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**“A BRIEF CATALOGUE OF THE HISTORY OF INTERNATIONAL
REFUGEE LAWS IN THE MODERN ERA (1948 – 2019).”**

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I. ABSTRACT:

“The article is dealing with the history of Refugee Conventions and Declarations around the world. Various principles including ‘non-refoulement’ principle which is related to refugee laws are also discussed. The authors want to briefly put out the evolution of the refugee laws around the world and give reasons for why there was a need to amend such laws. The combination of refugee laws with humanitarian principles is discussed. The intent of the authors is to provide the reader with a brief idea about the status of refugees around the world and the remedies they can claim for their protection and well-being. In an era where the children are taught to mind their own business, there is a need to amend the laws which are made for the immigrants and the refugees who have fled their country of origin and immigrated into the host country. Refugee laws are necessary to protect the people of the nations which are in a great depression and violence, such as Syria, Somalia, Libya, etc. All the important refugee conventions which helped to stop the atrocities on the people dating back from the period of World War II till date are discussed by the authors. Further, the Citizenship (Amendment) Act (CAA), 2019 of India is discussed. In the end, the authors have given their opinion on these conventions as well as the CAA.

Keywords: *State, Refugee, International Convention, non-refoulement, Persecution.”*

II. INTRODUCTION:

The Preamble of the United Nations Charter reaffirms faith in Fundamental Rights and the dignity of human persons in equal rights of men and women. As said by Nelson Mandela, ‘To deny people their rights is to challenge their very humanity’. Human rights are the basic individual rights which one cannot take from other, and violation of these rights should be the end of humanity. The word ‘refugee’ has been defined under Article 1 of the 1951 Refugee Convention read with its Protocol of 1967. It defines a refugee as any person who is in fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to or is unwilling to return to his country because of the fear for his life.¹

This definition of a refugee was taken into consideration in the case of **R v. Secretary of State for the Home Department**². It was said that a refugee is a person who has a well-founded fear of persecution if he returned back to his own country based on the facts and circumstances of the situation. The principle of non-refoulement as under Article 33 of the 1951 Refugee Convention says that no refugee or asylum seeker shall be forced to return to a country in which they are liable to be subjected to persecution.³

According to the said principle, the refugees can be sent to another country which is safe for the refugees. There are several exceptions to this principle like any other principle. There are several other conventions which deal with matters related to refugees. The current Indian Citizenship (Amendment) Act⁴ of 2019 also deals with the asylum seekers into India. The Act was made considering the international conventions and principles but the question which arises is to what extent that the Act does not violate these principles.

¹ Art. 1(A)(2), UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty series, available at: <https://www.refworld.org/docid/3be01b964.html>.

² R v. Secretary of State for the Home Department, Ex parte Sivakumaran and Conjoined Appeals (UN High Commissioner for Refugees Intervening) [1988] AC 958, 16 December 1987 (UK House of Lords).

³ Art. 33, UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty series, available at: <https://www.refworld.org/docid/3be01b964.html>.

⁴ Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

III. EARLY CHALLENGES (1921 - 1946):

In the early twentieth century, there was an emergency to control the problem of refugees around the world. International communities began to take responsibility to protect the interests of the refugees on humanitarian grounds. The League of Nations took initiative and made international agreements to solve the problem. The similar principles are reflected in the Preamble of the 1951 Refugee Convention. Back then, the refugees were recognized based on three categories; national origin, lack of diplomatic protection in their own country and the territory that they left. This categorization made the process simple to interpret as to who is a refugee. Hence, the refugees before the 1951 Refugee Convention were called as the ‘statutory refugees’.⁵

III.I UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) (1948):

UDHR was adopted by the United Nations General Assembly on 10 December 1948 in Paris. This declaration was made as the result of World War II and its destruction. World War II had left millions of people homeless and nation-less. In order to tackle this problem, the United Nations charted down this document of 30 articles which talk about the humanitarian grounds which can be followed by all the nations of the world. Moreover, Article 13(2) of UDHR clearly specifies that everyone has a right to leave his own country and come back whenever he wants.⁶ Article 14(1) uses the term ‘asylum’ and says that everyone has a right to seek asylum in any country of their choice.⁷

The declaration has not defined who an asylum seeker or a refugee is but the interpretation was taken in the next conventions which gave clarity about who can be called as a refugee. This declaration was the first step of the UN to give a framework about the humanitarian laws and refugee laws.

⁵ Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, Under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, 13, 2019.

⁶ Art. 13(2), UN General Assembly, *Universal Declaration Of Human Rights*, 10 December 1948, United Nations, Treaty Series.

⁷ Art. 14(1), UN General Assembly, *Universal Declaration Of Human Rights*, 10 December 1948, United Nations, Treaty Series.

III.II UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES (1951):

This convention is exclusively for the asylum seekers/refugees. It carries forward the principle that ‘every human being shall enjoy fundamental rights and freedoms without discrimination’ laid down by the UDHR in 1948. Considering the World War II and the UDHR, the Refugee Convention of 1951 recognized a refugee under Article 1(A)(2)⁸ as a person owing to well-founded fear of being persecuted for the reasons of race, religion, membership of a particular group or political opinion, nationality is outside his own country and is unwilling to return back to his country due to the events on or before 1 January 1951.

Article 33⁹ of the convention talks about the principle of ‘non-refoulement’ which says that an asylum seeker shall not be forced to return back to the country in which they are liable to be subjected to persecution.

This principle was applied in the case of *In Re G. J (1998)*¹⁰ where a homosexual was initially denied asylum was later granted the same because of his membership in an oppressed social group from Iran. But the only exception to this rule is the national security of the state which is letting the refugees enters their state. Due to the criticism of the definition of ‘refugee’ under this convention, there was a Protocol of 1967 which shall be read together for a better understanding.

III.III BANGKOK PRINCIPLES ON THE STATUS OF REFUGEES AND TREATMENT OF REFUGEES (1966):

This convention was drafted in order to tackle the oppression in the 1960s in Asian and African countries. People were killed in masses based on their colour and ethnic origins. Article I(1)¹¹ of the Convention defines a refugee and added the words ‘colour’ and ‘ethnic

⁸ *Id.*

⁹ *Id.*

¹⁰ *In Re G.J. [1998] INLR 387 (New Zealand Refugee Status Appeals Authority).*

¹¹ Art. I(1), Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees (Bangkok Principles)*, 31 December 1966, available at: <https://www.refworld.org/docid/3de5f2d52.html>.

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origin' to consider the fear of persecution. Article II¹² talks about the obligation of the signatories to grant asylum to the refugees. Article IV¹³ gives the minimum standards of treatment towards the refugees by the state giving refuge.

Moreover, Article IX¹⁴ gives the refugees a right to compensation which shall be paid by the country to which the refugees were not able to return back to. The compensation shall be paid based on the damage to property, bodily injury, death of the refugee caused by the state, public officials or mob violence.

III.IV PROTOCOL RELATING TO THE STATUS OF REFUGEES (1967):

This is a protocol to the 1951 Refugee Convention. It came into force on 4 October 1967. Under this, the meaning of the term 'refugee' under Article 1(A)(2)¹⁵ was amended as the 1951 Convention recognized refugees due to acts before 1 January 1951. Considering the new refugee situations around the world, this protocol amended the meaning of refugee by removing the time frame for the persecution of refugees.

**III.V RECOMMENDATION IN COUNCIL OF EUROPE ON THE SITUATION OF DE FACTO REFUGEES
(1976):**

This was a Recommendation¹⁶ in the Parliamentary Assembly of the Council of Europe which stated that the definition of 'refugee' shall be taken from the 1951 Refugee Convention read with its Protocol of 1967. It also recommended the ministers to form a committee to give the *de facto* refugees basic necessities like food, shelter, clothing and medical aid. Further,

¹² Art. II, Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees (Bangkok Principles)*, 31 December 1966, available at: <https://www.refworld.org/docid/3de5f2d52.html>.

¹³ Art. IV, Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees (Bangkok Principles)*, 31 December 1966, available at: <https://www.refworld.org/docid/3de5f2d52.html>.

¹⁴ Art. IX, Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees (Bangkok Principles)*, 31 December 1966, available at: <https://www.refworld.org/docid/3de5f2d52.html>.

¹⁵ *Id.*

¹⁶ Council of Europe: Parliamentary Assembly, *Recommendation 773 (1976) on the Situation of de facto Refugees*, 26 January 1976, 775 (1976), available at: <https://www.refworld.org/docid/4720706b2.html>.

free coaching classes of the local language shall be given to the refugees by the host country. Providing employment to them was also one of the recommendations.

III.VI CONVENTION ON THE RIGHTS OF THE CHILD (1989):

This convention was made exclusively for the children who were the victims of war, aggression, racism, or any other reason because of which they have taken refuge in the hosting country. Article 22¹⁷ of the Convention says that appropriate measures shall be made by the hosting nation to ensure that a child who is seeking refugee status is reunited with his family members on the grounds of humanitarian law. It also says that the hosting states shall take the help of the UN and other inter-governmental or non-governmental organizations to reunite that child with his family. And in case the family of that child is not found, then the hosting state shall give protection and education with basic necessities just like any other citizen of that state to that child temporarily till his family is found or permanently.

III.VII NEW YORK DECLARATION FOR REFUGEES AND MIGRANTS (2016):

This is the latest declaration relating to the status of the refugees which was adopted by the UN General Assembly on 19 September 2016 in New York. Due to growing concerns about the refugees and immigrants from the states where there is public disturbance because of political reasons, racism, riots, religious hatred and many other reasons, the General Assembly charted down some resolutions to benefit the refugees. This declaration is inspired from the oppression in countries like Syria, Turkey, Somalia and many others, where there are inhuman violence and oppression. The people of these countries are being oppressed based on religion and ethnic origin even in the 21st century.

Millions of immigrants are seeking refugee status in safer countries. To tackle this issue, this declaration has given guidelines for the hosting states about their duties towards these refugees. It says that no person shall be denied asylum in a state based on his religion, race, colour, political opinion and ethnic origin. Moreover, it says that children of such refugees

¹⁷ Art. 22, UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, available at: <https://www.refworld.org/docid/3ae6b38f0.html>.

born in the hosting state shall be registered as citizens of that country and they should be provided with free education.¹⁸ The refugees shall be provided security from human trafficking and medical aid, shelter, food and clothing on humanitarian grounds and the 1951 Refugee Convention.

IV. STATUS OF REFUGEES IN INDIA:

Despite not being a signatory to the 1951 Refugee Convention and its Protocol of 1967, the United Nations High Commissioner for Refugees (UNHCR) operates in India and registers the asylum seekers and supports their livelihood. Though it is not a signatory to the above-mentioned conventions, India is still bound by various other treaties and conventions which prohibit any form of discrimination based on religion. UNHCR has been working in India since 1981 to help India to register the refugees from the neighbouring states like Sri Lanka, Myanmar, Pakistan, Bangladesh and Afghanistan, seeking asylum in India. India does not have any national refugee protection laws but it has a long-standing tradition of hosting the refugees from the neighbouring states on the principle of non-refoulement.¹⁹ India has Indian Foreigners Act, 1946²⁰ which applies to all the classes of non-nationals including refugees. According to the Citizenship Act, 1955²¹, the refugees are not recognized but anyone seeking Indian citizenship can get it by the process of naturalization. By enacting the Citizenship (Amendment) Act, (CAA) 2019²², India has grossly violated the principles enshrined both in Indian Constitution as well as International law which prohibits favouring any particular religion/s. As per CAA people belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan who have entered India on or before 31st December, 2014 will not be considered as an illegal migrant and will be eligible for

¹⁸ UN General Assembly, *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at: <https://www.refworld.org/docid/57ceb74a4.html>.

¹⁹ UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 27th Session – India*, August 2016, available at: <https://www.refworld.org/docid/591971124.html>.

²⁰ Indian Foreigners Act, 1946, No. 31, Acts of Parliament, 1946 (India).

²¹ The Citizenship Act, 1955, No. 57, Acts of Parliament, 1955 (India).

²² The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

Indian citizenship.²³ On the face of it, the Act is discriminatory as it prescribes granting citizenship to illegal migrants only based on religion. The Government's stand is that these communities have been religiously persecuted in the neighbouring theocratic states and by granting them citizenship; India is helping them flee religious persecution. While it may be true that these communities have been religiously persecuted, there is no intelligible differentia in excluding other communities and also restricting the CAA to only three countries.²⁴

Pakistan persecutes the Ahmadiyyas, the Shias and the Balochis of Muslim community, Rohingyas are being massacred in Myanmar, Tamil Hindus in Sri Lanka face discrimination from the majority- Buddhists. If the Government's aim is to give shelter to the people facing religious persecution, the inclusion of only five communities in the Act only reveals the Government's prejudice against a particular community. While, on one the Government is keen on the deportation of illegal migrants, on the other hand through CAA it is granting such people citizenship. After this Act, people to be deported will be majorly from the Muslim community as they do not have any protection under the Act. When they are deported back to their country, there is no guarantee of their safety. Even if they live in India, they do not have any protection and will have to live in very abject conditions. Thus, CAA denies them fair and equal treatment merely because they belong to a particular religion. This goes against the fundamentals of the Indian Constitution and International law which India is bound to follow.²⁵

V. AUTHORS' OPINION ON CAA (2019):

To tackle this situation, what India needs is a National Refugee Law which treats everyone equally irrespective of religion, gender, place of origin, etc. While it is a rightful concern to deport illegal immigrants, but this cannot be done at the expense of one particular

²³ Sec. 2, The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

²⁴ INDIA CONST. art. 14.

²⁵ INDIA CONST. art. 51, cl. c.

community. Being in the executive committee of UNHCR, India has till day accepted various refugees from different countries irrespective of their religion.²⁶ India should not forget the secularism which its citizens take pride in and should abide by the international standards while regulating the influx of refugees in the country.

VI. CONCLUSION:

Having discussed the refugee laws, one important thing to remember is that these laws are not binding on any country whether it is a party of the convention or not. Landmark cases on violation of such laws have shown us that these laws are directory in nature but not binding on any country. The concept of the sovereign state limits the jurisdiction of the international courts of justice, for example, International Court of Justice (ICJ), Permanent Court of International Justice (PCIJ), International Criminal Court (ICC), etc. As these laws are directory in nature, it is easy for any state to deny entry of refugees into their state and give them asylum.

They are under no obligation to follow these laws. Coming to the Indian scenario, India has always welcomed refugees from its neighbouring states like Pakistan, Sri Lanka and Bangladesh. The CAA, 2019 gives Indian citizenship to the illegal immigrants who have entered India because of the fear of persecution by any means till 31 December 2014. But the only criticism to this Act is that it is applicable to only immigrants belonging to selected religions namely Hindu, Sikh, Buddhist, Jain, Parsi or Christian from the neighbouring three states. According to the authors, this kind of qualification for Indian Citizenship is against the concept of intelligible differentia under Article 14 of the Indian Constitution.

²⁶ UN High Commissioner for Refugees (UNHCR), *UNHCR Submission on India: UPR 27th Session*, August 2016, available at: <https://www.refworld.org/docid/5a12b5420.html>.