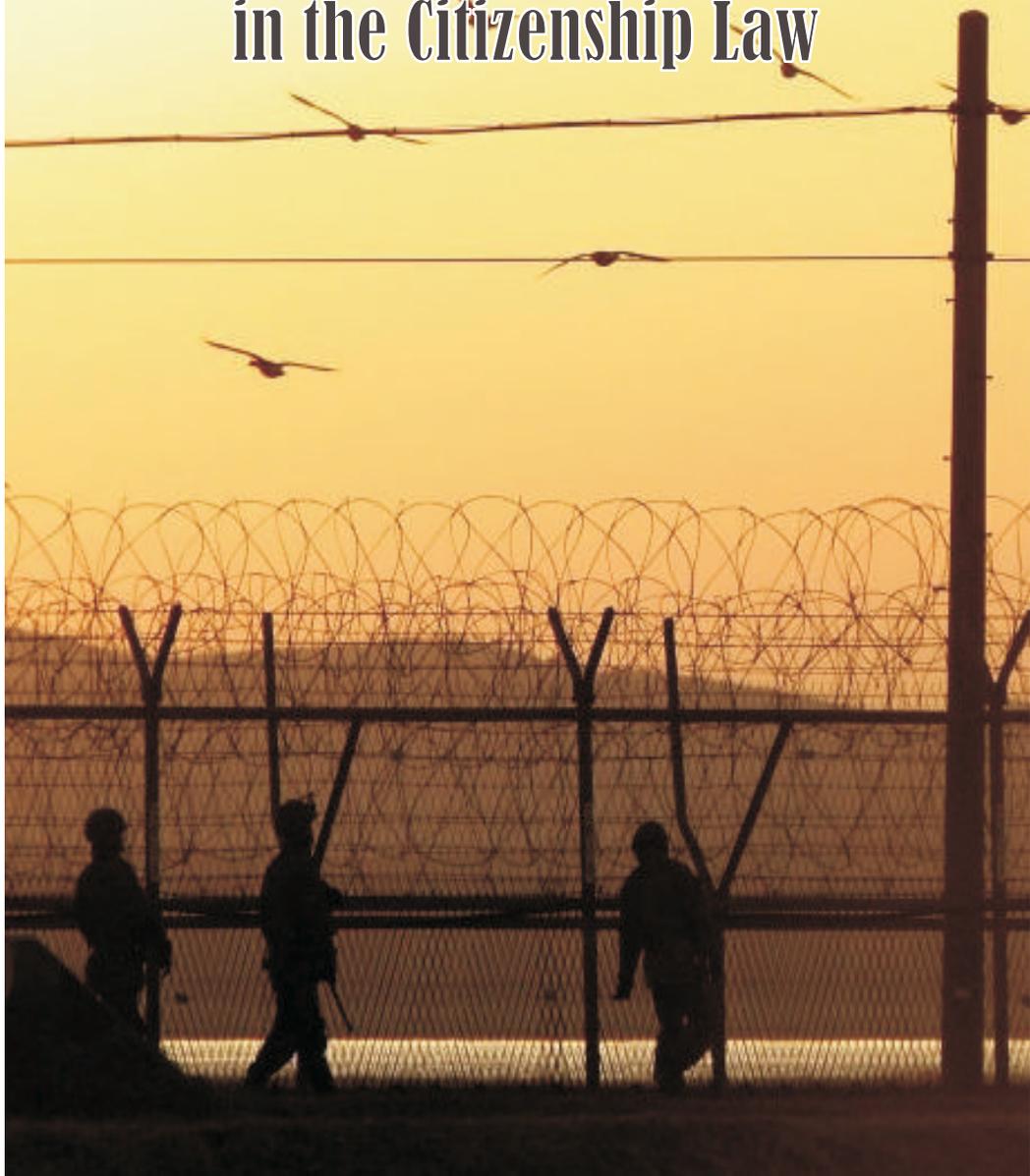


Refugee Crisis and Amendment in the Citizenship Law



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Citizenship law has been a delicate subject in India ever since independence particularly after large scale movement of people during partition and the recurrent influx of refugees because of domestic instability in neighboring countries. The Citizenship Act of 1955 has been amended five times until now. These amendments had set the grounds for prioritizing jus sanguini (blood and descent) over jus soli (soil or birth). The Union Government introduced the Citizenship (Amendment) Bill, 2016 in Lok Sabha on July 19, 2016. The Bill seeks to amend the Citizenship Act, 1955 which enacted to provide for the acquisition and determination of Indian citizenship. The Bill seeks to extend citizenship to person belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who have either entered into India without valid travel documents or the validity of their documents have expired shall not be treated as illegal migrants. Hence, make them eligible to applying for Indian citizenship by the process of naturalization. Under the existing provisions of the Act, persons belonging to the minority communities of aforesaid countries who have either entered into India without valid travel documents or the validity of their documents have expired are treated as illegal migrants. The Bill also seeks to reduce the aggregate period of residential qualification for the process of citizenship by naturalization of such persons from 11 years to six years.

Union Home Minister Shri Rajnath Singh while introducing the Bill in Lok Sabha laid down the statement of object and reason to seek changes in the Citizenship Amendment Act 1955. He said that the Citizenship Act, 1955 was enacted to provide for the acquisition and determination of Indian citizenship. Under the existing provisions of the Act, persons belonging to the minority communities, such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have either entered into India without valid travel documents or the validity of their documents have expired are regarded as illegal migrants and hence ineligible to apply for Indian citizenship. It is proposed to make them eligible for applying for Indian citizenship.

Many persons of Indian origin including persons belonging to the aforesaid minority communities from the aforesaid countries have been applying for citizenship under section 5 of the Act, but are unable to produce proof of their Indian origin. Hence, they are forced to apply for citizenship by naturalization under section 6 of the Act, which, inter alia, prescribes twelve years residency as qualification for naturalization in terms of the Third Schedule to the Act. This denies them many opportunities and advantages that may accrue only to the citizens of India, even though they are likely to stay in India permanently. It is proposed to amend the Third Schedule to the Act to make applicants belonging to minority communities from the aforesaid countries eligible for citizenship by naturalization in seven years instead of the existing twelve years.

Whether Bill is Discriminatory and Exclusionary?

The Bill represents a very positive and welcome change in India's Refugee Policy and it would be of the immense benefit to the displaced people of Pakistan, Bangladesh and Afghanistan. The exact number of minorities refugees from these countries is not known but according to rough estimate around two lakhs such people are living in India including Chakmas and Hajongs of Bangladesh who have been refugees for nearly 65 years. Most of refugees from these countries are Hindus and Sikhs spread largely in Rajasthan, Gujarat, Madhya Pradesh, Maharashtra,



Myanmarese refugees living in tattered tents in Delhi

Salient Feature of the Citizenship Amendment Bill

1. The Citizenship (Amendment) Bill, 2016, seeks to amend the 1955 Citizenship Act.
2. It extends citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh, and Pakistan.
3. The Bill reduces the aggregate period of residence or government service in India to six years from not 11 years.
4. The bill reduces the period of residency from 12 to seven years for eligibility via naturalization route.
5. Center can cancel registration of overseas citizens who violate Citizenship Act.

Assam, UP and Delhi. However, it is alleged that this amendment would benefit largely the Hindu migrants of aforesaid countries. Critique of the Bill says that it restricts itself to minorities from Afghanistan, Pakistan and Bangladesh who are fleeing due to religious persecution and denying the rights to the refugees/citizenship to people of all denominations who have made India their home. It is also alleged that the government while making the religious persecution main reason to award the citizenship, it discriminates several other communities in neighbouring countries who are facing the religious persecution viz. Ahmadiyyas in Pakistan and Rohingyas, in Myanmar have fled to India en mass due to religious persecution in their own countries. Unfortunately the Bill does not extend protection to the refugees in India from amongst the Muslim community and singles them out on the basis of religion. The Bill also doesn't consider the Sri Lankans of Indian origin of Sri Lanka who have taken refuge in Tamil Nadu following the state sponsored violence against Tamils in July 1983. Majority of these refugees are Hindu with Christian and Islam forming a small minority. The Bill also discriminates Hazaras of Afghanistan are constantly under religious persecution. Hazaras who have managed to escape have been accepted by the Australia.

National Legal Regime

India has not any central, uniform law dealing with refugees. Despite the fact that India plays host to thousands of refugees, it has no specific legislation dedicated to their protection and rights. India treats different refugee



Source: asianews

Refugee camps in India

groups differently denying them the right to be treated equally before the law. The Government of India determines the legal status of refugees by political and administrative decision rather than any codified model of conduct that governs the status of refugees in India.

Refugees in India are registered under Foreigner Registration act 1939, which is applicable to all foreigners entering to India. Under the 1946 Foreigner Acts, the Government is empowered to regulate the entry, presence, and departure aliens in India. Passport (Entry to India) Act 1920, Passport Act 1967 and Extradition Act, 1961 also deal with refugees in India. India has handled the refugees under political and administrative levels. India has no central government body, other the Foreigner Regional Registration

Some of Parliamentarians ranging from Congress' Shashi Tharoor to BJP's Varun Gandhi to BJD's Rabindra Jena has introduced the refugee law in Parliament. Tharoor introduced The Asylum Bill, 2015, as a private member's bill while Varun Gandhi introduced The National Asylum Bill, 2015. Rabindra Kumar Jena of the BJD introduced The Protection of Refugees and Asylum Seekers Bill, 2015. Incidentally, all three bills introduced on December 18, 2015 and are currently pending in Parliament.

Officers, under the Bureau of Immigration India to deal with refugees. The Government of India grants permission to UNHCR to conduct registration and refugee status determination as well as to assist the refugees, who are not extended direct assistance by the government. UNHCR provides them *de facto* protection because refugees recognized under the UNHCR mandate are not considered refugees under Indian law. However, in absence of any specific codified law the Fundamental Rights enshrined in Part (III) of the Constitution is applied to refugees especially that of Article 14, Article 20 Article to Article 28. However, Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article 16 (equality of opportunity in matters of public employment), Article 19 (six basic freedoms subject to reasonable restrictions), Article 29 (Protection of language, script and culture of minorities), Article 30 (Right of minorities to establish and administer educational institutions) are not available to the foreigners

Role of the Judiciary

Indian Judiciary is the guiding sentinel which preserves the rule of law. The Supreme Court has taken recourse to Article 21 of the Constitution in the absence of legislation to regulate and justify the stay of refugees in India in various cases. In *National Human Rights Commission vs. State of Arunachal Pradesh* (year) the Supreme Court of India decided that all refugees within Indian territory are guaranteed the right to life and personal liberty enshrined in Article 21 of the Constitution and that the state is bound to protect the life and liberty of every human being, be a citizen or otherwise, and it cannot permit anybody or group of persons to threaten the refugees, to leave. The Supreme Court has also held that the State of Arunachal Pradesh was under the

Baloch leader Brahumdagh Bugti approached India's Permanent Mission in Geneva to request political asylum in India on 20th September 2016, a first step before he files the formal application with the Indian embassy in Berne, Switzerland. If Government of India accepts his request, it would be the highest profile individual to get political asylum from New Delhi after 1959, when it received Tibetan spiritual leader Dalai Lama who was fleeing atrocities by China.

constitutional obligation to protect and safeguard the life, health and well being of the Chakmas and directed the state to take measures necessary for ensuring life and personal liberties of the Chakmas.

Furthermore, in a series of judgments the Supreme Court, the High Courts of Gujarat, Punjab, Gauhati and Tamil Nadu have reiterated the need for a humane due process for the Chakmas, the Sri Lankans and other refugees. Some of the judgments expressly recognize the value and worth of the UNHCR and invite it to involve itself more in the refugee questions in India.

Unfortunately, this jurisprudence sits uneasy with the normal law relating to foreigners, which grants the Government near arbitrary powers of deportation. The Law Commission's 175th Report of 2000, recommended more stringent laws to treat 'illegal entrants' harshly, making no consideration of the cruel circumstances that may occasioned their migration. However, the Supreme Court in *Louis De Raedt vs. Union of India* (1991) held that Article 21 of Constitution protects life and personal liberty of all persons. So aliens on Indian territory shall not be deprived of those rights except according to procedure established by law. Therefore, while a *de jure* system of refugee protection in India does not exist, there is a system of procedures and practices that serve to create a *de facto* refugee protection regime in India.

Influx of Refugees in India

India with its history, culture, and traditions, has been an epitome of grace and generosity in the way it has opened its borders to all people who have come looking for safety and sanctuary. India is a home to diverse groups of refugees. India is a country having a long historical tradition of welcoming refugees from all over the world. India discovered this when absorbing the Tibetan Refugees in 1959, the Bangladeshi refugees in 1971, the Chakma influx in 1963, the Tamil efflux from Sri Lanka in 1983, 1989, and again in 1995, the Afghan refugees from the 1980s, the Myanmar refugees for a similar period and migration and refugee movements from Bangladesh over the years.

At the end of 2015, according to the United Nations refugee body, there were 2, 07,861 persons of concern in India, of whom 2,

01,281 were refugees and 6,480 asylum seekers. It includes around 175,000 refugees from Tibet and Sri Lanka who have been given asylum over decades by the government. According to UNHCR India, some 31,000 refugees and asylum-seekers were registered with UNHCR in India at the end of year 2014 and 51 percent of refugees and asylum-seekers are men, while 49 percent are women. There are some 11,000 children below the age of 18. Refugees in India are coming from all over the world including Afghanistan, Myanmar, Somalia, Congo, Eritrea, Iran, Iraq, Sudan and Syria. According to media report 39 Syrian refugees and 20 asylum seekers are currently registered with the UNHCR in India as on August 2015. The influx of refugees are likely to increase in a condition where world is grappling with conflict like situation.

Global Trend

World over refugee crisis is deepening every year. An unprecedented 65.3 million people around the world have been forced from home. Among them are nearly 21.3 million refugees, over half of whom are under the age of 18. There are also 10 million stateless people who have been denied a nationality and access to basic rights such as education, healthcare, employment and freedom of movement. In a world where nearly 34,000 people are forcibly displaced every day as a result of conflict or persecution, India can't remain unaffected. The number of displaced people around the globe is equivalent to the UK's population of 65 million.

With just less than one percent of the world's population homeless and seeking a better and safer life, this global crisis is exacerbated by a lack of political cooperation and flouting of international agreements designed to deal with the crisis. According to the study conducted by the World Bank and UNHCR, the root cause of the problem is conflicts responsible for the majority of forced displacement every year for the past quarter of a century. The study singled out Afghanistan, Burundi, Caucasus, Colombia, the Democratic Republic of the Congo, Iraq, Somalia, Sudan, Syria and the former Yugoslavia as responsible for a crisis that affects one percent of the world's population. The report said that 89 percent of refugees and 99 percent of internally displaced people



Refugees and migrants in a boat

were hosted by around 15 developing countries, a pattern unchanged since 1991.

The UNHCR also estimates that 34,000 people around the world are forced to flee their homes every day to escape conflict or persecution. One such conflict is the Syrian civil war, which has resulted in over 4 million registered refugees in the past four years, with that number constantly increasing. This crisis is placing pressure on the resources of host communities. World over the debate has been generated how countries should respond to the vast numbers of asylum seekers and refugees. At the global level, there is discussion about how to change or strengthen current models for responding to refugee crises and the increasing burden faced by different countries. At the domestic level, a number of individual countries are applying their own refugee laws and policies in processing and supporting varied numbers of refugees. In some cases, new policies, special processes, and specific quotas have been instituted in response to the current crisis.

India deal with refugee and asylum seeker in three different ways and they are categorized as-

1. Refugees which receive full protection and assistance from the government of India for example, Sri Lankans and Tibetan.

2. Refugees who are granted refugee status by the UNHCR and are protected under the 'principle of non-refoulement' for example, Burmese Afghans, Somalis etc.
3. Refugees who are neither recognized by the Indian government nor the UNHCR but have entered India and assimilated into the local community for example, Chinese refugees from Burma living in the state of Mizoram

The government deals with these refugees differentially. Domestic politics and compulsion play the important role in treatment of refugees. Both Sri Lankan Tamil and Tibetan refugees are issued refugee identity documents and are entitled to government assistance. However, Tibetans live in settlements with almost unrestricted freedom, the Sri Lankan refugees are largely kept in camps under close watch and restricted movement. While in second category refugee Somalis, Palestinians and Burmese do not receive any assistance from the Indian State and are criminalized and denied access to basic social resources. The government has decided to issue long-term visa to Burmese refugees, who are mostly from the ethnic Chin minority, but the other group of refugees are not entitled to any privilege.

International Position

India does, however, have an informal refugee regime broadly in line with international instruments. While it has no formal asylum policy, the government decides on granting asylum on an ad hoc and case-to-case basis. India remains one of the few liberal democracies that have not signed, supported or ratified the international conventions that govern how nation should treat distressed people who are forced to leave their home under horrific conditions. India is neither party to the Refugee Convention 1951 nor to its 1967 Protocol on the Status of Refugees. The convention is signed by 144 countries out of 190 countries around the globe and works for protection of rights of the displaced and 'defining legal obligations of the states to protect them'. India has also not ratified the 1954 UN Convention on Statelessness and 1961 UN Convention on Reduction of Statelessness. India respects the Principal of Non- Refoulement , the most important basic human rights of refugee which forbids the rendering of a true victim of

persecution to his or her persecutor. According to this principle, no country shall deport, expel or forcefully return the refugee back to his original territory against his will or if there is a reasonable threat to his life, liberty and freedom.

However, India is a party to the 1966 International Covenant on Civil and Political Rights (ICCPR). Furthermore, India ratified the 1966 International Covenant on Economic, Social and Cultural Rights, the 1963 Convention on the Elimination of All forms of Racial Discrimination and the 1979 Convention on the Elimination of All forms of Discrimination against Women (CEDAW). In addition to it India has recognized the 1989 Convention on the Rights of the Child and signed the 1984 Convention against Torture (CAT). It is worth mentioning here that India has adopted the 1948 Universal Human Rights Declaration (UHRD) whose Article 14(1) states, “Everyone has the right to seek and to enjoy in other countries asylum from persecution. These treaties impose a positive duty on India to provide protection to refugees as long as they fear persecution at the hands of their government. No treaty, convention or law can be compartmentalized and excluded to respect the human rights of refugees.

In fact, though India may have respected certain provisions of the 1951 Convention, it has always had a different treatment towards the numerous groups of refugees and therefore not everyone has been entitled to the same humanitarian assistance from the Indian government.

Theory of Burden Sharing

As far as the system of international refugee protection is concerned, the Preamble to the 1951 Convention outlines a desire for the equitable distribution of the burden of refugees. This has given rise to theories of international burden-sharing, whereby every state can allocate an optimal amount of its income towards contributing to the establishment and maintenance of an international supply of funds, which they can benefit from at times of need. The international supply will thus be a combination of contributions from all states wherein, the countries with larger

incomes will bear a larger proportional share of the burden. In this manner, every country in the world will be required to contribute to the international supply, and countries that receive refugees can extract resources from this supply and utilize it for the protection of refugee rights. This is beneficial for individual countries like India as well, who have not signed the 1951 Convention, as it will provide a method to deal with the influx of refugees that it regularly faces across its porous borders, without adversely affecting the national economy and resources, as well as without denying refugees their rights.

However, in the current international legal framework, the burden of ensuring the integration of the refugee to a society falls entirely on the host country, even though the refugee problem is an international and not a national one. Developing nations face the most refugee problems. Some states bear an inequitable share of the burden of refugee protection and have to deal with a disproportionately large number of displaced persons in relation to other states. It is a fact that the world's poorest countries are the ones hosting the biggest refugee populations.

Conclusion

The refugee related issues have become more complex. The regional and international situations have changed quite substantially. The very definition of a refugee has been now subjected to a range of political interpretation with strong social cultural bias. India hosts the refugees but there is a definite symptom of aide and compassion fatigue. The absence of forthright and comprehensive legal regime has made the issues more fragile and management distinctly ad hoc.

Fate of the homeless and stateless people shouldn't be decided at the political goodwill. India needs to review its ambivalent refugee law policy and evolve a regional approach and enact rules to protect persecuted refugees. There must be a firm, and uniform structure and policy to deal with refugees of all denomination. A domestic law is needed in India to ensure that all refugees are given basic protection. Without that, refugee rights are not rights in the real

sense, they are simply privileges at the hands of the administration. The domestic law needs to in accordance and conformity with international conventions. Considering the conflict like situation all around the world, there is need of lot of preparedness to deal with refugees as influx of refugees are waiting at doorstep.

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