

**THE VIOLATION OF HUMAN RIGHTS OF BANGLADESHI ILLEGAL IMMIGRANTS
IN BANGALORE SLUMS: LEGAL REMEDIES AND SUGGESTIONS**

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Background

As hubs of high productivity and convenient access to resources, cities have become powerful growth accelerators.¹ Slums, or informal settlements, have proliferated as a result of this rapid rate of urbanisation. Slums are characterised by a lack of safe and affordable housing, as well as a lack of public services². The number of people living in slums was predicted to reach 860 million in 2010, with an additional 60 million individuals moving into slums between the years 2000 and 2010³. The slum population of sub-saharan Africa doubles around every 4.5 years⁴. UN Habitat assessment claims that there are more than 100 million people living in slums in India, despite government estimates putting the number at more than 61 million in 2001⁵. Over a third of the 200 million people who lived in urban Indian homes in slums that year were located in India's cities with a population of a million or more⁶.

From 1941 until 1971, Bangalore saw tremendous expansion due to the development of the city in information technology field⁷. Bangalore is the administrative capital of Karnataka in India, and its metropolitan area is home to roughly 11.52 million people⁸. It is also the third most populated city and the fifth most populous urban settlement in India⁹. The city's population and economy have expanded in waves that parallel the eras of industrialization and immigration. In the years between 1880 and 1920, when the city's western side saw an increase in textile production, the city had its first significant influx of immigrants¹⁰. Between 1940 and 1960, a flood of state-owned companies were established in the east and north, ushering in the second wave of industrialisation¹¹. Concurrently, in the city's northwestern quadrant, state-owned research and development facilities were established. The third phase may be located after 1990, when electronic and information technology-focused economic zones began popping up (which was initiated in the 1980s by the state government). Between the 1980s and the 1990s, state-owned entities built townships on the outskirts for their employees, while housing co-operative societies satisfied the need in the formal economy. Slums have grown and emerged in Bangalore as a result of the city's severe housing constraint and its high demand for labour. From 159 slums in 1971 to more than 2000 slums (both registered and unnotified) in 2015, Bangalore has experienced a dramatic increase in its slum population¹². Slum dwellers made up little more than 10% of the city's total population in 1971, and are expected to make up 25% to 35% of the population by

¹ Moreno, E. & Warah, R. The State of the World's Cities Report 2006/2007: 30 Years of Shaping the Habitat Agenda, Report No. HS/815/06E (United Nations Human Settlements Programme, 2006).

² Roy, D., Lees, M. H., Palavalli, B., Pfeffer, K. & Sloat, P. M. A. The emergence of slums: A contemporary view on simulation models. *Environ Modell Softw.* 59, 76–90 (2014).

³ Over 200 million escape slums but overall number still rising, UN report finds, UN News, Available at <https://news.un.org/en/story/2010/03/332882> (Last accessed on 28.12.2022)

⁴ Moreno, E., Arimah, B. C., Mboup, G., Halfani, M. & Oyeyinka, O. State of the world's cities 2012/2013: Prosperity of cities (Report No. HS/080/12E United Nations Human Settlements Programme, 2012).

⁵ Revi, A. Urban India 2011: Evidence (Report No. 3 Indian Institute of Human Settlements, 2012).

⁶ Chandramouli, C. Census of India (The Registrar General and Census Commissioner, India, New Delhi, Ministry of Home Affairs, Government of India, 2011).

⁷ Nair, J. The Promise of the Metropolis: Bangalore's Twentieth Century (Oxford University Press, 2005).

⁸ Chandramouli, C. Census of India (The Registrar General and Census Commissioner, India, New Delhi, Ministry of Home Affairs, Government of India, 2011).

⁹ Bengaluru Urban District, Available at <https://bengaluruurban.nic.in/en/> (Last accessed on 28.12.2022)

¹⁰ Bengaluru's growth story, The Hindu, Available at <https://www.thehindu.com/opinion/open-page/bengalurus-growth-story/article27102964.ece> (Last accessed on 28.12.22)

¹¹ Supra. Note-11

¹² Nair, J. The Promise of the Metropolis: Bangalore's Twentieth Century (Oxford University Press, 2005).

2015. Despite the fact that slum inhabitants are everywhere, one of the main challenges involved with researching them is that their needs, difficulties, and problems are frequently unseen owing to lack of representation¹³.

Recent scenario of illegal immigrants in Bangalore slums

According to the findings of central and state investigative authorities about 2.5 lakh Bangladeshi people are estimated to be residing illegally in the state of Karnataka. According to reliable sources, the vast majority of these individuals may prove their Indian citizenship by presenting official identification documents issued by the Indian government, such as Aadhaar cards and Voter IDs¹⁴. Investigators determined that of the total of 2.5 million illegal immigrants, around 2 million are based in Bengaluru, the state capital of Karnataka¹⁵. Authorities are keeping a close eye on the situation and preparing a report to submit to the Union government¹⁶. Migrants from Bangladesh have leased empty plots in Bengaluru and the surrounding rural regions, where they have erected makeshift shacks and sheds. Others who go from Bangladesh are renting out these shantyhouses¹⁷. It has also been reported that illegal immigrants are working in the plantations of Chikkamagaluru, Kodagu, and Madikeri. The investigations have uncovered evidence that the organised mafia is active on the India–Bangladesh border and is responsible for the unlawful entry of immigrants from Bangladesh. It appears that most of these people are heading to Bengaluru¹⁸. The major difference between illegal immigrants and refugee are, Illegal immigration is the migration of individuals into a nation in contravention of that country's immigration regulations, or the continuous presence in that country without the legal right to do so¹⁹. Illegal immigration often occurs from impoverished to wealthier nations. Illegal residency in a foreign nation increases the possibility of imprisonment, expulsion, and/or other punishments²⁰. According to the 1951 UN Convention on the Status of Refugees and its 1967 Protocol, a refugee is someone who is currently living outside of their country of origin due to a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion²¹. India has not signed the 1951 UN Convention on the Status of Refugees or its 1967 Protocol. If one defines country of origin (citizenship) as country of previous habitual abode, then stateless people may also qualify as refugees under this definition²².

Challenges faced by Bangladeshi Illegal Immigrants in Bangalore slums

In 2000, it was estimated that there were 15 million illegal immigrants from Bangladesh living in India, with another 300,000 arriving each year. It has been said that there are four new illegal immigrants for every one who is apprehended. While many immigrants have chosen to remain in border towns, others have travelled far further, to cities like Mumbai, Delhi, Bangalore, Kolkata.²³ The Union Minister of State for Home Affairs under the UPA administration, Sriprakash Jaiswal, told Parliament on 14 July

¹³ 10 EXTREMELY RELEVANT FACTS ABOUT POVERTY IN BANGALORE, The Borgen Project, Available at <https://borgenproject.org/10-extremely-relevant-facts-about-poverty-in-bangalore/> (Last Accessed on 28.12.2022)

¹⁴ Das, P., 2016. Illegal migration from Bangladesh: deportation, border fences and work permits.

¹⁵ 50 years on, Chakma refugees from Bangladesh". scroll. Retrieved 27 January 2019

¹⁶ Won't hesitate to leave the BJP forum". deccanherald. 25 January 2019. Retrieved 26 January 2019

¹⁷ Bangladeshi Migrants' Evicted in Bengaluru Demolition Were From the Northeast, Karnataka, The Wire, Available at <https://thewire.in/rights/bengaluru-demolition-bangladeshi-immigrants> (Last accessed on 28.12.2022)

¹⁸ Govt. to crack down on illegal Bangladeshi immigrants: Home Minister, the hindu, Available at <https://www.thehindu.com/news/national/karnataka/govt-to-crack-down-on-illegal-bangladeshi-immigrants-home-minister/article38334968.ece> (Last Accessed on 28.12.2022)

¹⁹ Taylor, M.P., 2007. The drivers of immigration in contemporary society: Unequal distribution of resources and opportunities. Human ecology, 35(6), pp.775-776.

²⁰ Briggs Jr, V.M., 2009. The state of US immigration policy: The quandary of economic methodology and the relevance of economic research to know. JL Econ. & Pol'y, 5, p.177.

²¹ Al Imran, H.F. and Mian, N., 2014. The Rohingya refugees in Bangladesh: A vulnerable group in law and policy. Journal of Studies in Social Sciences, 8(2).

²² Fitzpatrick, J., 1996. Revitalizing the 1951 refugee convention. Harv. Hum. Rts. J., 9, p.229.

²³ Jamwal, N.S., 2004. Border management: Dilemma of guarding the India-Bangladesh border. Strategic Analysis, 28(1), pp.5-36.

2004 that 12 million illegal Bangladeshi infiltrators were living in India, with 5.7 million of them residing in West Bengal. As a result of concerns from the Congress-led state government of Assam, the original declaration was later retracted on the grounds that the cited statistics cannot be trusted. Minister of State for Home Affairs in the NDA administration, Kiren Rijiju, has lately estimated that number to be closer to 20 million.²⁴

Human Rights violation against Bangladeshi illegal immigrants living in Bangalore Slums

Slums were demolished due to rejuvenation of Bellandur and Varthur lake. Immigrants who were mostly living in the area of Bellandur and Sarjapur area faced forced eviction, they were forced to evacuate the area, there was no rehabilitation given to them as they don't possess any valid government issued id cards or those who had valid id cards also faced the eviction. According to the local authority these slum dwellers mostly occupied private lands and core zone of bellandur lake bed area, there were cases of theft, nuisance and drug trafficking among these slum development areas. According to the survey conducted by the researcher it is found that mostly the slum dwellers are from Bangladesh and they illegally entered into India through Indo-China borders across West Bengal and they got settled in major cities and some of them obtained Aadhar cards, voter id cards through some agent. These illegal immigrants travelled from bangladesh in search of better employment in India and mostly they work as cook, restaurant boys, house-maid, driver, coolie and cleaners.



Source: Deccan Herald

The Bangalore development authority has demolished over 500 tents and temporary sheds in the Bellandur and yamalur area. Residents were forced to leave with their belongings. The authority has cut the electricity, water supply, road connection in Bellandur lake bed area. Over 1000 people rendered homeless after BBMP demolished their settlement in these areas. BBMP demolished 400 tin-shed houses to the ground without any prior notice. The slum-dwellers were given only half an hour to pack their belongings. BBMP officials has taken the defence of violation of buffer zone norms near the lake bed. The men and women and children spent their night under the open sky.

²⁴ Das, S. and Anisujjaman, M., 2022. Indian parliamentary discourse and securitization of Bangladeshi immigration into India. SN Social Sciences, 2(12), pp.1-29.

However it was argued that BBMP demolished the settlement which were under private ownership and not a public property and for which BBMP was supposed to give prior legal notice which they never did. The settlement was 1300 m away from the buffer zone. NGT has declared that 75m from the lakebed would be considered as buffer zone.



Source: Deccan Herald



Source: Bangalore Mirror



Source: The Hindu

Bangladeshi illegal immigrants vs Bangalore slum dwellers

Illegal immigrants and Bangalore slum dwellers both are different in the legal context. Slum dwellers who have Indian citizenship have wide protection under Indian legal framework but there is reasonable legal protection available to the illegal immigrants in the international conventions. The rights of non-citizens are protected under article 21 of the constitution of India²⁵. Even though the Supreme Court, in the landmark case *Olga Tellis vs BMC* (1985), widened the scope of the right to life to include the right to livelihood, millions of slum dwellers in India. Moving away from their place of employment would cut off their means of support. Supporting to slum dwellers the SC ensured that the right to livelihood in part and parcel of right to life under article 21.

Indian legal framework to protect the rights of Slum Dwellers

Slum is defined in any content of Law/ Statute/ Rules. But only 'the Slum Areas (Improvement and Clearance) Act, 1956'²⁶ defines the Slum Areas under Section 3²⁷ which gives the Declaration of slum areas.

²⁵ Article 21: "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law." This fundamental right is available to every person, citizens and foreigners alike.

²⁶ The Slum Areas (Improvement and Clearance) Act, 1956

²⁷ Section 3. Declaration of slum areas. Previous Next

(1) Where the competent authority upon report from any of its officers or other information in its possession is satisfied as respects any area that the buildings in that area—

(a) are in any respect unfit for human habitation; or

(b) are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals,

it may, by notification in the Official Gazette, declare such an area to be a slum area.

(2) In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to say—

(a) repair;

(b) stability;

Who are Slum Dwellers?

Most slum residents are labourers who have relocated to metropolitan areas from rural areas in search of better economic opportunities²⁸. This group of population can be termed as floating population.

Protection under Constitution of India

There relevant Articles as mentioned in the Constitution of India 1950.

Article 243W (12th Schedule), Item no. 10 – Slum Improvement & Upgradation which come under the Local Bodies i.e. Municipal. The Article defines the Power and Responsibility of the Municipality.

Article 12 which defines local Authorities as states.

Article 19 (1) (e) – to reside and settle in any part of the territory of India (44th Amendment)

Article 19 (5) – It's a provision that enables the state to protect the public lands.

Article 21 - No individual shall be deprived of life or liberty except in accordance with procedure prescribed by law." Anyone, whether a citizen or not, can exercise this basic freedom. So,illegal immigrants also have protection under Article 21 of the Constitution of India.

Article 37: Limit the power of the Judiciary to enforce the state's duty which is applicable to all.

Section 3 defines Slum Areas.

Section 19 states about Protection of Slums (Original Owners).

Section 20A states about Restoration of Slum Dwellers after Improvement.

Section 21 states about Protection of Public Land by Slum Dwellers where Section 19 & 20 is not applicable.

Section 28 states about Power of Competition Authority for Eviction.

Section 34: Restriction Court below 1st Class.

Section 37: Protection of Competition Authorities & representatives.

Section 37A: No Civil Jurisdiction and no injunction shall be granted by any Court.

Section 39: It overrides any other law.

Section 40: Power to make rules by the Local Bodies.

The Limitation Act, 1963

(c) freedom from damp;

(d) natural light and air;

(e) water supply;

(f) drainage and sanitary conveniences;

(g) facilities for storage, preparation and cooking of food and for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

²⁸ Chatterjee, M., 2010. Slum dwellers response to flooding events in the megacities of India. Mitigation and Adaptation Strategies for Global Change, 15(4), pp.337-353.

First Division Suits, item no. 111, states that 30 yrs in case of Public land to dispossession and item no. 64 states that 12yrs in case of Private land to dispossession.

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

It has been observed that many street vendors have not registered themselves despite the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014's intent to prevent evictions of registered vendors from their stores. The widespread belief that street vending is forbidden has persisted, leading to regular acts of hostility directed at those who engage in this activity. A loss of means of subsistence is also a consequence of this scenario.

Laws governing immigrants in India

People began travelling en masse in the modern period of globalisation as a means of finding safety from economic, political, and social unrest²⁹. The many opportunities available in India's multiethnic society are enticing to people from all over the world³⁰. The term "immigration" refers to the movement of people from one country to another with the goal of settling there permanently.³¹ The largest challenge for immigrants is becoming a legal resident of the country they have migrated to and exercising their basic rights there³². To speed up the process of granting citizenship to foreigners, certain laws have been passed. Those are as follows:

The Passport (Entry into India) Act, 1920

The Passport (Entry into India) Act of 1920, one of the earliest set of regulations enacted against illegal immigrants, granted the government the authority to enact regulations mandating that all individuals entering India be in possession of a valid passport³³. This rule also authorised the government to expel from India anyone who entered the country without a passport³⁴.

The Foreigners Act, 1946

During World War II, the Imperial Legislative Assembly passed the Foreigners Act, 1940, which established the notion of "burden of evidence"³⁵. In accordance with Section 7 of the Act, wherever there was a dispute regarding the nationality of a person, the burden of showing that he was not a foreigner rested with the individual.³⁶ The Foreigners Act, 1946 superseded the Foreigners Act of 1940 and gave authorities sweeping new authority over all non-citizens. The law authorises the government to employ all means necessary, including the use of force, to stop illegal immigration. It is still the case that the 'burden of evidence' belongs to the accused and not the government agencies authorised by this statute. The Supreme Court's Constitutional Law Department has endorsed this principle. The law authorised the formation of government tribunals with jurisdiction comparable to that of a civil court. The Foreigners (Tribunals) Order, 1964 was recently amended in 2019 to allow even district magistrates in all States and Union Territories to establish tribunals to determine whether or not an individual residing in India unlawfully is a foreigner.

²⁹ Nandy, C., 2005. Illegal Immigration from Bangladesh to India: The Emerging Conflicts.

³⁰ ibid

³¹ ibid

³² ibid

³³ The Passport (Entry into India) Act, 1920, India Code, Available at https://www.indiacode.nic.in/handle/123456789/2370?view_type=browse&sam_handle=123456789/1362 (Last Accessed 28.12.2022)

³⁴ Supra note- 34

³⁵ What are the laws in place to tackle illegal non-citizens?, The Hindu, <https://www.thehindu.com/news/national/what-are-the-laws-in-place-to-tackle-illegal-non-citizens/article30063702.ece> (Last Accessed on 29.12.2022)

³⁶ Section-7 of the Foreigner Act, 1946 states that, (1) The custodian of any premises, whether furnished or unfurnished, where lodging or sleeping accommodation is offered for remuneration should provide to the prescribed person and in the prescribed way such information on foreigners lodged in such premises. Explanation.— The information referred to in this subsection may pertain to all or some of the foreigners residing at the premises and may be needed to be supplied on a periodic basis or at a particular time.

The Registration of Foreigners Act, 1939

Any foreign national (other than an Overseas Citizen of India) staying in India for more than 180 days on a long-term visa must register with a Registration Officer within 14 days of arrival under the jurisdiction of the Foreigners Regional Registration Officer (FRRO). Visitors from Pakistan must register with the Indian government within 24 hours after arriving in the country, regardless of how long they want to remain.

The Citizenship Act, 1955

It establishes the procedures for determining and obtaining Indian nationality. Overseas Indians, Non-Resident Indians, and People of Indian Origin are all afforded certain privileges by the Constitution.

- **Acquisition of Indian citizenship**

Articles 5 through 11 of the Indian Constitution contain provisions for the attainment of Indian citizenship. A person can gain Indian citizenship by birth, registration, descent, naturalisation, and acquisition of territory, among others.

- **Methods of Obtaining Citizenship**

The Citizenship Act specifies five methods for obtaining citizenship:

- 1) **By Birth:** The legislation identifies and grants citizenship to anyone born in India on or after the Constitution's enactment, but before July 1, 1987. In addition, anyone born after 1 July 1987 must have at least one parent who was an Indian citizen at the time of their birth. Those born after December 3, 2004 should not have illegal immigrant parents, or both parents should have citizenship.
- 2) **By Descent:** A person born outside India on or after January 26, 1950, and before December 10, 1992, whose father possessed citizenship at the time of his birth, should be considered a citizen. A person born outside of India after December 10, 1992 is deemed an Indian citizen if either his mother or father is an Indian citizen at the time of his birth.
- 3) **By Registration:** A person may be registered as an Indian citizen if he has been an ordinary resident of India for seven years prior to his application, if he resides in undivided India, and if he is married to an Indian citizen. In addition to these individuals, the following can also register as citizens of India: minor children of citizens, persons of full age and legal capacity whose parent is a citizen of India, and those registered as Indian citizens living abroad.
- 4) **By Naturalisation:** A certificate of naturalised citizenship cannot be awarded to a person who is a citizen of a nation that prohibits the acquisition of Indian citizenship. If someone possesses high moral character and appropriate knowledge of a language listed in the Eighth Schedule of the Indian Constitution, he may be granted citizenship.
- 5) **By Incorporation of Territory:** To illustrate this point, when Pondicherry became a part of India, the inhabitants residing there became Indian citizens. Similarly, if any region becomes a part of our nation, the whole population of that territory also becomes a member of our country, therefore supporting the acquisition of citizenship.

There are three ways to get citizenship in India. Included on the list are residence, migration, and registration.

- 1) **By Domicile:** A domicile is the location that a person names his permanent residence. Article 5 of the Indian Constitution defines an Indian citizen as a person who has a permanent abode in India at the time the Constitution took effect.
- 2) **By Migration:** At the time of independence, a massive populace relocated from Pakistan to India via migration. The Indian Constitution contains provisions for this group, but

only under specified situations. Those requirements must be met before one can obtain Indian citizenship in its entirety.

- 3) By Registration: The third and last route for getting citizenship is through registration. Article 8 of the Indian Constitution specifies that a person can become a citizen by registering with a diplomatic representative of India in the nation in which he resides. It is only conceivable if the individual was born in India or if his parents or grandparents were born in India.

International Conventions

Refugee Convention, 1951

The 1951 Refugee Convention and its 1967 Protocol are the principal legal texts upon which our work is based. With 149 State parties to one or both, they define the word "refugee" and explain the rights and legal responsibilities of States to protect them. Non-refoulement, which states that a refugee should not be repatriated to a nation where they suffer grave dangers to their life or freedom, is the guiding concept. This is now regarded as a norm of international customary law. The UNHCR is the "custodian" of the 1951 Convention and 1967 Protocol. States are required to work with us to ensure that the rights of refugees are respected and protected in accordance with the law.

Supreme Court Apprehensions

Sarbananda Sonowal vs Union Of India & Anr³⁷

Supreme Court declared the Illegal Migrants (Determination by Tribunal) Act (IMDT)³⁸ unconstitutional in 2005 while citing the Sinha Report³⁹, arguing that the "invasion" represented by large-scale illegal migration from Bangladesh had rendered the lives of the people of Assam and Tripura "wholly unsafe and the terror caused thus had created fear psychosis" in other north-eastern States.⁴⁰ The Delhi High Court denied a Bangladeshi woman's request to halt her deportation in August 2008. The Supreme Court declared that illegal immigrants from Bangladesh "threaten India's internal security."⁴¹

The Indian Judiciary has made it easy with Public Interest Litigation. Refugees who are arrested for the illegal stay can be detained illegally under administrative order without charges. The Foreigners Act, 1946 vests an absolute and unfettered discretion in the Central Government to expel foreigners from India. The Supreme Court of India in *Hans Muller of Nuremberg vs. The Superintendent*⁴² the President gave "absolute and unfettered" power to the government to throw out foreigners. It was again upheld by the Supreme Court in *Louis De Raedt & Ors. vs. Union of India*⁴³ and also held that foreigners have the right to be heard. In the Gujarat High Court in *Ktaer Abbas Habib Al Qutaifi vs. Union of India*⁴⁴ held that the principle of non-refoulement avoids ejection of a displaced person where his life or freedom would be undermined by virtue of his race, religion, nationality, enrolment of a

³⁷ Writ Petition (civil) 131 of 2000 PETITIONER: Sarbananda Sonowal RESPONDENT: Union of India & Anr. DATE OF JUDGEMENT: 12/07/2005 BENCH: R.C. Lahoti, G.P. Mathur & P.K.

³⁸ IMDT Act is the biggest barrier to deportation, says Supreme Court, The Hindu, Available at <https://web.archive.org/web/20110514050935/http://www.hindu.com/2005/07/14/stories/2005071405551200.htm> (Last Accessed on 27th Dec, 2022)

³⁹ REPORT ON ILLEGAL MIGRATION INTO ASSAM, University of Pune, Available at http://www.unipune.ac.in/chairs/St_Sawarkar_Chair/pdf/SK%20Sinha's%20REPORT_24.042020.pdf (Last Accessed on 28.12.2022)

⁴⁰ IMDT act arouses aggression: SC, Times of India, Available at https://web.archive.org/web/20120902075754/http://articles.timesofindia.indiatimes.com/2005-07-14/india/27862078_1_illegal-migration-imdt-act-assam-governor (Last Accessed on 27.12.22)

⁴¹ "Illegal Bangladeshi immigrants threat to India: court". IBNLive Available at <https://www.news18.com/> (Last Accessed on 27.12.22)

⁴² 1955 AIR 367, 1955 SCR (1) 1284

⁴³ 1991 AIR 1886, 1991 SCR (3) 149

⁴⁴ 1999 CriLJ 919

specific social gathering or political conclusion. Its application ensures life and freedom of a person irrespective of his nationality.

National security threats

Many illegal immigrants and traffickers pass across the weak border in West Bengal into India every day.⁴⁵ Due to the high tax the Bangladeshi government places on several Indian commodities, they mostly engage in smuggling goods and cattle across the border. Similarly, women and girls from Bangladesh are trafficked to India.⁴⁶ An estimated 27,000 women and children from Bangladesh were trafficked into prostitution in India in 1998, according to the Centre for Women and Children's Studies.⁴⁷ It was found in the CEDAW report that 2.7% of Kolkata's prostitutes were from Bangladesh, and that 1% of all foreign prostitutes in India were from Bangladesh.⁴⁸

Conclusion and Suggestion

It is essential to prevent the entry of illegal migrants into India, since they place strain on locals and represent a security concern, particularly in volatile regions like Jammu and West Bengal. For instance, according to the Indian security officials, certain Rohingyas sympathising with the beliefs of several terrorist groups may be active in Jammu, Delhi, Hyderabad, and Bangalore and they may pose a danger to internal security. By Indian law, illegal immigrants do not qualify as refugees. The Indian Judiciary has made it easy with Public Interest Litigation. Refugees who are arrested for the illegal stay can be detained illegally under administrative order without charges. India is not subject to the United Nations principle of non-refoulement and hindrance to removal because it is not a signatory to the 1951 Refugee Convention. If illegal immigrants do not meet the legal criteria of a legitimate refugee in the host nation, they are subject to removal. Illegal immigrants are those who move to a nation in contravention of that country's immigration regulations, or those who continue to dwell in a country without the legal right to do so. Illegal immigration often occurs from impoverished to wealthier nations. The Supreme Court of India invalidated the Unlawful Migrants (Determination by Tribunal) Statute, 1983, in 2005, stating that the act "has created the greatest obstacle and is the most significant barrier to the identification and expulsion of illegal migrants. In spite of not being a party to the 1951 Refugee Convention and its 1967 Protocol, India has been one of the largest recipients of refugees in the world. However, if India had domestic legislation regarding refugees, it could have deterred any oppressive government in the neighbourhood to persecute their population and make them flee to India. Further, the absence of national refugee laws has blurred the distinction between refugees and economic migrants, leading to the denial of any assistance to even genuine asylum seekers. After India enacts its domestic refugee laws, it should also consider signing the 1951 Refugee Convention and the 1967 Protocol after recording its reservations. It would be still better if India took the initiative to encourage other countries in the South Asia Association for Regional Cooperation (SAARC) to develop a SAARC convention or declaration on refugees in which member states would agree to ratify the 1951 Refugee Convention and the 1967 Protocol and record their reservations to various clauses.

⁴⁵ "World bank report" (PDF). Accessed on 13 December 2022.

⁴⁶ "The World Factbook". cia.gov. 16 November 2021.

⁴⁷ "Coalition Against Trafficking in Women, Factbook on Global Sexual Exploitation, Donna M. Hughes, Laura Joy Sporcic, Nadine Z. Mendelsohn and Vanessa Chirgwin". Archived from the original on 15 April 2012. Accessed on 13 December 2022.

⁴⁸ Third and fourth periodic reports of States parties, COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, UNITED NATIONS, Available at <https://www.un.org/esa/gopher-data/ga/cedaw/17/country/Bangladesh/C-BGD3-4.EN> (Last Accessed On 22.12.2022)