

REFUGEE RIGHTS BEYOND THE REFUGEE CONVENTION: A COMPARATIVE ANALYSIS OF INDIAN AND INDONESIAN LAWS, CHALLENGES, AND SOLUTIONS

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ABSTRACT

In the 21st century, technological and contemporary global progress is marked by the increase in the economic wellbeing of nations around the world -- though characterized by wide regional differences. The development has come at the cost of increasing power struggles among the nations all around the world leading to the violation of human rights of a large number of humans. Even though democratic principles are widely supported and recognised by a large number of countries, the on-ground application of these principles is still a far-fetched dream. Pursuant to the problems faced by large numbers of refugees, the Refugee Convention was signed in 1951 and a consequent protocol was signed by some member countries of the United Nations in 1967 of which some of the major countries like India and other Southeast Asian countries like Indonesia, which house a large number of refugees, are not a member. This paper

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analyses the rights of the refugees in Indian law with respect to the Refugee Convention in detail and also discusses in brief the rights of refugees in the light of the Indonesian law. The paper further discusses the contemporary challenges facing the international community regarding securing the human rights of the refugees through the contemporary Poland-Belarus refugee crisis as well as the Rohingya crisis across the Bangladesh-India border. The conclusion is marked by the suggestions that could be helpful in combating the modern-day refugee crisis that could help balance the legitimate concerns of the nations with the human rights of the refugees.

KEYWORDS: *Refugee rights, Refugee convention, Refugee crisis, Indian refugee law, Indonesian refugee law.*

INTRODUCTION

According to UNHCR, more than 108 million people worldwide have been displaced forcibly from their places over a period of 70 years due to fear of persecution, conflict, violence, human rights violations, or events seriously disturbing public order. The figures have always shown an upward trend since the 1950s, and the COVID-19 Crisis made the situation across the globe even worse. These statistics clearly show the magnitude of the global refugee crisis.

To address the problems of the refugee crisis and to aid and protect the refugees, forcibly displaced communities, and stateless people, the United Nations established the United Nations High Commissioner for Refugees (UNHCR) in 1950. The international standards for the treatment of refugees in different countries were laid down in the 1951 Refugee Convention and its 1967 Protocol. Not every country across the globe has signed the Refugee Convention, but as mentioned above, the refugee crisis is a global phenomenon, and even the non-signatory countries are bound by international humanitarian laws to protect the rights of the refugees. The absence of any refugee-related law can create various challenges in ensuring adequate protection for refugees.

The focus of the paper will be on two non-signatory countries, i.e., India and Indonesia. Although they haven't signed the 1951 Convention, they still have to face complex refugee problems. We want to shed light on the special challenges faced by refugees in non-Convention countries and investigate how these nations handle the protection of refugee rights in the absence of a legally enforceable international framework by analysing the situations in both countries.

Ultimately, the comprehensive analysis will contribute to a greater understanding of the difficulties and potential solutions to the refugee crisis in non-Convention nations by delving into the specifics of the legal systems, policy concerns, and humanitarian responses in India and Indonesia.

The paper will also analyse two of the major refugee crises that happened in the past few years, one being the Poland Belarus migrant crisis and the other being the Rohingya refugee crisis, which will help develop a better understanding of the impact of a refugee crisis on a country hosting the refugees, from crimes to shortage of basic necessities like food and water.

Finally, the paper concludes by giving suggestions on how the situation of refugees can be improved and what are the possible solutions to address the concerns related to the rights of refugees, such as copyrights, employment, acquisition of property, education, food, housing, etc.

ANALYSIS OF RIGHTS OF REFUGEES IN INDIA WITH REFERENCE TO THE REFUGEE CONVENTION

The Refugee Convention places certain obligations on the contracting states and grants certain rights to the refugees. Most of the articles of the Refugee Convention place an obligation upon the signatory state to grant the refugees the same rights as would be accorded to foreign nationals, or in certain articles, aliens, under the same circumstances. Some of the provisions, like those relating to copyright rights³ or rationing rights⁴ are to be accorded

³ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) (1951) (The 1951 Refugee Convention) art 14.

⁴ *ibid* art 20.

to refugees on par with the nationals of the country. As a result, refugees in signatory countries are dealt with through specific legislation as opposed to general laws applicable to foreign citizens.

In India, refugees are generally dealt with on a case-by-case basis and are occasionally governed by specific regulations and guidelines issued by the Central Government. This is due to the lack of any particular legislation on this particular matter. However, certain rights are guaranteed to the refugees by the Constitution as well, and certain general laws applicable to foreign citizens are also applicable to refugees. In this portion, the Indian laws regarding the rights that are guaranteed to refugees as per the Refugee Convention will be analysed.

Rights available to Refugees regarding Acquisition of Property

Article 13 of the Refugee Convention obligates the state to guarantee the same treatment to refugees as given to aliens under the same circumstances⁵. In major signatory countries to the convention, ownership rights related to property are equally granted to refugees and nationals and are generally not very restrictive in approach. However, the refugees are granted ownership rights in India by the respective State Governments or

⁵ *ibid* art 13.

the Central Government on a case-by-case basis.⁶ The Indian law does not give the same ownership rights related to property to refugees as it does to citizens, and prior approval from the respective state governments is needed to be fulfilled even for foreign nationals residing in India.⁷ This is evident from the fact that certain refugees in Maharashtra were granted ownership rights after 70 years, and the Mizoram government directed Rohingya refugees not to purchase property without government approval.⁸

Rights available to Refugees regarding Copyrights

As per section 2(1)(ii)⁹ of the Copyright Act, 1957, works that are first published in India will be deemed to be Indian works. This means that in order to avail protection under the Indian Copyright law, it is not necessary for the author to be a citizen of India, as protection for the same has been provided under Sections 2(1)(i)¹⁰ and 2(1)(iii)¹¹ of the Copyright Act. However,

⁶ Rina Chandran, 'India grants land ownership rights to refugees who fled Pakistan 70 years ago' (*Reuters*, 27 April 2018) <<https://www.reuters.com/article/us-india-landrights-refugees-idUSKBN1HY14O>> accessed 15 May 2023.

⁷ 'Acquisition and Transfer of Immovable Property in India' (*Ministry of External Affairs*) <<https://www.mea.gov.in/images/pdf/acquisition-and-transfer-of-immovable-property-in-india.pdf>> accessed 15 May 2023.

⁸ Press Trust of India, 'Mizoram instructs Myanmar refugees not to purchase land or house without govt permission' (*The Print*, 18 September 2013) <<https://theprint.in/india/mizoram-instructs-myanmar-refugees-not-to-purchase-land-or-house-without-govt-permission/1133723/>> accessed 16 May 2023.

⁹ The Copyright Act, 1954 (14 of 1957) s 2 (1) (ii).

¹⁰ *ibid* s 2 (1) (i).

¹¹ *ibid* s 2 (1) (iii).

generally, the work of refugees may not receive protection due to a lack of awareness of legal provisions and safeguards and exploitative practises prevalent in this domain. To address this issue, specific legal provisions can be inserted in the Copyright Act so as to accord protection to the works of refugees in India. The works of foreign nationals can be accorded protection, as can be logically read from the protection granted to foreign works in India by certain countries as mentioned in the International Copyright Order, 1999.¹²

Rights regarding Wage Earning Employment and Self-Employment

The right to work is not available to refugees in India under any formal legislation. The MGNREGA Act was enacted with the aim of providing 100 days of guaranteed employment to people residing in rural areas and willing to do unskilled work, and in case of unavailability of work, people who have applied are entitled to wages for that duration of work.¹³ Though no provision of the Act limits its application to Indian Citizens, refugees residing in rural areas face difficulties in having access to work. This is due to the difficulties in providing the identity proof needed to secure a job card in certain states. In most cases, these identity proofs involve the Aadhaar card or the ration card.¹⁴ The payment done under

¹² The International Copyright Order, 1999, S.O. 228(E).

¹³ The National Rural Employment Guarantee Act, 2005 (42 of 2005) s 4 (1).

¹⁴ Preeti Motiani, 'Who can apply for Aadhaar card? Know the eligibility rules' (*The Economic Times*, 15 October 2018) <

this scheme is also now done through an Aadhaar based payment system, making the implementation of the Act highly dependent on the Aadhaar verification of workers.

This is a very big challenge for the refugees, as they cannot attain an Aadhaar card or ration card without government approval on a case-by-case basis. This is due to the fact that foreign citizens residing in the country for 182 days are eligible for the issuance of an Aadhaar card. However, in the case of refugees, it is very difficult to establish the legality of their residency, as the same requires specific sanction on the part of the government. This is also supported by the fact that, as per MHA, even UNHCR card holders are not entitled to Aadhaar cards.¹⁵ There is no legislation for extending the Aadhaar card facilities to refugees specifically for work related purposes under MGNREGA or even for claiming certain social security benefits associated with them.¹⁶

Refugees can work in the country subject to the regulatory conditions imposed by the government and having received

<https://economictimes.indiatimes.com/wealth/personal-finance-news/who-are-eligible-to-apply-for-aadhaar-find-out/articleshow/59998036.cms>> accessed 16 May 2023.

¹⁵ Rajesh Kumar, 'UNHCR card holders not entitled for Aadhaar: MHA' (*The Pioneer*, 09 October 2018)

<<https://www.dailypioneer.com:443/2018/india/unhcr-card-holders-not-entitled-for-aadhaar--mha.html>> accessed 17 May 2023.

¹⁶ Jean Drèze, 'Making Aadhaar-Based Payments Compulsory for NREGA Wages Is a Recipe for Disaster' (*The Wire*, 16 February 2023) <<https://thewire.in/rights/aadhaar-payments-compulsory-nrega>> accessed 17 May 2023.

proper legal sanction for residence and property rights from the government. However, refugees do not have the fundamental right to practise any trade, occupation, or business as granted to citizens as per Article 19(1)(g)¹⁷ of the Constitution. Though the right for citizens is limited by Article 19(6)¹⁸, refugees have a more limited right to practise any trade or profession. A government issued advisory in 2016 prohibited refugees from engaging in ‘sensitive businesses’ like selling SIM cards, etc¹⁹. This does not act contrary to the position of the 1951 Refugee Convention, as Article 18²⁰ provides for the same rights to the refugee to engage in self-employment as are accorded to the aliens under the same circumstances, which is done by the Indian Government largely in cases where refugees are granted some sort of property right by the government.

In the case of liberal professions, refugees lack access to the same and also face big challenges related to identity verification and valid documents necessary for seeking admission to higher institutions. Moreover, in most cases, the refugees lack proper education due to differences in the education systems and curricula. To address this, programmes like bridge courses can be

¹⁷ The Constitution of India, 1950 art 19 (1) (g).

¹⁸ *ibid* art 19 (6).

¹⁹ Alope Tikku, ‘Refugees can work but can’t be in ‘sensitive businesses’, Centre asks states’ (*Hindustan Times*, 25 August 2016) < <https://www.hindustantimes.com/india-news/refugees-can-work-but-can-t-be-in-sensitive-businesses-centre-asks-states/story-24ppzEm8Byj3v0LcQG5pPM.html> > accessed 18 May 2023.

²⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) (1951) (The 1951 Refugee Convention) art 18.

conducted, and some special provisions providing for higher education can be incorporated through legislative means so as to accord them a reasonable chance of self-development.

Rights regarding Food and Ration

Food security is the most essential aspect of human rights, as proper nutrition is the only way of ensuring that the people get basic nutrition and health, which enables them to realise the opportunity that the formal legal system guarantees them for securing the goal of socio-economic justice based on the cornerstone of humanitarian principles in modern democracies. The right to food is a basic human right that flows from reading Article 21²¹ of the Constitution of India.

To achieve this objective, the NFSA Act²² was enacted by the Parliament in 2013 in order to meet the basic nutrition requirements of people who belong to low-income groups of society. The primary requirement for availing benefits under the PDS scheme is that the beneficiary must hold a ration card issued by the competent authority. The refugees are not entitled to ration cards as many states have different eligibility criteria and verification processes that refugees are not able to meet.

²¹ The Constitution of India, 1950 art 21.

²² The National Food Security Act, 2013 (20 of 2013).

This non-entitlement to ration cards can also be verified by the fact that Tibetan refugees were ‘issued’ ration cards by Odisha’s State government²³, which verifies the fact that most refugees are granted ration cards on a case-by-case basis by the respective state government or are ineligible for the same as they cannot fit the eligibility criteria fixed by various state governments. Though international organisations like UNHCR and WFP are working in close coordination with their respective governments to secure the refugees' right to food, comprehensive legislation addressing the rights of refugees as a whole can play a great role in supplementing their efforts.

Housing related Rights

Under the Pradhan Mantri Awas Yojana (PMAY) scheme, all eligible beneficiaries must hold a valid Aadhaar Card for verification purposes, which invariably restricts refugees from getting benefits under this scheme.²⁴ The Convention requires no distinction between the treatment accorded to aliens and refugees under the same circumstances. Going by that, the scheme is not in conflict with the provisions of the Convention, but a legislative provision providing for some residency benefits so as to not violate

²³ Subhashish Mohanty, ‘Tibetan refugees get ration cards’ (*The Telegraph Online*, 26 February 2023) <<https://www.telegraphindia.com/india/tibetan-refugees-get-ration-cards/cid/1918948>> accessed 18 May 2023.

²⁴ Ministry of Housing & Urban Poverty Alleviation, Government of India, ‘Pradhan Mantri Awas Yojana (Housing for All - Urban)’ (*Vikaspedia*, 11 January 2022) <<https://vikaspedia.in/social-welfare/urban-poverty-alleviation-1/schemes-urban-poverty-alleviation/pradhan-mantri-awas-yojana-housing-for-all-urban>> accessed 19 May 2023.

the basic human rights and dignity of the refugees can be incorporated.

Rights related to Public Education

Though there is no requirement of being a citizen of India so as to get elementary education in India, the same is a fundamental right under Article 21-A²⁵ of the Constitution and the Right to Education Act, 2005, which secures the right to elementary education for every child till the age of 14 years by virtue of Section 3²⁶. However, the refugees or illegal immigrants are not able to avail themselves of these basic education rights for their children due to a lack of access to the schools or a lack of awareness of the appropriate legal rights that are available to their children.

However, the verification process for the children and their parents, as mandated by different states, tends to exclude the refugees. This is due to the requirement of Aadhaar based verification of the child's parents and the child itself for securing admission. The MP government had mandated the completion of the verification process of documents like residence proof and Aadhaar cards in order to complete the admission process²⁷. The

²⁵ The Constitution of India, 1950 art 21 (A).

²⁶ Right to Education Act, 2005 (35 of 2009) s 3.

²⁷ TNN, 'Madhya Pradesh: July 1 last date to file for RTE admission' (*The Times of India*, 28 June 2021)

<<https://timesofindia.indiatimes.com/city/bhopal/madhya-pradesh-july-1->

UP government has also mandated Aadhaar-based verification of students and their parents for admission to primary schools.²⁸

The same problems of the verification process, lack of awareness, and low levels of development restrict the refugees from getting access to higher education in the country.

Rights related to Public Relief and Social Security Provisions

The majority of public relief schemes of the Government of India, even the most basic schemes like PDS schemes, involve complex verification processes requiring Aadhaar cards or other supporting documents, due to which refugees are left at the discretion of the state or central governments for availing benefits under public relief schemes or social security schemes. The benefits are either extended on a case-by-case basis or valid documents are issued by the competent authority. Though the intention of the government can be readily questioned as the verification processes are employed to make sure that the benefits reach the genuine seekers, a lack of legislation on refugees and their verification process exacerbates the problem by depriving

last-date-to-file-for-rte-admission/articleshow/83910939.cms> accessed 19 May 2023.

²⁸ Rajeev Mullick, 'Now, Aadhaar card mandatory for all U.P. govt primary, upper primary students' (*The Hindustan Times*, 27 June 2022) <<https://www.hindustantimes.com/cities/lucknow-news/now-aadhaar-card-mandatory-for-all-u-p-govt-primary-upper-primary-students-101656349303567.html>> accessed 19 May 2023.

them of the basic human rights they are entitled to as per Article 21 of the Indian Constitution.

Article 24 of the Refugee Convention mandates that we not differentiate between nationals and refugees in matters of public relief and social security²⁹. Though the benefit under this article is limited to certain matters under the control of administrative authorities or subject to laws and regulations, social security provisions like pensions can also be limited by the state parties to the Convention. Nonetheless, legislative clarity on this particular issue will enable the government to better identify the beneficiaries and accord them protection.

The exhaustive study of the existing public literature showcases that the lack of refugee laws in India has led to the treatment of refugees at the sole discretion of government policies depending on socio-political reasons.³⁰

NON-REFOULEMENT POLICY IN INDIAN LAW

India is a signatory to the International Covenant for Civil and Political Rights (ICCPR) and the Universal Declaration of

²⁹ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) (1951) (The 1951 Refugee Convention) art 24.

³⁰ Arushi Dhawan and Dr. K. Parameswaran, 'Rights of Refugees in India: The Legal Perspective with Special Reference to Their Educational Rights' (2022) 6(4) Journal of Positive School Psychology <
<https://journalppw.com/index.php/jjpsp/article/view/4320/2859>> accessed 19 May 2023.

Human Rights (UDHR). It follows from the reading of Article 7 of the ICCPR ³¹and the combined reading of Articles 3³², 4³³, and 14³⁴ of the UDHR that the principle of non-refoulement forms an integral part of these conventions, and India, being a signatory of both, should actively follow the principle of non-refoulement. Moreover, the principle today forms part of customary international law due to widespread acceptance and respect of human rights and also due to a number of conventions signed in this regard.

Also, the Manipur High Court recently held that the principle of non-refoulement flows from the reading of Article 21 of the Indian Constitution. ³⁵ Though the view of the Supreme Court in a recent judgement upholding the expulsion of Rohingya refugees and holding that the principle of non-refoulement was not a part of Indian law because India was not a signatory to the 1951 Refugee Convention. However, the Supreme Court, in framing sexual harassment guidelines in the Vishakha case, considered international conventions and treaties, including CEDAW, to which India was a signatory. The court held that

³¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 7.

³² UN General Assembly, 'Universal Declaration of Human Rights' UNGA Res 217A (III) (10 December 1948) UN Doc A/810 at 71 art 3.

³³ *ibid* art 4.

³⁴ *ibid* art 14.

³⁵ The Leaflet, 'Non-refoulement' is part of Indian Constitution, says Manipur HC; grants Art 21 cover to 7 Myanmar for safe passage to Delhi' (*The Leaflet*, 03 May 2021) < <https://theleaflet.in/non-refoulement-is-part-of-indian-constitution-says-manipur-hc-grants-art-21-cover-to-7-myanmar-for-safe-passage-to-delhi/> > accessed 20 May 2023.

Article 51³⁶, read with Article 253³⁷ and Entry 14 of the Union List, implies that principles not opposed to Part 3 of the Constitution and upholding constitutional guarantees of fundamental rights to individuals can be considered and incorporated into the body of Indian jurisprudence. Therefore, the wider interpretation of Article 21 as done by the Manipur High Court is in concordance with the principle of non-refoulement, which is a part of customary international law, and hence, despite the absence of legislation declaring this principle to be part of Indian law, courts can consider and apply it in order to grant relief to refugees in cases where it would not be detrimental to national security concerns.

PROCESS OF NATURALIZATION OF REFUGEES IN INDIAN CONTEXT

In India, certain communities belonging to certain religions from certain countries are not regarded as illegal migrants for the purposes of the Foreigners Act and Passport Act and hence will not be deported and will be granted citizenship by naturalisation after fulfilling certain conditions as provided in the Citizenship Amendment Act, 2019.³⁸

³⁶ The Constitution of India, 1950 art 51.

³⁷ *ibid* art 253.

³⁸ The Citizenship (Amendment) Act, 2019 (47 of 2019) s 2.

Pursuant to the proviso to clause (b) of s. 2(1) of the CAA Act, 2019, the Central Government or an authority specified on its behalf may grant a certificate of registration or a certificate of naturalisation on fulfilment of certain conditions after an application is made for citizenship in this behalf. Further, the period of service required for naturalisation in certain communities has been reduced to 5 years. But it is clear that all other refugees facing persecution in other countries will be treated as illegal immigrants, which makes this Act highly restrictive in its approach.

Indian lawmakers need to consider this issue with a sensitive approach and reconsider the parameters of naturalisation of refugees, as reducing the refugees to second class residents will violate their right to basic human dignity and a decent opportunity to survive and have a decent standard of living. Though the apprehensions of India in this regard and those of other countries facing refugee problems are not unfounded and are based on understandable concerns, which will be discussed later.

THE POLAND BELARUS MIGRANT CRISIS

The border between Poland and Belarus was marked by humans shivering in cold, living in hunger, and without access to any of the basic amenities needed for a basic standard of living. For us, it seemed like even the supreme creator would have given

up hope for humanity. The crisis continued for months at the borders of both countries. Belarus, in response to EU sanctions, started flooding the Polish border with refugees having complete disregard for their basic human rights and dignity. The migrants were not allowed to return and were forced to enter Poland. Poland also responded in a harsh manner by blocking the border and increasing security in order to push back the incoming migrants. Both countries have shown disrespect for the 1951 Refugee Convention, and Poland, being an EU member country, also violated the European Convention of Human Rights (ECHR), which embodies the principle of non-refoulement under Article 4 Protocol 4³⁹. Many EU leaders have accused Belarus of waging hybrid warfare against EU nations by flooding them with migrants.

There are various reasons behind this crisis. One reason is the larger sentiment of the Polish public attached to this issue and also the ideological orientation of the ruling party in Poland. The second reason could be the economic and social issues that arose with the influx of large numbers of migrants into a nation, as that takes a toll on resources and tends to disturb the perception of the nationals towards the plight of refugees. The third could have been the international and geopolitical dynamics of the nations based on their own vested interests. These interests, whatever their

³⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) (1950) 5 (European Convention on Human Rights, as amended) (ECHR) art 4.

nature or genuineness, became a huge reason for the plight of these immigrants, who were victims of these conflicts. Also, the unaccountable and unfettered exercise of power by the leaders of a nation tends to undemocratize the decision-making process, which ultimately leads to incessant conflicts. There can be a host of other reasons for this crisis.

However, Poland, along with Latvia and Lithuania, are blamed more for disrespecting the ECHR. The reactions and steps taken by these nations may be unjustified and are in disregard of basic human rights and international law. However, these reactions are not unfounded, and one can attempt to understand the reasoning behind the reactions of these nations. As discussed above, resource constraints and changes in public perception based on the economic limitations of the nation play a very important role, and a possible solution to balance the genuine concerns of nations with the human rights of refugees and asylum seekers will be discussed in following section.

THE ROHINGYA REFUGEE CRISIS

When it comes to a refugee crisis, a state giving shelter to a stateless population bears most of the consequences, and the Rohingya refugee crisis is one such living example. Rohingya is a Muslim ethnic minority in Myanmar that has been denied citizenship since 1982 on the grounds that the Rohingyas are illegal immigrants from Bangladesh. In 2017, around seven lakh

Rohingya refugees were forced to leave their country, making it one of the fastest-growing refugee crises in the world.⁴⁰ The Rohingyas were tortured, raped, and displaced by burning down their houses and even entire villages, which left them with no choice but to migrate to another nation. The Rohingyas fled from Myanmar and took refuge in Bangladesh, and to this date, there are approximately one million refugees residing in Cox's Bazar, Bangladesh, which makes it one of the largest refugee camps in the world.⁴¹ These refugees are given the status of registered refugees and are given relief by the Refugee Relief and Repatriation Commission of Bangladesh.

Bangladesh is not a signatory to the United Nations Refugee Convention of 1951 and its 1967 Protocol, but despite being a non-signatory, Bangladesh has recognised the principle of non-refoulement and provided the Rohingya Muslims relief and shelter from the persecution. But a refugee crisis does not only mean giving shelter to the migrants; it also comes with a lot of security concerns for the nation that provides them shelter.

One of the main security concerns associated with the refugees is crime within these refugee camps. It is not possible for

⁴⁰ Reuben Lim Wende, 'Stateless Rohingya continue to struggle for survival in Myanmar' (*UNHCR*, 25 August 2022) < <https://www.unhcr.org/news/stories/stateless-rohingya-continue-struggle-survival-myanmar> > accessed 19 May 2023.

⁴¹ UNHCR, 'Rohingya Refugee Crisis Explained' (*UNHCR*, 13 July 2022) < <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/> > accessed 20 May 2023.

a developing middle-income country to provide each and every immigrant with proper resources and employment. These countries depend on donations and aid from foreign countries and agencies. Many agencies, such as the United Nations High Commission for Refugees (UNHCR), Médecins Sans Frontières, also known as Doctors Without Borders, and the United Nations International Children's Emergency Fund (UNICEF), provide relief to these immigrants, especially women and children. Now, to sustain even the most basic necessities in such difficult situations, immigrants start getting involved in illegal activities, and as a result, the crime rate increases. The majority of these immigrants are not equipped with any skills and are not literate enough, which also makes them unsuitable for any kind of employment.

In 2018, Bangladesh seized a record 53 million methamphetamine (Yaba) pills, which is also known as the madness drug.⁴² Many of these drug dealers were Rohingya. As the refugees are in dire need of money for basic necessities, they fall into the trap of drug trafficking very easily.

According to some reports, Bangladeshi police have seized various firearms, from highly advanced to domestically made⁴³.

⁴² AFP, 'Bangladesh makes record drugs seizure — 53m meth pills' (*World Asia*, 10 February 2019) <<https://gulfnews.com/world/asia/bangladesh-makes-record-drugs-seizure--53m-meth-pills-1.61987724>> accessed 20 May 2023.

⁴³ Tribune Desk, '2 million yaba pills, 14 firearms seized from Rohingya camps in 16 months' (*Dhaka Tribune*, 04 July 2022)

These firearms are not only used for illegal trans-border smuggling but also for committing various crimes such as theft, rape, and murder. This becomes a reason for internal tussles among the refugees in the refugee camps.

The refugees also cross borders to find better opportunities in neighbouring countries. These refugees forge their identities by making fake identity documents and crossing the border illegally. There have been instances where Rohingya refugees were arrested by the police for crossing borders illegally, and fabricated documents such as Aadhaar cards were also recovered by the officials⁴⁴. The Rohingya refugees enter India through the borders of West Bengal, Manipur, and Tripura.

Due to the overcrowding of the refugee camps with Rohingyas, the Government of Bangladesh decided to relocate some refugees to a newly formed island in the Bay of Bengal. In 2020, the GOB relocated around 20,000 refugees to the island, and as of now, the number stands at approximately 30,000. ⁴⁵ The island is not equipped with any kind of storm and flood protection

<<https://www.dhakatribune.com/crime/2022/07/05/2-million-yaba-firearms-seized-from-rohingya-camps-this-year> > accessed 20 May 2023.
⁴⁴ Express News Services, 'Five Rohingya immigrants arrested in Tripura for illegal border crossing, fake Aadhaar cards' (*The Indian Express*, 19 May 2023) < <https://indianexpress.com/article/north-east-india/tripura/five-rohingya-immigrants-arrested-tripura-8618920/> > accessed 20 May 2023.
⁴⁵ "An Island Jail in the Middle of the Sea" Bangladesh's Relocation of Rohingya Refugees to Bhasan Char' (*Human Rights Watch*, 07 June 2021) < <https://www.hrw.org/report/2021/06/07/island-jail-middle-sea/bangladeshs-relocation-rohingya-refugees-bhasan-char> > accessed 20 May 2023.

measures, and along with this lack of reliable water supplies, schools, health facilities, and food shortages, the residents of the island are often at serious risk.

The Rohingya crisis gives us an account of not just a refugee crisis but also the socio-legal and security concerns related to the settlement of refugees in a nation. Bangladesh is a low- to middle-income developing country, and hosting refugees for an indefinite period puts pressure on its resources.

Since 1971, Bangladesh has already hosted many refugees, and further signing of the 1951 Refugee Convention and its 1967 Protocol could lead to additional pressure to host more refugees, which is not possible with the limited infrastructure of the country. The only way to deal with this problem could be a safe deportation of the refugees back to their country, as indefinite hosting is definitely not the solution. But this is only possible with the cooperation of Myanmar, as regular persecution could again lead to the same situation or even worse in some cases.

THE INDONESIAN LAW ON REFUGEE

Indonesia is one of the few countries in South Asia that hasn't signed the 1951 Refugee Convention but has still shown a humanitarian approach towards refugees over the years. Collaborating with the United Nations High Commissioner for

Refugees and analysing its policies can help give new direction to policy-making in India too.

As of 2022, Indonesia is home to around 13,098 refugees from over 50 countries. The influx of refugees in Indonesia started in the 1990s. Indonesia is one of the major South Asian countries after India that has not signed the 1950 Convention relating to the status of refugees or its 1967 protocol. The majority of refugees in Indonesia came from Afghanistan, Myanmar, and Somalia. The President of Indonesia signed a comprehensive refugee law in 2016.⁴⁶

According to this regulation, a foreign refugee is a person who resides within the boundaries of Indonesia due to fear of persecution due to race, ethnicity, religion, nationality, membership in a particular social group, or different political opinions and does not wish to avail himself of the protection of his own country or be declared a refugee by UNHCR.⁴⁷

As Indonesia doesn't have a national refugee status determination system, the Government authorises UNHCR to

⁴⁶ Sreeparna Banerjee, *The Rohingya crisis: Indonesia's immigration issue*, Observer Research Foundation, <https://www.orfonline.org/expert-speak/the-rohingya-crisis-indonesias-immigration-issue/> (last updated Jan.18, 2023).

⁴⁷ The Handling of Foreign Refugees Concerning the Handling of Foreign Refugees, 2016 (125 of 2016) art 1 (1).

carry out its refugee protection mandate and identify solutions for refugees in the country.

Article 28G (2)⁴⁸ and Article 28⁴⁹ of the Indonesian Constitution of 1945 and Legislation No. 39 of 1999 concerning human rights, respectively, provide that “Everyone has the right to seek and receive political asylum from another country”.

Article 2⁵⁰ of the 2016 Presidential Regulation on Handling Refugees provides that the “handling of refugees is carried out pursuant to cooperation between the central government and the United Nations through the United Nations High Commissioner for Refugees in Indonesia and/or international organisations”.

Furthermore, Article 3⁵¹ of the regulation states that “the handling of refugees must duly observe generally applied international provisions and be in accordance with the provisions of laws and regulations”. If, in any case, the refugee’s application is rejected by the United Nations through UNHCR, then such a person can be subject to deportation and be put in an immigration detention centre.

Overall, Indonesia has outsourced the determination of a refugee to the UN through UNHCR instead of having a system of its own,

⁴⁸ The Constitution of the Republic of Indonesia, 1945 art 28 G (2).

⁴⁹ *ibid* art 28.

⁵⁰ The Handling of Foreign Refugees Concerning the Handling of Foreign Refugees, 2016 (125 of 2016) art 2.

⁵¹ *ibid* art 3.

and the rights and treatment that are given to the refugee depend on the status provided to a person by this agency.

SUGGESTIONS FOR ADDRESSING THE REFUGEE CRISIS

The Global Compact on Refugees (GCR) is a framework adopted by the United Nations in 2018 to address the challenges posed by large refugee movements. The GCR offers recommendations to improve the global response to refugee situations. It emphasises the importance of international cooperation and burden-sharing among countries to ensure a fair distribution of responsibilities. The GCR calls for the protection of refugees' human rights, including non-refoulement and access to education, healthcare, and legal assistance. It emphasises the need for comprehensive and predictable response plans, early warning systems, and coordination mechanisms. The GCR promotes self-reliance and inclusion, encouraging support for refugees' socio-economic integration and empowerment. It highlights the importance of durable solutions such as voluntary repatriation, local integration, and resettlement. The GCR also stresses the need for sustainable funding mechanisms and engagement with non-state actors. Additionally, it emphasises data collection and evidence-based approaches to inform policies and programmes. By implementing these recommendations, the international community can enhance the effectiveness and

inclusivity of refugee responses, ensuring the well-being of refugees while supporting host communities.

Refugees are humans who are entitled to basic human rights that grant certain levels of opportunities so as to enable them to secure fundamental opportunities for growth and development. Though countries endeavour to protect their citizens on a priority basis and are somewhat justified in their approach, refugees cannot be left at the mercy of unknown circumstances facing them, as they are humans at the end of the day. Furthermore, neglecting these refugees leads to an increase in crimes and an unsafe environment for the nationals of the country. The democratic principles are inevitably based on respect for basic human dignity, and so countries claiming themselves to be democratic must make concerted efforts in this regard.

A possible solution further along this line could be the creation of a common fund pool that would be established by nations that are signatories to the Refugee Convention. This fund could be managed with a similar institutional setup and guidelines as the IMF, but with suitable modifications introduced in the relief disbursement process to make it faster and more efficient. Contributions to the common fund could be based on the principles of Common but Differentiated Responsibilities (CBDR), as affirmed at the 1992 Earth Summit. These principles can be adapted to the specific circumstances within the domain of refugee protection. The collective international will can play a

crucial role in this regard, as the contributions to the fund should come from nations with stronger financial and economic stability. Additionally, countries from where refugees originate should be held accountable, and the powers of the International Court of Justice (ICJ) to sanction state officials can be enhanced in this regard. Wherever possible, repatriation should be prioritised to facilitate the return of refugees to their country of origin.

CONCLUSION

The challenges posed by the modern-day refugee crisis demand a collaborative approach from the international community. In today's contemporary era, where the majority of countries have adopted the democratic form of governance, the achievement of democratic principles of equality and brotherhood is still not achieved, which is evident from the treatment of refugees by these democratic nations. Merely signing the international protocols has never led to their adherence. The need of the hour is to strike a balance between the interests of the nation and the fundamental human rights of the refugees.

The United Nations Global Compact on Refugees (GCR) provides a comprehensive framework calling for international cooperation, burden sharing, and the protection of refugee rights. It emphasizes the need for comprehensive, self-directed response plans with an emphasis on self-reliance and sustainable solutions.

The basic human rights and entitlements of refugees require the involvement of the entire international community. Ignoring their plight not only threatens their well-being but also poses dangers to the host society and its democratic principles. To effectively meet these challenges, it proposes the creation of a single bank, similar to IMF but designed for refugee assistance, guided by principles of Common but Differentiated Responsibilities. This approach saves the powers of the countries, boosts recognitions of the plight of the refugees, encourages strong financial assistance to support refugee protection, and address the legitimate social and economic interests of the countries that host refugees.

An analysis of the distinctive approaches of India and Indonesia in handling refugees and both being non-signatory to the Refugee Convention reveals that Indonesia has demonstrated a humanitarian approach, collaborating with the United Nations High Commissioner for Refugees (UNHCR), while, on the other hand, India navigates refugee issues on a case-by-case basis. Strengthening the accountability of countries of origin, such as India and Indonesia, and fostering regional cooperation aligns with the broader global strategy outlined by the GCR.

In addition, countries of origin should strengthen their accountability in matters relating to refugees, respecting the exercise of jurisdiction by international institutions such as the International Court of Justice (ICJ) and recognizing national

authorities. Prioritizing repatriation where possible ensures a permanent return. By enhancing international cooperation through the implementation of these recommendations, the world can work towards an effective, inclusive, and humanitarian response to the refugee crisis.