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***Title: Refugee Women in India: Abuses and Rights, Authored By: Ms. Nandika
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ABSTRACT:

“The issue of Refugees has become a global issue. The world is currently witnessing the highest levels of displacement on record. Millions of people all over the world have been forced from their homes by conflict and persecution at the end of 2018. Among them are nearly 30 million refugees, in that almost nearly half of them are under the age of 18 years. The refugee problem greatly impacts the life and safety of women and children. Due to war crimes, and internal disputes in their motherland, many women are forced to seek refuge in another country. Such women who seek refuge in another nation are referred to as refugee women. India is a country which is host to a large number of refugees. But since India does not have any laws which govern the protection, safety and welfare of the refugees, and moreover due to lack of proper facilities in the refugee camps, many refugee women have to earn a living of their own. Therefore, they are forced to work in brothels. Due to a lack of protection, they are very much vulnerable to all types of abuse and sexual abuse being the most common. These problems have no geographical limitation; they exist wherever refugees are displaced. Women seeking refugee status in their own right and not in association with their husbands, fathers, brothers or uncles, are often subject to sexual demands in return for refugee status. The administrative regime of refugee camps is heavily male-dominated and excludes the participation of women in decision-making in areas of interest to them and their families, such as their physical security, and the mechanics of food distribution. Though refugee women undergo several types of abuses, this paper focuses on the sexual abuses of refugee women with a main focus on sexual exploitation and also with regard to the various legislations that deal with the protection and safety of refugee women in India and also looks into the various rights that a refugee woman in India can adhere to”.

**Keywords: Refugee, Refugee Women, Abuses, Sexual Exploitation, Rights, Indian
Constitution.**

CHAPTER 1: INTRODUCTION:

1.1 INTRODUCTION:

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There are many issues which require global attention. One such issue is with regard to the rise of refugees. A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. In most scenarios, they cannot return home or are afraid to do so. It is the duty of the country which takes these refugees as host to take care of them, and to treat them with the same dignity as they would their own citizens. India is a country which plays host to refugees from Bangladesh, Myanmar and Sri Lanka. Most of the refugees are women. Since no article speaks about the rights of refugee women in our Indian constitution, they are being manhandled, abused, etc. The government of India has to come up with certain rights for the protection of refugee women.

1.2 RESEARCH PROBLEM:

The problem of refugees came soon after the Second World War wherein many people were displaced from their homelands. This continued even during the Cold War time. In India after the independence and partition, there was a refugee problem because many were in a confusion as to whether they belonged to Pakistan or India. The Hindu people in Pakistan became refugees. They came to India for protection. Later on, with the war between East Pakistan and West Pakistan, many of them became refugees and they came to India. India though not a party to the 1951 Convention, has decided to give protection to all the refugee people in India. The strength of female refugees is more when compared to male refugees. Women all over the world, not just in India, are often faced with specific abuses from which they need protection. The most perverse and widespread are rape, sexual abuse, sexual extortion, and physical insecurity during flight and in places of refuge. These problems have no geographical limitation; they exist wherever refugees are displaced. Women seeking refugee status in their own right and not in association with their husbands, fathers, brothers or uncles, are often subject to sexual demands in return for refugee status. Women who breach refugee camp regulations in certain circumstances are subjected to demands and acts of sex by male camp officials in lieu of punishment. The administrative regime of refugee camps is heavily male-dominated and excludes the participation of women in the decision-making in areas of interest to them and their families, such as their physical security, and the mechanics of food distribution. In some cases, refugee women have had to submit to sexual

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extortion in order to obtain food to feed their families. For all the crimes committed against refugee women, the Indian government has to come up with certain specific legislation which speaks about the rights of refugee women in India and also about their protection.

1.3 EXISTING LEGAL SITUATION:

According to UNCHR's Global Trend Report released on 19th June 2019 million of people are forcibly displaced in the world. These displaced people include refugees, asylum seekers as well as internally displaced persons. Among the refugees, it is the refugee women and children who are forcibly displaced that live in a worse situation. They are still being subjected to sexual abuse across the world.

1.4 LITERATURE REVIEW:

- 1) ***We Are Displaced: My Journey and Stories from Refugee Girls Around the World by Nobel Peace Prize Winner Malala Yousafzai***

In this book, the author not only explores her own story of adjusting to a new life while longing for home, but also shares the personal stories of some of the incredible girls she had met on her various journeys - girls who have lost their community, relatives, and often the only world they've ever known. The book tells us that every single one of the 68.5 million currently displaced is a person, often a young one, with hopes and dreams and that everyone deserves universal human rights and a safe home.

- 2) ***The Securitization of Migration and Refugee Women by Alison Gerard***

In this book, the author explores the journey made by refugee women who have travelled from Somalia to the EU to seek asylum. This book reveals the humanized impact of the securitization of migration, the dominant policy response to irregular migration pursued by governments across the Globe.

- 3) ***UNHCR Handbook for the Protection of Women and Girls***

This handbook deals with the protection of women and girls, gender equality, Identification, Prevention and Response to Risks Faced by Women and Girls, UNHCR's tools to protect women and girls, Sexual and gender-based violence, etc.

1.5 SCOPE AND OBJECTIVE:

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Though refugee women undergo several types of abuses, this paper focuses on the sexual exploitation of refugee women and also regards to the various legislations that deal with the protection and safety of refugee women in India and their rights. The objective of this research is to look into the various rights that a refugee woman in India can adhere to.

1.6 RESEARCH METHODOLOGY:

The methodology used for the purpose of this research is Qualitative research. The research is done with the help of secondary sources which includes research articles, books, judgements etc. The secondary sources are those that are already collected, and area compilation work and the selection will differ from study to study. It involves no practical method. It is termed to be an Ex-post facto research as it respects what has happened already.

CHAPTER 2: CONCEPT OF REFUGEES

2.1: REFUGEE:

A refugee, according to the 1951 Convention as well as UNHCR's Statute, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Hence any person who has been forced to flee his or her country because of persecution, war or violence is known as a refugee.

2.2: REFUGEE WOMEN:

Any woman who has been forced to flee her country because of persecution, war or violence, and also who is unable or unwilling to return to her country of origin owing fear of being persecuted for reasons of race, religion, etc is considered to be a refugee woman.

2.3: REFUGEE POPULATION IN INDIA:

India plays host to a large number of refugees across the globe. Some of them include:

2.3.1: TIBETAN REFUGEES:

Tibet was recognized as an independent country in the year 1914. Later on in the year 1949 China invaded Tibet; killing, detaining and arresting thousands of Tibetan citizens. Tibetan citizens were unable to live under Chinese oppression. Therefore, in order to seek refuge,

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they fled to India. The Indian government despite India not being party to either the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol, accorded refugee status to those Tibetans. Tibetans in India live in 37 different settlements and 70 scattered communities in Himachal Pradesh, Ladakh, Arunachal Pradesh, Karnataka, Uttar Pradesh, Madhya Pradesh, South Sikkim, West Bengal, Maharashtra and Orissa. In fact, they are the only refugee group to receive travel permits from the Indian Government. Indians and Tibetans generally co-exist peacefully.

2.3.2: SRI LANKAN REFUGEES:

For the past many years, there has been conflict between the Sri Lankan army and the *Liberation Tigers of Tamil Eelam (LTTE)* who are fighting for independence for the minority Tamil population. Tamils from Sri Lanka have been fleeing their home country to India seeking refuge since the time when the conflict began. Many, especially women, are forced to flee the country in order to escape torture, rape etc. The Government of India recognizes these Sri Lankans to be refugees and accordingly grants them protection. Sri Lankan refugees live in refugee camps scattered across the state of Tamil Nadu.

2.3.3: BHUTANESE REFUGEES:

Ethnic/Hindu Nepalese people started living in Bhutan as early as the 20th century such that they almost accounted for a quarter of the Bhutanese population. Hence in order to determine the number of Nepalese livings in Bhutan, the census was carried out. As a result of the census, the Citizenship Act of 1985 was enacted which set out new conditions for citizenship of Bhutan. Because of this Act, a huge number of Ethnic/Hindu Nepalese Bhutanese became illegal residents. Therefore, they decided to take refuge in India. However, the Indian government did not acknowledge them as refugees. Because of this, these people are not eligible to receive the amenities and assistance afforded to refugees.

2.3.4: HINDU PAKISTANI REFUGEES:

Before the partition of India, i.e., during the pre-independence period, the Hindu population, the majority of them being Dalits, lived in the southern province of Sindh (*territory of Pakistan*). The relationship between Hindus and Muslims in Sindh was generally peaceful. However, after the partition of India in 1947 leading to the creation of two sovereign states:

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India and Pakistan, Urdu-speaking Muslims from India arrived in Sindh province and communal violence erupted between them. The Sindh Hindus were forced to flee, and they sought refuge in India. The Islamisation of the country under the dictatorship of Zia ul-Haq made life for religious minorities (Hindu Pakistani) in Pakistan difficult. The Indian government does not recognize this group to be refugees and as a result, they are unable to acquire residence permits and find it difficult to gain employment. *However according to The Indian Constitution, Indian Citizenship Act 1955, The Citizenship Amendment Rules 2004, as well as the amendment of the Citizenship Act, 2005* there are specific provisions for those who were born or whose parents were born in undivided India to apply for Indian citizenship in Gujarat and Rajasthan. But then despite the acquisition of Indian citizenship, some Pakistani Hindus still face ongoing problems with accessing the associated benefits including ration cards and other government schemes.

2.3.5: AFGHAN REFUGEES:

After the invasion of the Soviet Union in Afghanistan, there was fierce resistance to it from the United States-backed Mujahadeen. During this time, many Afghans sought refuge abroad. But even after the withdrawal of the Soviet Union, due to civil war between the Taliban and the Najibullah regime, more Afghans were forced to flee their country. They sought refuge in India and the Indian Government recognized them as refugees. Most of them belong to the Hindu or Sikh faiths; religious minorities in Afghanistan who could not openly practice their religions in their home country for fear of persecution. These people have shown interest in becoming naturalized Indian citizens, the requirement for which is that a refugee must have lived in India for 12 years or have been married to an Indian for 7 years. The Indian government has issued most Afghan refugees with valid residence permits. While most Afghan refugees live in Delhi, there is also a large number living in Faridabad, Haryana. The Afghan Hindu and Sikh communities are generally well integrated into Indian society since they share religious beliefs and often speak Hindi. In addition to these groups India also hosts small numbers of refugees from Bangladesh, Myanmar, Sudan, Iraq, Iran, Ethiopia etc amongst others.

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CHAPTER 3: KINDS OF ABUSES FACED BY REFUGEE WOMEN

3.1: RAPE:

Rape is one of the most serious risks faced by refugee women. Refugee women, many of whom are widowed or young, have few structures to protect them. While refugee camps exist to provide a safe haven, they often provide little protection. Refugee women are often subjected to violence by the very people who are supposed to protect them. Stories of rape by camp authorities and military guards are common. Most of the time, the raping of refugee women is planned and unusually brutal. Many refugee women are gang raped or raped repeatedly, often for days at a time.

3.2: SEXUAL ABUSE:

Sexual abuse is another major risk faced by refugee women. Sexual abuse means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Refugee women are often subjected to sexual abuse because there are not many such laws for their protection. Therefore, they are often forced into pornography and also treated as sex slaves.

3.3: SEXUAL EXPLOITATION:

Refugee women are very much vulnerable. Because of their vulnerability, they are often subjected to Sexual exploitation. Since these women have to depend on the refuge/host nation for survival and other services, there are many cases in the refugee camps where the refugee women are provided with those services in exchange for sexual favour. They are also forced into the field of prostitution and are also the primary victims of human trafficking.

CHAPTER 4: SEXUAL EXPLOITATION OF REFUGEE WOMEN:

4.1: DOES SEXUAL EXPLOITATION OF REFUGEE WOMEN ACTUALLY EXIST?

Yes, sexual exploitation of refugee women indeed actually exists. This is because refugee women are very much vulnerable. Due to their vulnerability, they often encounter sexual

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exploitation at the hands of soldiers and border guards. Even in the refugee camps, they are sexually exploited. They are not provided with basic necessities such as food and are forced into prostitution in order to avail of those services. As long as refugee women do not have sufficient food or medical care, they will be vulnerable to sexual exploitation. In fact, in the past few years, there has been growing awareness of the sexual exploitation of refugee women by humanitarian workers who are charged with protecting and assisting refugee women.

4.2: HOW COMMON IS THE SEXUAL EXPLOITATION OF REFUGEE WOMEN?

The sexual exploitation of refugee women is very much common. In fact, if we take a look into different refugee camps worldwide, we will be surprised to find that there is no proper refugee camp in the world which is devoid of exploitation of therefugee women. Sexual exploitation is very much common within the large refugee camp at Dunkirk where the refugee women are forced to have sex by traffickers in return for blankets or food or the offer of passage to the UK. Refugees International have noted that trafficking and sexual exploitation of Venezuelan women and girls¹ is a growing problem. With the crisis in Venezuela continuing to escalate, the vulnerable position of Venezuelan women and girls living in host countries with uncertain legal status creates the potential for sexual exploitation. They are being forced into situations of trafficking and commercial sexual exploitation. The traffickers often advertise to Venezuelan women and girls that they will be provided with a job and legal status in another country. However, once they arrive, they are unable to leave and find themselves either working for no pay or engaging in sex work. Some of the refugees in Ugandan² camps are sexually harassed and beaten. The sexual exploitation scandals of the early 2000s involving humanitarian workers in refugee camps in West Africa and Nepal raised awareness of this problem. As a result, the Secretary-General issued a Bulletin on special measures for protection from sexual exploitation and sexual abuse.

¹ <https://www.refugeesinternational.org/reports/2019/8/2/searching-for-safety-venezuela-trafficking>

² https://en.wikipedia.org/wiki/Sexual_exploitation_of_refugees_in_Uganda

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4.3: HOW CAN THE SEXUAL EXPLOITATION AGAINST THE REFUGEE BE PREVENTED?³

The sexual exploitation against refugee women can be prevented by providing them with proper protection such as:

- 1) *By providing water and food supplies close to where the refugee women live so that they do not have to go far in search of water and food.*
- 2) *By providing them with adequate clothing so that they can maintain their dignity and reduce their risk of exposure to Sexual Exploitation.*
- 3) *By providing refugee women who may be particularly at risk of Sexual violence, such as those with hearing or speech difficulties, with whistles and training them how to avoid danger and how to use the whistles to draw attention if attacked.*
- 4) *By establishing confidential complaints mechanisms so that refugee women can report on abuses etc.*
- 5) *By conducting regular participatory assessments with refugee women in order to gather information and understand their issues.*
- 6) *By providing them with small labour works so that they don't have to depend on their body for livelihood and also for their empowerment.*

CHAPTER 5: WHY REFUGEE WOMEN SUFFER IN SILENCE:

5.1: NEED FOR LIVELIHOOD:

The concept of “*Pay me with Your Body*” is prevalent in the refugee camps. Refugee women don't have any employment opportunities, so in order to earn a living even if it is forced prostitution, they accept it and suffer in silence.

5.2: FEAR OF BEING ASKED TO LEAVE BY THE HOST

COUNTRY:

Refugee women too need the basic elements essential for living such as food and water. But in many refugee camps all over the world, they are providing them food and water in

³UNHCR Handbook for The Protection of Women and Girls (UNHCR 2009)

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exchange for sex. Therefore, even if these women are sexually exploited, they don't want to speak about it, because the fear that they might be asked to leave the host country and asked to go back to their motherland which is something they do not desire.

CHAPTER 6: IS THE INDIAN GOVERNMENT RESPONSIBLE FOR THE PROTECTION AND SAFETY OF REFUGEE WOMEN IN INDIA?

India is a country which is host to the largest number of refugees, especially Southeast Asian refugees. However, India is neither a signatory to the 1951 Refugee Convention nor does it have domestic legislation for the protection of refugees. It has been offering them protection under the expansive understanding of Article 21 of the Indian Constitution. Due to the lack of domestic legislation, refugee women are always abused and exploited. There is a lack of basic amenities in the refugee camps. Since there is no domestic legislation, it would be wrong to say that it is the responsibility of the Indian government for looking into the protection and safety of refugee women in India. It would be apt to say that currently, the Indian government does not have much responsibility for the protection and safety of refugee women in India.

CHAPTER 7: HAS THE INDIAN GOVERNMENT TAKEN PROPER MEASURES TO PREVENT THE SEXUAL EXPLOITATION OF REFUGEE WOMEN?

No, the Indian Government has failed to take proper measures for the prevention of abuse of refugee women. In spite of having so many Acts, the female citizens of India still do get sexually abused and exploited. Therefore, when there is no Act to govern the refugees, the plight of refugee women is even worse. They are therefore more vulnerable to sexual exploitation. It is heartbreaking to know that despite being the host nation for a large number of refugees, India has still been having a blind eye towards the sufferings and silent cries of the refugee women, who are getting raped, tortured, forced to work in brothels etc. There is a

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lack of basic amenities in the refugee camps, and therefore they are forced to go to faraway places in search of food and water, making them easy targets of sexual offenders. It is high time that the Indian government formulates legislation for the protection of refugee women in India.

CHAPTER 8: LEGISLATIONS WHICH DEAL WITH THE PROTECTION OF REFUGEE WOMEN IN INDIA⁴

8.1: THE REHABILITATION FINANCE ADMINISTRATION ACT:

The Rehabilitation Finance Administration Act was passed in the year 1948 to cope with the massive migration of people from Pakistan.

8.2: THE CONSTITUTION OF INDIA:

The Constitution of India is in fact the main body based on which India is playing as host nation for the refugees. However, there is no direct provision in the Constitution which speaks about refugees. But with the interpretation of the various Articles, we are able to play as a host nation and also grant certain fundamental rights to the refugees. A few of the

Articles include:

- (a) Article 14 - Right to Equality*
- (b) Article 20 - Right to Protection in respect of conviction for offences*
- (c) Article 21 - Right to Life and Personal Liberty*
- (d) Article 22 - Right to Protection arrest and detention*
- (e) Article 25 - Freedom of Religion*
- (f) Article 32 - Right to approach the Supreme Court for Enforcement of Fundamental Rights*

8.3: THE FOREIGNERS ACT OF 1946:

The Foreigners Act, 1946, was enacted by the Colonial Government in response to the Second World War. This Act confers certain powers upon the Central Government. This is one of the Acts which govern the entry, stay and exit of foreigners in India.

⁴ https://shodhganga.inflibnet.ac.in/bitstream/10603/128419/15/12_chapter%204.pdf

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8.4: THE REGISTRATION OF FOREIGNERS ACT OF 1939:

The Government of India during the colonial period enacted the Registration of Foreigners Act, 1939, to provide for the registration of Foreigners in India. This Act included the entry of foreigners, the presence of foreigners in India, and also regarding foreigners who were departing from India.

8.5: THE EXTRADITION ACT OF 1962:

The Government of India enacted the Extradition Act, 1962. In this Act, extradition is the surrender by one state to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justifiable in the Courts of the other state. Surrender of a person within the state to another state, whether a citizen or an alien is a political act done in pursuance of a treaty.

8.6: THE PASSPORT (ENTRY INTO INDIA) ACT 1920:

The Passport (Entry into India) Act, 1920, was enacted by the Government of India. In this Act, "passport" means a passport for the time being in force issued or renewed by a prescribed authority and satisfying the conditions prescribed relating to the class of passport to which it belongs.

8.7: THE PASSPORT ACT OF 1967:

The Passport Act, 1967, provides for the issue of passport and travel documents to regulate the departure from India, of citizens of India and other persons and for matters incidental or ancillary thereto. All the departure and entry of foreigners into India is not valid until they do not hold a valid passport or travel document. No refugee has so far had the privilege of getting travel documents in India, except Tibetan refugees. Tibetan refugees can even travel to foreign countries and come back to India on the basis of their identification papers and documents.

8.8: THE PROTECTION OF HUMAN RIGHT ACT, 1993:

The Protection of Human Right Act, 1993, provides for the Constitution of a National Human Rights Commission (NHRC), State Human Rights Commissions (SHRC) and Human Rights Courts (HRC) for better protection of human rights and for matters connected

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or incidental thereto. The Commission is not restricted to investigating issues of concern to citizens only and in fact, it also considers matters relating to all human beings including the rights of refugees in India.

CHAPTER 9: HOW TO SUPPORT REFUGEE WOMEN?

In India, refugee women can be supported by first formulating legislation for their protection.

In case there is an idea of formulation of laws for the protection of refugee women, then the lawmakers can also look into the following factors:

- *Prevention of attacks on refugee women crossing the border.*
- *Assistance policies that ensure that single refugee women and women-headed households gain access to food, shelter, health care, clean water, firewood, etc.*
- *Access of women to registration documents in their own names.*
- *Access of women asylum applicants, where applicable, to a fair hearing to determine their refugee status.*
- *Ensuring an adequate number of female staff, particularly as protection workers and health workers.*
- *Participation of refugee women in the planning and implementation of assistance, services and protection measures.*
- *Prevention of attacks on refugee women in refugee camps.*
- *Access of women to income-generation and skills-training programmes to ensure their ability to support themselves and their families.*

CHAPTER 10: VARIOUS RIGHTS OF REFUGEE WOMEN IN

INDIA⁵:

The various rights of refugee women in India fall under the ambit of Article 21 of the Indian Constitution. Article 21 of the Indian Constitution, covers a variety of rights which are provided to refugees' aliens and non-citizens in India:

- i. Right to live with human dignity*

⁵ https://shodhganga.inflibnet.ac.in/bitstream/10603/128419/15/12_chapter%204.pdf

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- ii. *Right to livelihoods*
- iii. *Right to Shelter*
- iv. *Right to Education*
- v. *Right to Social Security and Protection of the Family.*

*In NHRC vs. State of Arunachal Pradesh*⁶, the Supreme Court said that the state was bound to protect the life and liberty of every human being, be he a citizen or otherwise and that the state could not tolerate or permit anybody or group of persons to threaten other person or group of persons.

- vi. **Right to Health and Medical Assistance**
- vii. **Right to Privacy**
- viii. **Right to Free Legal Aid and Right to Speedy Trial**
- ix. **Right against Inhuman Treatment**

11. CONCLUSION:

Government is responsible for the current situation of refugee women in India. Refugee women are subjected to sexual exploitation, human trafficking etc. This is because the government has not come up with specific legislation which focuses on the rights of refugees. It is high time that the Indian government came up with some laws to protect these refugee women, as well as all the refugees in India in general.

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