NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, BANGALORE

A DISSERTATION ON

"REFUGEES IN INDIA AND THEIR RE-INTEGRATION WITH SPECIAL REFERENCE TO CITIZENSHIP AMENDMENT ACT, 2019"

UNDER THE SUPREVISION OF

Dr. D.S. MAKKALANBAN

IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE DEGREE OF LL.M. 2019-2020 IN HUMAN RIGHTS

SUBMITTED BY

JAY JAISWAL

LLM/885/2019

CERTIFICATE

This is to certify that Mr. Jay Jaiswal, student of LL.M. 2019-20 (Human Rights), National Law School of India University has prepared this dissertation on "Refugees in India and their re-integration with special reference to Citizenship Amendment Act, 2019" under my direction and supervision. This work has been carried out genuinely by him and no part of this dissertation has earlier been submitted or published in any form. He has completed his work with sincerity and upto my satisfaction.

Signature

Prof. Dr. D.S. Makkalanban
NLSIU, Bengaluru

DECLARATION

I, Jay Jaiswal, student of LL.M. 2019-20 (Human Rights) hereby declare that this dissertation on "Refugees in India and their re-integration with special reference to Citizenship Amendment Act, 2019" is my original work and has not been copied from any other work. The same has been done under the guidance and instructions of Dr. D.S. Makkalanban, Professor, NLSIU. I hereby declare that views that have been reflected throughout this work are of author and proper citation has been provided wherever references are drawn from any existing work.

Date:

Place: Bengaluru Researcher

Jay Jaiswal

NLSIU, LL.M. 2019-20
(Human Rights)

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LIST OF ABBREVIATIONS

- CAA- Citizenship Amendment Act, 2019
- ICCPR- International Covenant on Civil and Political Rights
- ICESCR- International Covenant on Economic Social and Cultural Rights
- ICSR-International Convention on Status of Refugees
- NRC- National Register of Citizens
- NPR- National Population Register
- MNLR- Model National Law on Refugees
- MoHA- Ministry of Home Affairs
- NHRC- National Human Rights Commission
- BJP- Bhartiya Janta Party
- NDA- National Democratic Alliance
- UNHCR- United Nations High Commissioner for Refugees
- AIR- All India Reporter
- SC- Supreme Court
- SCC- Supreme Court Cases
- SCR- Supreme Court Reporter
- BCI- Bar Council of India
- HLR- Harward Law Review
- IBR- Indian Bar Review
- i.e.- That is
- Art.-Article
- Sec.- Section
- w.r.t- With respect to
- OCI- Overseas Citizen of India
- CJI- Chief Justice of India
- J.- Justice
- NEFA- North-East Frontier Agency

CHAPTER 1
INTRODUCTION

Background:

India has always been welcoming to all the migrants who had been coming to India crossing borders of their countries where they were persecuted for several reasons. However, it recognised them as refugees officially and offered varied protection to different groups based upon discretionary and diplomatic policy. Differences in treatment is quite evident from the different status of different refugee groups as some of them[1] have been given freedom to stay as well as of moving freely however other groups[2] have been given only residence permit and kept under surveillance. Whereas, some others[3] although never objected to reside in India, were are not even given such permits officially.

India never accepted international way of dealing with refugees and has always denied individualistic approach and favored group wise approach to deal with refugees due to prevailing mass influxes problems in South Asian region. There is no national refugee protection regime concerning with refugee problems in India but different administrative measures and judicial developments have led to an implied though scattered regime of refugee protection.

Considering various mass influxes of people into Indian Territory from neighboring countries seeking alyssum and refuge in India, Indian parliament amended its citizenship law. Different political ideologies who came to power saw refugees from different perceptions. In 1986, Citizenship Act was amended to make its citizenship law stricter in the sense that children of migrants or of foreigners in India cannot acquire Jus Soli citizenship just by virtue of being born on Indian land with adding requirement of either

[1] Tibetan Refugees.
[2] Sri Lankan Tamils.
[3] Bhutanese Hindu Nepalese, Pakistani Hindus, Bangladeshi Chakma and Hajong refugees, Afghan refugees etc.

parent to be existing citizen of India to get citizenship by birth.[4] Again in 2003 through amendment[5], the citizenship law was made even stricter. It defined 'illegal migrants'[6] and added requirement of having one parent to be Indian citizen and the other 'not to be illegal migrant', for getting Indian citizenship by birth.

Recently, the BJP led NDA Government of India has enacted another Citizenship Amendment Act, 2019 (herein after also referred to as CAA) which provides for relaxations of lesser period[7] of residence in India to certain illegal migrants[8] to apply for citizenship by naturalization process.

The selective approach of the Act which excludes Muslim community from the specified three countries and other illegal migrants from other non-specified neighboring countries led way to huge protests and debates not only throughout India but also in the international community. The act has also been challenged before the Supreme Court of India for being unConstitutional because of its discriminatory nature and having being against the secularism as implicit in the Indian Constitution.

It is important to note that the Act only provides for consideration of these selected communities for naturalization process and does not automatically provides citizenship. How the implementation will be done is yet to be disclosed by the Government. At present no rules for the same has been enacted and the same are awaited.

Such local integration is alleged to drastically change Indian approach of viewing refugees especially religiously persecuted minorities. It is alleged to be capable of reducing India's refugee burden. However, the same will be determined by the certainty in the implementing process under the draft rules which are yet to come. But before that,

[4] The Citizenship Amendment Act, 1986 provided that from the date of implementation of the amendment, getting citizenship by birth will require at least one parent to be Indian Citizen in advance. However, such amendment left those unaffected who were born before this amendment came into force.
[5] Citizenship Amendment Act, 2003.
[6] Ibid. Illegal Migrants are persons who travelled to India without valid visa and documentation or whose valid documents have expired and stayed beyond the permitted period.
[7] Calculated to be around 5 years instead of 11 years that is required usually to get naturalization in India.
[8] Those who entered India before specified date in 2014 and belong to Hindu, Parsi, Jain,, Buddhist, Sikh and Christians from Pakistan, Afghanistan and Bangladesh.

the Act is required to sustain the test of Constitutionality before the Supreme Court of India.

Research Problem

Local integration of refugees has been proved to be durable solution to refugee problem around the world but when re-integration is done in the refuge state by granting citizenship, it gives wide scope for debates and controversies especially by the nationals of the refuge state. India has passed Citizenship Amendment Act, 2019 to provide citizenship to some refugees who fall under the specified criteria. However, it is alleged that it categorically left one particular community from its protection, thereby attracting humanitarian, Constitutional as well as cosmopolitanism debates. The same needs to be analysed critically.

Aims and objectives

1. To put some light upon how India has been able to manage the refugees without being party to the refugee Convention;
2. To examine re-integration of refugees in host state as a durable solution;
3. To see whether there was need of CAA in India towards refugee protection;
4. To critically analyse the provisions of CAA along with its objects and reasons;
5. To critically look upon the practical aspects of CAA to reduce the refugee burden of India;
6. To critically analyse some past experiences of re-integration in host state by granting citizenship;
7. To analyse whether CAA is consistent with the Constitution and its soul;
8. To evaluate if spirit of CAA catogorise the refugees in India;

Hypothesis

'Citizenship Amendment Act, 2019 might result into drastic reduction of refugee burden on India'

Research Questions

1. Whether provisions of Citizenship Amendment Act, 2019 are in line with its object and reasons?
2. What are the practical implications of CAA with respect to India's historical obligations, Constitutional consistency and societal acceptance?
3. How far is it justified to weigh CAA with principles of natural justice and whether it leads to the idealism as being refugee solution or to the insights of Constitutional morality?

Research Methodology

The present research work is mainly based upon doctrinal research approach. Study in this research is analytical, comparative, and descriptive in nature.

The researcher has relied upon **primary** as well as **secondary sources**. In primary sources, UN Human Rights Conventions, general comment of treaty bodies, UNHCR reports and resolutions, Constitution of India, 1950, Citizenship Act, 1955 and its amendments including Citizenship Amendment Act, 2019 aiming towards granting citizenship to refugees, parliamentary debates, Constitutional doctrines, Supreme Court and High Court judgments etc., have been taken into consideration whereas various law books, research articles from international and national law journals, published reports & interviews of eminent personalities etc. have been relied upon as secondary source for this study.

Importance of study

The study is important to everyone as there has been great political controversy about the subject matter that also led to public violence and therefore it is important matter of public concern. The present work has special utility to those who have duty to make general people aware about the exact nature and scope of the subject matter. It is

especially important to lawyers, social activists, journalists and judges who have to make a detailed analysis to arrive at a conclusion.

Mode of Citation

The researcher has used NLSIU citation style in the present research work.

Scope and Limitations

The study is more focused towards national aspect i.e. Indian aspect and thus international refugee law and international regime is discussed only where it is necessary to have better understanding about CAA and its scope and impacts.

Literature Review:

1. Raghuwanshi & Chowdhury (2018)[9]

Authors in this research article discussed in brief about the India's position in handling refugees. However, they conducted an empirical study through questionnaire wherein they concluded that India has been welcoming to refugees and only around 5% people think that it is not so with additional 1% people who strongly disagree on it. The study also took into account various other questions such as threat to national security, having sufficient laws for protection of refugees etc. In which similar figures were concluded. However, when it came to the question as to whether citizenship be given to refugees, 34.3% disagree on 'citizenship status be granted to refugees' whereas 23.5% strongly disagree on granting citizenship status to them while 25.5% seemed to have neutral opinion. Moreover, 14.7% and 2% thereby agreed and strongly agreed in conferring citizenship status to refugees. The reason seemed to be various including threat to security of India, permanent overpopulation, India's status of being developing nation.

[9] Rishika Raghuwanshi and Ayush Chowdhury, *Exigency of Domestic Norms for Tackling Refugee Crisis: Perspective on Citizenship and Balance between Human Rights and National Interest in India*, 1(1) JUS DICERE REVIEW 134-154 (2013).

This paper further discusses upon having a need of domestic law specifically dealing with refugees and need of South Asian Refugee Convention.

2. Acharya (2016)[10]

In his study mainly deals with the Asylum Bill, 2015 that was introduced by a Member of Parliament Mr. Shashi Tharur (not from the government). Author rests his work on four principles on which Asylum Bill, 2015 entirely rests which are very broad as well as according to author, are quite praiseworthy. The four principles includes firstly that asylum, because it is multifaceted, different categories of protection is required; secondly, India has past experience of mixed migratory flows and thus they demand flexibility in processing mechanisms; thirdly, greater level of attention is required in mass influxes (that India witnessed several times) than individualistic procedures; and lastly, that goal of the asylum bill is management and regulation of asylum and refugees in India and their governance.

Author categorically also lays down a critical study of what famous works of B.S. Chimni provides that India does not need any national legislation for refugees and asylum. Author's view is that though India has been welcoming for refugees, it did not provide adequate protection to them. Their condition is not consistent with the humanitarian principles of natural justice.

He points out that any suggestion that Indian judiciary has recognised the principle of non-refoulement is not accepted. He does so by analysing the poor implementation and ignorance of the judicial pronouncements that were pro refugees especially those which dealt with non-refoulement.

3. Sarker (2013)[11]

[10]Bhairav Acharya, *The Future of Asylum in India: Four Principles to Appraise Recent Legislative Proposals*, 9(2) NUJS LAW REVIEW 173-228 (2016).

[11]Shuvro Prosun Sarker, *Inception of Statelessness and Refugee's Battle for Citizenship in India: a Critical Study***,** 12 ISIL YEAR BOOK OF INTERNATIONAL HUMANITARIAN AND REFUGEE LAW 284-305 (2012-2013).

Author wrote about how statelessness is one of the major problems in India. Indian approach to look at stateless people is quite different as it does not consider the problems of statelessness but only deals with them as aliens under the Foreigners Act. Author points out about how the problems of statelessness is linked with the citizenship issues in India and that citizenship has come to be a political weapon and medium towards treating non-citizens as second class people in the country.

Then the author move on to analyse some important parliamentary debates regarding granting citizenship to refugee groups. It is reflected that parliament, several times, considered and debated to grant citizenship to Chakma and Hojong migrant groups stayed in Arunachal Pradesh since 1971. However it left those staying in other parts of India.

At last the author points out some judicial precedents wherein approach of court seemed to be pro refugee protection and was linked to granting citizenship to refugees. However, the paper does not arrive to sorted conclusion as to what ought to be done. It stated that the matter is still under consideration before all organs i.e. legislature, executive as well as the judiciary, in view that certain cases involving related issues are were pending.

Debates also look into granting of citizenship to Pakistani refugees staying in Malappuram, Kerala in which Ministry of Home Affairs in 2005 gave clarification that no such applications have yet been received from such group and if they apply, decision shall be taken in accordance with the citizenship law of India. It also reflects that citizenship has been granted to those Pakistani refugees staying in Gujarat and Rajasthan region of India.

Author then discusses about few case laws where some persons born from Tibetan refugees on Indian Territory were held to be citizen of India because of falling within cut off period wherein there was no requirement of having either parent to be Indian citizen at the time of birth, to get citizenship by birth.

4. Hovil and Lomo (2014)[12]

The author in this work discussed about the citizenship and it plays a vital role in belongingness to a land. Author lays greater emphasis on the need of local integration as a durable solution for exile and means for re-establishing citizenship rights.

Author discusses 9 case studies that have been done on the situation of refugees in great lake region of Africa in which different case studies look into the subject matter from varied angles and perspective. One of the case studies that I found quite relevant to my research work is case study of Burundi refugees staying in Tanzania who were granted naturalization post 1971. However, author points out that Tanzanian Government were giving citizenship to Burundi refugees with a catch of relocating them to other areas of Tanzania which means that those who were granted naturalization had to leave their homes of past 3 decades and start a new life at new places.

5. Choudhary & Kanungo (2019)[13]

Authors very briefly wrote about the citizenship law in India alongwith Constitutional provisions regarding citizenship as enshrined under part II of the Constitution of India and how it is being changed in favour of certain refugee community through the Constitutional Amendment Act, 2019. Author highlights about how deportation of illegal migrants has been a long lasting issue in India.

Then the article discussed about the very aim of CAA alongwith its Constitutionality part by pointing out that it is discriminatory and against Article 14 of the Indian Constitution. Their work also discusses various grounds of discrimination implicit under CAA which is against secular character of India. Apparently, author discusses the same in very summarized manner and leaves very important aspects about the Constitutionality of

[12] Lucy Hovil and Zachary Lomo, *The Role of Citizenship in Addressing Refugee Crises in Africa's Great Lakes Region, International Refugee Rights Initiative: 2014 policy briefing*, INTERNATIONAL REFUGEE RIGHTS INITIATIVE (2014).

[13] Abhishek Choudhary and Rajashree Kanungo, *A Study on the Constitutionality of the Citizenship Amendment Act, 2019*, MANUPATRA (June 23, 2019), *available at* www.manupatra.com (Last visited on March 20, 2020).

CAA i.e. the importance of object and reasons of CAA and how it is constituting a different class of non-citizens to whom CAA aims to give protection through naturalization.

6. Vijayakumar (2000)[14]

In his article, he analysed judicial responses towards the refugee protection. He highlighted the importance of Chakma case and the later development in the refugee regime in India as remarkable pronouncement by Supreme Court of India which tried to keep a balance between the state's discretionary right under the Foreigner's Act and the right of refugees for basic necessities. He highlighted the tremendous role of NHRC of India to assist the chakmas to reach the apex court. He also highlighted that bureaucrats are doing mere red tapism towards a standard refugee protection regime in India whereas great scholars will assist the government by showing a way forward towards this subject area.

7. Saxena (2007)[15]

Author wrote his paper from the perspective of implementation of government measures and policies on human rights and refugee issues. He demonstrated various reasons for non-acceding of the 1951 convention by India. He also pointed out about non-enactment of any national refugee law by South Asian countries due to variety of reasons such as political hardship and ignorance, instability in democracies, overrated concerns about security issues etc. In later part of his research paper, he highlighted why the judicial approach of High Courts and Supreme Court in India cannot be said to be right based approach but is merely based upon humanitarian principles and bare necessities. Finally, he supported the enactment of a national legislation for India in terms of refugee protection as it is required historically and it is stated that if it is not enacted, much harm

[14]Veerabhadran Vijayakumar, *Judicial Response to Refugee Protection in India*, 12(2) INTERNATIONAL JOURNAL OF REFUGEE LAW 235-243 (2000).

[15] Probodh Saxena, *Creating Legal Space for Refugees in India: the Milestones Crossed and the Roadmap for the Future*, 19(2) INTERNATIONAL JOURNAL OF REFUGEE LAW 246-272 (2007).

is expected to be inflicted to the Indian democratic and humanitarian approach of dealing with refugees. He also reviewed and favored MNLR draft that was drafted at the regional level of South Asia.

Chapterisation

1. Introduction

1.1. Brief background

1.2. Research methodology etc.

2. Status of refugees in India before CAA

2.1. Historical tradition of welcoming refugees in India

2.2. India and International Refugee Law

2.3. Refugee problems in India

2.4. Refugee Protection in India

2.5. Status of refugees in India before Citizenship Amendment Act, 2019

3. Local integration by granting citizenship as a durable solution for refugee problem

3.1. Local integration as a Solutions for refugee problem

3.2. Varying local integration for different refugee groups

3.3. Religious persecution and importance of local integration of religiously persecuted minorities in refuge state

4. CAA and how it changes the status of refugees in India

4.1. Citizenship and how can it be acquired?

4.2. Citizenship Amendment Act, 2019: Analysis of object and reasons alongwith its provisions

4.3. How far and to what extent can CAA affect the refugee's status in India

4.4. CAA and its practicability: Societal acceptance v/s Legal status in documents

5. Whether CAA is justified with Constitutional provisions, Constitutional values and Constitutional morality?

5.1. What are alleged grounds of challenging of CAA?

5.2. Justifications of CAA as contemplated by Government of India.

5.3. Analysis of validity of CAA in view of test of equality and Constitutionality.

6. Conclusion and Suggestions

CHAPTER 2

STATUS OF REFUGEES IN INDIA BEFORE CITIZENSHIP AMENDMENT ACT, 2019

India's concept of '*Atithi Devo Bhava*' and its ideological importance:

India has been a country of values and ideologies with a rich cultural history. '*Atithi Devo Bhava'* is one of them and is quite a times used to confer that India is at best doing to respect and protect the non-citizens on its land. However, whether every non-citizen entering its territory would be considered as '*Atithi*' and thereby *ipso facto* would be considered deity or only those who are formally invited should be the one? Has the societal ideology modified in terms of all the non-nationals entering in India, to the extent that only those who are entering after getting valid visa be given due respect as '*Atithi*' and those (refugees and illegal migrants) who enter India without requisite legal documents are not entitled to be considered our guests?

Is it so that only those who are recognised by Indian Government to be refugees owing to their forced circumstances must get the status of being our *'Atithi'*? If it so considered then to what extent such recognised refugees are entitled to be treated in India? What about those who have been granted refugee status by UNHCR but not by Indian government? What about those who may have crossed borders due to inevitable circumstances and fear of persecution aiming to save their lives but are not recognised as refugees by either Indian government or UNHCR? What about the illegal migrants who cross borders for better economic and social life?

2.1. Historical tradition of welcoming refugees in India:

As already stated India has its tradition of welcoming refugees with the concept of '*Atithi devo bhava'*. Indian culture has always welcomed refugees and has given them honour and dignity in the India society. India's 5000 years old known history is witness for the same. The Parsi community arrived in India 1200 years ago because of religious persecution. The Jews came 2000 years ago to India because they were persecuted by

Romans. Since then, both Parsis and Jews have stayed in India with dignity and were never persecuted in India. They were integrated in the society and are known as Indian now.[16]

Apart from them, we have Americans, Syrian Christians who arrived in our country in fourth century A.D. because of persecution.

2.2. India and International Refugee Law:

Earlier the refugee protection was done in accordance with the customary principles however lateron with time, International refugee regime has been developed in view of worlds changing ideology towards human rights protection mechanisms. At present, there are three international instruments that deal with the refugee protection regime which includes Statute of UNHCR[17], ICSR[18] and Optional Protocol to ICSR[19]. However, India has not ratified the international refugee regime. At most, India has allowed UNHCR to give assistance to the refugees staying in Indian Territory. One of the reason which in my opinion is very ground reason not to follow the international regime is that International regime give refugee protection on individual basis whereas India because of its past experiences of mass influxes into its territory believes in refugee protection on group basis. The same is discussed in sub heading below.

2.2.1. Who are considered as refugees in India?

To evaluate how refugees are protected and what is their status in any country, the foremost thing to know in a concrete form is who are considered to be refugees in that country. As regard to the definition of refugees, the most commonly used definition is given in Article 1 of the International Convention on the Status of Refugees, 1951 wherein it is stated that a person (individual) who was forced to flee from his country of

[16] Markandey Katju, *India's Perception of Refugee Law*, 1 ISIL YEAR BOOK OF INTERNATIONAL HUMAN AND REFUGEE LAW 251 (2001).
[17] Stature of United Nations High Commissioner for Refugees, 1950.
[18] International Convention on Status of Refugees, 1950.
[19] Optional Protocol to International Convention on Status of Refugees, 1967.

habitual residence to other country and was so fled, due to well-founded fear of persecution on 5 grounds i.e. race, religion, nationality, being member of social group or having different political opinion and is unwilling or unable to return to his country of origin due to well-founded fear of persecution, is considered as 'refugee' for the purpose of the convention. However, as the definition seems to be limited so as not to cover certain individuals who may have taken refuge due to threat of their lives due to civil war or due to threat of climate change or due to natural disasters etc., some regional instruments[20] have provided for a wider definition of the term 'refugee'.

However, as far as India is concerned, it does not follow the above given meaning of the term 'refugee' and thus the entire approach of dealing with refugees is on different footing than that of other countries especially of west. Indian approach is more like a diplomatic and political approach which mostly depends upon the discretion of the government in power. Its approach also differs from group to group basis. This is analysed below in the later part. There is no exact definition of refugees laid down in any legislation in India and therefore, all refugees are legally foreigners under the Foreigner's Act and are accorded protection on diplomatic and humanitarian basis on its own discretion.

2.2.2. Indian hesitation to ratify the Convention:

Despite having pressure from UNHCR as well as the international community including the developed west, India has always been hesitant in ratifying the convention without clearly specifying the reasons. Although there are several reasoning including diplomatic and political reasons given by different authors having different political ideologies, but reasons from the authorised sources[21] can be summarized as below[22]:

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[20] Organization for African Unity Convention on Refugee Problems in Africa, 1969 and Cartagena Declaration of Latin American, 1984.

[21] Sreya Sen, *Understanding India's Refusal to Accede to the 1951 Convention: Context and Critique*, 2(1) REFUGEE REVIEW: RECONCEPTUALIZING REFUGEES & FORCED MIGRATION IN THE 21ST CENTURY 134 135 (June 22, 2015), *available at* https://refugeereview2.wordpress.com/opinion-pieces/understanding-indiasrefusal-to-accede-to-the-1951-refugee-convention-context-and-critique-by-sreya-sen/ (Last visited on April 13, 2020).

1. The Euro centrism in the original draft convention and its process is one of the primary reasons in non-willingness of India to ratify the convention. Despite there being only few independent nations from the global south during the convention's drafting, their inputs were not given much importance and were considerably rejected[23] which resulted into ignorance of Non-European displacement[24]. The convention has only taken consideration of the European and Western displacement however, the biggest refugee problems are prevalent as on today in the global south whose experience was ignored in the drafting of the convention. India witnessed world's biggest displacement at the time of its partition however the refugees resulting out of such partition did not even qualify for the protection under international convention[25].
2. Conventions individualistic approach of refugee protection is another reason of difficulty for India as India has seen mass influxes of refugees on its territory and qualifying refugee on an individualistic basis is practically very difficult. India has always preferred refugee protection on group basis. Yet again, "for India, an individualist asylum system would ignore its unique national imagination and fluid conception of citizenship; it might even ideologically betray the "idea of India."[26]
3. Most importantly, India has taken a view that it wants a strong burden sharing provision in the convention[27]. Since countries at Global North have developed regimes to stop effectively people from entering their territories[28] and Global South has burden of considerable number of refugees in the world, the burden must be

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[22] Acharya, *Supra* note 10 at 179.

23 Paul and Weis, *The Refugee Convention, 1951: The Travaux Preparatoires Analysed with a Commentary*, 7 CAMBRIDGE INTERNATIONAL DOCUMENTS SERIES (1995).

[24] United Nations Economic and Social Council, Ad Hoc Committee, *Report on Statelessness and Related Persons*, U.N. Doc. E/1618 12-13 (1950).

[25] Prashant Bharadwaj *et all*, *The Big March: Migratory Flows after the Partition of India*, 43 ECONOMIC & POLITICAL WEEKLY 39 (August 30, 2008).

[26] Bhairava, *Supra* note 11 at 179.

[27] UNHCR Executive Committee, Statement by the Indian representative, 51st Session 549th Meeting, U.N. Doc. A/AC.96/SR.549, (2000).

[28] Laura Barnett, *Global Governance and the Evolution of the International Refugee Regime*, 14 INTERNATIONAL JOURNAL OF REFUGEE LAW 238, 250 (2016).

shared by the North for getting any say in how Global south is dealing with the refugees.[29]

4. Like other South Asian countries, lack of measures to control population entry due to porous borders; considering refugee entry as affecting internal stability, ethnic conflicts, political stability and international relations; high chances of changing linguistic and religious composition of receiving areas which raises local anxieties and restlessness harming peace of the particular area etc, are some other reasons for India for not signing the convention.

2.3. Refugee problems in India:

As mentioned earlier, India witnessed mass influx into its territory on several occasions from several countries especially from its neighboring countries. Refugee movements in India dates back the time when India got its independence. Indian independence which was given on in lieu of partition of undivided Indian soil brought with it an unfortunate and inevitable biggest refugee crisis into its land. Although the number of refugees is not certain, various reports provide for different statistics of refugees in India with differences to some extent. As per UNHCR '2016 Factsheet India'[30], there are 209,234 people of concern[31] in India in which 18,914 belong to Myanmar, 13,381 belong to Afghanistan, 672 belong to Somalia and 1483 belong to other places. The total figure also includes 1,10,095 Tibetans and 64,689 Sri Lankans who are also assisted by Government of India. With the recent data as per 2018 Global Trends Report[32] by UNHCR, there were 1,957 asylum seeking applications were received by India in 2018 alone in which 4,500 are new alyssum claims from Afghan. With this, India consists of around 1,95,891 refugees staying on its territory as on 2018.[33] Several refugee movements along with the

[29] B.S. Chimni, *From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems*, 23 REFUGEE SURVEY QUARTERLY 66 (2004).
[30] UNHCR, *Factsheet India 2016*, available at https://www.unhcr.org/50001ec69.pdf (Last visited on March 1, 2020).
[31] They include refugees, asylum seekers, returned refugees, stateless persons, Internally Displaced Persons and other people which UNHCR thinks to assist on humanitarian grounds.
[32] UNHCR, *2018 Global Trends Report* (2018**)** *available at* https://www.unhcr.org/5d08d7ee7.pdf (Last visited on May 5, 2020).
[33] Many of the refugees have been repatriated to their countries after their reasons for being persecuted were resolved. Sri Lankan Tamils and 1971 refugee influx from East Pakistan may be taken as examples.

various categories into which they have been divided on the basis of the practice that India followed are discussed in detail below:

2.3.1. Refugee movements in India

Tibetan Refugees

In 1959, due to Chinese invasion in Tibet, their political leader Dalai Lama took asylum in India with the help of Indian Government. Thereafter, around 80,000 Tibetans fled from Tibet to India which was followed by steady similar flow of Tibetans into India. Till 2009, there were 150,000 Tibetan refugees taken refuge in India.

Tibetan refugees have been recognised as refugees by the Government of India and have been issued certificate to that extent that they can take admission in educational institutions etc. The inborns of Tibetan refugees are also required to get the registration certificate at the age of 18. Tibetan refugees are in a best position in India as compared to other refugees in India as far as their legal status is concerned. They are the only refugee group who are also granted travel documents by the Government of India.

Sri Lankan Tamils

Due to conflict between LTTE and the Sri Lankan government, Sri Lankan Tamils (linguistic minority of Sri Lanka) have been fleeing to India since 1983.

Sri Lankan Tamil refugees are not granted refugee status by the government of India and in accordance with the Foreigners Act, they are considered to be illegal migrants who traveled without legal documents for entry. They have been kept in government camps which has 7 p.m. curfew timing. Those who wish to stay outside the government camps are required to take permission from local police station and are required to timely attendance. They are not allowed to work officially but are given aid by the government. They are also given primary school education for children and subsidized food grains etc.

Due to assassination of former Prime Minister Rajeev Gandhi by a militant group who was found to be belonged to these refugee groups, those who are under suspicion of such activities which may be threat to the nation are kept under detention camps under surveillance.

Repatriation of Sri Lankan refugees was done in several phases after taking assistance from UNHCR and the Sri Lankan government. In 1987, Indian Government signed an accord with Sri Lankan government to resolve the ethnic crisis between the two nations wherein India agreed to take back its citizens from Sri Lanka provided Sri Lanka also takes back its citizens living on Indian soil, most of who are refugees. Memorandum of understanding was also signed between Sri Lanka and UNHCR to provide assistance to returnees. In 1992 again, agreement was signed between the two nations to start repatriation again and the same was carried out. Concerns were raised by several NGOs that it is not voluntary repatriation and principle of non refoulement is being violated by India. However, there are enough evidences based on which UNHCR report says that most of the returnees answered in positive that they are going back voluntarily when UNHCR interviewed over 70% of the returnees.[34] In P. Neduraman and Dr. S. Ramadoss v. The Union of India and the State of Tamil Nadu[35], the Madras High Court stated: "I am satisfied by the records produced by the Special Government Pleader that the consent of the refugees is obtained in proper manner and only those refugees who have expressed their consent are being sent back and the voluntariness of consent is being verified by the representatives of the UNHCR."

However, due to several allegations and after finding out that some of the refugees were forced to sign their voluntary repatriation form by certain officers, the repatriation process was stopped.[36]

Hindu Nepalese

[34] B.S. Chimni, *The Legal Condition of Refugees in India*, 7(4) JOURNAL OF REFUGEE STUDIES 378 (1994).
[35] Ibid.
[36] Ibid.

Due to ethnic conflicts between original Bhutanese and Hindu Nepalese, the Citizenship Act of 1985 was passed by the Bhutanese government which required Hindu Nepalese to prove 15 years of naturalization of which many couldn't prove and thereby became illegal migrants. The act also provided for revocation of Bhutanese citizenship if any act of Hindu Nepalese were proved to be disloyal to the King, or to the Nation or to the Bhutanese people. This resulted into huge protests and retaliations from Hindu Nepalese as a result of which Bhutanese government increased the military presence and closed their schools and development programs. Thereby they were forced to flee from Bhutan. Though there is no exact data, but it is said that there are approximately 15,000 to 30,000 Nepalese staying in India.

Because there was a treaty signed by India with Nepal and Bhutan, they can move freely throughout Indian Territory without any legal document and thus can also work in any part of the country. Owing this, Indian Government neither considered them as illegal migrants not recognised them as refugees. Thus as far as freedom of movement is concerned, they are in a best position as compared to the other refugees.

Hindu Pakistani Refugees

After the partition of India, several Hindus decided to stay in Pakistan as a minority who resided in Sindh region of Pakistan. However, owing to partition when Muslim population migrated to Pakistan from India in the Sindh region, there emerged communal violence due to which Hindu Pakistanis started to flee to India. After the demolishment of Babri masjid in 1992, the Hindu population in Pakistan was again persecuted and thus forced to flee to India due to religious persecution. By 2007, 115,000 Hindu Pakistani settled in Rajasthan and Gujarat region post 1965.[37]

The Citizenship Amendment Rules 2004 was enacted which provided Pakistanis could apply for citizenship in Gujarat and Rajasthan by proving 5 years of residence in spite of 12 years as in the case of ordinary naturalization. 13,000 Hindu Pakistanis were granted

[37] Human Rights Law Network, Report of Refugee Population in India, (2007).

Indian Citizenship by Government between 2005 and 2006. However, many were left as it is as they could not afford the application fee which was increased drastically by the Citizenship Amendment Rules 2005.

Burmese Refugees

In 1988, the pro-democracy movement was begun to be surpassed by the Burmese Government that forced over 3,000 refugees to flee into India. The enhanced militarization under SPDC and its devastating impacts continue to cause enormous flight from Burma to India especially from the western region because of forced labour, torture, rape, disappearances, and extra-judicial killings. As on 2018, India consists of 18,800 Myanmar (then Burma) refugees. They have settled in the north eastern states of India.

Somali Refugees

Post 1991 civil war in Somalia which has been under anarchy since long witnessed huge number of influxes from the country who sought asylum in various countries. The largest African community staying in India is Somalis numbering around 400 people including some of them who had been officially registered by naturalization. They are staying mostly in Hyderabad and some in Delhi. Somali refugees are not recognised by Indian Government and have not been given residence permits and thus they are unable to work. They have been receiving subsistence allowance and assistance from UNHCR in India.

Afghan Refugees

Over 9,000 recognised refugees from Afghan are staying in India and over 90% are of Hindu or Sikh beliefs. They fled majorly because they could not openly exercise their faiths under the Taliban regime which was based upon strictest enforcement of Shariya Law. Most of them fled from Afghanistan due to fall of the Najibullah regime when the Taliban took control over Afghanistan and started imposing their oppressive measures.

They are not recognised by the Indian Government but are recognised by UNHCR mandate. However, they have been provided with residence permits and thus are able to work and mix with the Indian population due to their common religious beliefs and their ability to speak Hindi.

Bangladeshi refugees

There was a huge separation between the two parts of Pakistan i.e. east and West Pakistan after the 1947 Partition of India and Pakistan. The biggest mass influx from East Pakistan was caused in 1971.

There had always been controversies between the people of two regions on issues such as less representation of East Pakistan in military, subordination of economic interest of East Pakistan by West Pakistan etc. The demand of Bengalis of East Pakistan for autonomy was increased by 1960 resulted into demonstrations and strikes. However, military rule was prevalent in the Pakistan at that time. The administration of General Yahya Khan announced that his transitional government would try to transfer power back to civilian government.

Election were held for new national assembly but because of the conflict between the political parties who got majority in East and West Pakistan on the issue of autonomy of East Pakistan, President General Yahya Khan declared to postpone the inauguration of the national assembly indefinitely which prompted violent protests in East Pakistan in early 1971. It was followed by self-declaration of People's Republic of Bangladesh in March, 1971 by people of East Pakistan which was followed by launch of massive counterinsurgency operation by Pakistani army. Attacks were launched on those suspected in support of the political group which was in having leadership in independence of Bangladesh owing to which severe human rights violations were caused with thousands of deaths of civilians. This life threatening situation led to the exodus of

around 10 million refugees into Indian land. By 1971, number of 9,899,305 Bangladeshi refugees had entered into India[38].

Government of India made it clear that India would do its best to assist the refugees but they are not allowed to stay on a permanent basis[39]. The Bangladeshi refugee problem due to its high numbers of influx was causing conflicts of ethnicity and culture between natives and refugees. In some of the districts, number of refugees got even higher than the indigenous population of that district.[40]

However, the refugees could not be sent back as the situation in their land was quite the same because of which they had to flee to India. Thus, Indian government with the help of international community and Indian Army assisted the East Pakistan in getting independence from Pakistan and thereby the East Pakistan became independent Bangladesh in later 1971. The way was clear now for the refugees to go back to their land. An announcement was quickly made by India that all Bangladeshi refugees would need to return back to their territory. With the assistance of UNHCR, repatriation was effectively conducted lateron.

Though majority of them were repatriated to Bangladesh, there is no proof of whether there are none left in India and it is said that some left in India and are living in India since then.

Chakmas and Hojong Refugees

The Chakmas and Hajongs were originally residing in the Chittagong Hill Tracts in the East Pakistan (now Bangladesh). They had to flee to India when their land got submerged through the 1960's Kaptai dam project. The Chakmas faced severe religious persecution

[38] United Nations Secretary General, *Report Concerning the Implementation of General Assembly Resolution 2790 (XXVI) and Security Council Resolution 307(1971),* UN Doc. A/8662/Add.3 (1972).
[39] UNHCR, *The State of The World's Refugees 2000: Fifty Years of Humanitarian Action by UNHCR* (2000), *available at* https://www.unhcr.org/ (Last visited on May 5, 2020).
[40] R.E. Sisson and L.E. Rose, *War and Secession: Pakistan, India and the Creation of Bangladesh*, (Berkeley CA) University of California Press, 206 (1990).

because they were Buddhists by faith along with the Hindus believing Hajongs.[41] A state survey of 2016 claims that the total population of Chakmas and Hojongs altogether is 65,851 in Arunachal Pradesh only with others of them settled in other north eastern states of India including Assam.[42]

The constant tussle between the original indigenous population and the chakmas and Hojong refugees in Assam, Tripura and Manipur is striking as they claim that illegal migrants have caused a substantial change in the social demography of their areas making the locals of the land minorities in the areas. These conflicts were also one of the reasons behind the deadly Kokrajhar riots of 2012 in Assam in which more than 80 people died[43].

Rohingya Muslims:

Myanmar enacted its new citizenship law in 1982 grants citizenship to 'national races' who settled in Myanmar prior to 1824 (i.e. prior to first occupation by British). It does not grant citizenship to Rohingya Muslims as they are considered to have settled afterwards. Becoming stateless in Myanmar, they retaliated and protested however they could not get citizenship. However, lateron, when they began to use violence against government, they were tagged as terrorists and were persecuted. Owing to such persecution, they fled to several parts of world. However, since 2012 clashes between Buddhists of Myanmar and Rohingya Muslims again erupted in Rakhine state and they again fled due to persecution.

In India as well, according to government estimates[44], around 40,000 Rohingya Muslims entered and at present they are found in Jammu and Kashmir, Delhi, Hyderabad majorly.

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[41] https://indianexpress.com/article/who-is/who-are-chakma-and-hajong-refugees-in-arunachal-pradesh-4841615/ (Last visited on April 18, 2020).
[42] Sadiq Naqvi, *For Chakma & Hajong refugees, Citizenship Struggle Continues, available at* https://economictimes.indiatimes.com/news/politics-and-nation/for-chakma-hajong-refugees-citizenship-struggle-continues/articleshow/74033643.cms?from=mdr (Last visited on April 16, 2020).
[43] Martand Jha**,** *India's refugee saga, from 1947 to 2017 available at* https://www.livemint.com/Sundayapp/clQnX60MIR2LhCitpMmMWO/Indias-refugee-saga-from-1947-to-2017.html, (Last visited on April, 18 2020).
[44] https://legaldesire.com/analysis-balance-national-interest-human-rights-rohingya-crisis-india/.

They are alleged to have entered India through Bangladesh that hosts largest Rohingya Refugees.

The Indian Government considers them as security threat to India and decided to deport them back to Myanmar. In 2017, Writ petition was filed in the Supreme Court challenging the government's decision of deportation. In its affidavit filed before Supreme Court, the Government of India said that some of them having militant background were found to be very active in Jammu, Delhi, Hyderabad and Mewat thereby forming potential security threat to India. Centre also stated that some of them were part of a 'sinister' design of Pakistan ISI and terror groups such as the ISIS whose presence will pose a serious security threat to India.

Supreme Court although in its previous order in the said petition stated that Government is required to balance out national security reasons with the humanitarian principles. However, in later orders it denied to stay the deportation of Rohingya Muslims.[45] On Jan 10, 2020, Achiume, U.N. Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance filed an application before the Supreme Court requesting the Court to allow her to assist the Court in matter dealing with Rohingya Muslims.[46] The matter is still pending before the Supreme Court of India without having any stay on deportation that is being carried out by the Government of India.

At present there might be considerable number of Rohingya population dwelling in Indian Territory, but the recent stance of Indian authorities have made close to 1500 Rohingyas to pour out of India to Bangladesh. In October 2018, the deportation order of seven Rohingya Men was given a green signal by the Supreme Court, and it refused to interfere. Again in January 2019 a Family of Five was deported back to Myanmar, this has kindled fear among the Rohingya population in India and they themselves have started leaving India due to fear of similar consequences. India, has in such specific

[45] https://ohrh.law.ox.ac.uk/deporting-rohingya-refugees-indian-supreme-court-violates-principle-of-non-refoulement/.
[46] http://www.ipsnews.net/2020/01/un-special-rapporteur-offers-assistance-indian-supreme-court-case-rohingya-deportation/.

concern not only broke its image of an accommodative nation but also has violated the *jus cogens* norm of *non-refoulement*.

2.3.2. Categories of refugee

Like no definition of refugees, there are no specified categories of refugees in India however based on the past experiences of the different refugee groups; we can divide the refugees in India into three categories which are as follows:

a. Recognised by India: Both Tibetan refugees and Sri Lankan refugees because they are issues residential permits can be said to be in a way recognised by India as refugees. Tibetan refugees are not only issued certificates for residence but are given freedom to move freely in India and freedom to work whereas Sri Lankan Tamil refugees are only given residence permit and are kept on surveillance. They are not allowed to move freely or to work and are only given minimum allowances and only those who stays in government camps are given essential items at highly subsidized rates.

b. Recognised by UNHCR: Somali refugees, Burmese, Afghan as well as Iranian refugees are recognised by UNHCR and are issues ID cards for refugees by UNHCR but they are not recognised as refugees in any way by Indian Government and are considered as illegal migrants as they entered Indian Territory without prior permission as per the Foreigners Act and Passport Act.

c. Un-recognised by both: Nepalese Bhutanese refugees, as well as Pakistani refugees (Both from east as well as west Pakistan) falls under this category as they are neither recognised by Indian Government nor by UNHCR. Nepalese Bhutanese refugees are allowed to move freely without visa because of the peace agreement between the governments.[47] Pakistani refugees are also not recognised as refugees but as pointed out earlier, they were made eligible to apply for Indian citizenship in Gujarat and

[47] Citizens of both the nations i.e. India and Bhutan can move freely without requirement of Visas into each other's territory. The same is also the case with the Nepal and India.

Rajasthan if they resided in India for at least 5 years through Citizenship Amendment Rules, 2004.

2.4. Refugee Protection in India:

As stated earlier, India does not have any specific legislation that deals with refugee protection and regulation regime. However, despite not having any such national legislation, there are other legislations which come forth for refugee protection alongwith many recently developed judicial precedents of Supreme Court of India that are based on such legislation as well as customary law.

2.4.1. Legislative measures:

It has always been a matter of debate that whether India's legislative measures are adequate for dealing with refugee problems from humanitarian as well as national security point of view but based on my understanding upon the present scenario of situation of refugees in India along with what has been done by now for their protection, Indian approach seems to be inclined towards national security for having its own reasons[48].

Although India is not a party to the 1951 Refugee Convention, it has ratified the two covenants[49] on human rights in 1976 which for some of its provisions becomes relevant for refugees as well. India seems to follow dualistic theory in which International Law needs to be incorporated domestically to get force of law and mere ratification does not automatically gives it force. But Indian courts along with India Constitution and other legislations takes reference of these covenants also while deciding human rights and interpreting statute law[50]. However, whatever may the case be, it cannot be said that India does not have any protection regime for refugees. The Indian Constitution as well as

[48] Reasons may include security threat because of its experiences because of former Prime Minister's assassination by a group of persons who belonged to Sri Lankan refugees.
[49] ICCPR and ICESCR.
[50] P. Chandrasekhara Rao, THE INDIAN CONSTITUTION AND INTERNATIONAL LAW, *143 (1*993).

several other legislations that deal with refugees is relevant to constitute existing legislative refugee regime in India.

The Indian Constitution provides for various rights which are guaranteed to all persons and are not restricted to its citizens only. Prime among them are Article 14 and Article 21 which talks about right to equality and right to live and personal liberty respectively. Indian courts on many occasion has held that they are applicable to refugees staying in India.

Apart from the Constitutional provisions, Passport (Entry into India) Act, 1920 and Passport Act, 1967 requires all foreigners to enter India with a valid passport. Under Registration of Foreigners Act, 1939 the Central Government has power to make rules regarding where and whom foreigners are supposed to report to, getting registration certificate and identity proofs. Foreigners Act, 1946 while dealing with entry, exit as well as their stay in India also gives unlimited power to government to arrest and detain any foreigner which was also confirmed by judiciary.[51] Foreigners Order, 1948 further gives certain powers to state governments to deny entry to foreigners without having valid passports or for public safety such as of being suffering from infectious disease etc.

2.4.2. Judicial precedents:

Judiciary has played an active role in determining to a certain extent refugee regime by distinguishing refugees from other foreigners. Indian judiciary has introduced refugee law into our legal system through the back door, as it were, since the front door has been shut by the executive.[52] In *Visakha v. State of Rajasthan*[53], Supreme Court of India stated that the principles of humanitarian law and principles laid down in the two covenants[54] can be applied to refugees so far as they are not inconsistent with the domestic law of India. National legislations and International law should be read with harmony. Indian

[51] Hans Muller of Nuremburg v. Superintendent AIR 1955 SC 367, 367 (Supreme Court of India).
[52] Katju, Supra note 16.
[53] Vishaka v. State of Rajasthan AIR *1997* SC 3011 (Supreme Court of India).
[54] *Supra* note 49.

judiciary recognised the locus standi of foreigners to reach to the court if their Constitutional rights are violated.[55]

In *NHRC v. Union of India*[56] the Supreme Court permitted NHRC to intervene in repatriation of Chakma refugees and in laying down its standards. It was ordered that the custody be given to UNHCR and not to police. It also ordered proper amenities in the refugee camps.

It also laid down certain clarifications of the India's Refugee regime by stating in *Louis De Raedt v. Union of India*[57] that Article 19(1)(e) of Indian Constitution which gives freedom of residing and settling does not apply to non-citizens. The foreigners' rights are confined to life and liberty under Article 21 of the Indian Constitution. The same was also held in *Arnzachal Pradesh v. Ihudiram Chakma*.[58]However, later on in another case concerning Chakma Refugees, the Supreme Court held that the protection under Article 21 be applied with equal force to citizens as well as non-citizens. It is the Constitutional obligation of state governments to protect each and every refugee and that in doing so it may requisition paramilitary forces from the center. Court also ordered for expeditious decision on their citizenship applications which were pending from years[59]. However, another case is still till date is pending before the Supreme Court of India wherein specific directions are sought from the court to confer citizenship to Chakma refugees staying in state of Assam.[60]

Acknowledging Governments right of expulsion earlier the apex court in *Hans Muller v. Superintendent, Presidency Jail*[61], held that Foreigners Act provides an unfettered right of expulsion to Union Government. But decades later, in another infamous

[55] Chairman Railway Board. v. Chandrima Das AIR 2000 SC 988 (Supreme Court of India).
[56] NHRC v. Union of India AIR 1996 SC 1234
[57] Louis De Raedt *v. Union of India* (1991) 3 SCC 554 (Supreme Court of India)
[58] Arnzachal Pradesh v. Ihudiram Chakma AIR 1994 SC 1461 (Supreme Court of India).
[59] National Human Rights Commission v. State of Arunachal Pradesh, 1996 AIR SC 1234 (Supreme Court of India).
[60] Swajan. v. Union of India, W.P.(C) No. 243 of 2012 (07-06-2012) (Hon'ble The Chief Justice Ranjan Gogoi and Hon'ble Mr. Justice Navin Sinha (Supreme Court of India).
[61] *Hans Muller,* AIR 1955 SC 367.

pronouncement on refugees, i.e. *Louis de Raedt v. Union of India*,[62] the apex court reiterated by acknowledging that Central Government's power of deportation. However the same was held to be subject to right to be heard which may not be personal hearing in all cases. Though there are many other instances wherein Supreme Court has ordered for many amenities for refugees such as school for Sri Lankan refugee children in their camp etc., but it is alleged that its approach is more humanitarian based rather than right based approach.

Customary International Law:

Indian courts have adopted doctrine of incorporation that customary international law can be incorporated and applied by courts so far as it is not inconsistent with any statute law of the country and thus principle of non-refoulement has not only been given importance by Indian judiciary while deciding cases of refugee protection and their deportation but also held it to be part of Article 21 of the Constitution.

Justice J. S. Verma who had also been chairperson of NHRC, observed in an inaugural address:

> '*in the absence of national laws satisfying the need, the provisions of the Convention and its Protocol can be relied on when there is no conflict with any provision in the municipal laws. This is a canon of construction, recognized by the courts in enforcing the obligations of the State for the protection of individuals*.'[63]

2.4.3. Administrative orders:

The Foreigners from Uganda Order, 1972 is the only administrative order dealing with specific refugee group i.e. Ugandan refugees of Indian origin who arrived in India when they expelled from Uganda in 1972[64]. The Act laid down certain procedure for their entry and stay in India and also exempted them from other formalities in Foreigners Act and

[62] *Louis De Raedt*, (1991) 3 SCC 554.
[63] Inaugural address, Conference on 'Refugees in the SAARC Region: Building a Legal Framework', New Delhi, (1997).
[64] Vijay Kumar Diwan, LAW OF CITIZENSHIP, FOREIGNERS AND PASSPORTS, 291 (1984).

Passport Act. Another important administrative order is Foreigners (Amendment) Order, 2015 which exempted persons belonging to minority communities in Pakistan and Bangladesh i.e. Hindus, Buddhists, Sikhs, Jains, Christians and Parsis, from the application of Foreigners Order, 1948 which deals with regulation of foreigners, their entry, stay and exit from India.

The Passport (Entry into India) Amendment Rules, 2015 also expended the above mentioned religiously persecuted minorities from the application of the Passport (Entry into India) Rules, 1950 which prohibited from entering India without valid document.

2.5. Status of refugees in India before Citizenship Amendment Act, 2019

With the above discussion so far in this chapter, it is quite clear that India with so many refugees from different countries was managing with them without even signing the 1951 Convention or its protocol. India considered them as aliens and dealt with them as per Foreigners Act and other related legislations. It has always given different treatment to different refugee groups based on its discretion on the basis of bilateral diplomatic ways which is also clear from the above discussions.

There is difficulty for Somalis to sustain in India as India does not consider them refugees. They do not even have free permit like Nepalese and Bhutanese. India has given certificates to Tibetans who can even move freely and take admissions in educational institutions throughout Indian territory whereas Sri Lankan refugees only has residential permit and have to stay in camps under surveillance. Pakistani refugees were given relaxation in citizenship rules to apply for citizenship. In addition to them, it also hosts small numbers of refugees from Iraq, Iran, Ethiopia and Eritrea who are not given any protection.

Therefore, different treatment to different refugees is witnessed with no uniform refugee regime. In 2019, Indian Government came up with Citizenship Amendment Bill which was passed in the parliament and became Citizenship Amendment Act, 2019 which aims to provide citizenship to refugees who are staying in India at least since prior to Dec 31,

2014 and arrived in India because of religious persecution in their country of origin. However, the Act is only applicable for non-Muslim refugees of three countries i.e. Pakistan, Bangladesh and Afghanistan.

However, prior to this the status of all refugees was same and till now it did not catogorise religiously persecuted minorities and other persecuted refugees. So far as the rights are concerned, they were having only those Constitutional rights which are guaranteed to all persons irrespective of nationality and citizenship of India which included right to life and personal liberty, right to equality, right to religion, right against exploitation, right to Constitutional remedies.

Going with the above analysis, India does not absolutely follow the 4 basic fundamental Principles on which international refugee protection regime is founded upon which are as follows:

Principle of non-discrimination – It prescribes that refugee protection is to be accorded without any discrimination with regard to religion, race or place of birth etc. However, we saw that India's approach of providing assistance and protection to the refugees on its land varies from group to group for diplomatic and political reasons. It accord protection on its own discretion on ad-hoc basis.

Principle of non-penalization – It requires that the refugees shall be exempted from penal liabilities for their entry or stay which could be illegal or breach of refuge countries' immigration rules. Indian legislations dealing with foreigners contain such penal provisions. However, they are not generally invoked.

Principle of non-refoulement- This principle that has even become norm of Jus Cogen[65] implies that refugees cannot be deported or repatriated without their free consent. Although Indian Judiciary has held that principle of non-refoulement is a part of Article

[65] Jus Cogen norm is a fundamental norm of International Law that is applicable to all states irrespective of their consent and cannot be altered by private agreements.

21 of the Constitution, the deportation procedure if complied with along with principles of natural justice is considered to be reasonable under ‘procedure established by law’.

Thus, India follows the said principles based upon its own Constitutional law and legal system and government uses its discretion wherever permitted.

Conclusion:

India with its diplomatic and discretionary policies for refugee protection has shown that its approach of dealing with refugees is entirely ad hoc and does not depends upon the international refugee regime although UNHCR is allowed to give assistance on humanitarian grounds. However, post Citizenship Amendment Act, 2019, whether India’s refugee regime is changed or not is interesting to look into. After the 2019 amendment into its citizenship law, India’s refugee numbers are expected to change drastically as there are many religiously persecuted refugees of the three specified countries in India.

CHAPTER 3

LOCAL INTEGRATION BY NATURALIZATION AS A DURABLE SOLUTION FOR REFUGEE PROBLEM

3.1. Local integration as durable solution for refugee problems:

Refugee protection regime is of immense importance in any country so as to maintain the stability and peace within the country. There are various studies which show that number of refugees must be tried to be reduced by any of the durable solutions. Not only conflicts related to demography or culture, terrorism is also in a way linked to refugee problems. In a study[66], it was concluded that number of refugee populations and refugee groups in any country is directly proportional to enhanced terrorist activities in that territory because of several reasons including distress of refugees due to not having adequate sustainable conditions and psychological illness due to that.

As far as refugee protection regime that has developed throughout the world is concerned, there are various solutions to the problems of refugees from the humanitarian aspects which may include making refugees self-reliant for the initial period when their asylum seeking application is under process; solutions based on migration framework[67]; and any durable solutions as discussed below.

Durable solution indicates that any such solution which can resolve the refugee problem permanently must be identified considering various factors such as the socio-political systems of both the countries i.e. host and the country of origin, their possibilities of mingling within the society of the host country or chances of eradicating reasons of their persecution in their country of origin.

There are three types of durable solutions that UNHCR identified so far which are

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[66] Amanda Ekey, *The Effect of the Refugee Experience on Terrorist Activity: An Investigation of How the Humanitarian Refugee Crisis is Impacting Global Terrorism*, (Honors Thesis, Department of Politics, New York University, 2007) (Unpublished).

[67] In the sense of regularization of their status so that they are given temporary protection against refoulement threat until effective solution is sought under the migration regime of the host country.

1. Repatriation;
2. Local integration;
3. Re-settlement.

Repatriation means to arrange for return movements of refugees to their country of origin after all the threats of persecution are eliminated in their country of origin. This is considered to be best durable solution for refugees as issues such as mobilization of refugees in another segment of society, burden sharing, threat to national security etc., do not come into picture.

However, it is not always possible to repatriate refugees back to their country of origin as sometimes there may be no possibility of elimination of threat to persecution in their country for a very long time period[68] and thereby local integration and re-integration becomes important durable solutions.

Local integration requires integration of refugees in the first country of asylum itself through naturalization. Local integration is also not always possible for several reasons such as unwillingness of refuge state to naturalize them, impossibility of refugees to mingle up with local people due to entirely different language or ethnicity etc. Therefore, where local integration does not seem to be a solution, refugees are suggested to be re-settled into a third country where it can be done with the agreement of that third country. Thus, re-settlement also serves to be a durable solution for refugee problem in cases where refugees cannot be repatriated and country of refugee also does not provide local integration.

However, several literatures suggest that where there is no possibility for repatriation, local integration is better solution than re-integration for variety of reasons.[69]

[69] Refugees may become familiar with the survival of the first country of refuge. Moreover, re-integration will require further cost of adjustment. Re-integration seems to be quite difficult as it will require a third country to agree for their integration into their society which seems to be very difficult in this diplomatic world.

As to the hierarchy of the above mentioned durable solutions, although there is no specified rules as to the hierarchy but UNHCR Executive Committee conclusions[70] have stated time and again stated that voluntary repatriation is the most desirable solution for the refugee problems. Karen Jacobsen, a UNHCR officer remarked: "It doesn't make sense to confine refugees to camps and to insist that they survive on food aid when agricultural and income-generating opportunities are waiting to be exploited."[71]

3.1.1. Local Integration:

Local integration in particular as a durable solution, can be suitable in some countries[72] and that too for some groups of refugees. The 1951 convention also provide for such integration of refugees by state parties.[73] It is well recognised in many literature works[74] that a large proportion refugees in the world are currently unable to be repatriated with safety and dignity and they requires either local integration or re-settlement on other territories.

However local integration is quite subjective and seems to be at the discretion of the first state of asylum or refuge state. It entirely depends upon caseload of refugees, prevailing socio-economic conditions in host country and impossibility to repatriate them back to their country of origin etc. Those groups of refugees are given priority who either has established close bonds with the host country especially with its local population or if they are born on its own territory but could not acquire citizenship and remained stateless[75]. Further considerations that are taken care of includes factors such as ethnicity,

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[70] UNHCR, Executive Committee, *Conclusion 29 of 1983*, 12A A/38/12/Add.1 (1983); See also conclusion 58 of 1989; Also conclusion 79 of 1996.

[71]Karen Jacobsen, The forgotten solution: local integration for refugees in developing countries, (Working Paper no. 45, UNHCR 2001).

[72] Countries whose political structure is inclusive enough to grant effective naturalization to refugees without causing any internal distress.

[73] Article 34 of the 1951 Convention states "the contracting states shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings."

[74] Jeff Crisp, *The local integration and local settlement of refugees: a conceptual and historical analysis,* (Working Paper No. 102, UNHCR 2004).

[75] *Refugee Protection and Mixed Migration: The 10-Point Plan Solutions for refugees***,** Chapter 7, (UNHCR 2013) *available at* https://www.unhcr.org/50a4c2b09.pdf (Last visited on March 25, 2020).

local distress etc. They are integrated if their local integration will not lead to local distress or change of demography or ethnicity in the area of integration.

Refuge Country sometimes adopt an gradual incremental approach of local integration by issuing residential permits which may further lead to greater rights and entitlements gradually with time. So, before completely granting naturalization to refugees, host country may earlier provide right to stay, free movement, work, health care facilities, education and administrative assistance etc. It is a complex process involves legal, socio-economic as well as cultural aspects. As per UNHCR estimates, 1.1 million refugees around the globe got naturalization and became citizens in the country of their asylum in the past decade.[76]

There are considerable examples throughout the world where local integration has been adopted as a durable solution for refugee problems. For instance in Panama[77], refugees who were granted political asylum and held refugee status for over 10 years could apply for permanent residency status who will have right to apply for naturalization post 5 years or in certain cases after 3 years if they got Panamanian children. In Tanzania[78], Burundian refugees were given two options in 2008 i.e. either to get naturalized in Tanzania or to return to their country of origin. Burundian refugees had been taking refuge in Tanzania since 1972. With this reform in citizenship of Tanzania, around 1,60,000 Burundian refugees were foresaw by the government to be naturalized.

3.2. Varying local integration for different refugee groups:

It is seen frequently that the local integration when adopted in refuge country, different refugee groups are treated differently at several instances. The authors and academicians

[76] https://www.unhcr.org/pages/49c3646c101.html, (Last visited on April 25, 2020).
[77] *Panama: Regularization Law and Public Awareness Programme 2008-2010*, Law 25/2008 *available a*t http://www.unhcr.org/47f250744.html, (Last visited on March 25, 2020).
[78] *Tanzania: Burundi Naturalization, A Model for Local Integration and Durable Solutions for Protracted Refugees* (2008) *available at* https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/solutions/kuch.pdf, (Last visited on March 25, 2020).

provide for different factors[79] that may be responsible for such variance such as political, security, social, economic and legal factors.

Political factor takes into account national level concerns such as security concerns or cross-country relations etc. The countries which get influenced globally are expected to think politically in this regard. Security factors conveys that the domestic concerns of county of refuge aiming towards internal peace and stability and protection of its own citizens from dangerous outsiders such as rebel insurgents or dangerous criminals.

Legal factors pertain to what level of local integration is allowed by the Constitutional law of the land as well as the legal status of refugees over its land. In economic factors, refugees are seen from the perspective that whether they are beneficial pool for the market leading boost in demand or a threat to the local economy and domestic employment resulting into drain of natural resources.

Social factors include the most important factors variance of treatment which includes ethnicity, religion, language, etc. Those who have social similarities i.e. in terms of ethnicity, language or religion to the host country's communities are more favorable to be integrated.

It is general practice of the states to provide naturalization after due consideration to all the above stated factors especially to the social factors and therefore they may come up with different treatment of local integration for different refuge groups.

3.3. Religious persecution and local integration of religiously persecuted minorities in refuge state:

Persecution in the name of religion is quite common throughout the world. The first international refugee protection was given to persecuted Jews in Nazi regime. Many

[79] Susan Banki , *Refugee Integration in the Intermediate Term: A Study of Nepal, Pakistan, and Kenya,* (Working paper no. 108, UNHCR (2004).

refuge seeking people fled from their countries are victims of oppressive circumstances exacerbated or caused by different faiths or religions.[80]

The world has witnessed many conflicts and tensions that may be inter-ethnic or inter racial however even then, the ethnic, national or religious minorities are more often get affected by such conflicts rooted in power struggles due to social and economic inequalities for the reason of being vulnerable for being minorities. To say more deeply, religious minorities are comparatively even more vulnerable and more prone to get affected by such conflicts and as result of which they are persecuted. 1951 Refugee Convention also establishes link between refugee protection and religious persecution by incorporating religious persecution as one of the ground in the definition of refugees.[81]

The principle of Westphalia[82] which is known as the first international multilateral peace treaty was a result of the 30 year old religious wars. This notion of Westphalia which was aiming towards territorial sovereignty, itself was established as a result of the pursuit of religious tolerance as means toward a stable international order. The notion also took into account religious tolerance which can be said to be embodied in '*cuius region, eius religio'* which allowing 'local rulers to prescribe the religion of the people without interference from the outside'. Therefore, peace of Westphalia also incorporated non-interference in the religious matters of the state as a part of notion of sovereignty of the country.

State could decide upon extent of religious freedom to be granted to their people. Although later developments laid down right to religion to be fundament human right, but the same has not been made non derogable and state parties can justify on mere reasonability any derogation from this entitlement to its people.

[80] Guy S. Goodwin-Gill, THE REFUGEE IN INTERNATIONAL LAW, 27-28 (1983).
[81] Article 1 of Convention on Status of Refugees, 1951.
[82] The peace treaty of Westphalia was signed among most of the European states to resolve the 30 years lasting conflict of power among pop, emperor and feudal kings. It established principle of sovereignty wherein no state was allowed to interfere in territory of other states and their sovereignty.

Therefore, when it comes to religious persecution, there is less possibility of interference by international community, regional or neighboring community and thus when people flee from religious persecution from their country of origin, they have less possibility of return or repatriation and thus they look for other durable solutions for their protection. It is also commonly observed by the UNHCR that religious persecution is more common in those countries who are not secular and either do not provide for equal rights of religious minorities or do not provide for effective protection against the persecution by state or non-state actors.

Finding durable solution for religiously persecuted minorities is therefore a difficult task. Repatriation is only possible if there is no threat of persecution in their country of origin. Establishing evidences to show that there is no more threat of religious persecution in a non-secular country becomes quite difficult especially when other states cannot interfere in the extent of religious freedom granted in the country of origin. In other cases of persecution such as persecution on account of race or nationality or membership of a different social group (for instance member of LGBT community) or having different political opinion etc., the state of origin may be compelled to eliminate such persecuting circumstances and to provide equal treatment to its citizens either by the international community by diplomatic efforts or by the help of any external assistance by any other country (for instance in Sri Lanka, the conflict between the two groups came to end when India intervened by employing its military in Sri Lanka to establish peace on the territory; or India with its diplomatic efforts supported East Pakistan to become independent because there was mass influx of refugees from East Pakistan in India who were persecuted due to their ethnicity of being Bengali).

Conclusion:

Religious persecution though condemned everywhere but is quite common as throughout the history, religious persecution had been prevalent. Even the international refugee regime started for providing protection to religiously persecuted refugees. Owing to several reasons discussed above, it becomes difficult to repatriate religiously persecuted

refugees and thus attempts must be made to look forward for other durable solutions for them including local integration in the country of asylum.

CHAPTER 4

CITIZENSHIP AMENDMENT ACT, 2019 AND ITS EFFECT ON THE STATUS OF REFUGEES IN INDIA

Recently Indian Parliament made an amendment to its citizenship law which although did not barred any illegal migrants to apply for naturalization for acquisition of Indian citizenship, but was stringent towards inborns of illegal migrants in granting Jus Soli citizenship i.e. citizenship by birth as those born on Indian Territory whose either parent was illegal migrant was prohibited to get citizenship by birth. After the passage of the Citizenship Amendment Bill, 2019[83] that is aiming not only to untag certain religiously persecuted minorities of some countries staying in India from being considered as illegal migrant, but also expedite the naturalization process of granting citizenship to them.

President Ram Nath Kovind gave his assent to the Citizenship (Amendment) Bill, 2019 on 12th December 2019 and the bill finally became an act, Citizenship (Amendment) Act, 2019 which came to force on 10th January 2020. The act covers six communities namely, Hindu, Sikhs, Parsis, Jains, Christians and Buddhists who are migrants from Pakistan, Bangladesh and Afghanistan and provides that the members belonging to this particular cluster shall not be treated as illegal migrants and will be given Indian citizenship provided they are facing religious persecution in their land of origin and if they have moved to India before 31st December 2014, but this act does not recognize the Islamic migrants which became the reason for controversy throughout the country. Furthermore, this act has also relaxed the provisions of acquiring 'citizenship by naturalization' and it reduces the duration of stay/ residence from minimum requirement of 11 years to a minimum of 5 years for the above mentioned communities.

As discussed in detail in the second chapter, there are many refugees in India who are Indic-religious minorities who fled persecution from other countries post 1947. While illegal migrants are not synonymous to refugees, all those foreigners who enter India

[83] Citizenship (Amendment) Act, 2019 (Act no. 47 of 2019).

without a valid visa or an Indian citizenship are designated as illegal migrants[84]. Until the passing of the citizenship law amending Act of 2019 India had legally recognized only migrants from Tibet and Sri-Lanka as refugees by exempting them from application of Foreigners Act and Passport Act and granted them certain permits. Further, Indian laws do not classify illegal migrants as refugees and they are subjected to the Foreigners Act 1946. Therefore, all refugees in India except Tibetans and Sri Lankan Tamil refugees were considered as illegal migrants.

With an absence of any specific legislation on entry and status of refugees in India, the matters related to it are handled on a political and administrative level. As already discussed in previous chapters, India is not a party to the UN Convention on Refugee, 1951 and its Protocol of 1967, however India is seen to generally grant renewable temporary residence to certain class of refugees as earlier pointed out. The refugees have a general obligation to follow and obey the laws and regulations of the country in which they find themselves. The actual practice adopted in India is that it deals with the question of admission of refugees and their stay until they are officially accorded refugee status under the Foreigners Act, 1946, and that it is the decision of the Union Government to decide what kind of protection and rights are to be provided to the entrants. Home ministry, Government of India has created standard operating procedures for various groups seeking refuge and all the rights which should be availed to them differ on a case to case basis.

In the recent years, according to the data accorded by the Ministry of Home Affairs provided that there are around 41,331 Pakistani and 4,193 Afghan nationals living in India, as of 21st December 2018 who belonged to religious minority groups on long term visas.[85] Since 2015 many of these people have been provided with education and health-care facilities and also granted driving licenses. Making clear that some refugees are more welcomed than others, quite a rational number of refugees from groups other than this are still huddled in refugee camps with no proper facilities and any rights. And about

[84] Citizenship (Amendment) Act, 2003.
[85] https://economictimes.indiatimes.com/news/politics-and-nation/41331-pak-4193-afghan-citizens-living-in-india-govt-tells-ls/articleshow/70243691.cms (Last visited on May 15, 2020).

2,447 legal migrants from the six identified communities mentioned above from the three regions, have gained citizenship either through citizenship by naturalization or by way of registration.[86]

Thus, the fate of refugees cannot solely depend on the administration decisions and vote bank politics or to fulfill other political agendas. A hard core legislation is required which provides for a non-discriminative refugee policy providing reasonable reasons for labeling refugees as infiltrators, outsiders, illegal migrants. And the rationale should be to include all of them under a single roof which is not communal.

4.1 Citizenship and how it can be acquired:

Citizenship is a legal right. It establishes a relationship of a person with the state and also between two individuals. It ensures basic set of freedoms to an individual in order to live a life of his own choice without any external interference; it ensures that the society is moving progressively towards an egalitarian policy. In a democracy especially like ours, citizenship provides for various rights such as to vote, to run for an office, to get elected and the like. In such a case the non-citizens including the illegal migrants who are even though residing in the state or even if living on work permits do not get the above stated privileges, hence the integration of illegal migrants as citizen of a country brings about a vast impact which is long term upon the politics and democracy of the country.

Citizenship is mainly, an idea of exclusion, listed under the Union list[87] of the Constitution and thus under the exclusive jurisdiction of the Parliament. Citizenship as such is not defined but is provided in two important legislative acts i.e. The Constitution of India and The Citizenship Act, 1955[88]. Articles 5-11 mentioned in the part II of the Constitution of India, 1950 provide for the citizenship in India and also that though the other provisions of the Constitution was enforced from 26th January 1950, Articles 5-11

[86] https://scroll.in/article/946220/no-law-for-refugees-in-india-and-the-citizenship-bill-does-not-fill-the-gap, (Last Visited on April 26, 2020).
[87] List 1, Schedule VII, Constitution of India, 1950.
[88] Citizenship Act, 1955.

were enforced from 26th November 1949 itself. It provides rights of citizenship to overseas citizens of India, non-resident Indians and Persons of Indian origin.

According to Article 5, all those people who are domiciled and born in India were given citizenship, further, all those people who were domiciled but not born in India were also considered as citizens provided that either of their parents were born in India, and thirdly anyone who was an ordinary resident in India for 5 years was also entitled to Indian citizenship.

While Article 8 provided for rights of citizenship to such people who were persons of Indian origin but residing outside India – stating that the parents or grandparents of such persons as mentioned above, if are born in India then such person could register himself as an Indian citizen with the Indian Diplomatic Mission. Article 10 held that any person who is or is deemed to be the citizen of India under any foregoing provisions of this part, shall subject to the provisions of any law made by the Parliament, continue to be such citizen. And Article 11 empowered the Parliament to make laws w.r.t. to the acquisition and termination of citizenship and matters relating to it.

According to the provisions of the Citizenship Act, 1955 which provides for the provisions for acquisition and determination of citizenship – there are four modes of acquiring citizenship namely, by birth, descent, registration and naturalization.

Firstly, by birth[89], i.e. any person who is born in India on or after 26th January 1950 but before 1st July 1987 shall be a citizen of India irrespective of the nationality of his parents. Also, every person born between 1st July 1987 and 2nd December 2004 is a citizen of India given either of his parents is a citizen of India at the time of his birth. Further, every person born in India on or after 3rd December 2004 is a citizen of India given both his parents are Indians or atleast one parent is a citizen and the other is not an illegal migrant at the time of the birth[90].

[89] Ibid, Section 3.
[90] Citizenship Amendment Act, 2003 read with Citizenship Amendment Act, 1986.

Secondly, by way of registration[91], i.e. after the fulfillment of certain mandatory conditions which are namely, a person of Indian origin who has been a resident of India for 7 years before applying for registration, a person of Indian origin who is a resident of any country outside undivided India, also any person who is married to an Indian citizen and is ordinary resident for 7 years before applying and the minor children of persons who are citizens of India.

Thirdly, by descent[92], i.e. a person who was born outside India on or after 26th January 1950 is a citizen of India by descent if his father was a citizen of India by birth, or if a person is born outside India between 10th December 1992 and 3rd December 2004 if either of his parents are Indian citizens by birth, and if a person is born out of India on or after 3rd December 2004 who wishes to acquire an Indian citizenship then his parents will have to by way of declaration provide that the said minor does not hold any foreign passport and that his birth is registered at an Indian consulate within 1 year of their birth.

And lastly, by naturalization[93], i.e. when a person is ordinarily resident of India for 12 years and fulfills all the qualifications in the third schedule of the citizenship act, provided (i) he is residing in India or serving the Government or has been residing in India for atleast 12 months preceding the date of application (ii) he should not belong from a country whose citizens cannot become a citizen of India by way of naturalization, (iii) he should have a good character and (iv) must know the languages mentioned in the 8th schedule of the Constitution.

The act also provides citizenship by way of incorporation of any territory i.e. if a foreign territory or an area becomes a part of India, then the people of that territory or area become the citizens of India automatically. The act does not provide for dual citizenship or dual nationality, it provides for a single citizenship which is the Indian citizenship and that too by the above stated modes. The Overseas Citizenship of India (OCI) scheme was introduced by the amendment made in 2005 it stated that a person cannot have a second

[91] Ibid, Section 5.
[92] Ibid, Section 4.
[93] Ibid, Section 6.

counties passport even in the case when a child who is a citizen of another country as claimed by such a country. The OCI is not an actual citizenship and does not equal to a dual citizenship nor is anyone allowed to use any Indian identity cards neither the OCI shall be substituted for Indian Visa [94]

4.2. India's historical moral obligations:

In various undergoing parliamentary debates on CAA, the government as well as those who favored the bill was seen to rely heavily on historical obligation of India towards the people of un-divided India.

The words of the first Prime Minister of independent India in his speech on the day when the partition of India was carried out into effect (The day on which Pakistan was divided which is also considered to be Independence Day of Pakistan) are clear towards establishing our historical moral obligation. The exact words are:

> "We think also of our brothers and sisters who have been cut off from us by political boundaries and who unhappily cannot share at present in the freedom that has come. They are of us and will remain of us whatever may happen, and we shall be sharers of their good and ill-fortune alike...."[95]

In another statement given by Dr. Syama Prasad Mookerjee in 1950, such obligation was restated. The statement reads as:

> *"*the circumstances that have led to my resignation are primarily concerned with the treatment of minorities in Pakistan, especially in East Bengal … Let us not forget that the Hindus of East Bengal are entitled to the protection of India, not on humanitarian considerations alone, but by virtue of their sufferings and sacrifices, made cheerfully for generations, not for advancing their own parochial interests, but for laying the foundations of India's political freedom and intellectual progress … The establishment of 'a homogenous Islamic State' is Pakistan's creed and a planned extermination of Hindus and Sikhs and expropriation of their properties constitute its settled policy. As

[94] https://news.rediff.com/report/2009/oct/29/flying-to-india-carry-old-passport-with-oci-card.htm (Last visited on March 25, 2020).
[95] Prime Minister Jawaharlal Nehru, *Tryst with Destiny,* Parliament House (Aug 14, 1947) *available at* https://www.inc.in/en/in-focus/tryst-with-destiny-speech-made-by-pt-jawaharlal-nehru (Last visited on April 16, 2020).

a result of this policy, life for the minorities in Pakistan has become "nasty, brutish and short"[96]

4.3. Citizenship Amendment Act, 2019: Analysis of the object and reasons along with its provisions:

The Citizenship Act, 1955 is now amended so as to provide certain persons who are compelled to leave their country of origin and seek shelter in India due to the fear of religious persecution, and the amendment facilitates them to acquire citizenship by naturalization as per Section 6[97]. The amendment act covers six communities which are Hindus, Sikhs, Jains, Parsis, Buddhist, and Christians who have migrated from Afghanistan, Bangladesh and Pakistan. Thus Act of 2019 provides for an easier path to citizenship for the selected communities facing religious persecution from the neighboring Muslim countries who entered India before December 2014.

Statement of object and reasons:

> "It is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The Constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries. Some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents."

With the above object and reasons, it is clear that the aim of CAA is only to give protection to religiously persecuted minorities of the three specified countries which has Islam as state religion. The rationale for only considering neighboring Islamic states as is reflected in the above statement is that they have citizens of un-divided India. However,

[96] Dr. Syama Prasad Mookerjee, Parliament House (April 19, 1950) *available at* https://eparlib.nic.in/bitstream/123456789/58670/1/Eminent_Parliamentarians_Series_Syama_Prasad_Mookerjee.pdf (Last visited on April 20, 2020).
[97] *Supra* note 88.

justifications for Afghanistan are not as clear as is the reflection of justification for Pakistan and Bangladesh.

The critics of this Act however point out that it has discriminately left out Muslims who constitute around 15% of the population. However, the government holds the opinion that the three countries which are specifically provided for in this act to name them again – Afghanistan, Bangladesh and Pakistan are Islamic Republics and have a majority of Muslim population hence the Muslim migrants cannot be treated as persecuted minorities.

The act proposes that the specified classes of illegal migrants will not be treated as illegal and provided with Indian citizenship thus closing all the legal proceedings against them regarding their status and identity in the country.

The act clarifies that the provisions of the act will not apply to certain areas namely the tribal areas of Assam, Meghalaya, Tripura and Manipur as included in the sixth schedule of the Constitution and the states which are regulated by the "Inner Line" permit under the Bengal Eastern Frontier Regulations 1873.[98] This provides that all the other illegal migrants will not be benefitted from the said act and may continue to be prosecuted as illegal migrants, refugees. On bare reading of the act, it provides a differential treatment to the illegal migrants on the basis of the country of their origin, religion and date of entry, place of residence in India.

In Section 2 (1) (b)[99], a proviso is added by way of amendment which reads as - "Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted[100] by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act,

[98] *Supra* note 83, Section 6B clause 4.
[99] Ibid.
[100] The government of India made Foreigner's Order, 2014 wherein it exempted these groups of illegal migrants from application of those specified provision.

1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;"[101]

On the debate over inclusion of Afghanistan in the proposed amendment the Ministry of Home Affairs had stated:

> "There have been multiple attacks against Indian interests in Afghanistan by the Pakistan establishment sponsored LET, Haqqani Network and Taliban. Besides, minority communities in Afghanistan had migrated to Afghanistan from Pakistan region during pre-independence India. They are facing continuous atrocities due to their Indian origin… A number of persons belonging to minority communities in Afghanistan have also come to India on account of religious persecution or fear of religious persecution. Hence, it was decided to include Afghanistan within the ambit of the Notification issued on the 7 September, 2015 by issuing two more Notifications on the 18 July, 2016".[102]

Hence, those people who have already applied for Indian citizenship citing reasons of religious persecution will be benefited from this amendment. For practical purposes they are already a citizen of India. The amendment however, is specifically who have claimed that they have been persecuted on religious grounds in their country of origin.

The amendment however, does not directly provide with Indian citizenship on these persons merely but it provides for an opportunity to be considered for the grant of citizenship by naturalization. Providing a reasonable classification for this legislation it does not violate Article 14 of the Constitution.

Earlier, i.e. in the Principal Act, there was no provision under Section 7D to cancel the registration of Overseas Citizen of India (OCI) cardholders who violate any law, the Amendment Act of 2019 has now empowered the central government to cancel the registration as Overseas citizen of India, in case such a person has violated the provisions of the act or any other law in force. Thus it enables the government to take action against such violators of law holding OCI.

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[101] *Supra* note 83, Section 2(1)(b).
[102] Joint Parliamentary Committee, Lok Sabha, REPORT OF THE JOINT COMMITTEE ON THE CITIZENSHIP (AMENDMENT) BILL, 2016, (2019).

The amended part of section 7 reads as- "(da) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for the time being in force; or."[103] Not to forget that a reasonable opportunity of being heard has been provided as per the insertion of a new proviso after Clause f that reads: "Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard."[104]

The object behind the amendment of the Third Schedule Clause (d) is to relax the time period qualifications, since under Section 6(1) the time period set out for acquiring a citizenship is twelve years of residence in India, the amendment seeks to reduce the aggregate time to six years, is available to applicants who are not of Indian origin or are unable to provide proof of Indian origin thus bringing them at par with the requirements of residency period under Section 5(1)(a) and 5(1)(c) of the Principal Act, because such persons cannot apply for citizenship under Section 5(1)(a) which is meant for the persons of Indian origin. The amendment reads as: 'Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years"[105]

4.4. How far and to what extent can CAA affect the refugee status in India:

As a mature democracy it is the duty of India to look after all these refugees who have come to seek refugee who are helpless and in hope of a humane treatment. CAA is directed at fast-tracking citizenship to certain communities' subject to certain conditions (religious persecution), this in turn has brought hope to the refugees residing in India of the certain mentioned communities so far. The determining factor about the act is that it only talks about acquiring citizenship to the refugees in India and does not talk about snatching away the same from any already existing citizen. Article 14 of the supreme law

[103] *Supra* note 83, Section 7D (da)
[104] *Ibid*, Proviso to Clause (f) Section 7D.
[105] *Supra* note 83, Proviso to clause d, Schedule III.

of the land provides for "Equality before law" and "equal protection of law" to all the persons, the passed amendment has proposed to give non-Muslim illegal migrants from the three countries as mentioned a slight ease in acquiring citizenship.

4.4.1. Effect on eligible refugees:

Now putting it simply, it will ensure all the illegal non-Muslims facing religious persecution in their origin countries the status of a legal migrant not forgetting the fact that they don't have any valid travel documents or rather to say without any permission have crossed borders, i.e. they will become citizens of India, and not remain a stateless person anymore. The government has time and again maintained the stand that this Act was to protect the human rights of the people who are belonging to a minority community in a foreign state and are facing persecution for their belief and practices, providing that unlike its neighboring countries which have declared themselves as an Islamic state, India is a secular state and also holds a large population of Hindus and as such should house them so. Union Minister Amit Shah, has gone further to say that the reason for not including the Muslim migrants is that they are least likely to face persecution on behalf of religion in an Islamic country. All such people mentioned above are free from the fear of being deported or being harassed due to various other reasons and other communities or benefit holders. It will also help the government to identify the infiltrators and deal with them according to the protocol to be devised.

Under the Constitution certain fundamental rights are available only to the citizens of India namely the Right against discrimination on the grounds of caste, religion, race, sex or place of birth[106], right to equal opportunity in matters of public employment[107], freedom of speech and expression, assembly, association, movement and residence, profession[108], cultural and educational rights[109]. Also the right to vote and also hold public offices or become a member of the parliament or the state legislatures, can also become the judge of the Supreme Court or High Court, occupy the office of President,

[106] Article 15, The Constitution of India, 1950.
[107] Ibid, Article 16.
[108] Ibid, Article 19.
[109] Ibid, Article 29 and Article 30.

Vice-president, Governor of a state. However, the act remains vaguely silent on the rights and obligations which will emerge on them with the grant of citizenship and such anomalies will open floodgates to future litigations.

With the newly acquired citizenship status, these people can avail the benefits of all the governmental schemes and also ration cards, to take up jobs in formal sectors apart from irregular jobs in the informal industry and earn a handful of wages without any discrimination and in case of any, can address the same before the competent authority and avail decisions in their favour. There are around 9000 recognised Afghan refugees mainly Hindus and Sikhs who sought asylum in India after 1992, most of them have sought a valid residence permit which though affords them legal protection, but they still require further benefits for their upliftment which are academic resources their access to primary and secondary education are not yet secured, and also those who have not acquired a valid permit for residence have a great deal to suffer for.

These people still live in poverty and share cramped living apartments with other families, with the acquisition of citizenship the chances of improving their livelihood and standard of living are very high. Frequently hired in casual quarter jobs such as of salesperson, manufacturing units, security guards, and as workers in agricultural fields, they are often exploited at work and are more prone to exploitation due to lack of any sanctions and also harassment of women at the work place is seen to be very common, not only by employers but also the local administrations, hence, with an acceptance of them as a part of this land, they will not be subjected to such stigmas.

Many people also argue that these people are living as ‘citizens without having the right as that of a citizen’. They will now have a right to acquire property legally and shall not be stigmatized on the basis of outsiders and the threat to their lives due to such reasons of political and social un-acceptance shall be reduced. They will now be accommodated better as compared to the poor ill treatments by the society and the administration. Hence, to put forward the point that the status update from that of refugee to a citizen shall bring about a change in the lives of such people who were living in India for a long enough period of time as protection seekers but under the constant threat and fear of being

deported back or social non acceptance or living forever in a destitute state, or all of them.

Non-automatic grant of Citizenship:

The CAA provides that the eligible communities of the three specified countries are not to be considered as illegal migrants and make them eligible to apply for naturalization and getting citizenship of India through the said process whereby reducing the period of residence in India to not less than five years for naturalization. The rule making power in this regard is given to central government by CAA itself where it is stated that government may make rules requiring documents and proofs. Through such documents, eligible non-citizens will have to proof certain things such as date of entry to India is within the cutoff date laid down under CAA and that the reason of flight into India is religious persecution etc. How the same will be practical to prove is still a point of concern and is awaited to see in rules under CAA.

The Press Information Bureau says "no foreigner will automatically get citizenship under the act, each application will be scrutinized and those which comply with the criteria will be granted citizenship."[110]

4.4.3. Effect of CAA on non-eligible refugees:

CAA provides fast track citizenship to eligible refugees in India but it does not bar any particular group of refugees from applying for citizenship as per the ordinary citizenship law of India. Non-eligible refugees can apply for citizenship by naturalization as they used to apply before CAA came into existence. As the data given by Home Ministry[111] says, 2830 Pakistani citizens, 912 Afghan citizens, 172 Bangladeshi citizens were given Indian citizenship by naturalization in past in past six years. Further, clarifying the

[110] https://www.ndtv.com/india-news/mystery-document-raises-questions-over-citizenship-drive-in-uttar-pradesh-2164578.

[111] Vijaita Singh, *MHA clarifies on citizenship to migrants from three nations*, The Hindu, (December 16, 2019), *available at* https://www.thehindu.com/news/national/mha-clarifies-on-citizenship-to-migrants-from-3-nations/article30322679.ece., (Last visited on 26th April, 2020).

Government's stand not to be in favour of targeting Muslim community stated many of afore stated numbers are of Muslim religion as well.

Furthermore, 14864 Bangladeshi Nationals were granted Indian Citizenship when more than 50 enclaves were incorporated in India through boundary agreement with Bangladesh. Many of them also include people of Muslim community.

4.5. CAA and its practicability: Social acceptance v/s legal status in document

Since, there are more than 140 petitions filed in the Hon'ble Supreme Court regarding the validity of the Citizenship Amendment Act, 2019. Some of them have been filed by different states namely, Kerala, West Bengal, Rajasthan, Punjab under Article 131 of the Constitution of India and all the states ruled by political party other than BJP namely Kerala, West Bengal, Madhya Pradesh, Rajasthan, Punjab, Jharkhand, Chhattisgarh, Maharashtra have announced that they will not implement CAA which leads to another argument that the lack of acceptance and willingness of the state governments in the implementation of the amendment will come out as a big hurdle. Just like the case of Chakma group, where the Central Government supported the refugees, but the state governments had taken various measures against them, such as denial and withdrawal in school admissions, book grants etc. The state legislative assembly of Arunachal Pradesh had gone to the extent of passing resolutions demanding immediate deportation of refugees, while the stand of Centre on this was that they were eligible for grant of citizenship. The outcome of the tussle between the Centre and the state is that the fate of the chakmas is still a question mark.

The Supreme Court while listening to the petitions has refused to stay the law, a three judge bench headed by CJI S.A. Bobde, J. Sanjeev Khanna and J. A.S. Nazeer, without hearing the government is waiting for the response from the Centre.

While some people are of the opinion that since these people who were not originally part of this land, shall now be treated at equal footing and avail the same status as that of the people who have originally been the part of India since ages and this will hinder their

right to observe certain traditions and practices – once such instance is that of the Chakma Group ethnic Buddhist refugee), many of them left their unique place and took refuge in India, mainly in Assam, Arunachal Pradesh, Mizoram, Tripura, Meghalaya. They now live a refugee live cramped into poverty, illiteracy, unemployment, and an identity crisis, with social discrimination and monetary boycotts. 'The Central government of India gave settlement regions to the Chakma-Hajong populace inside the Tirap department of North-East Frontier Agency (NEFA) (now a part of Arunachal Pradesh) so as to avoid any conflict with the indigenous population of Mizoram. Since then, a shift in the political repute of Arunachal Pradesh, and the continuing upward push of the Chakma-Hajong population, has brought about a growing sense of resentment among the indigenous population.'[112] There have been robust emotions of prejudice against the refugee communities by the various indigenous groups that the Chakmas might outnumber them. They are often denied jobs because of their refugee status and also are denied ration cards under the PDS.

A severe opposition is due to the tussle over land and other resources, people are threatened that their indigenous lifestyle shall be prejudiced and their identity will be lost, on recognizing the Chakmas as a citizen they will gradually demand and claim the status of Scheduled Tribes and claim seats reserved for indigenous tribes in education and jobs.

The passing of the Act[113] has created a ruckus amongst the Muslims which has led to massive protests throughout the country as the Muslims are not ready to accept the amendment citing reasons of fear that their citizenship is in danger and that they will be rendered stateless and remediless and that CAA is an anti-Muslim enactment. For instances, around 500 people (majority amongst whom were women) had gathered in Delhi (Jaffrabad Metro Station) against the CAA blocking traffic on roads. Same was the situation in Chennai, Bengaluru, Aligarh, Mumbai, Kolkata, Varanasi, Lucknow and other major parts throughout the country. The protests in Delhi's Saheen Bagh, began on 15th December where Indian Muslim women decided to sit in demand for scrapping the CAA indefinitely, this protest was given a break due to the Pandemic 2020 (COVID19).

[112] https://lawcorner.in/a-state-of-the-stateless-people-a-case-study-of-chakmas/.
[113] *Supra* note 83.

What is the fate of an act when it is not accepted by the people which is facing so much back lash? Whether the protests are a political move or a demand of secularism? What will happen to those people who are given citizenship based on this Act even after the protests? Are they not going to be stigmatized on this basis and might not be accepted in the society as they should have been? Looking at the gravity of these protests it can be read out that this will further lead to social discrimination and biasedness.

There is a resentment within people about the way in which they have tackled the issue relating to the implementation of the act and assuring the Muslim population that their citizenship will not be terminated under this act, there is a wave of misunderstanding within the community that they are deemed as non-citizens of this country and will have to prove their citizenship again, there are slogans being raised like *"hum kagaaz nhi dikhaenge*" (we will not show the papers) "no CAA no NRC" "we are not anti-anything, we are secular" wherein the people raise the contention that they don't have proper documents to show their citizenship the fear is because of the incident which happened in Assam during the NRC and when Home Minister Amit Shah as alleged to say that the NRC shall be implemented throughout the country. It is the duty of the Centre to take remedial measures as soon as possible.

People are afraid of losing their citizenship if they do not have proper documents to prove their citizenship when NRC is going to be implemented for the whole of India. Indian Muslim believes that all non-Muslims who do not have documents to prove their Indian citizenship will be able to get citizenship under CAA. However, again it should not be ignored that CAA is not granting citizenship automatically as discussed earlier.

The fear that mongers amongst some of those people who have entered India during the 70's or during the partition who do have any documents and have not granted citizenship yet is that they have no means to prove they were facing persecution. Therefore, it becomes impossible for such people to prove that they fled due to religious persecution and cannot avail the benefit of CAA.

Legal status is such that the CAA rules are yet to be notified by the government and yet there's no clarification on how it will be implemented. Now the very first thing which needs to be strictly verified is that only those people who are facing religious persecution can avail citizenship under this act and to ensure that no undesirable element takes advantage of these provisions. (People staying back in India after the expiry of their visas siting religious persecution without any documents proving the same, such people cannot be deported or imprisoned).

Since, no country would ever accept the fact that there is any persecution on any grounds taking place in their country, Pakistan, Bangladesh and Afghanistan are in no manner going to help India to identify all such people who are in fear of religious persecution. And also since, there are no guidelines on how the people will prove the same on their own it becomes difficult to assume what are the legal effect and its advantages to the people and there is also a doubt as to whether such exercise under CAA would actually benefit the people and what shall happen on the failure of its proper and just implementation. The standard protocol of Parliament provides that six months after a law comes into force, the rules need to be framed.

Though there is a lack of any clear criteria on the basis of which the citizenship would be granted a report by the NDTV says – "the UP government had already started identifying the potential beneficiaries of the said law and had estimated that around 32,000 to 50,000, and most of them nearly 37,000 have been identified from the Pilibhit district where Bangladeshi families settled decades ago. A few of them already had Aadhar cards, bank accounts and ration cards a few of them were also registered voters. Some were also availing government benefits had gas connections and had received aids to build toilets and homes."[114]

Talking about social stigma, the Act does not take into consideration the circumstances and the reality of these migrants, which has created a lot of confusions and has left unanswered the problems related to social differences and as such this legislation has the

[114] https://www.ndtv.com/india-news/mystery-document-raises-questions-over-citizenship-drive-in-uttar-pradesh-2164578.

prospects of creating political and social crises in the country. It is interpreted by some as not being identity-neutral as the scope should have been, but a racial or religious one. People who have entered India and are living in India for a long time now, and also availing various government benefits, granted aids, have proper bank accounts, Aadhar and ration cards, some of them even vote during the elections and have taken citizenship by various means and some who yet haven't been granted citizenship are still identified by the locals and administrative bodies as infiltrators and not Indians, for them it is still a more of identity crisis. And due to such reasons they are many a times subjected to ill-treatment and discrimination and also denied basic rights in a society.

Conclusion:

CAA although provides for considering religiously persecuted minorities of specified three countries but how it will be done is not clear and yet to be known. However there are various speculations as the gross difficulties that is going to arise in CAA's implementation. Few basic questions that arise are what happens to the fate of such people who have applied under this Act for citizenship but are not provided the same or denied citizenship, or what if it takes years to grant one. Yet again what happens in case there is a change in the government in the coming years?

CHAPTER 5

CITIZENSHIP AMENDMENT ACT, 2019: JUSTIFIED WITH CONSTITUTIONAL PROVISIONS, CONSTITUTIONAL VALUES AND CONSTITUTIONAL MORALITY?

Citizenship Amendment Act, 2019 although providing naturalization of certain sects of refugees in India and therefore is appreciable from humanitarian perspective, but is also being highly criticized for being discretionary in nature as it leaves Muslim refugee community entirely from its scope. Therefore, various writ petitions have been filed before the Supreme Court of India challenging the amendment act to be unconstitutional for variety of reasons. The unconstitutional challenge is not only limited to writ jurisdiction of the Supreme Court of India but certain states[115] have also knocked the door of Supreme Court of India envisaging original jurisdiction of the apex court of the country making CAA challenge to be dispute between center and group of states as well.

5.1. What are alleged grounds of challenging of CAA?

As already pointed out in earlier chapters, in accordance with the UNHCR reports and other sources, many refugees in India are religiously persecuted refugees especially from the neighboring countries. CAA as discussed at length in previous chapter provides to consider applications of non-Muslim religiously persecuted minorities who entered India before a particular cutoff date in 2014, that too from Afghanistan, Pakistan and Bangladesh, provided the same shall not be applicable for certain specified states and regions which have inner line permits.

Therefore, it is challenged for being discriminatory in nature from the following aspects:

1. Discriminating between the religion as it left Muslim migrants entirely from the CAA scope and protection even though they are religiously persecuted;

[115] Kerala, Rajasthan, Punjab and West Bengal have also challenged CAA invoking Article 131 of the Constitution of India.

2. Discriminating between nationality of migrants as it leaves migrants from Sri Lanka, Bhutan and Myanmar covering only migrants from Pakistan, Bangladesh and Afghanistan;
3. Discriminatory in taking time of entry into India into consideration as it leaves those migrants who do not fall under the specified cut off dates in the sense that those migrants who entered India after 2014 are not to be considered for naturalization relaxations;
4. Discriminatory for requirement of place of residence as it is not to be applicable to the tribal areas specified in Sixth Schedule of the Constitution i.e. of Assam, Meghalaya, Mizoram or Tripura and to the areas falling under the "internal line" as notified under the Bengal Eastern Frontier Regulation, 1873.

Alleged to be violative of intelligible differentia and Article 14:

CAA has been challenged invoking right of all persons under Article 14 which talks about right to equality and equal protection of laws which is guaranteed to all persons and therefore is also applicable to all illegal migrants staying in India. Although right under Article 14 is not an absolute right and intelligible classification is held to be permissible by the Supreme Court of India but the same has to be free from arbitrariness. It is contended that since all migrants irrespective of their religion or place of residence in India, or owing to their nationality are one particular class. Classification can be made as citizens and non-citizens or for that case as legal migrants and illegal migrants however, the same cannot be done as Muslim illegal migrants and non-Muslim illegal migrants or illegal migrants from some countries in one side and those from other countries on other side.

Alleged exclusions: It is alleged that the Act has excluded Rohingya Muslims who are victims of religious persecution in Myanmar[116] and also Ahmadi sect of Muslims of Pakistan who are also religiously persecuted in their country as being considered equivalent to non-Muslims in Pakistan. The Act is also alleged to ignore persecuted

[116] Myanmar does not have any state specific official religion although it gives preference to Buddhism.

linguistic minority i.e. Sri Lankan Tamils from its coverage. Furthermore, it is contended to leave Bhutan and Sri Lanka which are non-secular countries and have their own state religion as Buddhism.

Alleged to be against the constitutional morality:

CAA is alleged to be against Constitutional morality of Constitution of India which in its preamble incorporates equality as one of the ideological value on which our Constitution is structured. It is also said to be against Constitutional value of secularism which also find place in the very foundation of the Constitution as CAA targets to leave one religion away from protection mechanism for illegal migrants. It is alleged that such acts which takes away the secular character of the country by providing citizenship on the basis of religion is clearly a violation of secular nature of our country. Both these principles i.e. equality as well as secularism are held to be basic structures of the Constitution are cannot be amended in any way not even by Constitutional amending power of the parliament.

Alleged unjustified inclusion of Afghanistan:

Even if claim of Government of India is accepted that CAA is aiming to give protection to people of un-divided India who became religious minorities considering it to be India's moral obligation, it is argued that there is no justification of inclusion of Afghanistan in CAA as Afghanistan was never a part of un divided India.

5.2. How Government of India is justifying CAA to be under the ambit of its Constitutional power?

Government of India has enacted the legislation with the following statement of object and reasons:

> "It is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. Millions of citizens of undivided India

> belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The Constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries. Some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents."

The government says that object and reasons specifically talks about citizens of undivided India and their protection. CAA aims to provide protection only to citizens of undivided India who were later religiously persecuted for being minorities in three specified Islamic states. The protection is not aimed at religiously persecuted refugees of all neighboring countries to India. Therefore exclusion of Sri Lanka, Myanmar, Bhutan, and Nepal is justified because they were never a part of undivided India. Thus, although Sri Lanka and Bhutan which provide are not secular and have Buddhism as their state religion is justified for CAA being limited for people of undivided India.

However, one of the important arguments which come here is if CAA aims to provide naturalization to persecuted minorities of undivided India only, then why Afghanistan is added into the list. Afghanistan was never a part of undivided India. Replying to the particular argument, the Ministry of Home Affairs had stated that there had been multiple attacks against Indian interests in Afghanistan by Taliban and LET group. Apart from that, minority communities in Afghanistan had migrated from north western region (now included in Pakistan) of undivided to Afghanistan during Pre-independence India. And when they were persecuted in Afghanistan by Taliban regime which was aiming for strictest implementation of Shariyat law into the region, many of them came to India. Therefore, for the aforesaid reasons, Afghanistan has been included under the CAA regime.[117] It is also quite established that the Afghan refugees in India had been victim of the religious persecution and almost all of those who came to India belong to either

[117] *Supra* note 102.

Hindu or Sikh beliefs. The same has been discussed in detail in second chapter of this research work.

Another very important debatable question that is posed at government in the active protests against CAA is that why Muslim community of undivided India may also have been persecuted in these three countries, is not included under CAA regime. Replying to this concern, Government clears its stand by stating that Muslims cannot be aid to be religiously persecuted in their Muslim majority country where their Constitution itself provides for Islam as state religion. Although Union Government has laid down a perception that only minorities can be expected to have been persecuted in a non-secular state, this cannot be denied that Ahmedi Muslims in Pakistan have been persecuted as they are considered to be equivalent to Non-Muslims. It is also not wrong to assert that religious persecution is possible in a secular country as well and therefore no such conclusion can be drawn. It is important to put that Indian Government does not recognize persecution of Ahmedi Muslims. Besides, there is no data that I could find to show whether any Ahmedi Muslim sought for asylum in India due to persecution in Pakistan.

Therefore with these clarifications, Government justifies CAA as a protection regime for persecuted religious minorities of un-divided India who came to India seeking protection. Thus, CAA provides for an intelligible differentia of religiously persecuted minorities of un-divided India.

5.3. Analysis of validity of CAA based on Supreme Court's previous decisions on test of equality, government's foreign policy and other relevant matters:

CAA has been challenged to be violative of Article 14 of the Constitution for being discriminatory in nature. And therefore, a clear understanding of what Article 14 confers is very important. When we have a close look at CAA and its spirit and scope read with the object and reasons attached to it, we come to a conclusion that it centers around what right to equality conveys for the non-citizens. Article 14 is applicable to non-citizens as well and thus there is no doubt that they can be discriminated. Going by the absoluteness,

they cannot even be discriminated against citizens but the same is allowed as reasonable classification exists between citizens and non-citizens. Thus, where the test is followed, classification can be done for benefiting one class leaving other aside.

Article 14 provides for equality before law as well as equal protection of laws. If any act of parliament is discriminatory, it is unconstitutional and liable to be struck down by the judiciary. However, it is important to assert that Article 14 forbids class legislation and not reasonable classification.[118] Classification to be reasonable must fulfill the following two tests as laid down by the Supreme Court of India and reiterated in catena of judicial pronouncements concerned with Article 14. Firstly, it should not be arbitrary or artificial and should rest on intelligible differentia i.e. real and substantive distinction that distinguishes persons or things grouped together as one class from others who are left out from that class. Secondly, such intelligible differentia in classification must have a rational nexus with the object sought to be achieved by the enactment or stature in question.[119] Therefore CAA, to attract Article 14, must have a classification that is unreasonable or arbitrary without any rational and does not contain any nexus between the object sought to be achieved.

CAA is alleged to be unconstitutional because on the face of it, it is differentiating on the basis of religion. However, it is not always necessary that the basis of classification to be valid must always appear on the face of the law.[120] The Supreme Court itself has held that for deducing and finding out the rational and the justification of the classification, the court may take reference to other relevant material, such as statement of objects and reasons attached to bill, parliamentary debates, the background circumstances that led to passage of the Act, and other matters of common knowledge, etc.[121]

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[118] M.P. Jain, INDIAN CONSTITUTIONAL LAW, 2011.
[119] Laxmi Khandsari v. State of Uttar Pradesh, AIR 1981 SC 873, 891 (Supreme Court of India); Also reiterated in several other judgments including Javed v. State of Haryana, AIR 2003 SC 3057 (Supreme Court of India).
[120] *Supra* note 118.
[121] Jagdish Pandey v. Chancellor, Bihar University, AIR 1968 SC 353 (Supreme Court of India; Also State of Jammu & Kashmir v. T.N. Khosa AIR 1974 SC 1 (Supreme Court of India).

If we look at the CAA provision, prima facie it may be inferred that the enactment is discriminating on the basis of religion but adhering to what Supreme Court observed with regard to constitutionality of any legislation (as reflected in the earlier paragraph), we are required to look into other relevant material that becomes very important while deciding constitutionality of any legislation. Therefore, object and reasons attached to the CAA as well as parliamentary debate and other factual and historical circumstances becomes relevant when we talk about constitutionality of CAA.

In the object and reasons, it is stated that the aim of the enactment is to provide protection to citizens of undivided India who were persecuted because of being religious minorities in the three specified Islamic states.

Concerning with the inclusion of Afghanistan which was never a part of undivided India, the clarificatory statement given by the Ministry of Home Affairs becomes relevant to be taken into consideration in which MoHA states that there had been multiple attacks against Indian interests in Afghanistan by Taliban and LET group. Besides, minority communities in Afghanistan had migrated from north western region (now included in Pakistan) of undivided to Afghanistan during Pre-independence India. These minority communities took shelter in India when they were religiously persecuted. Now, another point of concern that comes into picture is \

However, whether there is any basis on which the said statement has been made is not cleared by the Ministry. Is there any evidence to show that the said minorities of Afghanistan migrated from Pakistan during pre-independence period is still a question and seems to have based upon presumption of government. Such immigration seems to be quite difficult to be proved and thus unreasonable to be proved. In such cases, the Supreme Court takes inclined view in favour of government action without going to the technicalities.

Now applying the first test of reasonable classification, CAA is making classification between persons of Hindu, Sikh, Jain, Parsi, Christian, and Buddhist faith on one side and persons belonging to Muslim faith on the other who are left in the said class. The same

has been done on the basis that the said class is the minority communities in Pakistan, Afghanistan and Bangladesh whereas on other hand, Muslim community is the religious majority in the said country where Islam is the state religion. The same has been inflicted in the objects and reasons as well as the parliamentary debates that led to passage of the CAA. Therefore, looking with this perspective, it fulfills the first test of intelligible differentia which has a particular rational and does not seem to be artificial.

Geographical differentiation:

CAA makes another classification that is Pakistan, Afghanistan, and Bangladesh as a class and other countries another class which is left out from the first class. Whether such classification can be done?

The Supreme Court of India observes that geographical considerations may form a valid basis of classification for purposes of legislation in appropriate cases. The Supreme Court of India in this connection has observed that "historical reasons may justify differential treatment of separate geographical regions provided it bears a reason and just relation to the matter in respect of which differential treatment is accorded. Uniformity in law has to be achieved, but that is a long drawn process."[122]

The rationale behind it which is again reflected in the parliamentary debates as well as object and reasons of CAA is that religiously persecuted minorities of these countries were citizens of undivided India. The inclusion of Afghanistan has been made clear by the Ministry of Home Affairs officially as already discussed above. Thereby, it also forms the intelligible differentia to make classification. This classification also sustains the first test of Article 14 on the basis of the object and reasons of CAA and MoHA statement on Afghanistan's inclusion.

Moving further to the second test i.e. classification must have nexus with the object sought to be achieved. The object that has been reflected in the statement of object and reasons is to provide naturalization to religiously persecuted minorities of the three

[122] Clarence Pais v. Union of India AIR 2001 SC 1151, 1155 (Supreme Court of India).

specified country whose religious minorities were citizens of un-divided India. Therefore, the said classification does seem to have strong nexus with the object CAA is seeking to achieve.

In the exact words of Supreme Court "when a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by the Court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any rational basis having regard to the object which the legislature has in view."[123]

There exists an initial presumption in favour of Constitutional validity of statues or enactments and the burden lies upon him who attacks it to establish that there is clear transgression of the Constitutional principles.[124] Supreme Court observed that it must be presumed that the legislature understands and correctly appreciates the need of its own people. In *Deepak Sibal v. Punjab University*[125], the Supreme Court pointed out categorically that there need not be such a classification that is scientifically perfect or logically complete. The classification need not be made with 'mathematical precision'.

The court also observed that 'the surrounding circumstances may also be taken into consideration in support of the Constitutionality of a law which may otherwise be hostile or discriminatory in nature. But the circumstances must be such as to justify the discriminatory treatment or the classification sub serving the object sought to be achieved.'[126] It is the historical fact that trans-border migration of population has been happening continuously between the territories of India and the territories of Pakistan, Afghanistan and Bangladesh. Most of such migration is of the religious minority

[123] K. Thimmappa v. Chairman Central Board of Directors AIR 2001 SC 467 (Supreme Court of India).
[124] Ashutosh Gupta v. State of Rajasthan AIR 2002 SC 1533 (Supreme Court of India).
[125] Deepak Sibal v. Punjab University AIR 1989 SC 903 (Supreme Court of India); Also Dharam Dutt v. Union of India AIR 2004 SC 1295 (Supreme Court of India).
[126] *Deepak Sibal* AIR 1989 SC 903.

communities of the three countries. There are enough evidences to show that there had been religious persecution on the minorities of these countries. The Constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. Although Bangladesh has proclaimed to be secular country through amendment to its Constitution in 2011, most of the migration to India occurred prior to that. Supreme Court will definitely go with proper consideration of all these surrounding circumstances while testing the Constitutional validity of the CAA.

Further, the protection is just a mere relaxation of time provided to the persons belonging to religious minorities of specified countries and to expedites the naturalization process of acquiring citizenship in India. The amendment does not prohibit persons belonging to Muslim community from applying for citizenship of India. It does not 'freshly' declare foreign Muslims as illegal migrants. The position of foreign Muslims remains unchanged by the amended Act who can apply for citizenship through usual naturalization process after proving 11 years of stay in India.[127]

Whether violates secularism?

One of the grounds for Constitutional challenge of CAA is that it undermines and takes away the secular character of India which is held to be basic structure of the Constitution of India. The protests occurring against CAA also portray that CAA is trying to make India a 'Hindu Rashtra' which the BJP led NDA government is quite often accused of. Now, keeping the political agendas apart and technically looking into legal aspects of CAA read with its object and reasons, in my opinion it not be outrightly said that CAA takes away the secular character of India. After having detailed discussion on CAA's sustainability under Article 14, it is clear that CAA aims at protecting persecuted religious minorities of the Islamic neighboring countries which is said to have people of undivided India for the protection of whom, India considers its moral obligation.

[127] Monika Arora, *Right to Equality: Citizenship Act Passes Twin Test of Article 14 of Constitution* (14 Dec, 2019), *available at* https://www.news18.com/news/opinion/opinion-right-to-equality-citizenship-act-passes-twin-test-of article-14-of-Constitution-2424599.html (Last Visited on April 25, 2020).

It does not take away any right from any religious community or is not banning any religious community from ever getting citizenship of India through any process including naturalization. Moreover, it gives protection to all the religious minority communities and does not limit protection to any one particular religion. However, the drafting language of CAA which mentions the religious communities by their names leaving one religious community aside is worth criticizing as the government could just mention 'religiously persecuted minorities from Pakistan, Afghanistan and Bangladesh' to avoid such communal distress. It is noteworthy that such language may reflect a political ideology of government in power but when it comes to Constitutional validity, the Constitutional court cannot decide upon the Constitutionality on such artificial basis but has to take into account the technical legality and the object it sought to achieve to do justified legal scrutiny.

Whether discriminatory on Cut-off dates?

With regard to the discriminatory aspect of CAA based upon the cut-off date i.e. Dec 31, 2014 (i.e., illegal migrant is required to have entered the Indian territory before the mentioned cut-off date to get protection under CAA), it is said that the object of CAA is to permit the specified eligible communities to be considered for naturalization. It is inherent conceptual understanding of naturalization that it requires some period of prior residence on the territory of the country which provides its citizenship. The time of prior residence may differ as per the laws of different countries.

Ordinarily, Citizenship Act, 1955 provides for naturalization if applicant has prior residence of not less than 11 years in India. CAA by specifying the cut-off date of protection puts the requirement of at least 5 years to get naturalization. Thus, it reduces the requirement of 11 years of prior residence and makes it 5 years for eligible communities falling under CAA. What should be the minimum requirement of prior residence is entirely a policy matter and rests on the parliament as per the Constitution where no judicial intervention seems to be possible. Therefore, with such rationale of naturalization, it cannot be said to be discriminatory in nature.

Whether Supreme Court will look into CAA alongwith NRC?

NRC (National Register of Citizens) is a concept of creation of a register which will contain names of all the citizens of India. The creation of NRC was included in the citizenship law of India in 2003[128] providing power to create such register to the central government. However, no such register has yet come into existence. Recently when the CAA was being enacted, it was stated y Home Minister Amit Shah that soon NRC will be applicable for the whole of India. Thus, all those who do not have required documents to proof their citizenship will be considered to be illegal migrants.

As CAA provides protection to non-Muslim religious communities, it is argues that government will grant citizenship to all those non-Muslims who do not have required documents under CAA whereas, all those Muslims who do not have required documents will be considered as Non-Citizens of India. This seems to be the whole root cause of the entire controversy and protest about CAA.

It is specified by the government many a times that NRC and rules regarding documents shall be drafted in such as way that citizenship could be proved easily by the Indian Citizens.

It is noteworthy that, neither such NRC nor any rules regarding the same are yet officially announced or drafted. What shall be the requirement of proving religious persecution and getting citizenship under CAA is also not yet clear. Government has not yet come up with any draft rules under CAA. Therefore, it is very difficult to assert what could be the possibilities of a weapon of CAA+NRC that can be used against Muslims of the country.

However, as far as Supreme Court's practice is concerned, in almost all probabilities, Supreme Court cannot assess CAA and its Constitutionality by connecting it to NRC which does not even have any existence yet or whose scope is not known to court yet. Thus Supreme Court has to decide based upon the laws in existence and cannot consider what the executive is capable of doing in coming future. What it can do is to assure that if

[128] Citizenship Amendment Act, 2003.

NRC or Rules under CAA goes beyond the ambit of Constitution or the fundamental rights guaranteed by the Constitution or the inherent Constitutional morality, the same will be scrutinized through judicial review.

Constitutional Morality v/s Constitutional Legality:

Constitutional Morality is an inner morality of the Constitution which is inferred from the existing Constitutional provisions read with the Constitutional values enshrined in the Preamble to the Constitution. However, it is looked into while deciding the Constitutionality of any state action where there is no direct enough Constitutional provisions towards the same.

Article 14 that is applicable to non-citizens as well, gets scrutinized by the reasonable classification. Moreover, there is clear provision with regard to non-discrimination on ground of religion under Article 15 but it is only guaranteed to citizens of India. Thereby, it gets unclear whether parliament can classify on the basis of religion. However, as analysed from Article 14 reasonable classification test, we saw that CAA qualify such test.

At the same time, it cannot be ignored that Article 11 of the Constitution provides unconditional power to decide further upon Citizenship of India upon parliament. It does not provide for any subjection of such power. As deciding upon the citizenship especially of non-citizens has always been considered to be matter of policy, it would violate doctrine of separation of power as held to be basic structure of the Constitution if judiciary interferes in such policy matters. Thus, judiciary can only interfere so far as it is a matter of Constitutionality. Once is satisfies the reasonable classification test, it cannot go further to lay down guidelines on the same.

As far as Constitutional morality of secularism is concerned, Constitution itself recognizes reservation system that is not applicable to religious minorities of India. The caste reservation applies to Hindu community solely as the caste system on which it is based has become a part of Hindu culture gradually with the time. If such caste

reservation that is beneficial to one particular religious community based upon the historical circumstances of undivided India can become a part of Indian Constitution and if our Constitution makers did not object to such system favoring one religious community for the reason that it is based upon prevailing historical conditions in a particular society, then CAA can also not be said to be against the Constitutional morality. Constitutional morality cannot be seen to exist when it differs with what our forefathers i.e. makers of the Constitution, desired.

Conclusion:

Citizenship Amendment Act, 2019 though immoral as it leaves particular community from its scope and for the reason that it only considers a small fraction of refugee for local integration under CAA leaving every other aside, the same does not seem to be unconstitutional because it satisfies the intelligible differentia test laid down by Supreme Court of India under Article 14. Further CAA is required to consider that it is a policy matter for which exclusive power has been given to Parliament by the Constitution. Moreover, based upon the past approach of Supreme Court following doctrine of separation of power, it does not seem to interfere in such matters until it abridges part III of the constitution.

CHAPTER 6

CONCLUSION AND SUGGESSIONS

6.1. Conclusion:

The international refugee protection regime and Indian refugee regime protection regime differ in many aspects as seen in the entire initial chapters. Until 2019 India only believed in repatriation of refugees to their country of origin. It did what it had to for repatriation of refugees as it witnessed from India's assistance in independence of Bangladesh, in establishing peace in Sri Lanka wherein moto of India was to make conditions of neighboring countries favorable for repatriation of refugees. However, post Citizenship Amendment Act, 2019 India seemed to have in a way recognised the local integration of refugees as a durable solution. Although scope of CAA seems to be very limited and the same will be decided by further drafting of rules for the implementation of CAA.

With regard to whether India's discretionary approach towards refugee protection is concerned, the same appears to be still prevalent as CAA is only to allow a mere consideration of applications of eligible refugees thereby keeping the ultimate discretion at the hand of authorities and the government who will be capable of rejecting such applications for various reasons.

Further discretionary approach is reflected in the CAA itself as it is aiming at providing its protection to only religiously persecuted minorities and that too of the three specified countries only. It shows the discretionary approach of India although it is said to be based upon its historical obligation towards people of un-divided India.

Therefore, hypothesis of the present research analysis at the end appears to be nullified as India's refugee burden is quite high at present and has neither reduced for the reason of not granting automatic citizenship nor is likely to reduce post rules under CAA for the reason that CAA is likely to '**consider**' grant of citizenship by naturalization '**only**' to certain '**eligible communities'** and that too after they prove their reason of flight to be religious persecution in their country of origin. Proving so would not be easy and thus let

us now look forward to rules that will soon be drafted by the Government of India under CAA for its actual implementation which indeed actually show how much refuge burden is relieved by CAA.

6.2. Findings:

I. Status of refugees in India has always been discretion based. It is more from the perspective of humanitarian rather than right based.

II. Even the Supreme Court in many of its pro refugee pronouncements only fulfilled the basic needs on the humanitarian grounds and in a way which were not barred by the legislative enactments. It has held principle of non-refoulement a part of Article 21 but at the same time, power of deportation as per the procedure allowed under Foreigner's Act, 1946 read with the principles of Natural Justice and Humanitarian Principles.

III. It has been varying from group to group from different countries as is evident fro the discussion under this presentation

IV. Freedom of religion can be limited to any extent by state depending upon its law of land because the same is made derogable in the international human rights covenants.

V. Religious persecution is one of the kinds of persecution which generally pertains to long term persecution and is difficult to be eliminated easily by interference by other states or international community

VI. Local integration has been seen to be varying for variety of reasons considering political, social, economic and legal factors throughout the world.

VII. India's Citizenship Amendment Act, 2019 is a broad step in protection of religious minorities but the same has been limited to three countries.

VIII. As far as humanitarian principles are concerned, India has moral obligation towards all the refugees over its land however if seen limited from religious persecution, its moral obligation extends to all religiously persecuted minorities of all neighboring countries.

IX. If compared India's moral obligation towards all religiously persecuted refugees on its land, because of having historical reasons, its moral obligation is greater with respect to citizens of un-divided India to protect them.

X. As far as Constitutionality of CAA is concerned as in my opinion it satisfy the two fold test laid down by Supreme Court to asses reasonable classification under Article 14 and for the fact that deciding about citizenship is a matter of policy and is empowered to parliament under Article 11 of the part II.

XI. CAA because it implies that countries which have state religion are more prone to inflict religious persecution and also that religious majority cannot be said to be persecuted, seems to be inconsiderate from the international refugee protection regime and thus is lacking moral and logical consistency.

XII. CAA further catogorise refugees on Indian Territory as refugees of un-divided India and rest of the refugees; Religiously persecuted refugees and other refugees; Muslim refugees and Non-Muslim i.e. refugees who are religiously persecuted minorities.

XIII. CAA does reflect political ideology as has been the case in India's approach of treating refugees till now.

6.3. Suggestions:

I. Although several factors are important in Local integration, but inclusive steps must be taken to extend protection to as many refugees as possible if there are no reasonable grounds for considering them as threat to the nation. As Mr. Harish Salve also pointed out that 'Some good does not become bad on the ground that whole good has not been done'.

II. CAA must be seen as a India's first step towards local integration and should be accepted by all its state governments as well as by people.

III. Citizenship Amendment Rules must be drafted so as to give protection to as many eligible refugees and any further procedural difficulties must be avoided.

BIBLIOGRAPHY

Books:

1. B.S. Chimni (Ed.), "International Refugee Law: A Reader", New Delhi, Sage Publications, 2000
2. Guy S. Goodwin-Gill, "The Refugee in International Law", Oxford, Clarendon Press. 1983. 13
3. J. C. Hathaway, "The Rights of Refugees under International Law", Cambridge University Press, 2005
4. Rathin Bandopadhyay, "Human Rights of the Non-citizens: Law and Reality", Deep and Deep Publications Pvt. Ltd. 2007
5. M.P. Jain, "Indian Constitutional Law" 2011
6. Vijay Kumar Diwan, "Law of Citizenship, Foreigners and Passports" 1984

Articles:

1. Rishika Raghuwanshi and Ayush Chowdhury, *Exigency of Domestic Norms for Tackling Refugee Crisis: Perspective on Citizenship and Balance between Human Rights and National Interest in India*, 1(1) JUS Dicere review 134-154 (2013)
2. Bhairav Acharya, *The Future of Asylum in India: Four Principles to Appraise Recent Legislative Proposals*, 9(2) NUJS LAW REVIEW 173-228 (2016)
3. Shuvro Prosun Sarker, *Inception of Statelessness and Refugee's Battle for Citizenship in India: a Critical Study***,** 12 ISIL YEAR BOOK OF INTERNATIONAL HUMANITARIAN AND REFUGEE LAW 284-305 (2012-2013)
4. Lucy Hovil and Zachary Lomo, *The Role of Citizenship in Addressing Refugee Crises in Africa's Great Lakes Region, International Refugee Rights Initiative: 2014 policy briefing,* INTERNATIONAL REFUGEE RIGHTS INITIATIVE (2014)
5. Abhishek Choudhary and Rajashree Kanungo, *A Study on the Constitutionality of the Citizenship Amendment Act, 2019*, MANUPATRA (June 23, 2019), *available at* www.manupatra.com (Last visited on March 20, 2020).

6. Veerabhadran Vijayakumar, *Judicial Response to Refugee Protection in India*, 12(2) INTERNATIONAL JOURNAL OF REFUGEE LAW 235-243 (2000).

7. Probodh Saxena, *Creating Legal Space for Refugees in India: the Milestones Crossed and the Roadmap for the Future*, 19(2) INTERNATIONAL JOURNAL OF REFUGEE LAW 246-272 (2007).

8. Amanda Ekey, *The Effect of the Refugee Experience on Terrorist Activity: An Investigation of How the Humanitarian Refugee Crisis is Impacting Global Terrorism*, (Honors Thesis, Department of Politics, New York University, 2007)

9. Jeff Crisp, *The local integration and local settlement of refugees: a conceptual and historical analysis,*Working Paper No. 102, UNHCR 2004

10. *Refugee Protection and Mixed Migration: The 10-Point Plan Solutions for refugees***,** Chapter 7

11. Markandey Katju, *India's Perception of Refugee Law*, 1 ISIL YEAR BOOK OF INTERNATIONAL HUMAN AND REFUGEE LAW 251 (2001).

12. Sreya Sen, *Understanding India's Refusal to Accede to the 1951 Convention: Context and Critique*, 2(1) REFUGEE REVIEW: RECONCEPTUALIZING REFUGEES & FORCED MIGRATION IN THE 21ST CENTURY 134 135 (June 22, 2015),

13. Paul and Weis, *The Refugee Convention, 1951: The Travaux Preparatoires Analysed with a Commentary*, 7 CAMBRIDGE INTERNATIONAL DOCUMENTS SERIES (1995).

14. Prashant Bharadwaj *et all, The Big March: Migratory Flows after the Partition of India*, 43 ECONOMIC & POLITICAL WEEKLY 39 (August 30, 2008)

15. Laura Barnett, *Global Governance and the Evolution of the International Refugee Regime*, 14 INTERNATIONAL JOURNAL OF REFUGEE LAW 238, 250 (2016).

16. B.S. Chimni, *From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems*, 23 REFUGEE SURVEY QUARTERLY 66 (2004).

17. B.S. Chimni, *The Legal Condition of Refugees in India*, 7(4) JOURNAL OF REFUGEE STUDIES 378 (1994).

18. Susan Banki , *Refugee Integration in the Intermediate Term: A Study of Nepal, Pakistan, and Kenya,* (Working paper no. 108, UNHCR (2004).

19. R.E. Sisson and L.E. Rose, *War and Secession: Pakistan, India and the Creation of Bangladesh*, (Berkeley CA) University of California Press, 206 (1990).

Case Laws

1. Hans Muller of Nuremburg v. Superintendent AIR 1955 SC 367, 367

2. Vishaka v. State of Rajasthan AIR *1997* SC 3011

3. Chairman Railway Board. v. Chandrima Das AIR 2000 SC 988

4. NHRC v. Union of India AIR 1996 SC 1234

5. Louis De Raedt *v. Union of India* (1991) 3 SCC 554

6. Arnzachal Pradesh v. Ihudiram Chakma AIR 1994 SC 1461

7. National Human Rights Commission v. State of Arunachal Pradesh, 1996 AIR SC 1234

8. Laxmi Khandsari v. State of Uttar Pradesh, AIR 1981 SC 873, 891

9. Javed v. State of Haryana, AIR 2003 SC 3057

10. Clarence Pais v. Union of India AIR 2001 SC 1151, 1155

11. K. Thimmappa v. Chairman Central Board of Directors AIR 2001 SC 467

12. Ashutosh Gupta v. State of Rajasthan AIR 2002 SC 1533

13. Deepak Sibal v. Punjab University AIR 1989 SC 903

14. Dharam Dutt v. Union of India AIR 2004 SC 1295

15. Jagdish Pandey v. Chancellor, Bihar University, AIR 1968 SC 353

16. State of Jammu & Kashmir v. T.N. Khosa AIR 1974 SC 1

Internet Sources

1. https://indianexpress.com/article/who-is/who-are-chakma-and-hajong-refugees-in-arunachal-pradesh-4841615/

2. https://economictimes.indiatimes.com/news/politics-and-nation/for-chakma-hajong-refugees-citizenship-struggle-continues/articleshow/74033643.cms?from=mdr

3. https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/solutions/kuch.pdf
4. http://www.unhcr.org/47f250744.html
5. https://scroll.in/article/946220/no-law-for-refugees-in-india-and-the-citizenship-bill-does-not-fill-the-gap
6. https://news.rediff.com/report/2009/oct/29/flying-to-india-carry-old-passport-with-oci-card.htm
7. https://www.inc.in/en/in-focus/tryst-with-destiny-speech-made-by-pt-jawaharlal-nehru
8. https://eparlib.nic.in/bitstream/123456789/58670/1/Eminent_Parliamentarians_Series_Syama_Prasad_Mookerjee.pd
9. https://www.livemint.com/Sundayapp/clQnX60MIR2LhCitpMmMWO/Indias-refugee-saga-from-1947-to-2017.html
10. https://www.unhcr.org/50a4c2b09.pdf
11. https://www.ndtv.com/india-news/mystery-document-raises-questions-over-citizenship-drive-in-uttar-pradesh-2164578.
12. https://www.news18.com/news/opinion/opinion-right-to-equality-citizenship-act-passes-twin-test-of article-14-of-Constitution-2424599.html
13. https://www.thehindu.com/news/national/mha-clarifies-on-citizenship-to-migrants-from-3-nations/article30322679.ece.,
14. https://lawcorner.in/a-state-of-the-stateless-people-a-case-study-of-chakmas/.
15. https://www.ndtv.com/india-news/mystery-document-raises-questions-over-citizenship-drive-in-uttar-pradesh-2164578.
16. https://www.unhcr.org/pages/49c3646c101.html
17. https://www.unhcr.org/
18. https://refugeereview2.wordpress.com/opinion-pieces/understanding-indiasrefusal-to-accede-to-the-1951-refugee-convention-context-and-critique-by-sreya-sen/
19. https://www.unhcr.org/5d08d7ee7