

# Exigency of Domestic Norms for Tackling Refugee Crisis: Perspective on Citizenship and Balance Between Human Rights and National Interest in India

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## **Introduction**

A refugee is any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or unwilling to avail protection of that country”<sup>3</sup>. India though not a part of the Refugee Convention, is a signatory to other treaties which impose obligations to provide protection to refugees. These obligations are such that as long as a refugee fears persecution, India has to provide protection. The problem at hand is three-fold. Firstly, India is a developing country and cannot provide basic amenities. Secondly, there is no law to regulate the status, entry, rights and rehabilitation of refugees. The govt. deals with it on ad hoc basis. Lastly, there is no distinction between foreigner and a refugee which cause a lot of human right violations. In this article, the authors critically analyze the refugee scene in India, whether the present laws are adequate to help these refugees, the lacunae and problems associated with it, role of UNHCR and NHRC and whether we need a better enforcement mechanism or mere ratification of the Convention will suffice.

## **Interplay of Human Rights Law, Refugee Law & Humanitarian Law**

Refugee law and Human Rights laws are overlapping. The purpose of which are protection of life, dignity and liberty. These principles are enshrined in Art 21 of the Indian Constitution which extends to non-citizens as well. This shows the emphasis given to the life of a refugee in India despite not being a signatory to the Convention. Refugees are victims of human rights violations to the extent that they don't even have the protection of their respective

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<sup>3</sup>Article 1(A) (2) of the 1951 Refugee Convention. Also see Article 1, 1967 Protocol.

nations. Further, the principle of Non-refoulement which prohibits forceful repatriation is described under both refugee and human rights law. The linkage between the two laws is clear, that gross violation of Human Right laws makes it impossible for refugees to return to their homeland safely<sup>4</sup>. Humanitarian Law deals with conflict wherein Refugee Law protects the distressed refugees in the wake of such conflict. This makes them complementary to each other. Clearly demonstrating that both laws work hand in hand. Therefore, it can be reasonably concluded that a majority of laws are borrowed from each other and are inter-dependent on each other.

### **Refugee Scene in India**

India's status as a preferred refugee base is further concentered by the constant flow of refugees from many of its neighbors. According to the last survey conducted in 2009 by the World Refugee in 2009, refugees in India totaled to 456,000 including about 96,000 Sri Lankans, and around 110, 000 Tibetans about 80percent of whom have lived in camps or scattered settlements.<sup>5</sup>

Moreover about 100, 000 ethnic Chinese people from Myanmar lived under the most restricted conditions in Mizoram while approximately 30,000 Afghans remained until 2009. The count for Bhutanese and Nepali refugees totaled up to 25000 each. Also, some 600 Somali refugees, who after the collapse of the government in 1991 came to India and an unknown number of Iraqi and Iranian refugees and about 200 Palestinians from Iraq also resided in India. The Government deported some, ignored others, and issued others residence permits

### **Statistics as on 2009 By World Refugee Survey**

ITEM	2009 Figures
Refugees & Asylum seekers	456,000
Sri Lanka	120,000
China	110,000
Myanmar	100,000

<sup>4</sup> Prafulla Kumar Nayak, Protection of Refugees: A Humanitarian Crisis in India, **Voice of Research**, Vol. 2 Issue 3, December 2013.

<sup>5</sup> "World Refugee survey 2009" United states Committee for refugees and immigrants, Available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&docid=4a40d2a75d&skip=0&publisher=USCRI&querysi=world%20refugee%20survey&searchin=fulltext&sort=date>.

Afghanistan	30,000
Bhutan	25,000
Nepal	25,000
New Asylum seekers	3300

## 1. India's Initiative on Rohingya Crisis

A crisis erupted in Myanmar and drew the attention of the international thinkers, strategists and policy makers. The Rakhine Advisory Commission has stripped the Rohingyas of their political, civil and citizenship rights. The Burma Citizenship Law of 1982 provided that those who traced their residence in the Myanmar before 1823 or belonged to majority ethnic groups were eligible for full citizenship. Unfortunately, the updated list of ethnic groups who qualified under the law did not include the Rohingyas.<sup>6</sup>

Thus, the Rohingyas are the set of tormented Muslims whom the Myanmar Government claims are not part of original ancestors of Burmese society thus denying them citizenship. They are deprived of basic necessities and are discriminated by various laws.<sup>7</sup> Moreover, the Myanmar Government justifies its decision stating that Rohingyas are illegal migrants who came from Bangladesh.<sup>8</sup> The Indian Government despite taking courageous steps, has tried to raise the issue of deportation of Rohingya refugees from the country.

India's reciprocation towards the crisis by deporting, shows that it has drifted away from the idea of "*Atithi Devo Bhava*". This shift from the age old approach shows the nations concern towards potential security threat. It could be understood that India is coming on the forefront to adopt a more pragmatic approach than ever earlier. Owing to the domestic and foreign issues a mass shelter to them is wisely being considered.

A look into India's unique history of providing asylum has changed drastically. It has realized the threat of overpopulation and the scarcity of basic necessities. India might have honoured the idea of "*Atithi Devo Bhava*", but has also with time envisioned the limit to the

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<sup>6</sup>Vidushi Sanghania, "An International Law Perspective on India's Response toward the Rohingya Refugee Crisis". Available at <http://ohrh.law.ox.ac.uk/an-international-law-perspective-on-indias-response-toward-the-rohingya-refugee-crisis/>.

<sup>7</sup>Warzone Initiatives, "Rohingya Briefing Report" October 2015. Available at <http://www.equalrightstrust.org/ertdocumentbank/Rohingya%20Briefing%20Report.pdf>

<sup>8</sup> Kumari Anupama, "A case study of Rohingya crisis in Myanmar and India's concern", 2 IJARD 477, 477-481 (September 2017).

old adage and problems in accommodating asylum seekers without triggering any kind of socio economic tensions.<sup>9</sup>

## **Legal Status of Refugees in India**

### **Principle of Non-Refoulement**

This principle<sup>10</sup> states that no country shall deport, expel or forcefully return the refugee back to his original territory against his will or if there is a reasonable threat to his life, liberty and freedom<sup>11</sup>. Although this principle is subjected to the scrutiny of “national security” and “public order”, it is a customary practice of international law and there is enough evidence and state practice with no opposition to conclude the same.<sup>12</sup>

In India this principle is given paramount importance through a landmark judgement<sup>13</sup> which dealt with the deportation of two Iraqi nationals. Here the principle of non-refoulement was upheld and included under the wide ambit of Article 21 of the Indian Constitution, provided that they have a fear for their life and liberty in their original country. Further, in another case law deportation of Burmese refugees were stayed on similar grounds.<sup>14</sup>

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Principle of Non-Refoulement is an absolute norm whose application is not dependent on ratification of any treaty or convention. As soon as a refugee expresses his intention of not going back to his home country because there is a threat to his life, this principle comes into force. But there have been cases where mass violation of this principle has occurred where state passes an order of deportation for frivolous reasons. There has been criticism that despite being a customary law of utmost importance, it is violated by many western countries who manage to escape with clean hands.<sup>15</sup> Mostly when a refugee is forcefully sent back the reasons concerning this are mostly diplomatic relations between host country and the original country, the economic dependency and international pressure.<sup>16</sup> Proper “enforcement” and

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<sup>9</sup> Id at 8.

<sup>10</sup> See Article 33 of the 1951 Refugee Convention.

<sup>12</sup> Guy S. Goodwin Gill, *The Refugee in International Law*, Clarendon Press: Oxford, 1990, pp.97-98.

<sup>13</sup> Ktaer Abbas Habib Al Qutaifi v Union of India, 1999 Cri LJ 919, para- 3.

<sup>14</sup> Malvika Karlekar v. Union of India Supreme Court Case 1992, Cri. WP No. 243 of 1992.

<sup>15</sup> Shirley Llain Arenilla, *Violations to the Principle of Non-Refoulement Under the Asylum Policy of the United States*, *Anuario Mexicano de Derecho Internacional*, vol. XV, 2015, pp. 283-322 México, D. F., ISSN 1870-4654.

<sup>16</sup> *Protecting Refugees A FIELD GUIDE FOR NGOS*, Produced jointly by UNHCR and its NGO partners, United Nations Publications Sales Number GV.E.99.0.22 ISBN 92-1-101005-5.

“implementation” is needed as this principle has lesser legal implication and is more moral in nature. Whenever repatriation is undertaken, it has to qualify the test of voluntary nature of the act<sup>17</sup>. The state of mind of the person willing to be repatriated should be taken into consideration.

## 2. Constitutional Protection

India is a part of various International human rights treaties which create an obligation on India to provide protection to refugees<sup>18</sup>. Various Customary International laws are binding on all states including India<sup>19</sup>. Hence, India has specific laws ensuring the fulfilment of the obligation<sup>20</sup>. This can be seen in the Vishakha case<sup>21</sup> where the court encouraged harmonious construction of international law and domestic law with regard to fundamental rights.

The Constitution of India extends some fundamental rights to non-citizens. These include Article 14 and 21. Article 14 is subjected to reasonable classification and intelligible differentia which differentiates between citizens and refugees. But if state actions are discriminating among foreigners of same class then there is a valid constitutional cause of action.<sup>22</sup> Refugees enjoy the protection of Article 21 in two ways: (a) they are equally entitled to the right to live with integrity and dignity<sup>23</sup>, and (b) to a certain extent, the right against executive action sans procedural due process accrues to them<sup>24</sup>. In *Majid Ahmed Abdul Majid Mohd. Jad Al-Hakv. Union of India*<sup>25</sup>, it was highlighted that food and medical care are essential for survival and should be given to detainees.

Further, the court held<sup>26</sup> that even non-citizens have the fundamental right to life, liberty and dignity. This right to life is followed by right against arrest and detention under Article 22 of the Constitution. Similarly, there has been liberal interpretation in detention cases by the court such that the UNHCR can determine the status of the refugee<sup>27</sup>.

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<sup>17</sup>Ranabir Samaddar (ed.), *Refugees and the State. Practices of Asylum and care in India 1947-2000*, (2003 edn.) SAGE publications, UK, 2003. BS Chimni, “Status of Refugees in India” pp. 453.

<sup>18</sup>Refugee Protection India, [http://www.hrdc.net/sahrdc/resources/refugee\\_protection.htm](http://www.hrdc.net/sahrdc/resources/refugee_protection.htm).

<sup>19</sup>Nicaragua v United States of America, 1986 I.C.J. 14 at para 186.

<sup>20</sup>INDIA CONST. Art. 51 Cl. c.

<sup>21</sup>Visakhav. State of Rajasthan, 1997(6) SCC 241 (India).

<sup>22</sup>Basheshar Nath v the commissioner of income tax AIR 1959 SC 149 (India).

<sup>23</sup>The Chairman Railway Board & Ors v Chandrima Das (2000) 2 SCC 465 (India).

<sup>24</sup>P. Mohammad Khan v State of Andhra Pradesh (1978) II APWR 408 (India).

<sup>25</sup>Majid Ahmed Abdul Majid Mohd. Jad Al-Hakv. Union of India, Delhi High Court 1997, Criminal Writ Petition No 60 of 1997 (India).

<sup>26</sup>Louis De Raedtv. Union of India, AIR 1981 SC 1886 (India).

<sup>27</sup>Mr Boghyv. Union of India (Civil Rule No 1847 of 1989) (India).

Apart from the above-mentioned, foreigners are also entitled to the protection of some of the rights recognized in Article 20 for instance, the right against prosecution under retrospective penal law; the right against double jeopardy; Articles 25 – 28 the right to freedom of conscience and the free practice and propagation of religion and, Article 32 the right to move the Supreme Court for enforcement of the rights listed above.

### 3. Laws Governing Refugees

Although there is no particular law governing the aspect of refugee, India uses its already available domestic laws in this aspect. Because of this there is no distinction between foreigner and refugee, which gives rise to a plethora of problems. The laws which deal with this ambit of refugees are as follows:

1. Passport (Entry into India) Act, 1920.
2. Passport Act, 1967.
3. Registration of Foreigners Act, 1939.
4. Foreigners Act, 1946.
5. Foreigners Order, 1948.

There are many types of foreigners who come to India for example economic migrants, tourist and students. Therefore, when there is no distinction given between refugees and foreigner in the **Passport (Entry into India) Act, 1920** and the **Passport Act, 1967** refugees run a big risk of arrest and illegal deportation without a valid passport by immigration authorities<sup>28</sup>. This is a problem as refugees stuck in turmoil may not have the time to get a passport, further due to lack of infrastructure access to passport office it might not be possible to get a passport. Hence, penalty should not be imposed on them.

According to section 20 of the Passport Act 1967 refugees might get a valid passport and identity cards provided it is in the public interest. Till now only Tibetan Refugees have got this opportunity because their spiritual and political leader, the Dalai Lama resides in India. Even their parliament is on the Indian soil. This has been criticized a lot as it hampers the sovereignty of India. Moreover, this privileged treatment is given to the Tibetan refugees

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<sup>28</sup> Bimal N Patel, *India and International Law*, (2005 edn), Martinus Nijhoff Publishers, 2005. Section 30 of the Passport Act 1920 read with rule 6A of the Indian Passport Rules 1950.

are only. Although the Constitution does not guarantee freedom of movement but the administration may give this right based on a case to case basis imposing reasonable restrictions. This is a clear violation of equality principle for all refugees<sup>29</sup>.

Under the Registration of Foreigners Act, 1939 the Central Government is empowered to make rules for foreigners regarding where and whom to report to, registration certificate acquisition and proof of identity<sup>30</sup>. These technicalities have added to the agony of the refugees who have already suffered a lot owing to their respective government. Furthermore, this power is used in an arbitrary manner which harasses genuine refugees.

The Foreigners Act, 1946 puts more restrictions on refugees, with regard to defining available routes to enter the country and whom to meet<sup>31</sup>. The biggest criticism to this is that there is unlimited power to arrest and detain any foreigner. The first case which confirmed this unlimited power was *Hans Muller of Nuremberg*<sup>32</sup>, thus with no judicial review and scrutiny this unlimited power to arrest and detain remains unchecked.

Lastly the Foreigners Order, 1948 gives authority to the State governments to refuse or accept a refugee on grounds of invalid passport, unsound mind, public safety or if he or she is detected suffering from a loathsome or infectious disease. The permission can also be denied if the formalities are not fulfilled under the Foreigners Act. Since the condition of refugees are different this mala fide rule results in arbitrariness.

Furthermore, most of the refugees are detained in transit areas. Transit areas are mostly sea ports, airports or land specifically earmarked for this purpose and are called international zones where domestic laws don't apply. Hence, in these areas refugees are handled through administrative remedies not legal remedies<sup>33</sup>. This creates a problem as the custom officers and bureaucrats lack the competence and know-how to handle this situation. Thus, resulting in deportation, violating the principle of non-refoulement.

Often authorities are insensitive towards the conditions and compelling factors of a refugee and the genuine reasons behind no possession of valid documents. The Indian Penal

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<sup>29</sup> Id at 29.

<sup>30</sup> R. J. S. Tahir (eds.) *Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir: Refugees and the Law*, 2edn, HRLN, 2011, pp 78.

<sup>31</sup> Id at 31

<sup>32</sup> *Hans Muller of Nuremberg* AIR 1955 SC 367 at pr. 36.

<sup>33</sup> *Supra* Note 31

Code makes no distinction between nationals, refugees or foreigners<sup>34</sup> and might penalize a refugee for cheating, fabricating documents and forgery<sup>35</sup>. Therefore, IPC should not be applicable to refugees.

The paramount need and urgency of a specific law which deals with refugees and their problems is the need of the hour. A clear-cut distinction between a foreigner and refugee has to be made to meet the international standards of handling refugees. The present laws are not sufficient as the refugees need far more protection than available.

#### **4. Role Of UNHCR**

UNHCR plays a very crucial role, their work starts as soon as a refugee enters India. A refugee may apply for refugee status. A legal officer then interviews them to procure important information. If the information is inconsistent then that refugee is handled with care as the mental status of his mind is taken into consideration<sup>36</sup>. The main object for deciding the status is the fear of persecution or threat to life. Free aid is provided by the legal officers of UNHCR. But whatever is done is not sufficient because the mandate of UNHCR is limited and it cannot work without the support and participation of the country.

Hence, the Government should give more powers to UNHCR so that the identities of all refugees coming to India can be recorded

#### **5. Role of NHRC**

National Human Rights Commission, State Human Rights Commissions and Human Rights Courts have been established in India under the Protection of Human Rights Act, 1993. According to this Act, they have the powers of a civil court and can *suo moto* inquire into any petition and interfere in the judicial proceedings protecting the party from human rights abuse, study treaties and prepare reports.

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<sup>34</sup>Id at 34.

<sup>35</sup> See Section 416, 420, 463, 464 of IPC, 1860.

<sup>36</sup> Supra Note 31.

Under the guidance of Justice PN Bhagwati in 2000 a Model Law was proposed but unfortunately that has not seen light till today<sup>37</sup>. It also proposed changes in the outdated Foreigners Act, 1946 which deprives refugee rights as guaranteed under the Geneva Convention, Refugee Convention and Additional Protocol of 1967<sup>38</sup>.

### **India's International Commitment**

India is not a signatory to the Refugee Convention as it finds it too Eurocentric and addresses only the refugee issues that existed post Second World War.

However, India has signed a number of International Conventions that create an obligation towards refugees. These include the Universal Declaration of Human Rights; The International Convention on Civil and Political Rights, 1966; the International Convention on Economic, Social and Cultural Rights, 1966; the International Convention on the Elimination of all Forms of Racial Discrimination, 1966; the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, 1984; and, the Convention for the Elimination of all Forms of Discrimination Against Women, 1979. India's international law obligations must be considered in the light of these commitments.

### **Reasons Given out for Non-Ratification of the Only Two International Conventions on Refugees**

There has been immense criticism and pressure on India to ratify the Refugee Convention 1951 and the 1967 Protocol relating to the Status of Refugees. However, despite the pressure, India failed to ratify it. Thus, in such a scenario it is important to understand the Indian perspective behind not ratifying it.

1. Eurocentric and addresses only the refugee issues that existed post Second World War.
2. Refugees are still given some rights and remains a major contributor of the asylum in the world.
3. Unique problems due to its geo-politics and controversial history ratification of refugee convention as futile.

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<sup>37</sup>Bhairav Acharya, the law, policy and practice of refugee protection in india, <https://notacoda.files.wordpress.com/2014/08/acharya-the-law-policy-and-practice-of-refugee-protection-in-india.pdf> (Accessed on 1 Jan 2017, 2:00 P.M.).

<sup>38</sup>Rajeev Dhawan, On model law for refugees: A response to the National Human Rights Commission, NHRC Annual Reports 1997-2000, New Delhi, 2003.

4. Hampering diplomatic relations especially with the connected major power China<sup>39</sup> which off late has been initiating cross border migration for no sound reason.
5. Undue pressure on the developing countries struggling to provide amenities to its own people.
6. Problem of infiltration and terrorism from our neighbours, thus ratification would mean non-distinction between a genuine refugee and an infiltrator.
7. The Conventions drafted in the 20<sup>th</sup> Century would fail to accommodate the contemporary challenges.
8. Wrongful availing of economic opportunities<sup>40</sup>
9. Fear of unknown clouds over security<sup>41</sup>
10. Unclear intent of the Convention due to non-representation from India while drafting.

### **India's Incongruent Policy Towards Refugee Groups**

There are three different types of refugees that India takes care of, they are: (1) Refugees recognized by the government, (2) Refugees recognized by UNHCR (3) Refugee not recognized by the Government or the UNHCR

#### **1. Refugees Recognized by the Government**

India's policy grants certain rights and privileges to selected refugee group, leaving the question of equality and uniformity unanswered<sup>42</sup>. Both Sri Lankan Tamilian and Tibetan refugees are issued identity documents<sup>43</sup> and are entitled to government assistance. Tibetans live with almost unrestricted freedom in settlements while the Sri Lankan refugees are closely watched and have restricted movement in camps. Therefore, geopolitical considerations play out in the treatment of refugees.

This geopolitical consideration can be noticed easily. For example, when India was not in good terms with China in 1959, the government allowed Tibetans in India. They set up transit camps, offered medical facilities and food supplies as well as their refugee identity documents, travel permits, which privileges were not granted to any other group of refugees.

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<sup>39</sup> Nair, Arjun: National refugee law in India: Benefits and road blockers. (Institute of Peace and Conflict Studies, New Delhi, 2007) Available at [http://www.ipcs.org/pdf\\_file/issue/51462796IPCS-ResearchPaper11-ArjunNair.pdf](http://www.ipcs.org/pdf_file/issue/51462796IPCS-ResearchPaper11-ArjunNair.pdf).

<sup>40</sup> Supra Note 17.

<sup>41</sup> Supra Note 17.

<sup>42</sup> Supra Note 41.

<sup>43</sup> Supra Note 17.

Then in 2014, when India had a comfortable political relation with China an order was passed saying that children of Tibetan refugees born in India between the cut-off date of 1950 and 1987, can no longer be denied enrolment in voters' lists. This shows the effect of geopolitical relation within the Tibetans Refugees group where different treatment is given to different refugees of the same group.

Further Sri Lankan refugees, although granted acknowledgement by the State, have no freedom of movement, no right to work and are forced to sustain themselves on limited government allowance. Moreover, only those living in the State's camps are recognized as refugees and receive essential items at highly subsidized rates<sup>44</sup>. They depend upon which party is in power<sup>45</sup>.

This highlights the crucial need for exercising uniformity regarding the treatment of refugees and to stop offering privileges to them according to political, economic or administrative influences.

## **2. Refugees Recognized by UNHCR**

Somali refugees don't even enjoy minimum privileges, such as the right to apply for residence permit. Thus, they are unable to work legally.<sup>46</sup> They receive a subsistence allowance from UNHCR. They face greater challenges than other refugee groups not only because of the language barrier but also because of their skin color, which brings greater attention of the police.

## **3. Refugee Not Recognized By The Government or The UNHCR**

The Nepalese Bhutanese refugees are neither recognized by India nor by the UNCHR and don't have any financial/humanitarian assistance from either entity. This is another example of differential treatment by the Indian government, under political influences. A Treaty was signed between India and Bhutan in 1949 and updated in 2007 giving the Nepalese Bhutanese refugees permission to move freely across the border between India, Nepal and Bhutan, granting them the right to equal treatment and privileges as Indian citizens<sup>47</sup>.

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<sup>44</sup>Supra Note 17

<sup>45</sup> Legal Rights of Refugees in India, Indian Social Institute, Jesuit Refugee Service, (October 2015)

<sup>46</sup> Id at 47

<sup>47</sup> me.gov.in 2007, Available at [https://www.mea.gov.in/Uploads/PublicationDocs/169\\_Annual-Report-2007-2008.pdf](https://www.mea.gov.in/Uploads/PublicationDocs/169_Annual-Report-2007-2008.pdf)

The Hindu Pakistani refugee group that arrived since 1965 and settled in the Rajasthan and Gujarat areas are also not recognized by either the UNHCR or India. The Citizenship Amendment Rules 2004 specifically provide for Pakistanis to apply for citizenship in Gujarat and Rajasthan<sup>48</sup>. The conditions for citizenship are that the individual must have been continuously resident in India for five years, rather than for 12 years as is the case with other foreigners applying for citizenship, and intend to settle permanently in India.

## **Findings & Discussions**

The Researchers conducted a survey wherein responses were collected by a way of circulating questionnaire and comprised of a sample size of 102. The data collected from the sample represent the population

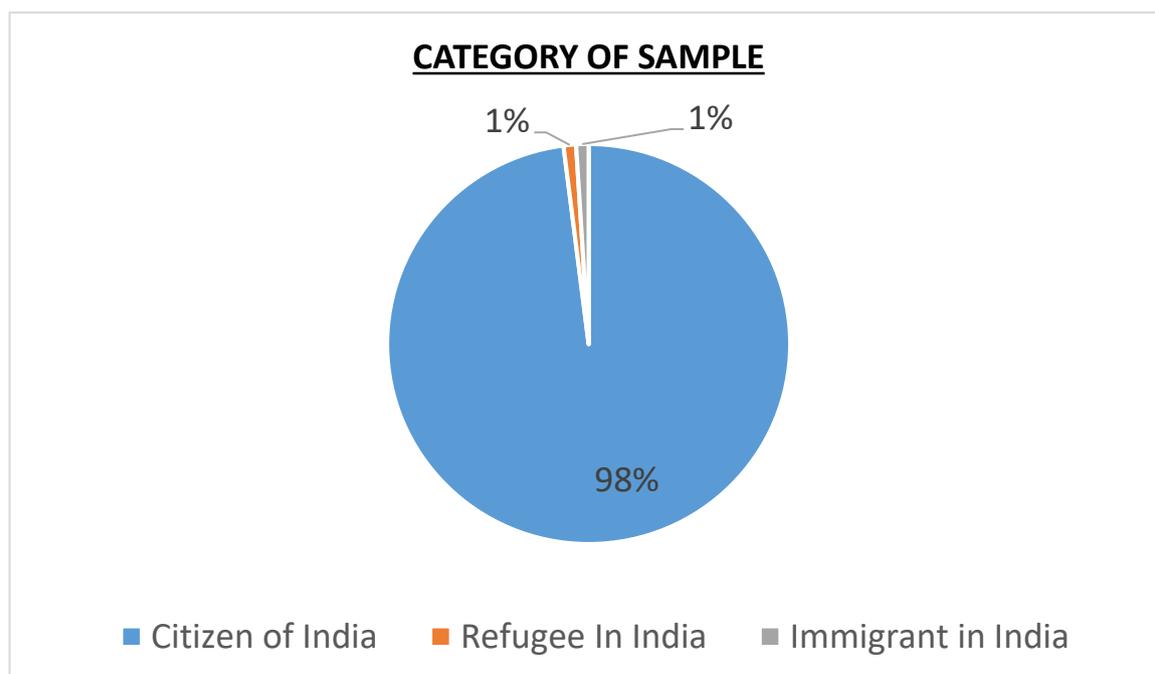
The primary data could be analyzed under the following heads:

### **1. Category of Population**

The survey showed that 98% who took the survey are citizens of India while just 1% are immigrants in India and 1% are refugees. This figure highlights that although even a sample of 102 was picked up as a part of the research, there still was one refugee to whom the questionnaire reached out to. Thus, inferring that it cannot be denied that possibilities exist that refugee composition are quite substantial in India. Moreover, reports show that India shelters most numbers of refugees hence projecting the correct representation.

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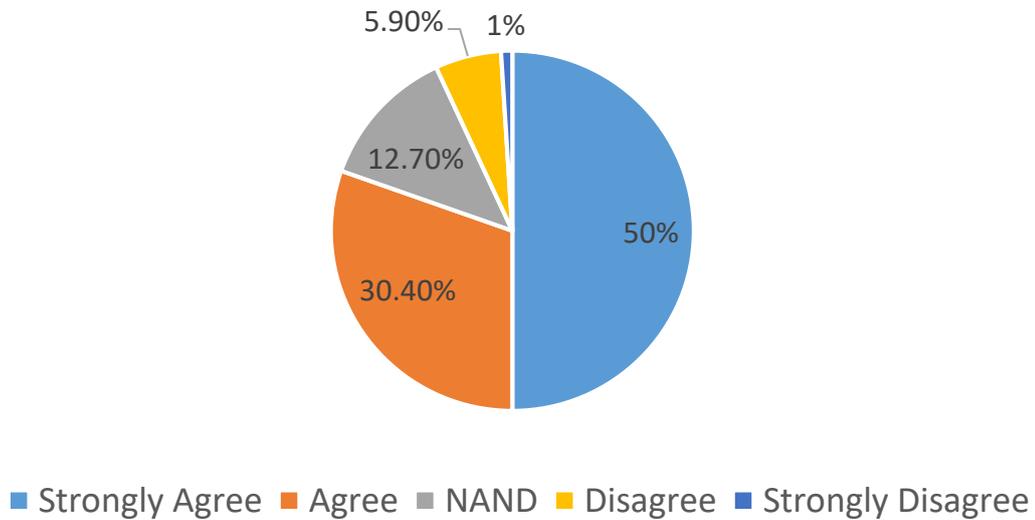
<sup>48</sup>Id at 49.



## 2. Treatment to Foreign Entry

The survey questioned if the nation has been welcoming to the refugees to which the majority of 50% answered in affirmative. These 50% represent the ones strongly agreeing to India being welcoming to refugees while 30.4 % just agree and 12.7 % neither Agree nor disagree while just a minority of contrary opinion from 5.9% disagreeing and 1% strongly disagreeing. The possible interpretation to such a figure is because of India's long-standing belief in *Atithi Devo Bhava* but the deviated opinions have also cropped up owing to the recent India-China diplomatic barriers which saw Chinese troops invading India and were reported to have crept in the territory as refugees. Amore recent instance could be given of the Rohingya crisis where they came in masses towards India which the Indian people were skeptical of co-existence.

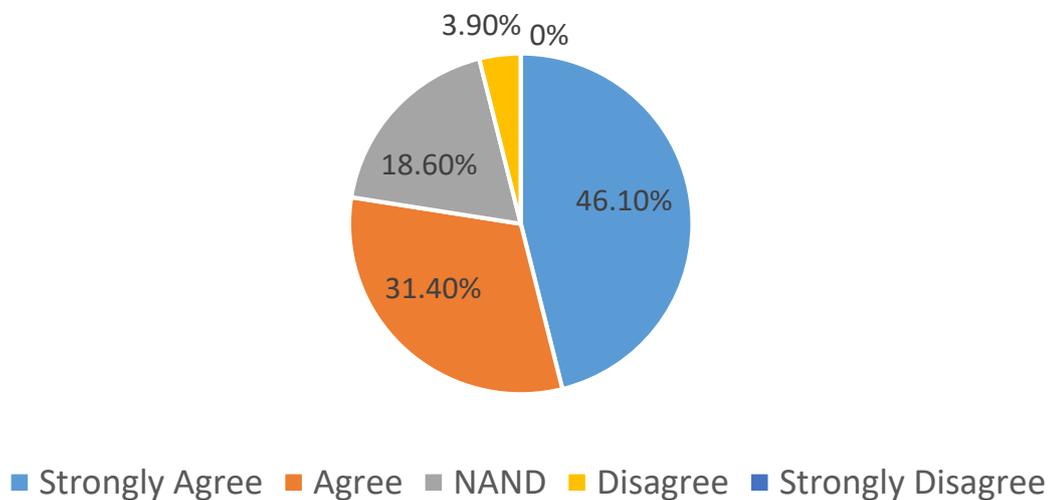
**INDIA HAS BEEN VERY WELCOMING TO THE FOREIGN ENTRY(REFUGEES/IMMIGRANTS)**



**3. Unregulated Foreign Entry**

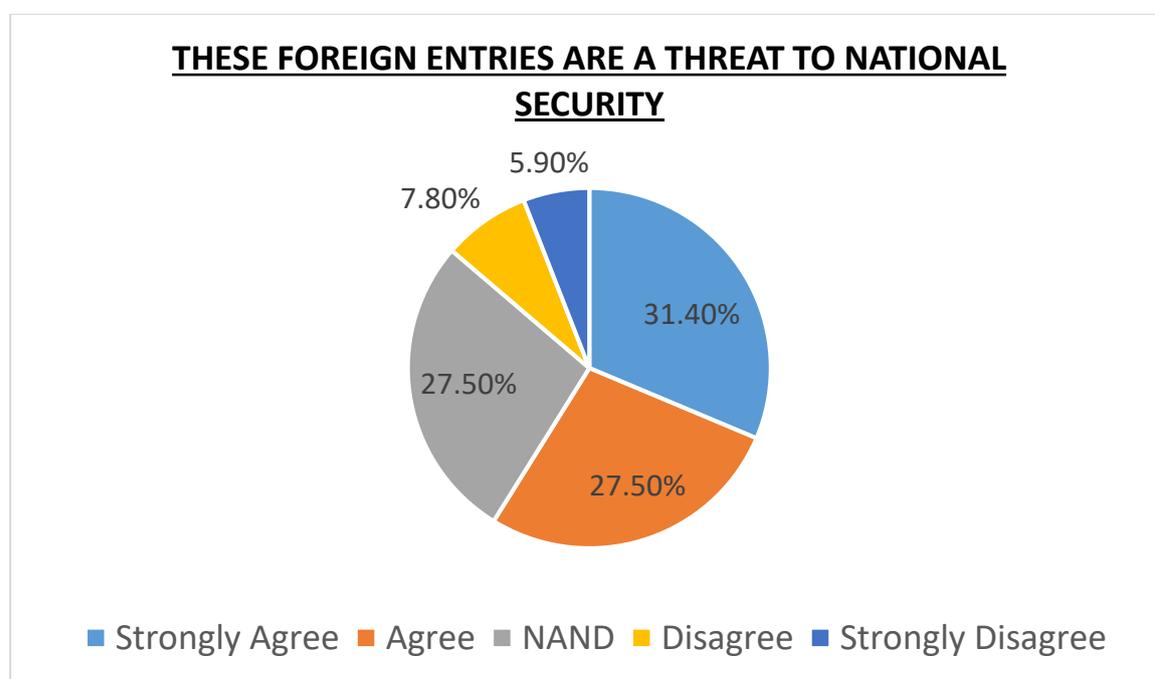
A major input that was sought from the sample was whether the foreign entry of refugees in India are regulated or not. A majority opinion constituting 46.1% strongly agreed that these foreign entries are not regulated while 31.4% just agree that there is a lack of regulation when it comes to entrance of refugees in India. 18.6% of the sample are of neutral opinion while just a minority of 3.9% dissented to the statement. This brings into focus the citizen's awareness regarding the loophole that persists in our country and there might a need to avert it to the core.

**THESE FOREIGN ENTRIES ARE UNREGULATED**



#### 4. Threat To National Security

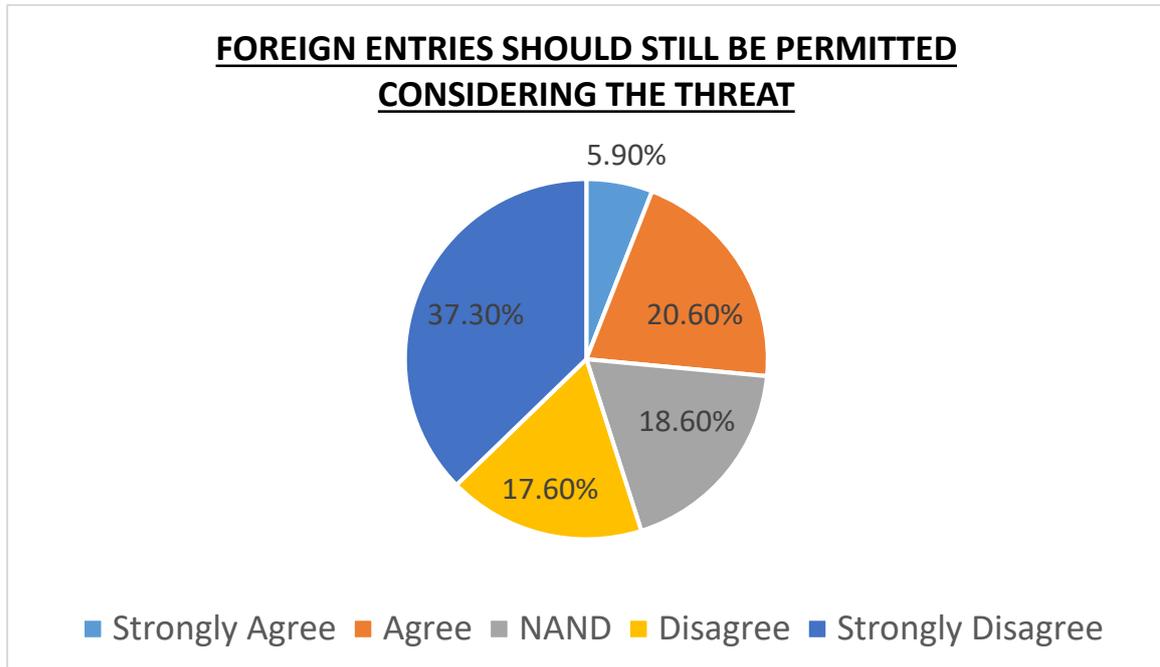
The researchers viewed the entry of such objectionable entities as a breach to security and threat to national interest. With 31.4% strongly agreeing that the foreign entry is a threat to national security, 27.5 % just agreeing to security threat while 27.5 % keeping neutral opinions. Moreover the minority comprising 5.9% strongly disagreeing and 7.8% disagreeing have refuting opinion. Researchers have a point of view that since most of the refugee exit one country to be refugee of another country because of exigencies in which they are deprived of basic necessities and thus they would be least lethal entities. Although the researchers still take the majority stand owing the fact that when there is mass entry, there might be chances where terror spreading elements claiming to be refugee can get access.



#### 5. Access To Free Entry

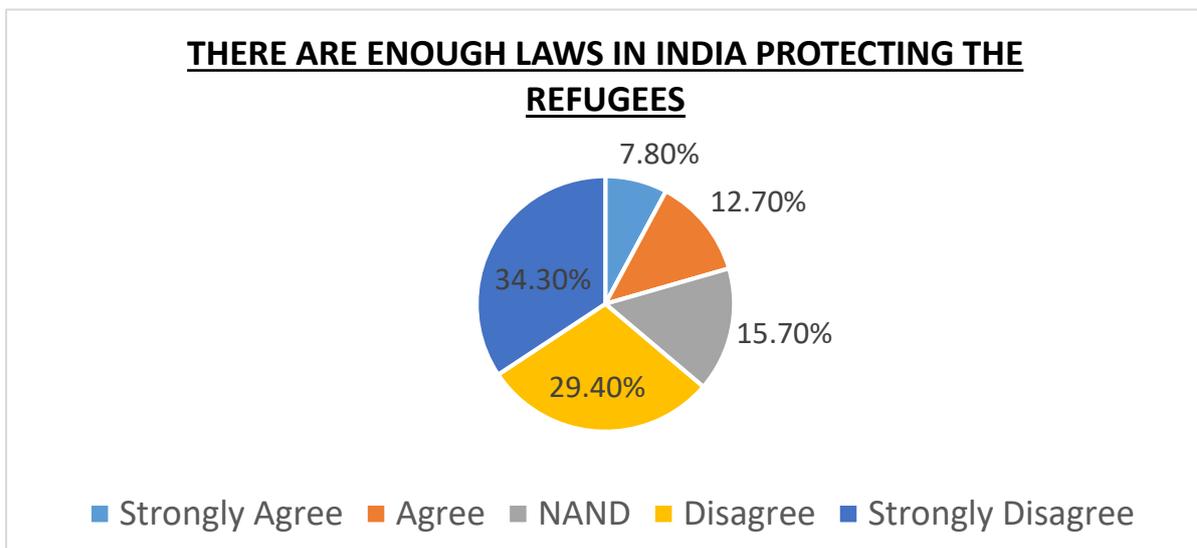
Having discussed the concern for threat to national security, the other question that crops up is whether to deny entry if there is a threat to security. On questioning this, the response that was received was, 37.3 % strongly disagreeing to permit these refugee inside Indian Territory while 17.6 % just disagreeing to permit, while 18.6% keep a neutral opinion 20.6% agree while 5.9% strongly agree. The question is do we really hinder the hopes for those seeking asylum and whether utilitarianism is just a principle. In affirmative to such a question we see 20.6% of the sample suggesting to still let the

refugee enter while 5.9% strongly agree even though we see majority drifted away from the above thought process.



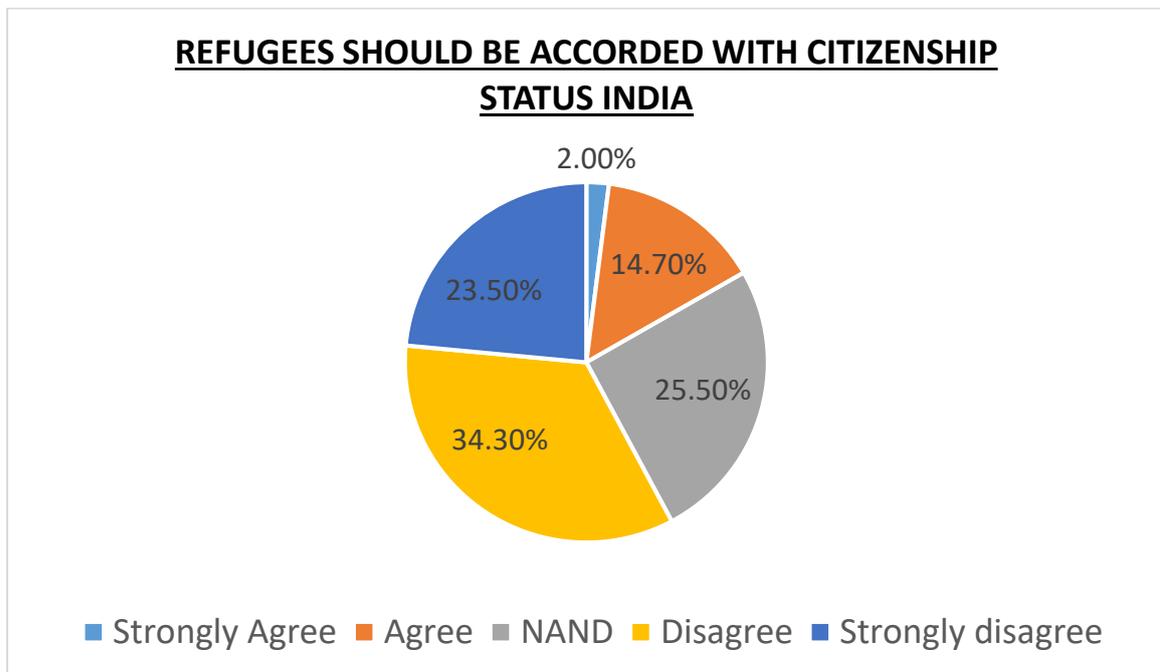
#### **6. Laws Protecting Refugees In India**

The most important concern which the paper deals with is the insufficiency of laws protecting refugees in India. When the sample's opinion was asked for, the point to be brought into light was indicated. The data showed 34.3% of the sample strongly disagreeing to sufficiency of laws in protecting refugees, while 29.4% just disagreeing to the sufficiency of laws. Moreover 15.7% of the sample were of neutral opinion while 12.7% and 7.8 % agreed and strongly agreed respectively. This brings us to the conclusion that the majority outnumbering the minority by a huge margin shows the need



## 7. Citizenship To Refugees

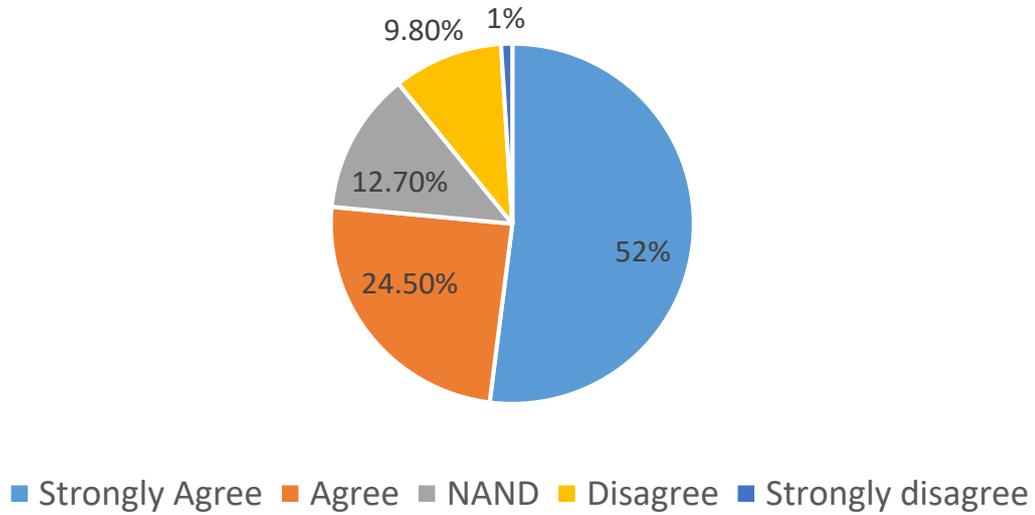
When the refugees are shown the way out of their country permanently they are left with no option but to migrate to other countries as refugees. Granting citizenship to these refugees becomes a question therefore. Henceforth the accordance of citizenship is also of a sensitive nature as there might be undue advantage that one might take plus India already being a home to 1.37 billion people constituting 17% of the world population we might just consider doing that. Thus to this 34.3% disagree that citizenship status should not be conferred while 23.5% strongly disagree to granting of citizenship status while 25.5% keep a neutral opinion , further 14.7% and 2% agree and strongly agree to the grant of citizenship status.



## 8. Over-Population

Adding on to the previous question would India have an issue keeping an open door policy? The researchers feel that we belong to an already overpopulated country. Letting in refugees without checks and measures would make it worse. Posing the same question upon the sample 52% strongly agreed that such entries would make problem worse while 24.5% just agreed. Additionally, 12.7% remained neutral and 9.8% & 1% & disagreed and strongly disagreed respectively.

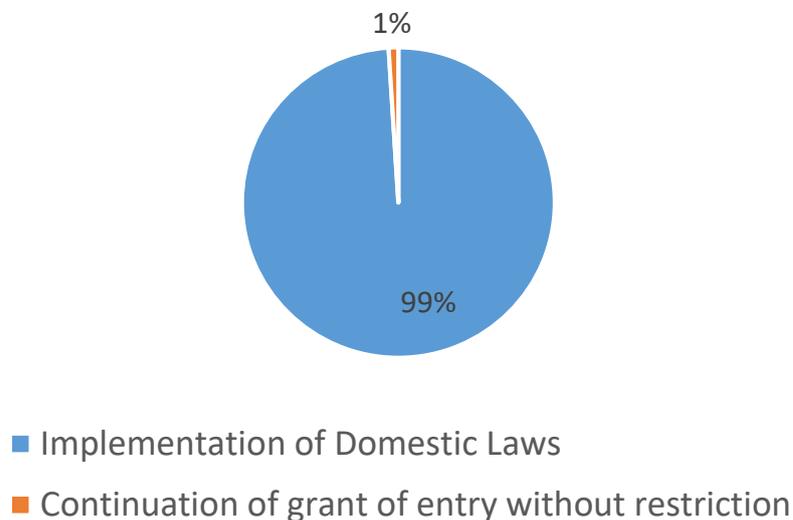
**FOREIGN ENTRIES WOULD MAKE PROBLEM OF OVER POPULATION WORSE**



**9. Means Of Ensuring Systematic Control Of Refugees**

In the final input received from the sample, it was questioned as to what measure would ensure systematic control of refugees in India. 99% of the sample answered that only implementation of domestic law could regulate such an activity. While just 1% responded suggesting that continuation of grant of entry without restriction is fine and that no development is needed. The researchers feel that the responses is self-explanatory in nature and that it is time to tackle the unvisited area by the legislature.

**IN YOUR OPINION WHAT WOULD ENSURE SYSTEMATIC CONTROL OF REFUGEES**



## **Limitations**

The Government by their inaction has made it clear that there are other pressing issues that play a major role than human rights infringements perpetrated by their own authorities. The researchers understand that these might be the probable hindrances for devising a domestic law:

1. Current arrangement of managing the quantum of migrants and asylum seekers through ‘ad hoc’ administrative decisions based on political and security considerations rather than specific legislative enactments is politically more convenient.
2. Existence of different treaties with neighboring countries would be a barrier to a uniform law.
3. India’s conclusion that “unwanted migration including those of refugees, are a source of bilateral and not multilateral relations and that international agreements could constrict her freedom of action”.<sup>49</sup>
4. Priority of security consideration rank higher owing to the porous nature of its borders.
5. Proposed domestic law would encourage more refugee in the country, with more rights and government services increasing threat of social, economic and political insecurity.
6. Three-dimensional risk model explaining the risk to national security
  - i. Strategic level security when refugees armed enter and the government loses control over the refugees.
  - ii. Structural-level security is threatened by increasing demands and conflict over scarce resources.
  - iii. Regime- level security threatened when the refugees enter the domestic political process and create pressures on the government.
7. Untrue representation of migrants as refugees to bag employment opportunities.

## **Recommendations**

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<sup>49</sup>Sarbani Sen, “Paradoxes of the International Regime of Care,” in Supra Note 17.

With incessant debates and discussions over the need to pass a domestic legislation and framing of a Refugee Convention specifically for South-East Asian Countries, we come to a conclusion that with recent exigencies of the Rohingya crisis, need is felt for adaptation of domestic laws. The researchers are of the view that both domestic law and a Convention for South-East Asia should co-exist so that if there arises any lacuna in domestic law, the convention backs it up. In light of this various recommendations are:

**Need for a domestic Law**

1. There is a need to urgently incorporate a domestic law to ensure that all refugees are provided the basic protection without which the rights of refugee are just a myth.
2. There has emerged the need to define refugees and inclusion of people who are internally displaced due to natural calamities, terrorist activities or governmental policy on ethnic discrimination.
3. Most important crisis is to accommodate these displaced people. Thus, housing and employment laws could be introduced to ensure self-reliance.
4. A number of civil society organizations should work in collaboration under this act to improve their living conditions.
5. The new act could be a consolidation of all the existing acts on similar lines. In this process the earlier acts like the passport act and the foreigner act could be repealed.
6. A domestic law would simplify the procedure of grant of refugee status.
7. The derogatory moves by other countries like ethnic cleansing, racial discrimination which makes the refugee insecure would be abolished in the entering country.
8. There could be special provisions for to protect women and children from crimes against them which is in consonance with CEDAW and UNCRC.

**Need for South Asian Refugee Convention.**

1. Like India, there are many other South Asian countries which have not been a signatory to the 1951 convention, a convention specific to the South Asian countries would be of great significance to ensure refugee protection.
2. A mutual Draft Convention from the experts from these countries based on the understanding of each nation could be prepared and in this way each country's background would be reflected in the convention.
3. There is a need to broaden the ambit of refugee so as to incorporate people displaced due to environmental disasters, socially ostracized for having a particular sexual orientation and people fleeing because of crimes against women and children. This would ensure no western intervention and at the same time, maximum protection can be given.
4. The convention would book the violator of refugee rights and would back formulation of a regional tribunal to deal with matters of refugees including trials, repatriation, rights and duties.
5. Reduction of animosity and diplomatic buildup of tension. The clause could be worded as "*providing refugee is a humanitarian act and shall not be interpreted as infringement to the sovereignty of the nation.*"<sup>50</sup>

Thus, when both the Conventions and the municipal laws would be in order, all the problems and issues associated with refugees would be addressed in an efficient manner. The above recommendation if incorporated would strike down arbitrariness and any official deviating from the duty to be performed would be held liable. The researchers have brought points all of which aim at one thing that is mending of definite refugee mechanism.

## **Conclusion**

So far India has dealt with mass refugee influx without a refugee law but with ever expanding population of refugees, a large chunk of who may not be repatriated in the near future, a standard domestic law would assist the government to maintain its huge non-citizen population with more accountability and transparency.

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<sup>50</sup> Supra Note 17

The NHRC has rightly suggested various recommendations but apparently the legislature is taking the matter in a very sensitive way. Probably the criticism and doubts have provided enough inputs for India to work on and witnessing the dynamism in the law and policy enactment in the country, very soon an Indocentric nature and content of law combining humanitarian need of the refugees with national interest would be enacted. It is not refuted that India has done appreciable concerning refugees but there is still a lot to be done for realization and enforcement of human rights of refugees

The authors objective of proving the point of conflict has been brought up in an extensive manner and with this inference, the research has been successful in keeping the point because ultimately how far can we serve in the name of “*Atihi Devo Bhava*”