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INTRICACIES OF REFUGEE REGULATION AND PROTECTION

MEANING

The intrinsic denotation of Refugee as a term under Article 1 of the Refugee Convention of 1951 focuses that the persons from political or other forms of persecution shall be included in the ambit of refugee. It elucidates that a refugee is a person who cannot or chooses not to go back to their home country because they have a valid fear of being harmed or treated unfairly there due to factors like their race, religion, nationality, being part of a specific social group, or their political beliefs.¹ Further it puts the condition for protection of refugee by imposing that A refugee should not be sent back to a country where their life or freedom would be in danger due to factors such as race, colour, religion, political opinions, or affiliation with a specific social group.

It is to note that the key principle of the 1951 Convention is 'non-refoulement,' articulated in Article 33(1), which mandates that if a refugee's life or freedom is endangered in their home country, states that have ratified the Convention are required to refrain from sending them back or expelling them. This principle reflects a fundamental commitment to protecting individuals fleeing persecution and ensures that signatory states uphold their humanitarian obligations towards refugees.² The principle of 'non-refoulement' is very integral to the international refugee law as we can identify the core humanitarian purpose of providing refuge to those fleeing persecution. Article 33(1) of the 1951 Convention establishes a clear legal obligation

¹ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *Convention and protocol relating to the status of refugees*. Access at:

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.2_

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. Accessed at: 108.pdf

²<https://www.unhcr.org/refugees#:~:text=Refugees%20are%20people%20forced%20to,violence%20or%20serious%20public%20disorder.>

on states to protect refugees from being returned to situations where their lives or freedoms are at risk.

In the international spectrum, Article 14 of the Universal Declaration of human rights 1948, in relation to The United Nations Convention on Refugees 1951, is made with intention to protect refugee. It acknowledges individuals' entitlement to seek asylum from persecution in foreign nations, establishing a framework for safeguarding the rights and welfare of refugees globally.³

Further, it is noted that although the Fourth Geneva Convention of 1949 lacks a precise definition of refugees, Additional Protocol I clarify that individuals recognized as refugees under relevant international instruments or national legislation are considered "protected persons," irrespective of circumstances or distinctions.

INTERNATIONAL VIEWPOINT IN RELATION TO HUMAN RIGHTS

It is observed that there is an interdependent and harmonious relationship between international humanitarian law and refugee law, with each field influencing and informing the other in various ways. Firstly, with the interaction between the armed conflict and the principles of international humanitarian law, there is a significant impact in the refugee law and the very essentials of the term refugees is also affected. There are many asylum seekers that flee conflict zones under the ground of humanitarian law violations, even though, not all of them meet the specific criteria outlined in the 1951 Refugee Convention, which essentially, as stated, focuses on persecution based on factors like race, religion, nationality, or social group membership.

Secondly, international humanitarian law also influences refugee law through the concept of exclusion. Under this principle, individuals who have committed war crimes, violations of humanitarian law, may be excluded from refugee protection, highlighting the integration of legal principles across both domains.⁴

In perspective of armed conflict, the body of the International Humanitarian Law (IHL) provides a dual layer of protection for refugees amid armed conflict. It states that as long as refugees refrain from direct involvement in hostilities, they are shielded from the adverse effects of warfare. Furthermore, IHL grants refugees additional safeguards due to their status as foreigners in conflict-afflicted territories, acknowledging their heightened vulnerabilities.

³UNITED NATIONS GENERAL ASSEMBLY RESOLUTION. (429(V) of 14 December 1950), Available at: <http://www.unhcr.org/refworld/docid/3b00f08a27.html>

⁴INTERNATIONAL COMMITTEEE OF THE RED CROSS. Accessed at: <https://www.icrc.org/en/doc/resources/documents/statement/6t7g86.htm>

One aspect that is particularly observed to be incorporated along with the refugee protection is that, this protection involves preventing civilian displacement, explicitly prohibited under IHL. In consonance to that, the Fourth Geneva Convention forbids forced mass transfers, whether within occupied territories or across borders, except in exceptional circumstances crucial for civilian security or imperative military needs. Even then, civilians must be repatriated once hostilities cease. The rules also mandate protection against the harmful effects of conflict to deter displacement.

Apart from such protection, in instances of international armed conflict, refugees also have the scope to seek benefit from regulations governing aliens within the territory of a party to the conflict. The refugees enjoy rights akin to those of other aliens in conflict-afflicted territories, including the right to leave unless contrary to the host state's national interests, maintenance of pre-conflict entitlements, and assurances of means of sustenance if control measures impede self-support. However, strict limitations exist on internment or assigned residence.

The Fourth Geneva Convention has put forth the prerequisites for the refugees, which shall make them eligible for the same. It states that the refugees are not automatically considered enemy aliens solely based on nationality, recognizing their severed allegiance ties. It also highlights that it shall consider the factor of refugees fleeing to occupied territories retain rights against arbitrary arrest, prosecution, or deportation by occupying powers for pre-conflict offenses, ensuring they are not penalized for actions prompting their flight.

INDIA'S POSITION IN REFUGEE PROTECTION

In a recent instance, the Madras High Court declined a request to confer Indian citizenship upon children born at Sri Lankan Tamil refugee camps. The judges stated that issuing such a broad directive was not feasible without the authorities being furnished with the necessary basic information essential for citizenship determination. The Madras High Court's decision on March 14, 2024, regarding the petition seeking citizenship for children born at Sri Lankan refugee camps in Tamil Nadu reflects a nuanced understanding of legal complexities and procedural requirements.

In the case of *Chief Justice Sanjay V. Gangapurwala and Justice D. Bharatha Chakravarthy*, it was emphasized that the presentation of essential details shall be an important element, such as birthdates and parental citizenship, for proper consideration of citizenship claims. The petitioner, V. Ravikumar, had initially approached the National Human Rights Commission (NHRC) and received detailed clarification from the Union Home Ministry regarding

citizenship laws. Despite attempts to challenge the Ministry's stance, the court found insufficient grounds to overturn it.

Furthermore, the amendment to the Citizenship Act in December 2019 illustrates the Indian Parliament's efforts to address citizenship issues, particularly for religious minority communities from neighbouring countries. This amendment aims to provide a pathway to citizenship for Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians who entered India before December 31, 2014, excluding them from the classification of "illegal migrants." However, certain tribal areas and regions under the "Inner Line" require additional permits for access, reflecting regional considerations in citizenship regulations.

The recent streamlining of the citizenship application process by the Indian government demonstrates a proactive approach to facilitate citizenship acquisition for eligible communities. By removing stringent documentation requirements such as a valid passport or Indian visa, the government has simplified the process, allowing applicants to substantiate their nationality through ancestral lineage documentation. Additionally, the acceptance of certificates from local elected officials as a substitute for visas further eases the burden on applicants, ensuring smoother proceedings in citizenship applications. Overall, these developments highlight the dynamic nature of citizenship laws and the government's efforts to address citizenship issues while considering regional nuances and administrative feasibility. Moreover, the question on violation of Article 14 of Constitution of India was also raised since it affected the right to equality of the citizens as there was a discrimination observed with regards to the exclusivity mentioned in the bill in relation to the Muslim Community.⁵

⁵ The Hindu. *Citizenship Amendment Act: Legal issues and status of judicial proceedings*

Accessed at: <https://www.thehindu.com/news/national/caa-legal-issues-and-status-of-judicial-proceedings-explained/article67941750.ece#:~:text=In%20December%202019%2C%20the%20Parliament,Pakistan%2C%20and%20Afghanistan%20who%20entered>