

CONTEMPORARY SOCIAL SCIENCES

PEER REVIEWED, INDEXED & REFEREED QUARTERLY INTERNATIONAL JOURNAL

ISSN 0302-9298

<https://www.jndmeerut.org>

[Vol. 33, No. 3 (July-September), 2024]

<https://doi.org/10.62047/CSS.2024.09.30.41>

Refugees, Citizenship and the Laws : An Indian Perspective

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Abstract

India has experienced a fair share of refugees from different parts of the world into its jurisdiction since independence. There has been a quite flexible approach while dealing refugees by India. The sole ground of being a refugee brings in a lot of ambiguity in the minds of the persecuted. Their future remains hazy. In this context the experiences in the host country becomes fairly important. Citizenship remains the most contested idea that revolve around the refugees. Recently in India, Citizenship Amendment Act, 2019 came into existence with a lot of controversies attached to it. With the gazette notification specifying the set of rules that shall bring this act into implementation mode, it is imperative to know its impact in the domestic politics of the country and how it is going to bring changes in the lives of those persecuted refugees residing in the country since long. The act brought in scope for many refugees in India from three countries to apply for citizenship as per the provisions and eligibility. The present paper examines the act and its relevance. It also identifies the myths and realities accompanied with the statute and how it brought in a rife in the country amongst the largest minority community.

Keywords

Migration, Refugees, Citizenship, CAA, Persecution.

Research Foundation International, New Delhi
(Affiliated to UNO)

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1. Introduction

Throughout the course of history, the phenomena of human migration have been an important element. From ancient times till the present, there have been many different types of migration around the world. It has happened all around the world for a variety of man-made and natural reasons. Such movements tend to be explained considerably more thoroughly by the concept of migration. Bartram, Porose, and Monforte (2014) define migration as the movement of people, or individuals, from one location to another. It is a deeply ingrained historical phenomena and a universal component of human existence. It makes more sense to view it as a social phenomenon with broader connections across a range of domains, including politics, economics, culture, identity, and so forth.

Migration has likely always been a common occurrence since the beginning of human history. Whether it was the early migration of people in search of food and shelter, the migration that occurred during the age of mercantilism for the purpose of trade, or the arrival of Europeans in various parts of the world during the colonization, the motivation has always been survival and better sustenance. It persisted throughout the post-colonial period and attained great popularity during the neo-liberal era, when barriers were lessened, individuals could travel around more easily, and people were more motivated by the desire to improve their standard of living.

India has always seen both domestic and foreign migration (Tomar, 2020). It is clear from historical records that migration from central Asia to India formed the significant racial makeup of the nation's population. The inhabitants were drawn to the Harappa Civilization once more because of its planned architecture, ideal location, and improved means of subsistence through trade and agriculture. India saw numerous foreign invasions during the Middle Ages as a result of its immense wealth, which finally allowed

the Mughals to conquer most of this magnificent country. The modern era recognizes the arrival of Europeans in Asia and Africa for trade, which led to the process of colonization. These incidents all demonstrate how individuals travel from one location to another for a variety of reasons.

Nationalities and foreignness are recognized as crucial points of differentiation in contemporary societies, which are defined by the existence of nation-states as fundamental institutions (Waldinger & Lichter, 2003). While there may be many innate similarities between migrants and natives when people relocate, nationality remains the most significant factor in and around these types of migrants. Erdal & Oeppen (2020) propose that these migrations may be categorized as voluntary or involuntary, depending on the variables involved.

A refugee is any person, male or female, who must from their place of residence and country because they have a justifiable fear of being mistreated because of their race, religion, nationality, gender, membership in a certain social group, or political ideas. Human rights abuses, major socioeconomic injustices that force people to flee their homes, and societal collapse all have a dramatic impact on refugees and internally displaced people. More people have been affected by the rise in human rights abuses and violent conflicts, which has increased migration and brought in a large number of refugees and internally displaced people on a worldwide basis. A thorough analysis of the refugee problems demands the development of a precise standard for determining who is considered a refugee. Many attempts have been undertaken to define refugees in a way that is legally enforceable.

Other terms that coexist with the term “refugee” are “illegal immigrant” and “asylum seeker”. In nations where separate procedures are followed, a person whose asylum claim is still seeking a decision from the country where it was filed is referred to as an asylum seeker. It’s crucial to remember that not everyone who applies for asylum will be given it in the end, but every refugee starts out as an asylum seeker. A person who is requesting asylum may be classified as a refugee, displaced person, or migrant, including an economic immigrant. A person who formally requests permission to remain in a foreign nation does so as an asylum seeker. This status remains in effect until a decision has been made about the application.

The decision as to whether an individual will be granted protection and recognized as a refugee, or whether their request will be denied and they will become an illegal immigrant who must leave the country and may face deportation, rests with the immigration authorities of the country in which the individual has filed for asylum. The asylum seeker may be awarded refugee status and recognized as a refugee if their circumstances meet the requirements specified in the 1951 Refugee Convention. An illegal immigrant is a person who leaves their home country in search of employment, typically as a labourer. However, because they enter the nation without a passport or any other documentation, their entry is regarded as illegal. These kind of people usually cross borders and hide their identity by mixing themselves amidst the workers or labourers in that country.

2. Refugee Influx in India

According to Khadria (2005), South Asia is a region that has had significant forced and involuntary migration. Ethnic disputes, cultural rejection, and governmental and military repression of the nation's minorities are among the causes. Such a dark issue has been faced by South Asian nations including Bangladesh, Pakistan, Afghanistan, Sri Lanka, and even Tibet and Myanmar in the wider region. Given India's prominence in the region and on a worldwide scale, there is a significant influx of refugees into its borders. India continues to house the greatest number of refugees in South Asia despite not being a party to either the 1951 Convention or the 1967 Protocol, which has about 140 signatories.

Since its inception, India has taken in a considerable number of refugees. There is a clear connection between the South Asian region's ethnic affinity and the refugee crisis in India. Because of the nation's egalitarian constitution, both its people and these newly arrived migrants who have endured severe persecution are protected from violations of human rights. The Indian Constitution's Articles 14 and 21 address the rights to equality and life of the nation's citizens as well as those who are not citizens. The approach that India has been taking to assist these refugees is based on a case-by-case analysis that results in the creation of different SOPs for refugees from each of these nations (Mittal & Tomar, 2022). Over time, the dynamics involved have changed.

Table-1 : Data of Refugees and Asylum Seekers of the Present Year, 2024

Year	Country of Asylum	Country of Asylum (ISO)	Refugees under UNHCR's Mandate	Asylum-seekers	Source	Month
2024	India	IND	251362	13792	Official estimates, UNHCR operational data	May

Source: UNHCR Refugee Data Finder

3. Factors affecting in Choosing India as the Destination

Safe haven, a concept that aims to ensure people's safety in a country, hold great promise as it can help end significant human rights violations. However, in practice, these structures are often adopted as a second-best alternative when nations are unwilling to provide refugee protection to those fleeing political violence (Arulanantham, 2000).

In India, most refugees and asylum seekers coexist with host communities in urban areas. 36% of the refugees are minors, while 46% of the refugees are women and girls. After decades of accepting a wide range of refugee groups, India has provided solutions for a large number of people who were forcefully displaced.

UNHCR collaborates closely with a wide range of stakeholders, such as line ministries, community organizations, and non-governmental organizations, to support the government's and its citizens' efforts to aid refugees in 11 states. UNHCR promotes solutions and self-reliance while concentrating on protection needs and carrying out RSD and registration.

Tucker (2018) asserts that there are several options for migration destinations and that these options might provide a hierarchy of justifications for choices. Comparative research has been employed to understand the choice of locations made by refugees from different nationalities in the receiving states. Moving decisions have been found to be influenced by a variety of factors, including social networks, information exchange, chain migration, trans-border ethnic linkages, language, labor market opportunities, education,

welfare, and the desire to live in a state that upholds democracy, freedom, and human rights. In addition, personal experiences, historical links, cultural affinity, and political situations can all have a big impact on migration decisions. To adequately comprehend and address migration patterns, policymakers and academics must acquire a thorough understanding of the complex interactions between these various components.

India appeals to South Asian refugees as a safe haven for a variety of reasons. India has developed into a prospective world power in terms of geopolitics. It should be acknowledged that political unrest has historically been widespread in South Asia. Furthermore, refugees looking for stability and prospects for a better life find India to be an appealing destination due to its robust economy and diversified culture. The confluence of these elements adds to India's image as a friendly and hospitable nation for people escaping violence and persecution in South Asia. India's standing as a friendly and hospitable nation for people escaping violence and persecution in South Asia has only gotten stronger. However, India has exhibited political stability and democracy in contrast to other nations in the region. In a similar vein, the International Monetary Fund has named India's economy the one with the quickest rate of growth worldwide. As a result, India is becoming a more desirable place to settle down and make a living. In South Asia, cultural affinity has also proven to be a significant factor in determining the fate of refugees. As a result, this community of refugees has integrated into Indian society. It also affects the demography of the area and presents a difficulty for the nation in handling security issues. In addition, refugees looking for better opportunities and a higher standard of living have been drawn to India by its robust economic growth. To preserve stability and security, the nation must confront the social and economic issues that the refugee crisis has brought about.

Since its founding, India-which is well-known for its long-standing reputation of hospitality-has had a sizable influx of refugees, according to Mittal & Tomar (2022). Based on the fundamental tenet of "Atithi Devo Bhava", India has addressed the issues of refugees from almost all of its neighbors. India has not disregarded the humanitarian needs of refugees who are being persecuted for political and social reasons in their home countries, despite not having ratified either the 1951 Convention on Refugees or the 1967 Protocol, which amends the convention. India has conti-

nuously protected both its citizens and international residents by upholding the fundamentals of human rights.

India holds the belief that human rights are universal and apply to all individuals, regardless of their nationality, place of residence, gender, ethnic background, race, religion, or language. Although India does not adhere to any international legislation regarding refugees, it played an important role in the creation of the Universal Declaration of Human Rights, which served as the main motivation for the development of the UN Convention on Refugees in 1951. The Indian delegation played a crucial role in the preparation of the declaration at the United Nations. India has also ratified the six fundamental human rights agreements. This could be viewed as a justification for India's proactive involvement in addressing refugee issues.

4. Understanding Citizenship

State and citizens are the two sides of the same coin. A state cannot flourish without its citizens. While citizens are being recognized as one just because of the existence of its state. A citizen is someone who is protected by the state and has a duty of loyalty to it. It is a two-way relationship in which the state grants him civil, political, and social rights, he must fulfil his duties and obligations toward the state. Therefore, citizenship denotes a reciprocal relationship between the state and the individual.

As a state, India has emerged with democratic values supported and assisted by the parliamentary system. This parliamentary form of the government formulates laws for those residing within its territory whether citizens or non-citizens. The parliament in India has the legitimate power to make laws that may define the legal aspects of citizenship and may also recognise or grant citizenship to people through its statutes and the provisions mentioned in the Part II of the Indian Constitution.

Citizenship Amendment Act, 2019 is the recent development with regard to the amendments made in the Citizenship Act, 1955 that provides provisions for granting citizenship in India.

5. Citizenship Laws and the Historical Past

The provisions of the Indian Citizenship Law of 1955 and the Constitution were initially fairly accommodating. But as time has gone on and the situation has changed due to a host of problems

involving the influx of illegal immigrants and refugees across the border, India has tightened its citizenship regulations to safeguard both its present population and its sovereignty. The first piece of legislation passed by the Indian Parliament to restrict citizenship acquisition on the grounds of *jus soli*-as previously defined by the 1955 Act-was the Citizenship Amendment Act, 1987. The purpose of the amendment is to shield the native Assamese population from the adverse effects of economic marginalization brought about by the large-scale migration of undocumented migrants from Bangladesh.

A further modification to the citizenship law was made in 2004, which prohibited all illegal migrants (those who cross borders without proper documentation) from applying for Indian citizenship on the two main grounds-naturalization and registration (Malischewski, 2018). As a result, the two amendments from 1987 and 2004 illustrated how strict the laws were when it came to giving these unlawful migrants citizenship. However, the Citizenship Amendment Act of 2019 gave marginalized groups who had fled persecution in Afghanistan, Bangladesh, and Pakistan the chance to become citizens of India.

6. Refugees and Citizenship in India

The sole idea of being stateless brings us to a question of citizenship. As suggested by United Nations High Commission for Refugees (UNHCR) a four-pronged approach to statelessness involves identification, prevention, reduction and protection (Malischewski, 2018). There is an ambiguity worldwide in terms of the total number of stateless people. Therefore, the identification of stateless people remains crucial. According to the UNHCR officials the most effective and easiest way to deal statelessness is prevention and figuring out ways to avoid the situation of statelessness. Reduction seeks to removing all kinds of barriers towards acquiring a recognition through citizenship or nationality. Those who remain stateless need to be protected. Being stateless does not mean that they are deprived of rights and respect (Malischewski, 2018).

7. Citizenship Amendment Act, 2019

The idea of citizenship is centred on the refugees because it offers hope to those who are being persecuted in their sad life. A person's status as an integral and accountable part of a political community is referred to as citizenship. According to Bellamy (2008), a citizen is a

person who is protected by the state and owes allegiance to it. A refugee's life and citizenship are intertwined.

In India, citizenship is mentioned in Part II of the Indian Constitution and is governed through the Citizenship Act, 1955 and further amendments made in it. With the recent amendment brought in by the Government led by the Bhartiya Janta Party, it enhances the scope of attaining citizenship for those within the ambit of this particular amendment act. This act was passed by the Parliament of India in December, 2019. Subsequently, the rules for implementing CAA were notified in the gazette of India in March 2024. CAA seeks to amend the Citizenship Act of 1955. The act pertains to those refugees who belong to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community and have travelled from Afghanistan, Bangladesh or Pakistan due to persecution and have entered the Indian territorial jurisdiction on or before 31st December 2014.

According to the CAA's provisions, members of the aforementioned communities will not be regarded as illegal immigrants, allowing them to apply for naturalization or registration and eventually become citizens of India. Additionally, the act encourages such individuals to be exempt from the Passport Act of 1920 and the Foreigner's Act of 1946, which govern foreigners' admission and exit and require them to have a valid passport, respectively.

The Government of India has issued regulations requiring migrants from Afghanistan, Bangladesh, and Pakistan to provide proof of their place of origin, religion, date of admission into India, and proficiency in any Indian language. Bangladesh is extremely important to this study because it falls under the CAA's purview. It is also crucial to consider the criticism levelled at CAA for failing to include Muslim migrants in its analysis of those arriving from Myanmar.

8. Conclusion

As a parliamentary democracy, India must have clear laws addressing the situation of refugees living there. All refugees should be treated equally under this rule, regardless of their birthplace, sex, country, religion, or color. The study's findings may suggest that India adopt a unified refugee policy to maintain parity with refugees arriving from other nations. Throughout the investigation, it was noted how the state's disparate handling of refugees from Bangla-

desh and Myanmar leads to inequality among both groups of people seeking asylum. It is important to distinguish CAA from refugee policies as it exclusively pertains to Afghanistan, Bangladesh, and Pakistan. Citizenship Amendment Act not to be treated as a refugee law. It is important to note that the Citizenship Amendment Act does not apply to refugees, but rather seeks to provide citizenship to persecuted minorities from neighboring countries. This distinction is crucial in understanding the purpose and scope of the legislation. The Act aims to fast-track the process of granting Indian citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians who have faced religious persecution in Pakistan, Bangladesh, and Afghanistan. Furthermore, the Act has faced criticism for excluding Muslims from these provisions. Critics argue that this exclusion goes against the secular principles of the Indian Constitution and discriminates against Muslims. Additionally, concerns have been raised about the potential impact of the Act on the social fabric and religious diversity of India.

The CAA declassifies the requirements for applying for citizenship as well. It offers no answers to the different problems and difficulties that refugees and asylum seekers encounter. In order for the refugees in India to receive basic healthcare, sanitation, and education as well as be able to support their families, there must be consistency. In general, this would preserve Indian customs and perhaps pave the way for India to become the VishwaGuru in the near future.

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