ROHINGYA REFUGEE CRISIS: INDIA’S LEGAL STAND & WAY FORWARD

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INTRODUCTION

The fundamental reason behind this paper is to determine the plight of Rohingya refugees residing in India. The project will provide the holistic view of the stages that they happened to live after escaping from Myanmar. The study will also cover the origin of the community which will further reach the stage of victimization and detailed study about their persecution. The study will then proceed with the International Conventions and laws relating to refugees where there would be critical examining of relevant articles mentioned under Universal Declaration of Human Rights, also general comment mentioned by United Nation Human Right Council about coerced and forced sterilization violates the Right to be Free from Cruel, Inhuman and Degrading Treatment (ICCPR, Article 7). Consecutively then this paper will determine some case study of Refugees like SrilankanTamilians, Tibetians and their conditions presently in India. It will cover their complete plot from abandoning their home country and settling in India. Further the PIL filed in Supreme Court of India about the status of their condition and their deportation will be critically examined. “The critical examination will cover the point about the effect if they are provided shelter in India, about their earning and also about their political status in the country. Lastly there would be a discussion upon the approach that one host country certainly should practice while addressing Refugees. Importantly a thoughtful hand should be given about the belief that every member of the Refugee Community cannot be militants. Hence taking women, children and old people into account their rights certainly should be safeguarded as of a priority.”
ORIGIN OF ROHINGYAS

Rohingyas are the indigenous habitant of Myanmar. It is a Muslim community originating from Arakan Kingdom which was situated on the western coast of Burma presently known as State of Rakhine. In olden period kingdom was either ruled by Indian rulers or Burmese Empires. They speakRohingya or Ruaingga that is rare and distinct from other languages spoken in Rakhine. J.A. Berlie in his book Burmanization of Myanmar’s Muslims magnificently illustrates the diversity of different Muslim groups residing in the country and also he pointed out that “the process of Burmanization has affected the Arakenese Muslims the most”.

Rohingyas are one of those ethnic groups who have been denied citizenship since 1982 rendering them to become stateless. Imtiaz Ahmed in his book the plight of stateless Rohingyas discusses the extreme condition under which Rohingyas are living and various international responses over it. He has also discussed about multiculturalism where the concept of citizenship hasn’t been touched”. “Usually multiculturalism follows with the accepted valid citizenship but in case of Rohingyas they have been denied citizenship which absolves them from claiming any political and civil rights”.

The Burmese Government has been deviated from the concept of human rights and made laws on the prospect of elites soothing their situation. So in order to reach to the conclusion of the ethnicity of Rohingyas, ethnographic approach can be taken into consideration which includes 3 process analyses: collective social memory, camp life experience, lastly their music and arts.”Since 12th century”Rohingyas are residing in Myanmar which means that when collective social memory is pointed out whatever they remember about past life experience covers the picture of Myanmar. “Secondly their present exiled camp life status draws to an extent consciously or unconsciously music and art which has been ethnic to the place giving them the identity of Rohingya. A nation cannot avoid one’s originality on the basis of their religion therefore on account of being a Muslim they cannot be denied from their natural rights.”

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2 J.A. Berlie, Burmanization of Mynmar’s, pg. 37, 2008.
3 Ibid.
5 Ibid.
According to the jurisprudential view of natural law provided by St. Thomas Aquinas, “No law is above eternal law. Any law made should not violate eternal law. Natural law is the basis of eternal law. Therefore every individual has the right to live with basic necessities like food, shelter etc”. Here Burmese government by not providing citizenship makes them devoid of place for living i.e. shelter leading to violation of their natural right. In present day natural right has been accepted as the concept of basic human right that can be substantiated with an example of view established by Hobbes “Human rights as the idea of right to basic needs.”. These Rohingyas live in the ghetto like camps lacking basic necessities which forces them for illegal immigration to neighboring countries.

PROBLEM CONCERNING CITIZENSHIP OF ROHINGYAS

Soon after the Myanmar was granted independence, the conspiracy for the denial of citizenship to Rohingyas started. A Citizenship Act was passed in 1948 defining citizenship and recognizing certain ethnic group who were allowed to gain citizenship known as indigenous races of Burma. The list did not mention Rohingyas. “However act allowed people to obtain identity cards if their previous two generations has resided in the country. Initially Rohingyas were provided identification card under this scheme however after Military coup of 1962 government started declining to provide identification to Rohingya children resulting in complete non recognition of new generation of Rohingyas.” Later in 1974 Myanmar government came up with a new rule that every citizen must obtain National Registration Cards whereas Rohingyas were only allowed to obtain Foreign Registration Cards as it is not recognized by many employers and schools limiting their job and educational opportunities.

In 1982 a new citizenship law came into force displacing the previous one which was instituted by General Ne Win. “The law stated that in order to obtain a citizenship one should provide proof that ones’ ancestors has resided in Myanmar before 1948. Many Rohingyas lacked in

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6 Thomas Aquinas, On Law, Morality, and Politics, pg. 91.
7 Constitution of the Union of Burma, Chapter II, para.11(i) (1947).
documents of their family’s historical residence. Consequently Burmese Government withheld their Identity Cards.” However even if some of them provided the proof they had to clear another level of naturalization which required fluency in one of the Myanmar’s National language. Due to limited access to education it was not possible for them to learn one of the national recognized languages.

General Ne Win defended the act by saying that “national security cannot be put at stake just for the humanitarian grounds”. However the permission to live in this country through lawful means is provided but governmental participation is restricted. This act has severely affected Rohingyas as most of them are stateless, also due to lack of resources they cannot approach courts. Their ethnicity has been denied by and then, sometimes by their government officials. Also once it was stated by one of their foreign Minister OhnGyaw that there has never been Rohingya race in Myanmar and described them as illegal immigrants. Their lament is unheard itself in their homeland.

Minority Rights is the predominant issue under Human Rights. International law has always focused upon and has been working proficiently to master this area. Larger, issues like South African- Apartheid was resolved after lot of fight and struggle. In the same way Rohingyas have completed their struggle on their part and now it is the time for international bodies to come into play. The Burmese Government attitude of purge towards Rohingyas has to be brought to halt.”

**LAWS & CONVENTIONS GOVERNING REFUGEES**

Now, the study will further bring insight into international conventions providing protection to refugees. Additionally, few case studies describing their plot of struggle and implementation of human rights. Taking last few years into consideration iota of refugee struggle has taken place around the world.

**DEFINITION OF REFUGEES:**

It was usually held that the task to define refugee was very dynamic in nature. However in 1951 a concrete definition was adopted by United Nation Convention relating to the Status of

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10 *Supra* note. 6.
11 Human Rights Watch, Burma: The Rohingya Muslims, p.9
Refugees (the Refugee Convention) and it defines as: “owing to a 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 to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution...”

The persecution on the group should be based on one of the five grounds listed in article 1 A (2) of the Refugee Convention i.e. race, religion, nationality, working as a member of a particular social group or political opinion.

1. Race: A broader concept inclusive of ethnic and social groups of common descent.

2. Religion: Another larger concept including people practicing same tradition and belief with a common religion.

3. Nationality: It refers to one’s citizenship. Additionally it also includes persecution of ethnic, linguistic and cultural groups within a population as the persecution on the basis of nationality.

4. A particular social group includes people who share a common background or social status. This is an overlapping category amongst the other four grounds. Example: It has been applicable to families of capitalists, landowners, homosexuals, entrepreneurs and former members of the military.

Political opinion: It is an opinion that would be eventually intolerable by the authorities, for example critical analysis of government policies and methods. Nevertheless it also includes the opinion of authorities where they believe that certain group of person carries certain political opinion which they may/ may not hold. Also those people are even qualified for refugees who believe that their belief can lead them to persecution so they run away from their country.

These are the requisites need to be fulfilled for determining one or group as refugees. During a mass exodus it is difficult for the government of the host country to do individual screening so in
such circumstances refugee status is provided to a group as a whole, which means each civilian is considered to be a refugee, due to the absence of evidence to the contrary.

**STATUS UNDER INTERNATIONAL LAW**

Right to seek asylum has been recognized by international law but its’ implication depends on the host state. It has been observed that when there is large mass exodus countries offer them temporary protection as it may affect their nations’ regular system. This is a way how people can be made safe for a particular period of time. Thus ‘temporary protection’ is helpful in providing interim protection safeguarding the interest of both government and asylum seekers However it cannot be avoided that temporary protection is mere complementary in nature and doesn’t adhere to wider protection measures offered by the Refugee Convention.13

Refugee protection and assistance organizations generally promote three ”durable solutions” to the fate of refugees:

- **Voluntary repatriation**: refugees are able to return to their home country because their lives and liberty are no longer threatened;
- **Local integration**: host governments allow refugees to integrate into the country of first asylum; and
- **Resettlement in a third country**: repatriation is unsafe and the first-asylum country refuses local integration.

Their rights to move and work are often highly restricted, and educational and recreational opportunities are often nonexistent or severely lacking. These refugees may also be subject to attack, either by local security forces or by cross-border incursions from the country of origin.14

- **Stipulated rights for violation**

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“Non refoulement is the process of putting restriction on the forced return of a refugee making it one of the most fundamental principles in international refugee law. This principle is laid out in Article 33 of the Convention Relating to the Status of Refugees, which says that no state “shall expel or return (‘refouler’ in French) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

In some countries asylum seekers are detained as soon as they arrive. This causes another grievous moral breakdown of the asylum seekers as they would have had already suffered same in their native so they have run and again they have to go through all such heinous punishments. Therefore, it cannot be neglected that detention can cause serious emotional and psychological stress. According to Article 31 of the Refugee Convention the refugees are safeguarded from penalizing in spite of the fact that they have entered a country illegally as they were under extreme danger and upon reaching they have made themselves known to the authorities. Hence, asylum seekers are not liable to be detained for forged identification papers or travel documents.

The following organizations play key roles in assisting and protecting refugees worldwide:

1. **United Nations High Commissioner for Refugees**: It was prepared in 1951 to work for the international protection of refugees. “The organizations primary agenda is to ensure that all persons can exercise the right to seek asylum and find safe living in another state, and to return home voluntarily. Another additional objective is to encourage governments to make refugee friendly laws which is just, equitable and fair creating egalitarian environment. When UNHCR was first established, material aspects of refugee relief (e.g., housing, food) were seen to be the responsibility of the government that had granted asylum”. “As many of the world’s more recent major refugee flows have occurred in less developed countries, due to which UNHCR has acquired the additional role of coordinating material assistance for refugees and returnees. Initially providing additional assistance was not the original mandate but gradually it moved into

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16 Ibid.
one of its’ principal function alongside protection and promotion of solutions. The International Organization of Migration (IOM) assists with the return of rejected asylum seekers and refugees referred by UNHCR.”

(ii) **International Committee of the Red Cross**: It is an independent humanitarian organization acting neutrally for the protection and assistance of war victims from providing medical care to victims to arranging exchanges of family messages. There are certain ways how ICRC provide assistance to the displaced persons like by medical assistance, food aid and restoration of family links between persons separated by war. The ICRC does not have a general mandate to provide protection and assistance to internally displaced persons. As per the reports over the years, it has provided limited assistance to certain groups of internally displaced persons. The ICRC is considered pivotal organ in providing help during crisis or in humanitarian situation. It carries out it work on the command of UN Secretary General who has been requested by the country involved.”17

**INTERNATIONAL AND REGIONAL INSTRUMENTS FOR PROTECTION**

International framework comes into play in the form of a treaty also acclaimed as agreement, convention and protocol which is binding on the contracting states. “Eventually after completion of negotiation, the authentic text of the treaty is made and contracting parties are made to sign. There are various means by which a state expresses its consent to be bound by a treaty. “The most common are ratification or accession.”. A new treaty is ratified by those states who have made negotiations while framing of the instrument .However if a state which has not participated in the negotiations maybe at a later stage, accede to the treaty. The treaty comes into force once a pre-determined number of states have ratified or acceded to the treaty.”18

Reservation can be made in a treaty which means that contracting state can make reservations to one or more article of the treaty unless it is prohibited. However it can be withdrawn by the party at any time. As per observation some countries follow the practice of taking international treaty

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18 Supra note 12
as precedence over their native law; while in other countries international treaty can be brought into force by making a specific law for inculcating it in domestic law.” Therefore in order to practically enforce international treaty a state might need to amend existing laws, issue decrees or introduce new legislation. Many international treaties have a watchdog looking after the implementation of the treaty whereas the Refugee Convention does not have any such body that monitors state obligations and commitments towards asylum seekers.

**POSITION OF INDIA UNDER SOME INTERNATIONAL CONVENTIONS FOR REFUGEE PROTECTION**

The main approach adopted in India is to treat the refugees under the laws applicable for all foreigners. But there exist a considerable difference between a refugee and a foreigner. The 1951 Convention on Refugees defines the group as those who have fled from their home country owing to well-founded fear of persecution on race, religion, nationality, membership of a particular social group or political opinion and is unable or unwilling to return to his country because of that reason. But ordinary foreigners are quite different category. They may include temporary residents, tourists or travelers.” They come to India for specific purpose with the prior permission of Indian Government. They may turn as refugees if during their stay in India the circumstances in their homeland turned as equal to that of 1951.19 “There is yet another category like illegal economic migrants who intrude into our borders solely to improve their economic prospects without any formal authorization from both the country of origin and destination. Another threatening group is that of criminals, spies, infiltrators, militants etc. They will be dealt with Indian criminal laws or special laws even if they have a valid travel document. If all these categories of people are handled with the same legislation there is bound to be disparities and injustices”. 20

In the absence of a specific statute often the plight of the refugees are decided based on the Foreigner’s Act drafted as early in 1946, the Emigration Act, 1983 and the rules framed there under, the Passport Act 1967 and above all the Indian Constitution under Art 21. In India the

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20 Ibid
major law enforcing agencies which will deal with the refugees on the first hand are the security personnel at the border, the immigration personnel at land check post, international airport and the seaport, and the State Police personnel. “But till date it generally confirms to the international documents for the protection of refugees. The status of refugees in India is governed mainly by political and administrative decisions rather than any codified model of conduct.21 The ad hoc nature of the Government’s approach has led to varying treatment of different refugee groups. Nowadays there has been stringent approach in dealing with foreigners due to security concerns. This has resulted in genuine refugees paying an unfortunate price in a country that otherwise has an impressive history of protecting refugees.”22

UNITED NATIONS:

- **Universal Declaration of Human Rights (1948) (article 14):** The first international document that recognizes the right to seek and enjoy asylum from persecution.
- **Convention relating to the Status of Refugees (1951):** This was the first international agreement covering the most fundamental aspects of a refugee’s life. The purpose behind this act was to help in creating equivalent status for the refugees in lieu of other foreign nations residing legally in the country and also in some cases to the citizens of the state.23 The process for implementation could only be started on co-operation amongst the countries during crises and necessity through burden sharing amongst states while tackling problem. As of 1 October 2002, 141 countries had ratified the Refugee Convention. India has not ratified it.24
- **Protocol Relating to the Status of Refugees (1967):** The protocol abolished the geographical and time limitation of the original Refugee Convention where mainly

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22 BhairavAcharya, ‘The law, policy and practice of refugee protection in India
23 UNHCR Conventions Implementation Status, (Available at: hrlibrary.ngo.ru, last accessed on 13.12.2017 at 7:12pm)
24 Ibid
Europeans were given refugee status for the events occurring before 1 January 1951. India is not a party to it.\textsuperscript{25}

- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (article 3):** “As per this convention asylum seekers are provided protection from forced expulsion as they fear persecution from the native state. It basically focuses on inhumane condition violating basic human rights of an individual depriving them from their life to live. “European Courts has accepted this principle in an in-direct manner as established in the case of *Soering v. the United Kingdom*\textsuperscript{26}. A state cannot avoid welfare rights of an individual and has to take view before one’s deportation. The monitoring body of this convention, the Committee against Torture, has established some fundamental principles relating to the expulsion of refused asylum seekers. India hasn’t ratified it.””


- **Declaration on the Elimination of Violence against Women (1994):** Under this the vulnerability of refugee women has been highlighted. Therefore certain rights has been allotted to them for their protection. India has ratified the convention in 1993.

**REFUGEE STATUS UNDER INDIAN LAW**

The Indian Government has not signed the 1951 Refugee Convention or the 1967 Protocol due to our financial constraints. India itself is a poor country where 500 million people are deprived of basic necessities. However Indian judiciary does recognize refugees and refugee law to an extent. It has opened refugee law into our legal system through the back door as it was shut off from the front by the executive.

The Universal Declaration of Human Rights states under Article 14 (1) that everyone has the right to seek and enjoy in other countries asylum from persecution. It has been interpreted in the following manner concluding that the right to enjoy asylum means no more than the right to

\textsuperscript{25} Ibid
\textsuperscript{26} Soering v. the United Kingdom, 161 Eur. Ct. H.R 1989
enjoy it if it is granted. In simpler terms it means that although an asylum seeker has no right to be granted admission to a foreign state, equally a State which has granted him asylum must not later return him to the country where he came from.”

Despite India’s reservation with signing the Refugee Convention, it has to be taken into note that it has international humanitarian commitments. As the country complies with a great number of international conventions and treaties, which by definition are also pertinent to refugees, the Government of India is expected to respect refugees’ human rights. India is a party to the 1966 International Covenant on Civil and Political Rights (ICCPR), where it has made a special provision for Article 13 in relation to the eviction of a person lawfully present in the territory of the State. “Also, India accepted the 1963 Convention on the Elimination of All forms of Racial Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights, and the 1979 Convention on the Elimination of All forms of Discrimination against Women (CEDAW). Apart from that, India has acceded to the 1989 Convention on the Rights of the Child and ratified the 1984 Convention against Torture (CAT)”. It is to be highlighted here that India has accepted the 1948 Universal Human Rights Declaration (UDHR) the Article 14(1) of which states, “Everyone has the right to seek and to enjoy in other countries asylum from persecution”. Being a member of the Asian-African Legal Consultative Organization (AALCO), India is a party to the Bangkok Principles (refworld.org 1996a) on the Status and Treatment of Refugees which was adopted on 24 June 2001 at the 40th session of AALCO in New Delhi.

In State of Arunachal Pradesh and Another (1996), the Supreme Court held that “all ‘refugees’ within Indian territory are guaranteed the right to life and personal liberty enshrined in Article 21 of the Constitution”.

Hon’ble Justice Ahmadi in his judgment declared that the State is bound to guard the life and liberty of each human being, whether s/he is a citizen or otherwise, and it cannot allow a person or group of persons to threaten the refugees. No state government is supposed to stand such threats by one group of persons to another; it has a duty to protect the threatened group from such attacks and failing to do so will infer that it has failed to perform its constitutional and

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27 Dr L.M. Singhvi, JagdishSwaroop Constitution of India, 3rd Edition Volume 1 page 160
28 Supra note 21
statutory obligations”. There is no law in India which contain any specific provision obliging the State to enforce or implement the international treaties and conventions including the implementation of International Humanitarian Law. Amongst the domestic legislation, the only law that directly deals with the principle of IHL is the Geneva Conventions Act, 1960.\textsuperscript{30}


“\textit{...the Act by itself does not give any special remedy. It does give indirect protection by providing for branches of Conventions. The Conventions are not made enforceable by the Government against itself, nor does the Act give a cause of action to any party for the enforcement of the Conventions. Thus there is only an obligation undertaken by the Government of India to respect the Conventions regarding the treatment of civilian population, but there is no right created in respect of protected persons which the Court has been asked to enforce.}”

Moving on to Article 33 (1) of the United Nations Convention on the Status of Refugees which declares that “No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of social group or political opinion”. This is encompassed in Article 21 of the Constitution of India, so long as the presence of refugee is not prejudicial to the law and order and security of India All member nations of United Nation including our country are expected to respect for international treaties and conventions concerning Humanitarian Law.\textsuperscript{32}

In view of directives under Article 51 and 253, International law and treaty obligations are to be respected. The Courts may apply those principles in domestic law provided such principles are not inconsistent with domestic law. When no construction of the domestic law is possible. Courts can give effect to international conventions and treaties by a harmonious construction.\textsuperscript{33}

\textsuperscript{30} Ktaer Abbas Habib Al Qutafi v. Union of India, 1999 Cri LJ 919 (923) Guj.
\textsuperscript{32} Supra note. 11.
\textsuperscript{33} Ibid
CASE STUDY OF CHAKMA REFUGEES

“The case involved a dispute between Chakma refugees residing in Arunachal Pradesh and a group of hostile locals (AAPSU). The Chakma people had been displaced in 1964 from erstwhile East Pakistan (now Bangladesh) and moved from Assam to the current state of Arunachal Pradesh, a sparsely populated area of India. “Although many applied for citizenship, local officials prevented their applications from reaching the federal government; despite living in India for over 30 years, some of the Chakmas remained, officially speaking, non-citizens.” As the Chakma population skyrocketed, the AAPSU issued quit orders, demanding that the Chakma leave or suffer severe harm. Arunachal Pradesh formulated plans to move the Chakmas to another state, even though some neighboring states threatened to kill the Chakmas upon entry. Meanwhile the Ministry of Home Affairs was attempting to confer blanket citizenship (but was continually foiled by the state, which refused to forward the naturalization applications) and demanded that the state provide security at their present location”. “Finally, the NHRC filed a petition in court demanding that Arunachal Pradesh halt the Chakmas. Forced migration and protect them from harm. Fortunately for the Chakmas, the Supreme Court ruled that they could not be moved until the federal government had ruled on their citizenship, and that, in the meanwhile, the state had an obligation to protect them from violence.”

The refugees were citizens of Bangladesh who had entered India in 1971 when it was known as East Pakistan and ruled over by Pakistan. The Apex Court ruling in National Human Rights Commission v. State of Arunachal Pradesh34 stated that Chakma Refugees who had come from Bangladesh due to persecution cannot be forcibly sent back to Bangladesh as they may be killed there and thus they would be deprived of their right under Article 21 of the Constitution. Thus despite the fact that the Indian Government has not signed the Refugee convention, the protection was provided.”35

Another important Constitutional right available to a refugee is Freedom of Religion. Religious persecution is in fact one of the major factors as to why asylum is sought and the eventual

35 H. Knox Thames, India’s Failure to Adequately Protect Refugees
refugee status. Thus non-availability of freedom of religion to a refugee would be fallacious and put a question mark on whole constitutional process available to a refugee.”  

In *Jameshedji v. Soonabhai*\(^37\), it was observed that if this is the belief of the community and it is proved undoubtedly to be the belief of Zoroastrian Community a secular judge is bound to accept the belief.

> “The above decision was accepted by Supreme Court in interpreting Art 25 and 26. It was further observed that Art. 25 is an article of faith in the Constitution incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country’s Constitution. This principle has to be borne in mind while interpreting Art. 25.”\(^38\)

In order to suppress the mischief of fundamentalism of religion the Right was confined under Article 25. The republican character of the Constitution did not permit any distinction between man and man or between one group or another in conferring the Right to Freedom of Religion. This is clear from the very text of the article which provides that “all persons are equally entitled to freedom of conscience and the right freely to practice and propagate religion” The right is thus conferred on all individuals. The right of religious denominations has the rights concomitant to the right to freedom of religion of the individual just as the freedom of the press is derived from right of the citizens conferred by Art. 19(1) (a).\(^39\)

**ANALYSIS & CONCLUSION**

The study holistically brought forward the picture of Refugees in India. It has been deduced that India hasn’t ratified international convention validating refugee status in the country; nevertheless it has worked on the safeguard of their basic human rights through articles under Indian Constitution. Indian Judiciary is independent of executive and legislature. Therefore the Supreme Court has placed human rights at the center of Indian polity and has tried turn them into

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\(^{36}\) Available at: http://refugee-law-with-international-and-indian-perspective://http,  
\(^{37}\) Jamshedji v. Soonabhai, ILR (1909) 33 Bom 122  
\(^{38}\) DD Basu Commentary on the Constitution of India 8th edition 2008, pg 3446  
\(^{39}\) LalNarainSinha, Indian Constitution A Fresh Look, 1st Edition 1993, pg 70
tool of advocacy and instrument of fairness between communities as well as individuals guaranteeing them for protection through civil and criminal justice process. Above all strengthening the identity of the Indian state and society.

When Chakma Refugees were provided asylum in the country, the population was around 50 Million but today it has risen upto 125 million so the present petition of Rohingyas i.e. JaffarUllah and Anr v. Union of India for providing essentialities to the community is the matter of dispute. India is not the party to any refugee convention i.e. of 1951 or of 1967 protocol due to its economic constraints. If India becomes party to it, refugees have to be then provided with food, housing and employment. Already people of the country are not stable, poverty index is around 28%. Hence it is impossible to accommodate a new set of population. However refugees can exercise the right to living and housing unless they are not deported.

Lastly, proceeding with the discussion upon stay of Rohingyas. It depends on the interpretation of judiciary. As per the devastated condition of Rohingyas, they should be provided with basic facilities of sanitation, proper drinking water, and medical facilities and gradually arrangements for their deportation should be made. Homeless group of people searching for home away from home are already struggling in their ways. Any host country considerably should protect them from further difficulties rather than thrown them again into the same. The right of living of any individual is a priority and cannot be abridged. The reason behind this study was to do an urge towards humanity for safeguarding humanity. The study suggests no religion is above humanity and Rohingyas should be humanely safeguarded.

Refugee law in India is therefore domestic, stemming from provisions under Article 21 and Article 51 of the Constitution, the Registration of Foreigners Act 1939, the Foreigners Act 1946, the Foreigners Order 1948, the Passports Act 1967, and the Illegal Migrants (Determination by Tribunals) Act 1983. It is on the basis of these provisions that applications for asylum by refugees are determined. India follows a dualist approach to international law, and so adheres to

40 JaffarUllah and Anr v. Union of India, Writ Petition (Civil) No.793/2017.
international law principles only insofar as they are incorporated into domestic law. Even if the deportation is lawful in domestic law, the question remains whether the deportations would be lawful as a matter of international law.\textsuperscript{42}\textsuperscript{4} While India is not a party to the Refugee Convention, and so is not bound by treaty to adhere to principle of non-refoulement, such an obligation stems from customary international law, as recognized by the UNHCR. Additionally, it is also bound by obligations stemming from international treaties and conventions it is a party to, namely, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment.” The expulsion of the Rohingya to Myanmar where they risk certain torture and a violation of their human dignity based on their ethnicity and religion is violative of basic human rights tenets embodied in all the above treaties.”

\textsuperscript{42}\textit{Ibid.}