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AMENDING CITIZENSHIP IN A SHIFTING WORLD: INDIA'S CAA AND THE GLOBAL REFUGEE LANDSCAPE

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I. ABSTRACT

The migration procedure, a complex and multifaceted aspect of human civilization, has been influenced by various factors such as economic opportunities, safety reasons, and improved living standards. However, the nation-state model of political organization and the introduction of artificial borders in different parts of the world have made immigration a more intricate and challenging issue. This paper delves into the distinction between migrants and refugees, a crucial aspect that determines their legal status and rights.

India's immigration laws, with their rich historical context, are a testament to the nation's resilience and adaptability. These laws, predominantly inherited from colonial-era statutes like the Foreigners Act of 1946, have evolved to safeguard the rights of foreigners, including refugees, in India, despite the absence of specific legislation addressing refugees. The development of citizenship laws in India, particularly the Citizenship Amendment Act (CAA) of 2019, has sparked debate due to its perceived bias. The CAA is designed to grant citizenship to persecuted minorities from neighbouring countries, but critics argue it contradicts India's secular principles and discriminates against certain religious groups. Recent changes to the CAA rules aim to address concerns about eligibility and required documents. In contrast, countries like Australia and the United States have well-defined procedures for resettling refugees, guided by global agreements and local laws. They prioritize the protection and integration of refugees into society while also addressing security concerns. This paper also includes primary research, incorporating data from various

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government and international databases, such as UNHRC, Refugee Council of Australia.

Dealing with migration, asylum, and refugee protection is a complex task that demands a delicate balance between humanitarian duties and the nation's interests. As a critical player in the region and a staunch supporter of humanitarian ideals, India is tasked with maintaining fairness, justice, and empathy while navigating the intricate issues of migration in an interconnected world.

II. KEYWORDS:

Migration, Refugees, Immigration Law, Citizenship Amendment Act (CAA), Religion

III. RESEARCH METHODOLOGY

This paper employs a mixed-methods research approach, utilizing both qualitative and quantitative data. Sources include various government and international databases, such as UNHCR and the Refugee Council of Australia, as well as primary data gathered through interviews and surveys. The secondary sources used in this paper include articles, case studies, surveys, websites and journals.

IV. INTRODUCTION

Migration is a constant global phenomenon that is as old as civilization. Since times immemorial, people worldwide have been on the move for various reasons and purposes. In search of economic gain, better living conditions, security, poverty alleviation, educational opportunities, etc., people move from one area to another, which was not a problem before the creation of the artificial boundaries of states. The aim of this paper is to provide an answer to the following question: How does India's immigration law aim to support the rights and needs of migrants? Talk about the main grievances and objections to CAA 2019. What distinguishes Australia and the US on the one hand, and India on the other, in terms of refugee resettlement and integration? What other sensible recommendations are there to boost India's energy-residing immigration and refugee policies?

The Citizenship (Amendment) Act 2019 (CAA) illustrates a clear pattern in India's approach to citizenship and minority communities. Section 2 of the CAA expedites citizenship for individuals from Hindu, Sikh, Buddhist, Jain, Parsi, or Christian communities from Pakistan, Bangladesh, and Afghanistan, reducing the required residency period from 11 years to five years.³ Although the Act ostensibly applies to legal migrants, earlier modifications to the Foreigners (Amendment) Rules 2015⁴ have effectively erased the distinction between legal and illegal migrants for non-Muslim immigrants from these countries. Additionally, amendments to the Passport (Entry into India) Rules 1920 exempt minority communities facing religious persecution or fear of it in Bangladesh, Afghanistan, and Pakistan from the requirement of bona fide documents, allowing them to stay in India⁵.

The CAA is not a recent development but has deep roots in the complex processes of citizen and national identity formation that followed the Partition of British India. These processes, which varied significantly along India's eastern and western borders, continue to shape contemporary policies and perceptions regarding citizenship and minority communities in India.⁶

V. WHAT IS ILLEGAL MIGRATION?

Migration is not a new phenomenon; it is since the Britishers time when they started developing different parts of the country and the main effect was seen after the partition of Bengal. Post independent period during 1951-2011 the population growth of the state of Assam was 288.21% against 235.15% for all India.⁷

Illegal migration can be rightly defined as unlawful movement is the entry of individuals from one nation into another nation without entering through lawful strategies. Unlawful foreigners are moreover alluded to as undocumented workers.

³ Citizenship (Amendment) Act 2019 (India) s 2 ('CAA') explicitly excludes these groups from the definition of illegal migrants.

⁴ Foreigners (Amendment) Rules 2015 (India).

⁵ Order GSR No 685(E) (Notification F No. 25022/50/2015-FI, 7 September 2015).

⁶ Manav Kapur, India's Citizenship (Amendment) Act: A Throwback to Debates Around the 'Long Partition', *Statelessness & Citizenship Rev.* (2023), <https://statelessnessandcitizenshipreview.com>.

⁷ Kumar Nath, B., C. Nath, D. and Biswanath, L. (2012) 'Undocumented migration in the state of assam in Northeast India estimates since 1971 to 2001', *Asian Journal of Applied Sciences*, 5(3), pp. 164-173. doi:10.3923/ajaps.2012.164.173.

Many issues exist concerning these foreigners, which incorporate boundaries such as dialect, work, lodging, transportation, and well-being care. Numerous unlawful workers are perplexed to look for administrations because of the plausibility of being found and extradited.⁸ Different from a few arrangements that exist within the joined-together States to address their well-being needs, most illicit workers stay uninsured and have constrained access to care. Therapeutic issues regularly influencing this populace incorporate irresistible infections, insufficient pre-birth care, and mental well-being concerns.⁹

Some of the migration includes migration from Bangladesh to the Northeast region of India which has been continuous throughout the twentieth century due to historical links, geographical and physical proximity.¹⁰ If we look into one of the examples the better employment opportunities and availability of fertile agricultural land in Assam act as a pull factor while the poverty, subsistence living, ravages caused by floods and other natural calamities in Bangladesh act as push.

VI. HOW IS IT DIFFERENT FROM REFUGEE?

The term "migrant" has no predetermined legal definition. The Office of the United Nations High Commissioner for Human Rights (OHCHR) defines an international migrant as "any person who is outside a State of which they are a citizen or national, or, in the case of a stateless person, their State of birth or habitual residence" in accordance with the High Commissioner's mandate to promote and protect the human rights of all persons.¹¹ As a result, the term "migrant" is used to refer to a group of people who share the trait of having no connection to their host nation. It does not affect the protection systems that are in place under international law for particular

⁸ Moini, J. et al. (2023) 'Illegal immigrant issues', Health Care Today in the United States, pp. 351-365. doi:10.1016/b978-0-323-99038-7.00018-7.

⁹ *Id*

¹⁰ *Id*

¹¹ OHCHR, ., 2018. Differentiation between migrants and refugees, Office of the United Nations High Commissioner for Human Rights. Switzerland. Retrieved from <https://policycommons.net/artifacts/4362158/differentiation-between-migrants-and-refugees/5158591/> on 22 May 2024. CID: 20.500.12592/94rdfr.

legal categories of individuals such as refugees, stateless persons, trafficked persons and migrant workers.¹²

Whereas A refugee is a person who leaves their country because they are being persecuted, there is war or violence. Such people are scared for good reasons of persecution by reasons of race, religion, nationality, politics and belonging to a specific social group. Under international law, refugees are protected by the 1951 Refugee Convention and its 1967 Protocol which set out the rights for them and duties for states towards this group.¹³ Stateless individual refers to someone who does not have any nationality according to national law of any state. This means that such individuals cannot claim citizenship with any country legally. Statelessness arises from various reasons including discrimination, gaps in the nationality legislations as well as disintegration of states. The Convention Relating to the Status of Stateless Persons (1954) creates a legal framework for protecting them.¹⁴ The primary distinction is that an immigrant makes the decision to leave their place of origin. A refugee, on the other hand, must go to another nation to apply for asylum.

A foreign-born person who freely leaves their place of origin and is granted permission to live permanently in the United States as a Lawful Permanent Resident is known as an immigrant. The primary distinction is that an immigrant makes the decision to leave their place of origin. A refugee, on the other hand, must go to another nation to apply for asylum.

VII. LEGAL FRAMEWORK TO GOVERN ILLEGAL IMMIGRANT AND REFUGEES

There isn't a specific statute in India that addresses refugees directly. The main laws that address how foreigners are treated in India in the absence of a specific framework are the Foreigners Act of 1946, the Registration Act of 1939, and the Foreigners Order of 1948. The colonial government passed the antiquated Foreigners Act, 1946 in

¹² *Differentiation between migrants and Refugees - OHCHR*. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf> (last visited March 6, 2024).

¹³ Convention Relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S. 137.

¹⁴ Convention Relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 117.

reaction to the exigencies of the Second World War. (See the Statement of objects and Reason of the Foreigners Act, 1946.)

The term "foreigner" is defined in 2 (a) of the Registration of Foreigners Act 1946.¹⁵
"foreigner" means a person who is not a citizen of India"

The 1948 Foreigners Order defines the same thing encompassing all refugees within its purview as a result. Thus, there is no legal distinction between foreigners and refugees in the absence of specialised legislation; instead, refugees are typically treated in the same manner as foreigners and undocumented migrants. It is essential to distinguish clearly between refugees as a particular subset of foreigners and foreigners as a class. Refugees in India are subject to a myriad of laws and rules, a complex legal framework that is designed to handle their entry, stay, and how they're treated in the country. These include the Passport (Entry into India) Act of 1920 and the Passport Act of 1967, which control the issuance and control of travel documents. The Registration of Foreigners Act of 1939 makes it mandatory for foreigners to register themselves, ensuring their presence is documented and watched. The Foreigners Act of 1946 and the Foreigners Order of 1948 go even further by providing detailed guidelines on how foreigners should be regulated, including their movement, behaviour, and the conditions of their stay. Section 3 of the Foreigners Act ¹⁶gives power to the central government to make rules about non-Indian citizens, like stopping, controlling, or limiting their entry into India and their stay in India and Section 7 ¹⁷of the said act states that foreigners must follow any conditions set by the government for their stay in India.

Furthermore, certain sections of the Criminal Procedure Code of 1973, the Indian Penal Code of 1860, and the Indian Evidence Act of 1872 also apply to refugees. ¹⁸For instance, the Criminal Procedure Code ensures that refugees are afforded the same legal rights and protections as Indian citizens when accused of a crime. The Indian

¹⁵ Registration of Foreigners Act, 1992, section 2 (a)

¹⁶ The Foreigners Act, 1946, §3.

¹⁷ The Foreigners Act, 1946, §7

¹⁸ Vaishnavi Yashasvi, Legal Framework Governing refugees in India, Vol. 11 Issue 11, International Journal of Research in Social Science (IJRSS), (2021),
https://www.ijmra.us/project%20doc/2021/IJRSS_NOVEMBER2021/IJRSS4Nov21.pdf

Penal Code sets out the criminal offences that apply to all individuals in India, including refugees. The Indian Evidence Act establishes the rules for presenting evidence in court, ensuring a fair and transparent legal process for refugees.¹⁹ This intricate legal framework not only safeguards national security but also upholds humanitarian concerns, reflecting the delicate balance that India strives to maintain.

VIII. EVOLUTION OF CITIZENSHIP LAW

A. CITIZENSHIP ACT

The Citizenship Act of 1955 outlines the procedures for obtaining and losing citizenship subsequent to the Constitution's adoption. Commonwealth Citizenship was originally provided for by the Act of 1955. Nevertheless, the Citizenship (Amendment) Act of 2003 repealed this clause. The Citizenship Act of 1955 sets forth five methods for obtaining citizenship: naturalisation, birth, descent, registration, and incorporation of territory.²⁰

The Partition of British India in 1947 was a significant event that had a considerable impact internationally and within the countries involved. It marked the end of British colonial rule and the start of some pretty complicated state-building processes. For instance, the establishment of new governments, the reorganization of administrative structures, and the formulation of new laws were just a few of the many challenges faced. Looking at the Partition from this angle helps us understand why people from Pakistan, Bangladesh, and Afghanistan are seen differently and why the distinction between refugees and citizens is such a big deal.

Instead of seeing the Partition as the final solution to the "minority problem" in British India, it's more beneficial to see it as the beginning of two new nations, as Ted Svensson suggests. This thinking highlights the messy and complex process of creating India and Pakistan²¹. Independence in August 1947 wasn't just a clean break

¹⁹ *Id*

²⁰ Drishti IAS (2022) *75 years: Laws that Shaped India: The Citizenship Act, 1955*, Drishti IAS. Available at: <https://www.drishtiiias.com/loksabha-rajasabha-discussions/75-years-laws-that-shaped-india-the-citizenship-act-1955> (Accessed: 22 May 2024).

²¹ Ted Svensson, *Production of Postcolonial India and Pakistan: Meanings of Partition* (Routledge 2007).

from the past, but a moment of continuity and change. It marked the start of many challenges in building these new countries, especially regarding citizenship and national identity. The debates and discussions about laws and the constitution after independence show how complicated this period was. The creation of India and Pakistan was a complex process but was influenced by the different situations in each region and the political limitations they faced. The relationship between the two countries, which has a long and complicated history, shows that their development wasn't a straight line either. Understanding these dynamics is essential to know how minorities and the distinction between refugees and citizens are seen in the region today.

IX. IMPORTANT AMENDMENTS:

- **1986 Amendment:** The 1986 amendment to section 3 was less inclusive than the original Citizenship Act and the constitutional provision that granted citizenship to all Indian-born people on the basis of *jus soli*.²² This amendment added to the constitution that anyone born in India on or after January 26, 1950, but before July 1, 1987, shall be an Indian Citizen. People who were born after July 1, 1987, and December 4, 2003, in addition to one's own birth India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.
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- **2003 Amendment:** The modification tightened the aforementioned requirement in light of Bangladeshi infiltration.
 - a) People who were born on or after December 4, 2004, the law now mandates that, in addition to the individual's birth, both parents or just one parent must be an Indian citizen, and the other parent must not be an undocumented immigrant.
 - b) India has nearly adopted the narrow concept of *jus sanguinis*, or blood relationship, with these restrictive amendments.²⁴

²² *Id*

²³ The Citizenship Amendment Act, 1986

²⁴ *Supra* note 7

- c) This states that even after seven years of residency in India, an undocumented immigrant is not eligible to obtain citizenship through naturalization or registration.²⁵
- **2005 Amendment :** The provisions of the main statute pertaining to Overseas Citizens of India (OCI) have been amended by the Citizenship (Amendment) Act, 2015. By combining the OCI and Persons of Indian Origin (PIO) card schemes, it has created a new program named "Overseas Citizen of India Cardholder." Section 7 B of Citizenship Act of 1955 states the right of Overseas Citizen of India Cardholder. This section specifically mentions that Overseas Citizen of India Cardholder shall not be entitled to the rights conferred on a citizen of India:
 - (a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;
 - (b) under article 58 of the Constitution for election as President;
 - (c) under article 66 of the Constitution for election as Vice-President;
 - (d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;
 - (e) under article 217 of the Constitution for appointment as a Judge of the High Court;
 - (f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;
 - (g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;
 - (h) under sections 5, 5A and section 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a

²⁵ *Supra* note 7

member of the Legislative Assembly or the Legislative Council, as the case may be, of a State;

- (i) for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may, by special order on that behalf, specify.

- **2019 Amendment :** One of the most heated amendments ever passed by the Indian Parliament was the Citizenship (Amendment) Act 2019, which was approved by Parliament on December 11th, 2019. The 12th of December, 2019, saw the bill granted presidential assent. The Indian Citizenship Act, 1955, forbids illegal migrants from becoming citizens. The fundamental goal of this Bill's enactment was to modify the previous Act and provide citizenship to undocumented immigrants who were subjected to persecution in India's neighbours. Only six religions—Buddhists, Hindus, Sikhs, Jains, Parsis, Christians, and Afghanis—were allowed to immigrate.

- a) The bill also contained a few other amendments in addition to this. First off, as of December 31, 2014, the deadline for citizenship was extended. This meant that if one entered India on or before the deadline, they could only apply for citizenship.
- b) According to Section 6B, Clauses 2 and 3 of the Act, these individuals will be considered Indian citizens as of the day of their entry into the country, and any legal actions taken against them regarding their citizenship or illegal migration will be dropped.²⁶
- c) The amendment also relaxed the naturalisation duration from 11 years to 5 years for all those belonging to the six minority religious groups.
- d) Under Section 7D of the bill, modifications for OCI (Overseas Citizens of India) holders were also proposed. If a foreign national's spouse or they themselves are Indian origin, they can apply for OCI. Additionally, OCI

²⁶ The Citizenship (Amendment) Bill, 2016.

cardholders will be eligible for certain benefits, such as the ability to work and study within the nation.

X. CONSTITUTIONAL PROVISIONS:

India was a signatory to the Universal Declaration of Human Rights. UDHR laid down the foundation of human rights across the globe. The Constituent Assembly of India approved the constitution on December 26, 1949, and it became operative on January 26, 1950. The 1948 Universal Declaration of Human Rights had a significant impact on our Indian constitution.²⁷ The Universal Declaration of Human Rights is closely resembled by provisions found in Part IV, which deals with Directive Principles of State Policy, and Part III, which deals with Fundamental Rights. As a result, the Declaration's provisions and several of the fundamental rights protected in Part III of the Indian Constitution are comparable. There are many constitutional provisions related to the protection and regulation of the refugees in the same way it applies to the Indian citizens. In India, foreigners are safeguarded by the constitution, which includes protection under the right to equality [Article 14] and the prohibition against taking away a person's life or personal freedom without following legal procedures [Article 21]. Equal protection and equality before the law is guaranteed under the Article 14 of the Indian Constitution. A person's classification ought to be predicated on understandable distinctions connected to the act's purpose. As a result, executives may treat foreigners differently based on their classification or class. This means that a foreigner has a legitimate constitutional cause of action if they are the target of state discrimination against another foreigner who belongs to the same class or description. (See, Vincet Ferrer AIR 1974 AP 313 at para. 2; Basheshar Nath AIR 1959 SC 149 at para. 14; Hans Muller AIR 1955 SC 367 at para. 23-24)

Under Article 21 of the Indians constitution refugees enjoys protection in following ways:

²⁷ Jai Shah, Human Rights and Its Significance, ET Edge Insights (Jan. 18, 2021), <https://etinsights.et-edge.com/human-rights-and-its-significance/>.

- a) Protection of rights against deprivation of life and liberty.²⁸
- b) right against executive action sans procedural due process accrues to them.²⁹

The Supreme Court has radically altered the meaning of Article 21, requiring any state action that infringes upon a person's life or personal liberty to adhere to substantive due process of law. Many provisions of the Indian Constitution apply to refugees in the same way that they are to Indian citizens. The Indian Supreme Court has consistently maintained everyone's right to life and personal liberty under Article 21 of the Fundamental Rights of the Indian Constitution. The United Nations High Commissioner for Refugees (UNHCR) is essential to protecting refugees. As such, the Indian High Courts have adopted the natural justice principles in handling refugee cases. The Hon'ble High Court of Guwahati acknowledged the concerns of the refugees and permitted them to contact the UNHCR to find out their status by postponing the deportation orders.³⁰

The High Court of Madras declared in the cases of *Gurunathan & Ors. v. Government of India & Ors.*³¹ and *A.C. Mohd. Siddique v. Government of India & Ors.*³² that it would not force Sri Lankan refugees to return to their country of origin against their will. In *P. Nedumaran v. Union of India*³³, refugees from Sri Lanka requested a writ of mandamus from the Madras High Court, directing the Union of India and the State of Tamil Nadu to allow UNHCR representatives to determine the refugees' desire to return to Sri Lanka and to allow those who do not wish to return to stay in the camps in India. The Court also recognised the representatives of the UNHCR for their objectivity and skill.

²⁸ See, Louis De Raedt (1991) 3 SCC 554 at para. 13; Chandrima Das (2000) 2 SCC 465 at paras. 28, 32, 34; Anwar (1971) 3 SCC 104 at Para. 4; National Human Rights Commission (1996) 1 SCC 742 at para. 20

²⁹ See, P. Mohammad Khan (1978) II APWR 408.

³⁰ Harshit Rai and Vaibhav Dwivedi, Constitutional Provision Regarding Refugee Law in India, 4 IJLMH (2021), <https://www.ijlmh.com/paper/constitutional-provision-regarding-refugee-law-in-india/>.

³¹ *Gurunathan and others vs. Government of India*, (1992) WP No.S 6708 and 7916.

³² *A.C.Mohd.Siddique vs. Government of India and others*, (1998), (47)DRJ(DB) p.74.

³³ *P.Nedumaran vs. Union Of India* (1997)((The case is pending before the National Human Rights Commission of India).

In *Syed Ata Mohammadi v. Union of India*³⁴, the Bombay High Court ruled that "there is no question of expelling the Iranian refugee to Iran, as he is recognised as a refugee by the UNHCR." In conformity with the internationally recognised norms of "non-refoulement" of refugees to their place of origin, the Hon'ble Court also gave the refugee permission to travel to the country of his choosing.³⁵ The Supreme Court halted the deportation of Andaman Island Burmese refugees in *Malavika Karlekar v. Union of India*³⁶ because "their claim for status of refugee was pending for adjudication and is also a prima facie case filed for grant of refugee status." According to the Supreme Court's ruling in the Chakma refugee case, no one's life or freedom can be taken away from them without following the proper legal procedures.³⁷

In *Louis De Raedt v. Union of India*³⁸, the Court held that the fundamental right to life, liberty and dignity is available to non-citizens also. In *U Myat Kayew and another v. State of Manipur and another* (Guwahati High Court 1991, (Civil Rule No. 516 of 1991)), interim bail to the Burmese refugees who were detained was granted. In *Majid Ahmed Abdul Majid Mohd. Jad Al- Hak v. Union of India* (Delhi High Court 1997, Criminal Writ Petition No 60 of 1997)³⁹, Court expressed that food and medical assistance should be provided to the detainees as it is a basic minimum necessity for survival.

XI. THE REFUGEE CONVENTIONS

The formulation of guidelines and legal frameworks addressing the protection of individuals displaced from their homes and categorised as refugees originated primarily with the League of Nations, particularly in the aftermath of the First World War. The issue of displaced persons and refugees gained significant attention following the Second World War.

Certainly, the 1951 Convention was initially designed with a specific focus on safeguarding the rights and status of European refugees in the aftermath of the Second

³⁴ Syed Ata Mohammadi vs. State, Criminal, (1994), W.P. no.7504/1994.

³⁵ National Human Rights Commission of India, Group 4 June Report, <https://nhrc.nic.in/sites/default/files/Group%204%20June.pdf> (last visited May 28, 2024).

³⁶ Malavika Karlekar vs. Union of India, (1998) CrI. WP No.243.

³⁷ *Supra* note 33.

³⁸ Louis De Raedt v. Union of India (AIR 1981 SC 1886, para 12.)

³⁹ Majid Ahmed Abdul Majid Mohd. Jad Al- Hak v. Union of India (Delhi High Court 1997, Criminal Writ Petition No 60 of 1997).

World War. This specificity is evident in the inclusion of the phrase "events occurring before 1 January 1951" within the document. It was to make sure that refugees do not return to a country where they face a serious threat to their lives.⁴⁰ It helped in providing legal status to refugees, right of access to employment, education and social security and not punishing refugees for their illegality. The widely accepted interpretation of this clause is that it pertains to "events occurring in Europe" before the specified date. Therefore, the Convention initially addressed the particular challenges faced by refugees from Europe during the specified timeframe.

However, the 1967 Protocol expanded the convention's reach by eliminating both geographical and temporal restrictions, rendering it universally applicable. This convention is commonly referred to as the Geneva Convention of 1951 and holds the status of a legally binding document.⁴¹

The 1967 Protocol on the Status of Refugees aimed to address a gap between the broad UNHCR Statute and the limited scope of the 1951 Convention. Unlike the Convention, the Protocol emerged from discussions among legal experts at a colloquium in Bellagio, Italy, in 1965, favouring a Protocol over a complete revision of the Convention. This allowed states to apply relevant provisions without becoming direct parties to the treaty.

The UNHCR Executive Committee endorsed this approach, and the draft Protocol was transmitted to the General Assembly through the Economic and Social Council. The General Assembly acknowledged and urged states to accede to the Protocol, which came into force on October 4, 1967, with just six ratifications.

This protocol provided equal status to all refugees irrespective of the dateline of 1st January, 1951.⁴² Therefore the 1951 convention became applicable universally. Also,

⁴⁰ Human Rights Watch, "Our Lives Are Like Death: Syrian Refugee Returns from Lebanon and Jordan" (Oct. 20, 2021), <https://www.hrw.org/report/2021/10/20/our-lives-are-death/syrian-refugee-returns-lebanon-and-jordan>.

⁴¹ THE REFUGEE CONVENTION, 1951.

⁴² States of Jersey, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Government of Jersey, <https://www.gov.je/Government/Departments/JerseyWorld/Pages/TreatiesConventionsDetail.aspx?id=310> (last visited May 12, 2024).

the countries that ratify it will automatically have to abide by the refugee convention even though they are not part of it.

India might not be a signatory to the Refugees Convention because, Firstly, India places a high value on its sovereignty and is cautious about international commitments that might impinge on its domestic affairs. By not signing the Refugee Convention, India retains more significant control over its policies and practices regarding refugees without being bound by international legal obligations. Secondly, India has a long history of dealing with large numbers of refugees, starting from the partition of India and Pakistan in 1947, which led to massive population movements. Subsequent influxes from Tibet, Sri Lanka, Bangladesh, and Myanmar have further shaped India's approach. These experiences have contributed to a preference for flexible, case-by-case approaches rather than a fixed international framework.

Moreover thirdly, Given regional security dynamics, particularly with neighbouring countries like Pakistan and China, India is wary of the potential security implications of accepting large numbers of refugees. There is a concern about the infiltration of militants and the possibility of refugee camps being used for anti-India activities. Moreover, at last, India hosts many refugees from various countries. It has provided asylum to Tibetan refugees since 1959 and has also hosted Tamil refugees from Sri Lanka, Rohingya from Myanmar, and others. India prefers to handle these situations through bilateral agreements and regional cooperation rather than international conventions. India's decision not to sign the Refugee Convention is influenced by its desire to maintain sovereignty, manage complex regional dynamics, handle large refugee populations flexibly, and address security and socioeconomic challenges.

XII. AUSTRALIA'S APPROACH TO ASYLUM SEEKERS

If we consider Australia then, it has been known as a land of opportunity, drawing people from all over the world who are fleeing persecution, war, and hardship. ⁴³Australia, a country founded on immigration, has consistently shown via its wide range of refugee programs that it is committed to giving sanctuary to those in need.

⁴³ Immigration Museum of Victoria, *Journeys to Australia*, <https://museums victoria.com.au/immigrationmuseum/resources/journeys-to-australia/>.

Millions of people have been compelled to leave their homes in recent years in search of safety and security, as global displacement has reached previously unheard-of levels. Australia has adopted a multipronged strategy to tackle the intricate problems that face refugees and asylum seekers, aware of its global commitments and humanitarian duties.⁴⁴

Australia's refugee programs cover a wide range of initiatives targeted at meeting the various needs of displaced populations, from the initial reception and processing of asylum claims to the provision of resettlement services and long-term integration support. Australia has worked to promote a humane and inclusive approach to refugee protection through a combination of government-led programs, community-based initiatives, and cooperation with international agencies. The main piece of law controlling immigration and refugee issues in Australia is the Migration Act of 1958.⁴⁵ It describes the standards and methods for evaluating refugee claims, how to apply for a visa, and how to detain and remove undocumented immigrants.

Documentation issued by the Office of the UNHCR in Indonesia is in practice recognised by the Indonesian government as a basis for not deporting an individual, but it is the UNHCR which assumes processing responsibility.⁴⁶ Australia must also improve refugee protection in Indonesia as part of this arrangement. Asylum seeker transfers cannot proceed if international human rights law standards in Indonesia are not met.⁴⁷

⁴⁴ UNAIDS, *Refugees: An Opportunity to Reach the Unreachable*, https://www.unaids.org/en/resources/presscentre/featurestories/2015/june/20150620_refugeeday (last visited April 20, 2024)

⁴⁵ ROAD TO REFUGE, https://www.roads-to-refuge.com.au/whois/whois_government.html, (last visited Mar. 2, 2024)

⁴⁶ The UNHCR issues letters verifying a person is seeking refugee status, and following the Refugee Status Determination process issues letters of determination of that refugee status to refugees. See Jesuit Refugee Service, *The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Philippines* (Clung Wicha Press, 2012) 17; Crock, *supra* note 8, 259–60

⁴⁷ United Nations High Commission for Refugees, *Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum Seekers* (May 2013) 3: 'transfer arrangements of asylum-seekers for asylum processing need to take into account and ensure that: applicable refugee and human rights law standards are met ...'.

In Indonesia, improving refugees' immediate needs for food, shelter and water, among other things, are priority needs.⁴⁸ This is necessary for it to transfer persons back to Indonesia in accordance with international law. Additionally, this would communicate to the Indonesian government that Australia is serious about sharing responsibility for refugees, thus improving prospects for Indonesia to cooperate to make the whole arrangement a reality.⁴⁹

Refugee Status Determination (RSD): Australia follows the 1951 Refugee Convention and its 1967 Protocol, which provide the international definition of a refugee.⁵⁰ A person may be granted refugee status under Australian law if they can demonstrate a legitimate fear of persecution in their country of origin due to their race, religion, nationality, political beliefs, or membership in a specific social group.⁵¹

In order to address the Asia-Pacific region's refugee flows and asylum issues, Australia also participates in regional cooperation initiatives. This includes cooperating with Malaysia and Indonesia, two nearby nations, to strengthen border security and stop people smuggling.⁵²

Australia participates in the United Nations High Commissioner for Refugees (UNHCR) resettlement program, offering resettlement opportunities to refugees identified as being in urgent need of protection. However, Australia's annual refugee intake has been criticised for being relatively low compared to other countries.

In addition to permanent refugee visas, Australia offers temporary protection visas to some asylum seekers. TPVs and SHEVs provide temporary residency and work rights

⁴⁸ Refugee Council of Australia, 'Improving Refugee Protection in Asia-Pacific: How Australia Can Make a Practical Difference' (Discussion Paper, Refugee Council of Australia, July 2015)

⁴⁹ Keane Shum, 'A New Comprehensive Plan of Action: Addressing the Refugee Protection Gap in Southeast Asia through Local and Regional Integration' (2011) 1 Oxford Monitor of Forced Migration 60,

⁵⁰ Spinks, H. (no date) *Asylum seekers and the Refugee Convention, Home - Parliament of Australia*, https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/BriefingBook44p/AsylumSeekers (last visited Mar.9, 2024).

⁵¹ *Asylum seekers and refugees, The Australian Human Rights Commission*, <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/asylum-seekers-and-refugees> (last visited Mar. 10, 2024).

⁵² *Indonesia Country Brief, Australian Government Department of Foreign Affairs and Trade*, <https://www.dfat.gov.au/geo/indonesia/indonesia-country-brief#:~:text=Australia%20and%20Indonesia%20work%20closely,improve%20border%20integrity%20and%20enforcement> (last visited Mar. 11, 2024).

to refugees, but they offer limited pathways to permanent settlement and can create uncertainty for recipients.⁵³

All things considered, Australia's refugee laws and policies are the result of a complicated fusion of national laws, international commitments, and political concerns. The government's goal is to strike a balance between humanitarian obligations and border security concerns, but the execution of these policies has generated a great deal of controversy and cast doubt on Australia's commitment to human rights and refugee protection.

XIII. UNITED STATES OF AMERICA APPROACH TO ASYLUM SEEKERS

Coming to the United States of America which for more than seventy-five years has accepted migrants who would be under current International law will be identified as refugees.⁵⁴ In 1980 a legislation was signed by President Jimmy Carter, which established a permanent procedure for vetting, admitting and resettling refugees into the country and incorporating the official definition of the term “refugees”.⁵⁵

The country of Australia follows a rigorous procedure for admitting any refugees in the country. A proper screening process takes place to determine that seeking refugee qualifies under the definition of refugee or not, the individuals identified as refugees in need of resettlement are referred to one of the nine U.S. Department of State Resettlement Support Centres to check if they meet the criteria of U.S. Designated processing.⁵⁶

The U.S. Refugee resettlement process involves key federal agencies, with the State Department’s Bureau of Population, Refugees and Migration (PRM) serving as the

⁵³ Department of Home Affairs, Australian Government, *Immigration and citizenship*, <https://immi.homeaffairs.gov.au/> (last visited Mar. 11 2024)

⁵⁴ Council on Foreign Relations, *How Does the U.S. Refugee System Work? Trump, Biden, and Afghanistan*, COUNCIL ON FOREIGN RELATIONS (Aug. 20, 2021), <https://www.cfr.org/backgrounder/how-does-us-refugee-system-work-trump-biden-afghanistan>.

⁵⁵ U.S. Department of State, *Refugee Admissions*, <https://www.state.gov/refugee-admissions/>.

⁵⁶ Roy, D., McBride, J. and Klobucista, C. (2024) *How does the U.S. Refugee System Work?*, PBS. Available at: <https://www.pbs.org/newshour/politics/how-does-the-u-s-refugee-system-work> (Last Accessed: 02 April 2024).

initial point of contact and coordinator.⁵⁷ The Refugees resettlement in the USA do not need to have a “sponsor”. The State Department’s Reception and Placement Program provides funds to cover refugee’s living expenses. The State Department's humanitarian division is known as the Bureau of Population, Refugees, and Migration (PRM). By offering safety, reducing suffering, and finding a solution to the predicament of persecuted and forcibly displaced people worldwide, PRM advances American interests. In order to do this, they coordinate humanitarian policy and diplomacy, offer help that is necessary for survival, collaborate with multilateral organizations to create international alliances, and promote the most effective methods of humanitarian response. On March 27, 2023, the U.S. Department of State’s Bureau of Population, Refugees, and Migration signed the 2023-2025 Framework for Cooperation with the UN High Commissioner for Refugees (UNHCR).⁵⁸

The office of Refugee Resettlement in the Department of Health and Human Services provides longer- term cash and medical assistance, along with other social services such as language classes and employment training to support the integration of refugees into local communities.⁵⁹ One year after resettlement, refugees may apply for Lawful Permanent Resident (LPR) status. The Office of Refugee Resettlement (ORR) seeks to enhance the stability, health, and well-being of qualifying individuals and families, unaccompanied minors, and refugees by providing culturally sensitive, trauma-informed, and strengths-based services. In order to help each newcomer, reach their full potential, it envisions a welcoming environment with fair access to first-rate services and resources.⁶⁰

⁵⁷ Bureau of Population, Refugees, and migration - United States department of state. Available at: <https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/bureau-of-population-refugees-and-migration/> (Accessed: 05 April 2024).

⁵⁸ An overview of U.S. refugee law and policy (2023) American Immigration Council. Available at: <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy> (Last Accessed: 28 May 2024).

⁵⁹ American Immigration Council, An Overview of U.S. Refugee Law and Policy, AMERICAN IMMIGRATION COUNCIL (Sept. 20, 2021), <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>.

⁶⁰ An overview of U.S. refugee law and policy (2023) American Immigration Council. Available at: <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy> (Accessed: 28 May 2024).

Upon closer examination of United States laws, it becomes apparent that refugee resettlement applications may be declined based on several factors. These factors encompass criminal records, prior immigration infractions, suspected affiliations with terrorist entities, or the presence of contagious illnesses. Additionally, refugee resettlement organisations have voiced concerns that these supplementary "extreme vetting" procedures serve as an unnecessary pretext, intended to heighten the challenges associated with resettling Muslim refugees.⁶¹

Australia and the United States of America adhere to the UN Refugee Convention, which defines a refugee as someone with a well-founded fear of persecution due to race, religion, nationality, political opinion, or membership in a particular social group.⁶² Their refugee determination process focuses on this definition.

The CAA offers a path to citizenship for persecuted minorities (excluding Muslims) from Pakistan, Afghanistan, and Bangladesh who entered India before December 2014. Religion is the central factor determining eligibility under CAA, which has been criticised for discrimination. Australia and the United States of America have a well-defined process for refugee resettlement, India's CAA is specifically for citizenship for certain minorities. Asylum seekers arriving by boat without a visa are generally held in immigration detention onshore or offshore processing facilities in Nauru or Papua New Guinea while their claims are assessed.⁶³ This is a point of contention within Australia, India doesn't have a specific detention policy for refugees.

The amendment brought up is with the motive of providing the facilities that the developed nations provide to their refugees and a well-established procedure so that there is no manipulation of law. When considering the plight of minority communities facing persecution in Pakistan, Bangladesh and Afghanistan, it's crucial to

⁶¹ *An overview of U.S. refugee law and policy* (2023) American Immigration Council. Available at: https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy?__cf_chl_tk=w7Lj8ezSiOwR71vQ3BsWTb8PVxYSGH8S3UVNm.ohAk4-1711470572-0.0.1.1-1471 (Last Accessed: 05 April 2024).

⁶² International Justice Resource Center, *Asylum & the Rights of Refugees*, International Justice Resource Center, <https://ijrcenter.org/refugee-law/> (last visited April 22, 2024).

⁶³ *Australia's immigration detention policy and practice*, *The Australian Human Rights Commission*. Available at: <https://humanrights.gov.au/our-work/projects/6-australias-immigration-detention-policy-and-practice> (Accessed: 20 April 2024).

acknowledge their rights to seek asylum and refuge in accordance with international legal framework.

Outlining the plight of Hindu, Sikh and Jain minorities in these countries, are facing persecution and discrimination based on their religious beliefs. Therefore, eligible for protection and assistance from countries like India

Whereas the neighbouring countries consist of a huge population of Muslim refugees, which indeed accommodating a large number of refugees can pose economic and logistical challenges for a country like India. The burden of providing basic necessities such as shelter, food, healthcare and education to refugees can strain national resources and infrastructure. Therefore, in order to balance out the obligation that India has towards its citizens and towards this minority group, this is intended to avoid the larger minority group that could have overpowered the Indian Government itself. The smaller minority groups will be protected with the help of policies and mechanisms as stated in the law.

XIV. CURRENT POSITION OF INDIA

The Centre government on March 11, 2024, notified Rules for The Citizenship Amendment Act (CAA), paving the way for the implementation of the controversial law more than four years after it was passed by Parliament in December 2019.⁶⁴ There has been a major relaxation regarding the regulations. The previously necessary prerequisites of a current passport issued by Afghanistan, Bangladesh, or Pakistan and a copy of a current Indian residency permit have all but disappeared. The CAA Rules state that documents proving the applicant's citizenship in these countries include birth certificates, certificates from educational institutions, "Identity Document of any kind," "Any License or Certificate," "Land or tenancy records," and "Any other document" issued by these nations.⁶⁵ By broadening the scope of

⁶⁴ Tiwary, D. (2024) *The CAA rules, unpacked*, *The Indian Express*. Available at: <https://indianexpress.com/article/explained/explained-law/caa-rules-eligibility-minorities-refugees-9210464/> (Accessed: 18 April 2024).

⁶⁵ The Mooknayakan, CAA Rules Explained in Simplest Terms, THE MOOKNAYAK (Mar. 14, 2024), <https://en.themooknayakan.com/governance/caa-rules-explained-simplest-terms>.

acceptable documents, the government aims to facilitate the application process for individuals seeking refuge and citizenship under the CAA.

This relaxation of regulations may be seen as a response to criticisms and concerns surrounding the previous stringent requirements, which were perceived as potentially excluding eligible individuals from availing the benefits of the CAA. By streamlining the documentation process and expanding the range of acceptable proofs of citizenship, the government seeks to address these concerns and ensure a more inclusive implementation of the law.

India with not joining the Refugee Conventions have opened doors for a lot of new ideas. Starting with the amendment made in CAA is a step forward towards marking of its own domestic laws for the Refugee. This would further provide consistency and a clear framework in refugee claims and ensure due process is followed.

India can also initiate Promote refugee integration with vocational training, language courses, and entrepreneurship support. Ensure education access for all refugees and provide safe, affordable housing to foster stability and community integration. It can also act as a golden opportunity for a developing country like India to improve international relations by progressively ratifying the 1951 Refugee Convention with customized reservations. This will show support for international refugee values while attending to domestic issues. In order to handle refugee issues, encourage burden-sharing, and control large-scale influxes, establish regional frameworks with surrounding nations and actively cooperate with UNHCR and other international organizations.

However, it is important to recognize that the implementation of the CAA is still a topic of discussion and disagreement, both domestically and internationally. Some critics argue that the law unfairly targets certain religious groups and goes against the secular values outlined in India's Constitution. On the other hand, supporters believe that the CAA is necessary to help oppressed minorities from neighbouring countries. With these ongoing discussions and the intricate socio-political environment regarding the CAA, the recent announcement of rules is a major step towards putting

the law into action. Going forward, it will be vital for the government to guarantee transparency, fairness, and compliance with the law.

XV. CONCLUSION

The complex terrain of migration, asylum and refugee protection in conclusion, calls for a trade-off between humanitarian obligations and national interests. Over time, countries have struggled with how to offer refuge to people fleeing from persecution while ensuring they do not lose their own borders and resources.

India's Citizenship Amendment Act (CAA) though divisive in nature, is an attempt aimed at addressing the plight of persecuted minorities coming India's neighbour states amidst challenges posed by a large-scale influx. Through this step, it has shown its adherence to global principles on humanity but also its own security issues. Nevertheless, such acts need prudent examination of multiple issues including the rights of man preservation, refugee integration into society and resource management. The recent easing of the CAA rules is intended to make the procedure easier for those who want asylum in India.

Comprehensive refugee legislation should be introduced by India for the sake of enhancing legal protection, ratifying international treaties such as the 1951 Refugee Convention and establishing fair asylum procedures. Among the suggested measures are supporting refugee integration programmes by facilitating economic inclusion, promoting community participation and ensuring the availability of essential services. Therefore, India must engage with international organizations by strengthening UNHCR partnerships and joining global compacts. Apart from all this, India should consider putting in place a specialized institution for refugees; hence, it has become crucial to implement training programs for public officers in this regard. Consequently, these actions will continue to retain India's humanitarian traditions while ensuring that refugees have an opportunity to live their lives respectably again so that they can follow the best practices globally, which aligns with Indian refugees' policy accordingly.

In its journey on the global stage, India plays dual roles as a regional power and advocate for humanitarian values. It is crucial to uphold principles of equality, justice,

and compassion for all individuals, irrespective of their background or circumstances. Embracing diversity and implementing inclusive policies will allow India to uphold its tradition of hospitality and build a brighter future for all its citizens and asylum seekers.

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