, refugees in India are considered alien and foreign. The Foreigners Act of 1946⁹, the Registration of Foreigners Act of 1939¹⁰, the Passport (Entry into India) Act of 1920¹¹, the Passport Act of 1967¹², the Extradition Act of 1962¹³, the Citizenship Act of 1955- amended recently in 2019¹⁴, and the Illegal Migrant (Determination by Tribunals) Act

⁵ Md. Rizwanul Islam, *India's Refugee Policy and the Syrian Crisis: A Normative Appraisal*, 9 *ASIAN J. INT'L L.* 21, 23 (2019).

⁶ Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

⁷ AMNESTY INT'L, *UNDERSTANDING REFUGEES AND MIGRATION* (2019), <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/>.

⁸ Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

⁹ The Foreigners Act, No. 31 of 1946, India Code (1946).

¹⁰ The Registration of Foreigners Act, No. 16 of 1939, India Code (1939).

¹¹ The Passport (Entry into India) Act, No. 34 of 1920, India Code (1920).

¹² The Passports Act, No. 15 of 1967, India Code (1967).

¹³ The Extradition Act, No. 34 of 1962, India Code (1962).

¹⁴ The Citizenship Act, No. 57 of 1955, amended by Citizenship (Amendment) Act, No. 47 of 2019, India Code (2019).

of 1983¹⁵ are the laws currently directly applicable to them. A Standard Operating Procedure¹⁶ was implemented by the Government of India in 2011 for dealing with “foreign nationals who claim to be refugees”, which provides for long term visas and allows them the freedom to work and study in the country. In the Indian context, this was the first instance where the Standard Operating Procedure (SOP) explicitly recognised separate criteria for identifying certain foreigners as refugees. In doing so, it drew upon the definition outlined in the 1951 Refugee Convention¹⁷.

The Government of India does not have a stable policy in regards to dealing with refugees. It ends up more as an administrative decision making process rather than a firm framework to establish rules for these foreign nationals. The status of different refugee groups are thus determined differently by the Government, owing to the independent decision making process. It differentiates between refugees who have fled from certain countries that share borders with India and refugees who have fled from other countries in the world, with the former being treated better as they are considered central to the foreign policy of India.

Refugees outside the officially recognised categories often receive no formal acknowledgment from the Indian government, leaving their protection largely to the United Nations High Commissioner for Refugees (UNHCR). Many individuals arriving from neighbouring countries form part of mixed migration flows—including refugees, asylum seekers, economic and environmental migrants, unaccompanied children, and victims of trafficking. While many of them settle in border states, those seeking protection can still approach the UNHCR to be granted refugee status.

The Indian government has historically been cautious of the UNHCR, viewing its involvement as potential interference in internal matters. Nevertheless, prolonged diplomatic engagement and the need for international support in managing Tibetan refugee inflows led to the establishment of a UNHCR office in New Delhi in 1969. Since India is not a party to the 1951 Convention Relating to the Status of Refugees¹⁸ or the 1967 Protocol¹⁹, the UNHCR does not hold any formal supervisory authority over India’s refugee framework. Instead, it operates

¹⁵ The Illegal Migrants (Determination by Tribunals) Act, No. 39 of 1983, India Code (1983) (now repealed).

¹⁶ Ministry of Home Affairs, Standard Operating Procedure for Dealing with Foreign Nationals Who Claim to Be Refugees, Gov’t of India (2011).

¹⁷ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

¹⁸ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

¹⁹ Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

strictly within the limits of its founding Statute of the Office of the United Nations High Commissioner for Refugees, offering protection and assistance where possible.²⁰ As a result, refugees registered with the UNHCR in India are only informally recognised by the Indian government, with no official legal status.

²⁰ Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428(V), U.N. GAOR, 5th Sess., Supp. No. 20, U.N. Doc. A/RES/428(V) (Dec. 14, 1950).

