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**FROM ASYLUM SEEKERS TO CITIZENS: THE LEGAL PATHWAY FOR
REFUGEES IN INDIA AND A CRITICAL ANALYSIS OF LEGISLATIVE
FRAMEWORK**- Padmaja Sharma¹**ABSTRACT**

The global refugee crisis, particularly the plight of the Rohingya Muslims, remains a pressing humanitarian issue overseen by the United Nations High Commissioner for Refugees (UNHCR). The Rohingyas have endured prolonged discrimination and violence, leading to their mass displacement. This article aims to analyze the position of refugees in India and will be going to do a critical analysis of legislative framework. Citizenship Act, 1955, introduces a contentious provision that affects the status of illegal migrants. The CAA provides a pathway to Indian citizenship for six religious communities Sikhs, Jains, Parsis, Buddhists, Hindus, and Christians who entered India from Pakistan, Bangladesh, or Afghanistan before December 2014, by significantly reducing the required period of stay from eleven to five years. Further the article will be examining the role of Indian judiciary in providing protection to refugees in India. The legislative change has sparked considerable debate over its implications for secularism and the treatment of refugees, raising questions about India's commitment to its foundational principles and its response to the global refugee crisis. Despite the scale of this humanitarian challenge, India has yet to enact specific legislation for refugees and remains a non-signatory to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol. This article also analyses the implications of the CAA in the context of international refugee law, exploring how it conflicts with the universal standards set by the 1951 Convention. This article examines the current legal framework and status of refugees in India, with a particular focus on the Rohingya community. Therefore, the paper highlights gaps, and challenges in India's approach to refugee management and their problems. At last,

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this article will also attempt to provide certain possible suggestions to the challenges faced by the refugees in India.

KEYWORDS: Rohingya, Muslims, Citizenship, Illegal Migrant, Secularism.

INTRODUCTION

The refugee problem is deeply rooted in history and is driven by various factors that force people to leave their homes, including persecution, conflict, and severe economic hardship. The quest for freedom and security has always led individuals to seek refuge in other countries. The establishment of international agencies, such as the United Nations High Commissioner for Refugees (UNHCR), and various multilateral agreements like the 1951 Refugee Convention and its 1967 Protocol, represent significant efforts to address and manage the refugee crisis. However, despite these frameworks, a significant number of refugees still lack protection under customary international law. Customary international law refers to unwritten rules derived from the consistent practice of states and is often less comprehensive in addressing specific issues like refugee protection compared to formal treaties and conventions. The absence of a unified legal framework results in a patchwork of policies and measures that can vary depending on the refugee's nationality, political circumstances, or other factors. The plight of individuals fleeing persecution is a significant humanitarian concern addressed by international law. At the heart of this issue is the term "refugee," which is formally defined in the United Nations Convention Relating to the Status of Refugees, 1951. According to the Convention, a refugee is someone who has been compelled to leave their country of nationality or habitual residence due to a well-founded fear of persecution and is unable to return because of that fear. This definition is crucial in distinguishing refugees from other migrants and underscores the specific legal protections afforded to those who fall within this category. In contrast, individuals who seek safety in another country but have not yet been recognized as refugees are known as "asylum seekers."² Asylum seekers are those who request international protection due to their fear of persecution in their home country. The distinction between asylum seekers and refugees lies in the status determination process: asylum seekers are in the process of proving their claim for protection, while those who are granted asylum achieve refugee status and are entitled to various rights and protections under international law. The principle of "non-refoulement," a fundamental tenet of international refugee law, ensures that individuals cannot be returned to a country where they face a serious risk of persecution. The determination of asylum is based on a "well-founded" "fear of persecution, which requires solid evidence of past or potential threats, often corroborated by

² Manoj Kumar, *Legal Framework of Protection of Refugees in India*, 14-15 ISILY. B. Int'l Human. & Refugee L. 199, 199-215 (2014-2015).

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media reports, legislative actions, or executive measures. The article has been divided into 4 chapters wherein the first chapter will be dealing with the constitutional and legal provision on refugees in India. Further the paper will analyze the current legal framework and policies in India concerning the treatment and rights of refugees, and how are they applied in practice. Thereafter the second chapter will be discussing about the migration of Rohingya refugees in India and will be analyzing the factors which have driven Rohingya refugees to seek asylum in India, and what are their current conditions and challenges within the country. Further the third chapter will be examining the citizenship amendment act 2019 and will be doing critical analysis on the same. Therefore, the chapter four will be shedding light on the role of Indian judiciary on protection with respect to refugees.

CONSTITUTIONAL AND LEGAL PROVISIONS ON REFUGEES IN INDIA

The Indian Constitution, a cornerstone of the country's democratic framework, enshrines a commitment to ensuring the freedoms and dignity of its citizens. This commitment is reflected in two key parts of the Constitution: Part III and Part IV. Part III of the Indian Constitution is dedicated to Fundamental Rights, which are fundamental to the individual's dignity and freedom. These rights are intrinsic, essential, and deemed necessary for the protection of personal liberty and the development of one's personality. Fundamental Rights, as articulated in Part III, are the cornerstone of individual freedom in India. The term 'fundamental' signifies their inherent nature and their essential role in upholding the values of a civilized society.³ These rights are designed to create a legal environment in which personal freedoms can be exercised to their fullest extent. Importantly, no law, ordinance, custom, or administrative order can infringe upon these fundamental rights. Among these, Article 21 of the Constitution is particularly significant as it guarantees the protection of life and personal liberty, making it a cornerstone in the legal frame work for safeguarding individual rights in India. The landmark decision of the Supreme Court of India in **Maneka Gandhi vs. Union of India (1978)**⁴ marked a transformative moment in the interpretation of constitutional rights in India. This ruling expanded the scope of Article 21 of the Indian Constitution, which guarantees that no person shall be deprived of their life or personal liberty except according to a procedure established by law. Prior to this judgment, Article 21 was primarily understood as a safeguard against arbitrary executive action. However, the Supreme Court's decision in Maneka Gandhi redefined its reach, establishing that Article 21 also provides protection against legislative action. The Court's judgment in Maneka Gandhi case held that any law that deprives an individual of life or personal liberty must adhere to a procedure that is not only established by law but also reasonable, fair,

³ Ambika, *Challenges Faced by Refugees in India and Their Position in India*, 5 Indian J.L. & Legal Rsch. 1, 1- 9 (2023).

⁴ Maneka Gandhi v. Union of India, (1978) 1 SCC 248

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and just. This introduced a substantive and procedural due process into the Indian legal framework, meaning that laws could be challenged if they failed to meet these standards of fairness and justice. The Supreme Court's creative interpretation in this case gave a new era of judicial activism, profoundly enhancing the protective scope of fundamental rights under Article 21. In the broader context of international human rights law, India's decision to not become a party to the 1951 Refugee Convention and its 1967 Protocol, as well as the Convention relating to Statelessness, presents a notable divergence from international norms. Under international human rights law, states are generally expected to uphold principles of non-discrimination and ensure that both nationals and non-nationals are treated equally in most matters, with specific exceptions. By not ratifying these key conventions, India has opted to address refugee and statelessness issues through its own ad hoc measures rather than through internationally standardized frameworks. The principle of non-refoulement, a fundamental aspect of international refugee law, faces significant challenges within the context of India's legal framework, particularly at "International Zones" such as transit areas in airports. These zones, which are considered outside the jurisdiction of Indian courts and are not officially part of Indian territory, present a unique risk for refugees. A striking example of this issue occurred with a Palestinian refugee who was deported from Kathmandu to New Delhi International Airport.⁵ The refugee was detained in the transit lounge, effectively trapped in the "International Zone," and subsequently returned to Kathmandu, only to be sent back to New Delhi under similar circumstances. This situation highlights the practical difficulties and legal uncertainties faced by refugees held in such transit areas, where their ability to access judicial protection and challenge their detention is significantly constrained. Despite the challenges posed by International Zones, India's Constitution upholds the principles of natural justice, which are crucial for the protection of refugees. Articles 22(1) and 22(2) of the Indian Constitution enshrine the right to be informed of the grounds of arrest and the right to consult a legal practitioner, while Article 25(1) guarantees the freedom of conscience and the right to profess, practice, and propagate religion. These provisions reflect the broader commitment to the rule of law and the protection of individual rights, extending to all persons within India, including refugees. As a result, international agreements on refugee protection become part of domestic law only if they are specifically incorporated into Indian legislation. This implies that while India adheres to principles of natural justice and the rule of law, the implementation of international refugee standards depends on their formal inclusion in the domestic legal framework. Consequently, while the judiciary and administrative bodies may strive to uphold refugee rights, the lack of specific legal provisions necessitates ongoing efforts to reconcile domestic law with

⁵Pushpit, *Critical Analysis of Laws Relating to Refugees in India*, 17 *Supremo Amicus* 373, 373-389(2020).

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international obligations. Article 25-28 safeguard the right to freedom of religion, allowing individuals the liberty to practice, propagate, and profess their faith without interference. Article 32 guarantees the right to move the Supreme Court for the enforcement of fundamental rights, providing a crucial legal remedy for individuals seeking justice against violations of their constitutional rights. This provision affirms the judiciary's role as a protector of fundamental freedoms and a check on executive and legislative actions. Article 51(c) reflects India's commitment to fostering respect for international law and treaty obligations in its dealings with other nations. This article highlights the principle of international cooperation and the importance of aligning domestic policies with global standards.⁶ Article 253 empowers Parliament to legislate on any matter necessary to implement international treaties, agreements, or conventions. This provision, read in conjunction with Entry 14 of the Union List in the Seventh Schedule, allows the central government to enact laws that can extend beyond its traditional powers to fulfill international obligations. Together, these constitutional provisions establish a robust framework for protecting individual rights while facilitating India's compliance with international agreements.

MIGRATION OF ROHINGYA REFUGEES IN INDIA

The Rohingya migration to India is the broader narrative of forced displacement driven by violence and persecution. The Rohingya, an ethnic minority group from Myanmar, have faced systematic and brutal repression by state security forces, including the destruction of their villages and the killing of thousands. This relentless violence has forced the Rohingya to flee their homes in search of safety and refuge. Their primary destination has been Bangladesh, where over 919,000 Rohingya currently reside in refugee camps. Despite the substantial relief offered by Bangladesh, the harsh living conditions and overcrowding have pushed many Rohingya to seek asylum elsewhere. Attempts to migrate to Thailand and Malaysia countries with significant Muslim populations were met with restrictive policies, further compounding their plight. Faced with these closed doors, the Rohingya turned to India, driven by a desperate hope for safety and shelter. India's favorable image as a potential refuge, coupled with the continuous persecution in Myanmar and the adverse conditions in neighboring Bangladesh, have acted as key factors in this migration. The Rohingya's movement to India underscores their dire need for protection and the lack of viable alternatives. The Rohingyas, an ethnic minority residing in Myanmar's Rakhine State for generations, have endured severe repression and marginalization, primarily due to Myanmar's 1982 nationality law. This law, which continues to deny them citizenship, has rendered the Rohingyas a stateless group with restricted access to fundamental rights such as education, healthcare, and

⁶Ananthachari, *Refugees in India: Legal Framework, Law Enforcement and Security*, 1, ISILY .B. Int'l Human. & Refugee L.118, 118-143 (2001).

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employment. The Rohingyas' plight has been exacerbated by a series of discriminatory laws and policies enacted by Myanmar's military junta, which ruled the country from 1962 until democratic reforms began in 2010. The situation for the Rohingyas has been for decades, marked by systemic neglect and violence from both state and local authorities. The conflict escalated notably in the 1970s and further intensified in 2012 when allegations of a Rohingya group committing violence against a Buddhist woman led to a brutal military crackdown.⁷ The military's response included widespread evictions, land confiscation, and violent attacks on Rohingyas communities. The crisis reached a critical juncture in August 2017 when a massive military operation in Myanmar resulted in the deaths of thousands of Rohingyas and forced a large-scale exodus to Bangladesh.

CRITICAL ANALYSIS OF CITIZENSHIP AMENDMENT ACT, 2019

The Citizenship Amendment Act (CAA), introduced by the Government of India in 2019 and implemented in 2020, has been a subject of significant debate and controversy. This legislation aims to expedite the process of granting Indian citizenship to persecuted minorities from Pakistan, Bangladesh, and Afghanistan who entered India before December 2014. Specifically, it targets Hindus, Sikhs, Jains, Buddhists, Parsis, and Christians, while notably excluding Muslims from its provisions. The CAA does not extend its benefits to the Rohingya refugees, a group that has sought refuge in India due to severe persecution in Myanmar. Additionally, the Act excludes regions such as Tripura, Meghalaya, Mizoram, Assam, and areas under the Bengal Eastern Frontier Regulation of 1873 from its purview. The omission of the Rohingyas from the Act, coupled with its focus on religious criteria for citizenship, has sparked criticism. Critics argue that the CAA undermines the secular principles enshrined in the Indian Constitution by discriminating based on religion and could potentially impact the demographic balance of indigenous communities in India. Furthermore, the delay in implementing the Act's rules due to the pandemic has compounded concerns about its effectiveness and fairness in addressing the needs of various refugee groups. The Citizenship Act of 1955 lays the foundational framework for defining and establishing Indian citizenship, setting forth the criteria and processes for acquiring nationality.⁸ In contrast, the Citizenship Amendment Act (CAA) of 2019 serves as an amendment to this foundational Act, specifically targeting religious minority groups from three neighboring countries: Pakistan, Afghanistan, and Bangladesh. The CAA facilitates a more expedited path to Indian citizenship for six religious communities Jains, Sikhs, Parsis, Buddhists, Christians, and Hindus who entered India before

⁷ Ramsha, *Status of Rohingya Refugees in India: A Critical Analysis*, 4, Issue2 Int'l J. L. Mgmt. & Human. 1301, 1301-1313 (2021).

⁸ Yashwin, *Rohingya Refugee Crisis and Status of Refugees in India: A Critical Analysis*, 6 Int'l J. L. Mgmt. & Human. 2430, 2430-2438 (2023).

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December 31, 2014, reducing the residency requirement from 11 years to 5 years. The Citizenship Amendment Act (CAA) of 2019 has faced significant criticism, primarily for its exclusion of Muslim communities from its provisions, which has sparked debates about its compatibility with India's secular ethos. The CAA, which amends the Citizenship Act of 1955, is designed to provide a streamlined path to citizenship for six non-Muslim religious minorities: Jains, Sikhs, Parsis, Buddhists, Christians, and Hindus from Pakistan, Afghanistan, and Bangladesh. Critics argue that this selective inclusion undermines the principle of secularism enshrined in the Indian Constitution, which mandates equal treatment of all religions without favoritism or discrimination. A major contention is that the CAA disregards the plight of Muslim minority sects, such as Shias and Ahmadiyyas, who also face persecution in these neighboring countries. The Act is viewed as discriminatory under Article 14 of the Constitution, which guarantees equality before the law and prohibits arbitrary classifications. The twin test established in **State of West Bengal v. Anwar Ali**⁹ requires that any differentiation made must have a rational nexus to the objectives of the legislation. Critics argue that the CAA's religiously-based differentiation lacks a rational purpose and constitutes arbitrary classification, thus failing to meet the constitutional standards of non-arbitrariness and equal protection. Furthermore, the CAA's provisions create an unequal scenario where illegal migrants from countries other than Pakistan, Bangladesh, and Afghanistan face more stringent obstacles in acquiring citizenship, regardless of their persecution. This unequal treatment not only challenges the fairness of the Act but also raises concerns about its impact on the broader principles of justice and equality. The Act's approach, therefore, not only ignites debates about its adherence to secularism but also about its conformity to the constitutional guarantee of equal protection under the law.¹⁰ Article 14 of the Indian Constitution enshrines the principle of equality before the law and prohibits discrimination on the grounds of religion, among other criteria. However, while Article 14 forbids discrimination, it also permits reasonable classification, provided that such classification meets specific criteria. Supreme Court in the case of **Dr. Saurabh Chaudhari & Ors. v. Union of India & Ors**¹¹ the Court emphasized that the classification must distinguish between different groups in a way that is clear and intelligible. This means that the basis for differentiation must be logical and meaningful, ensuring that those included in one category are fundamentally different from those excluded from it. There must be a rational connection between the basis of the classification and the objective of the law. In other words, the differentiation should be designed to achieve a legitimate goal and should be relevant to the purpose of the legislation. The Court's ruling underscores that while reasonable classification is permissible, it cannot

⁹ State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75

¹⁰ Tanuj Kumar, *The Indian Rohingya Question: A Study on the Legal Position of Rohingyas Refugees in India*, 6 Int'l J.L. Mgmt. & Human. 2069, 2069-2078 (2023).

¹¹ Dr. Saurabh Chaudhari & Ors. v. Union of India & Ors., (2022) 10 SCC 339

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amount to class legislation. Class legislation, which treats individuals or groups arbitrarily based on characteristics such as religion, would violate the principle of equality.

ROLE OF INDIAN JUDICIARY ON PROTECTION TO REFUGEES

The Indian government's stance on deporting Rohingya refugees has generated significant controversy and legal scrutiny. The case of **Mohd. Salimullah v. Union of India**¹² challenges the government's decision to deport approximately 40,000 Rohingya refugees, a move that has been pending before the Supreme Court of India since 2017. The delay in adjudication has not stopped the government from acting; indeed, some Rohingya individuals have already been deported, raising serious concerns about their safety and human rights.¹³ The government's justification for these deportations' centres on national security concerns. However, critics argue that these actions are influenced by political motives, reflecting a broader ideological shift in the federal government's approach to refugees since 2014. This shift appears to be linked to the government's adoption of policies that are seen as increasingly exclusionary, particularly towards Muslim minorities. The case before the Supreme Court has gained additional urgency in light of recent events. In October 2018, India deported seven Rohingya men to Myanmar, and in January 2019, a Rohingya family of five was also deported. These deportations have prompted significant backlash, leading to legal interventions such as the stay order issued by the Calcutta High Court in early 2021. This court order halted the deportation of a Rohingya couple and mandated that the Bengal Government provide basic amenities to ensure the couple's dignity while their legal status is under review. As the Supreme Court continues to deliberate on the issue, the broader implications for human rights and international obligations remain critically at stake. In the case of **Kataer Abbas Habib Al Qutaifi v. Union of India**,¹⁴ the Gujarat High Court addressed the issue of deporting Iraqi refugees from India through the lens of Article 21 of the Indian Constitution. The court emphasized that Article 21, which guarantees the right to life and personal liberty must be interpreted in accordance with the principle of non-refoulement. This principle, rooted in international human rights law, prohibits the return of refugees to a country where they face serious threats to their life or freedom.¹⁵ The Gujarat High Court's interpretation underscored the importance of upholding this principle in safeguarding the rights of refugees and ensuring that they are not subjected to conditions that could endanger their well-being.

¹² Mohd. Sal mullah v. Union of India,(2018) 11 SCC 451

¹³Ekshita, *Unpacking the Citizenship Amendment Act 2019: A Critical Analysis*, 5 Issue 2 Indian J.L. & Legal Rsch. 1, 1-11 (2023).

¹⁴Kataer Abbas Habib Al Qutaifi v. Union of India,(2023)9SCC520

¹⁵ Supriya, *Citizenship Amendment Act 2019 and Rohingya Refugee Crisis: A Critical Analysis*, 4 Int'l J. L. Mgmt. & Human. 507, 507-517 (2021).

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Similarly, in the case of **Dr. Malvika Karlekar v. Union of India**,¹⁶ the Supreme Court of India reinforced the necessity of carefully considering refugee claims before making any deportation decisions. The Court held that authorities must assess whether an individual qualifies for refugee status and should refrain from deporting refugees until a formal decision on their status is made. This judgment reflects a commitment to due process and highlights the need to ensure that refugees are not removed from India without a thorough evaluation of their circumstances and potential risks they may face upon return.

CONCLUSION

The Citizenship (Amendment) Act (CAA) of 2019, enacted by India's Parliament, has sparked significant controversy and criticism for its perceived discriminatory nature and its departure from the core principles enshrined in the Indian Constitution. The CAA's provision to grant citizenship to non-Muslim persecuted minorities from Pakistan, Bangladesh, and Afghanistan, while excluding Muslim communities, stands in stark contrast to the constitutional mandate of equality under Article 14. This exclusionary approach not only undermines the spirit of secularism and equality but also raises concerns about the act's alignment with the fundamental values of the Indian Constitution. India's approach to the Rohingya refugee crisis further compounds these concerns. Despite not being a signatory to the Refugee Convention, India has traditionally maintained a stance of providing refuge to those in need. However, recent policies and decisions, including the CAA, suggest a shift towards a more exclusionary and politically motivated approach to refugee protection. The handling of the Rohingya situation exemplifies this shift, with the CAA highlighting the systemic discrimination faced by Muslim refugees. As India navigates its role on the global stage, its response to the Rohingya crisis and its broader refugee policies will shape its regional and international reputation. India's historical role as a sanctuary for refugees and its growing global influence position it uniquely to lead by example in addressing humanitarian crises. By upholding its commitment to international principles of human rights and refuge, India has the opportunity to reinforce its standing as a responsible global actor and advocate for compassionate and equitable treatment of all refugees.

¹⁶Dr. Malvika Karlekar v. Union of India, (2021) 8 SCC 680

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