

NAME: MUSKAN JAISWAL

SUPERVISOR: Prof. UDAYAN DAS

TITLE: Refugees and Indian Federalism: Three Comparative Case Studies Under the NDA-II Regime

DECLARATION: *“I affirm that I have identified all my sources and that no part of my dissertation paper uses unacknowledged materials”.*

INDEX

SR NO.	TOPICS	PAGE NO.
1.	Abstract	3
2.	Introduction	3-9
3.	Indian Federal System Manoeuvring Refugees: The Legal Trajectory i.)International ii.)National	9-20
4.	Case Selection and Methodology	20-21
5.	Assam	21-24
6.	Mizoram	24-25
7.	West Bengal	25-28
8.	Concluding Observation	28-31
9.	Abbreviations	31-32
10.	Bibliography	32-35

Refugees and Indian Federalism: Three Comparative Case Studies Under the NDA-II Regime

ABSTRACT:-

India, a Union of States and not a Federation, treats Refugees with compounded ambiguities. This paper with the help of doctrinal legal presentation, highlights how the Refugees in Indian federal jurisdiction are defined, situated and operated as a meso-identity between the Centre and the States under the NDA-II regime. Being a South Asian nation, India's aversion to sign the globally recognized Magna Carta on Refugees -the UN Convention on Refugees (1951) and the Protocol Relating to the Status of Refugees (1967), added with the absence of concrete National Asylum Policy provides a free discretionary space where partisan based ideological oscillation decides the fate of Refugee Identity in Indian Politics. To substantiate this presupposition, the research undertakes a three bi-partisan model of descriptive comparative case analysis of Indian states- namely, Assam (ruled by the same party at the centre and state, i.e. BJP); West Bengal (ruled by the oppositional forces, i.e. BJP at the centre and AITC in the state); and Mizoram (ruled by a coalition government comprising BJP and MNF), showcases a sui generis presence of cooperative and competitive federal dialogues in Indian polity with regard to the management of Refugee Crisis. Alongside, the paper highlights on how the inclusion of dimension of religious intelligible differentia under the Citizenship (Amendment) Act, 2019, by the Union government, aggravated the federal political discourses on Citizenship, Refugees and secular-democratic intentions of the government. Further, by culminating the visible trends of neo-federal dimension, this research intends to investigate- i.) How does the absence of a National Asylum Policy on Refugees affect the behaviour of the Centre and States in treating refugees? ii.) On what parameters do Centre and the States behavioural responses converge and diverge in terms of the modes of acceptance and rejection of Refugees? iii.) To what extent does the Refugee Identity influence the discourse of nationalism and subnationalism? Does it reflect any ethnic regional variations? The paper relies on qualitative content analysis of primary data (treaties, conventions, constitution, court cases, parliamentary debates, statutes, diplomatic records, manifestos, etc), and the secondary data (media reports, journal articles, reviews, and academic books) to identify the federal dynamism on 'Refugees' visible along the intersecting lines of nationalism and subnationalism, setting an interactive neo-federal meso-level category in Indian polity.

❖ **KEYWORDS:** *Neo-federalism, refugees, citizenship, asylum policy, centre-state relations, partisan-based interests, nationalism, subnationalism, indian polity.*

❖ INTRODUCTION:

India extols its experiences of having the world's most diverse and complex migration histories. Embarking on the journey with a grandiloquence of trust with destiny in 1947, the countrymen pledged in unison for embracing a democratic future. Indeed, they are struggling hard to experience one. Having the third-largest international border, India is susceptible to mass influx

which is very evident since the 1947, 1962, 1965, 1971, 1979, 1983, and 2012 great refuge and asylum-seeking historical moments. According to the United Nations High Commissioner for Refugees (UNHCR) India Factsheet, as of 31st October 2021, India is home to 43,641 registered asylum seekers, consisting of origins from Afghanistan, Bangladesh, Myanmar, Sri Lanka, Tibet and others. But, it is to be noted that India “does not maintain any data on refugees centrally”¹. Nevertheless, it was not easy for India to administratively deal with such refugee crisis management sequentially, as there exists a number of impediments impacting its overall federal power dynamics. And, when it comes to the study of Federalism in Indian polity, which is a Union of States and not a Federation, it is always analysed through a traditionalist lens, where only two tropes are discussed. One is Fiscal, and the other is Constitutional (Ashutosh Varshney, 2011). This paper departs from the conventional study on Indian Federalism, and tries to explicate the emergence of the neo-federal intermediate category of ‘Refugees Identity’ in determining the Centre-States interactions in India.

Especially, when certain decisive legal-political developments in the year 2019, chronologically remodelled and revamped the discourses on citizenship, immigration and infiltration in the country affecting the Centre-States relations. Firstly, the results of the 17th Lok Sabha election, made BJP (led by PM Modi), the first non-INC party to retain power for a second term with full majority in Lok Sabha on its own in Indian electoral history. The BJP secured 303 seats (+21 seats from 2014 General Election) out of 542 seats and the NDA² added 50 seats, making a total count of 353 seats. This signifies that the party not only managed to retain its support base of 2014, but

¹ Shri Nityanand Rai (Minister of State in the MHA) replied to Rajya Sabha question (number 213, on 3rd February, 2021) raised by Smt. Priyanka Chaturvedi and Smt. Phulo Devi Netam under the title of data on refugees.

² Also the regional version of NDA, North East Democratic Alliance (NEDA) formed on 24th May, 2016, against the INC strengthened the NDA’s potential in managing the critical North-Eastern border related issues.

also expanded its electorates both geographically and socially, which became a representative cause of influence on the policy process.

Secondly, the introduction of consequential policies and political discourses backed by the Hindutva project³ raised the questions on secular-universalist-democratic intentions of the GOI. A slew of legal measures, namely, i.) the Citizenship (Amendment) Act, 2019⁴, became an overt-preliminary attempt by the GOI to include the clause of religious intelligible differentia, post-1947. This augmented the nationwide protests against the GOI's authoritative policy formulation and its execution with such representative selectivism in providing 'faith based citizenship'⁵ (Niraja Gopal Jayal, 2019) in a secular polity. In official averments, we can discern a clear transformation from the principle of jus soli to the principle of jus sanguinis—from 'citizenship on grounds of birth' to 'citizenship on grounds of race and descent' that began in the mid-1980s and reached its nadir in 2019. ii.) The statement by Home Minister, Shri Amit Shah over the pan-India NRC exercise inside the premises of Sansad⁶ and public rallies⁷ in 2019 sparked huge commotion over citizens' stakes⁸. As prior to this, the announcement of the final updated list of NRC on 31st August 2019, brought hopes and aspirations to about 2 million people but for 19,06,657 people, who were excluded from the total population of 3.29 crore as Assam's electorates, it brought a wave of dismay and existential crisis, as they were declared as

³ Historian Gyan Prakash characterised Hindutva as "the de-facto ideology of the ruling regime in India" that "seeks to alter the constitutional order".

⁴ Particularly, the amendment of Section 2, sub-section (1), in clause (b). Exceptions are made to Sixth Schedule and the areas covered under the 'Inner Line' notified under the Bengal Eastern Frontier Regulation, 1873.

⁵ <https://www.theindiaforum.in/article/faith-criterion-citizenship>.

⁶ In response to a query of INC leader Syed Nasir Hussain in Rajyasabha, on 20th November, 2019, Shah confirmed about nationwide NRC exercise while differentiating it with the CAA.

⁷ Explicitly at a rally in Jharkhand's Chakradharpur on 2nd December, 2019, he said that "we will selectively throw out all infiltrators and this task will be undertaken by the BJP before 2024", setting a deadline for the said process.

⁸ Former Union Minister, P.Chidambaram in the book launch of the first of 14 volumes of Samruddha Bharat Foundation, "Rethinking India", proposed the idea of Constitutional Citizenship at stake, where he highlighted that Citizenship is no longer a theoretical concept but a political project behind which the state has put its might. As the founding fathers of the Indian republic had built the idea of citizenship based on the Constitution rather than based on language, race, religion, territory and culture.

‘D-Voters’⁹. This heightened the nativist anti-foreigners political nationalist nerves in Assam before the 2021 State Legislative Assembly election¹⁰, which caused a nation-wide chaos over citizenship. He also provided the binary of ‘citizen’ and ‘non-citizen’ which got officially morphed into a binary of *refugee* or *sharanarathi* and *illegal infiltrators* (avaidh ghuspaithiya variously translated as illegal migrant, intruder and infiltrator) solely predicated on religious denomination: “I wish to make this clear. There should be no confusion among the people and no confusion in the media. There is a distinction between *ghuspaithiye* and *sharanarathi*. Any person who leaves one country and goes to another in order to protect his dignity (maanyata), his identity (astitva), his self-respect (svamaan), his religion (dharm), he is a sharanarathi. A person who enters a country illegally for livelihood or other reasons is a ghuspaithiya. There is no confusion at all in the mind of the Bharatiya Janata Party on this matter”¹¹ Even such distinction between a refugee or sharanarathi and illegal ‘migrant’ or aaidh ghuspaithiya is extremely problematic, as the selective dispossession of refugee passage in this sense consists of double-edged political move— ‘the ousting of disfavoured groups and the simultaneous invitation to preferred groups’ (Jayal, 2019), impacting the state’s locale. Here, the formation of a discourse through the trio of language, ideology, and social practice (Norman Fairclough, 1989) are interrelated and can be found to impact the situational (Refugee Identity), institutional (Laws/Union of States), and societal (Ethnic Civic Community) level of politics (Norman Fairclough, 1995). This is somewhat similar to what our founding fathers proposed (Alladi

⁹ A list of Doubtful Voters 1.9 m people was released out of 33 million people, who failed to prove their Indian nationality prior to March 24, 1971 (analogous to Assam Accord). The process to update the register functionally began following a Supreme Court order in 2013.

¹⁰ Later, on 20th January 2021, the then Chief Election Commissioner, Mr. Sunil Arora clarified that those who were excluded from the 2019 NRC list, can cast their votes in 2021 Assam State Legislative Assembly Election. In support to his argument, he cited that the MHA notification published on 29th August, 2019 clarifies the exclusion of a person’s name from the NRC does not amount to his/her declaration as a foreigner.

¹¹ Amit Shah. Press Conference on National Register of Citizens (31 July 2018). https://www.youtube.com/watch?v=z5p85_d_IWE

Krishnaswami Ayyar in CAD¹²) and believed in, except the religious faith. iii.) In response to the September 20, 2018, SC Order¹³, on 9th January 2019, MHA framed 39 points of ‘Model Detention Centre/Holding Centre/Camp Manual’, which was circulated to all the States¹⁴ and UTs. This entrusted the administrators of UTs [under Art.239(1)] and States [under Art.258(1)], the power to deport and manage the movement or presence of foreign nationals staying illegally in the country. As per the manual, now States do not require any specific approval from the Centre in terms of deciding the numbers and size or setting up of the detention centres. But, it should only be set up outside the jail premises with proper conditions and amenities to maintain standards of living in consonance with human dignity¹⁵. Now, it is interesting to note that how this overshadowing of responsibility¹⁶ upon States affect the doctrine of Territorial Nexus (Art.245) and doctrine of Repugnancy (Art.254), as the Centre still continues to enjoy the same power under the Section 3(2)(c) of the Foreigners Act, 1946. iv.) On 30th May 2019, the Ministry of Home Affairs (MHA) issued a notification amending some clauses of the Foreigners

¹² While discussing on citizenship, he drew the attention of the house to the two principles on which the law of citizenship may be based: *lex sanguinis* (blood and race regardless of place of birth) and *lex soli* (grounds of birth). The suggestion of the Advisory committee was to adopt the *lex soli* principle, which was also commended by Sardar Vallabhbhai Patel, who also cautioned members (in reference to South African diasporic struggle against racial discrimination) that we should not take a narrow view of the subject and introduce racial phraseology in the Constitution. He remarked that “it is important to remember that the provision about citizenship will be scrutinised all over the world.”

¹³ The SC, in response to a Public Interest Litigation (PIL) filed by activist Harsh Mander (based on NHRC Report) against the plight of Assam’s detention Centres, passed an order in 2018, directing the Union government to expedite the process of formulating a detention manual.

¹⁴ Under the provisions of Section 3(2)(e) of the Foreigners Act, 1946, the Union government had the sole authority to control the movement of foreigners in India. But now, the power seems to be shared between the Union and the States.

¹⁵ The manual listed out somewhat similar earlier records of some of the proceedings in the petition concerning the detention centres of Assam in *‘In Re - Inhuman Conditions in 1398 Prisons’*, which highlighted the 4 issues: problem of overcrowding in prisons; unnatural deaths of prisoners; gross inadequacies of staff; and the available untrained or inadequately trained staff.

¹⁶ The 2018 SC Order on PIL filed by Harsh Mander directed the Union to expedite the process of formulating the detention manual. Though, it must be mentioned that State governments from time to time (2009, 2012, 2014 and 2018) have been instructed to set up detention centres.

(Tribunals) Order, 1964,¹⁷ which made two significant changes- a.) The new insertions in the Act converted the existing clause 3A into clause 3C, by empowering the district magistrates (DMs), as the custodian of all the official documents to refer a suspected foreigners' case to a tribunal, based on her/his own judgement or in the case of those whose citizenship is under question and who have still not appealed to a tribunal within two months of a case registered against them. Alongside, it empowered all the State Government and Union Territory administration to build tribunals to decide whether a person staying illegally in India is a foreigner or not, in consonance with the Foreigners Act, 1946. Earlier, the power to constitute tribunals were vested only with the Centre. b.) The amendment has also allowed individuals to approach the Foreigners Tribunal. As earlier, only the state administration had the onus to move to the tribunal against a suspect. v.) From a 'century of partitions' to 'the century of stateless people' (Samaddar, 2018) and to the massive extension of 'disturbed zone of citizenship'¹⁸ (Anupama Roy, 2010), the Centre-States interaction upon non-citizens' access to public benefits, (i.e., Right to education, land, shelter, food, etc.) on the basis of jus sanguinis or ethnic belongingness became the prime focus in 2019, particularly in the states of Assam, West Bengal and Mizoram (discussed in the upcoming section). The debate over the idea of 'unconditional hospitality'¹⁹ (Jacques Derrida, 2005) in terms of locally integrating (based on Walzerian model of liberal citizenship, 1989) or segregating (based on the Republican model of civic self-rule) the Refugee population from the state's welfare policies became the electioneering axis.

¹⁷ It was enacted by the Central government through the use of powers granted under Section 3 of the Foreigners Act, 1946. Through the order, issued by the MHA on September 23, 1964, it had a countrywide jurisdiction but it was just intended for the state of Assam for all practical purposes.

¹⁸ See, Mapping Citizenship in India (2010) by Anupama Roy.

¹⁹ It is a moral imperative which refers to the acceptance and embracing of the stranger without condition or question. His idea can be equated with the ancient Indian moral code of "*ayam nijah paro veti ganana laghu chetasam, udaracharitanam tu vasudhaiva Kutumbakam*". Though, it is practically impossible to follow such an idea of moral universality in the current global border regime.

Some highlights of 2019 politico-legal developments were just an addition to the existing antecedent gaps on Government of India's ambiguous approach towards the Refugees. Hitherto, India dealt with the issue of refugees by applying an ambiguous and differential logic on an 'ad hoc' and 'case-by-case' basis, as it lacks a national legal framework defining and securing the refugees as a category of concern. However, it cannot be denied that there were no attempts in the past to materialise the claims for the protection of refugees in India. There were three such instances when idea for bills were proposed with zeal for national refugees' protection (in the year 1997²⁰, 2006²¹, 2015²² respectively), but the GOI rejected these proposals citing national security concerns. Yet, the question comes as to how India, given its past complex migration historical moments, monitors these 'Refugees'? Is there any legal definition that binds GOI to govern these unrecognised immigrants? Where do they feature in the Indian constitution and legal institutional setup of the government as a meso-level identity? Does this legal inertia of national asylum policy impact Indian federalism? How Refugees are defined in Indian polity? The following section provides a doctrinal legal presentation to answer the above posed questions.

❖ INDIAN FEDERAL SYSTEM MANOEUVRING REFUGEES: THE LEGAL TRAJECTORY

India as a State-Nation and not Nation-States (Stepan, Linz and Yadav, 2011) has relied its federal constitutional politics upon integration/convergence and not assimilation/hegemony, which got particularly strengthened with the rise of coalitional electoral politics in India since

²⁰In 1997, India drafted a 'Model Refugee Policy', under the guidance of Justice P. N. Bhagwati, the former Chief Justice of India, but it was not enacted.

²¹'Refugees and Asylum Seekers (Protection) Bill', (2006), Public Interest Legal Support and Research Centre.

²² Shashi Tharoor presented 'The Asylum Bill, 2015'.

1989. "Nation-states tend to be assimilationist in character. Removal of ethnic or cultural diversities is one of the key features of nation-states. In contrast, State-Nation policies work on two levels: creation of a sense of belonging with respect to the larger political community, while simultaneously putting in place the institutional guarantees for safeguarding politically salient diversities, such as language, religion and culturally sacred norms. If it's territorially specific, then federalism is normally a necessary condition for protection of such diversities. And having two or more political identities is not considered subversive to the nation" (Rudolph and Rudolph, 2010). An independent journey from 14 to 28 states, post-1947 was all about such management of 'museum of races' (Joseph Deniker, 1990) with territorial social diversity²³ adjustments on the basis of Language and Tribe, which made the presence of Nationalism and Sub-nationalism in India, a stable feature of 'holding together' federation. Post-2014, the National Institution for Transforming India (NITI) AAYOG as a nucleus of cooperative and competitive federalism, has tried to empower the analogical metaphor of 'salad bowl' by attenuating the 'melting pot' logic with the temporal evolution, but it's just limited to the fiscal front. Whereas, the political intentions seem missing in terms of strengthening the 'salad bowl'. This clearly exhibits the presence of the 'melting pot' logic active at the functional level of politics (visible in political parties and their manifestos or leader's speeches) which is unparalleled to the existing structural ideals mentioned in the Indian Constitution.

Now, to decipher how the Refugee Identity is defined, situated and operated in Indian polity, we first need to analyse the historicist (Foucauldian) and the neo-historicist (Derridian) available sources to understand the GOI's approach, setting their space of compounded ambiguities between the Centre-State interaction. According to Philip Mahwood (1984), in a culturally

²³ 'Federalism is never non-territorial as the federal units are always cartographically organised' (Arend Lijphart, 1977)

diverse developing country like India, federalism is chosen not merely for administrative requirements but for the very survival of the nation. That is why, the framers of Indian Constitution even avoided using the word 'federal' once in the document, due to the fear of further disunity and secession²⁴. Dr. B.R.Ambedkar (1948) also stated the reason as to why the Drafting Committee opted for 'Union of States'²⁵ and not a fully federalised political system. He remarked that "the Federation was not the result of an agreement by the States to join in a Federation... the Federation not being the result of an agreement, no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration... the country is one integral whole, its people a single people living under a single imperium derived from a single source." Also, while introducing the draft constitution to the Constituent Assembly, he emphasised that the constitution was federal to the extent it introduced a 'dual polity' in which "the Centre and the States each have sovereign powers exercised in fields established by the constitution. But the flexibility inherent in the Indian constitution distinguished the proposed Indian model of federalism from all that had gone before. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand, Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances" (Ambedkar, 1948). In normal times, it is framed to work as a federal system. But in times of war, it is so designed as to make it work, as though it was a unitary system. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of

²⁴The partition between India and Pakistan (1947) on the grounds of religion..

²⁵Article 1 of the Indian Constitution.

(Louise Tillin, 2019). The Constituent Assembly had designed a model to enable the central government to act fast with relatively few checks in instances where internal or external crises threatened stability. The constitution also enshrined a model of strong interdependence between the central government and states that was intended to push both levels of government to work together to resolve issues of national importance. So here, we can say that the word ‘federal’ was intentionally avoided by the Constituent Assembly. But since 1994, it has been legally recognised as part of the constitution’s Basic Structure Doctrine (BSD) which cannot be amended. Federalism was recognised as part of the ‘basic structure’ by the Supreme Court in *SR Bommai v. Union of India, (1994)*, and *Kuldip Nayar v. Union of India, (2006)*. But as the Chief Justice said in the Kuldip Nayar ruling, ‘the federal principle is dominant in our Constitution and that principle is one of its basic features ... it is also equally true that federalism under the Indian Constitution leans in favour of a strong Centre’. This depicts that India is open to varied interpretations on deciding its nature of federalism, be it on any domain (fiscal, constitutional, immigration, etc.), it will continue to remain an example of asymmetrical federation. Therefore, to situate the location of Refugees in Indian Federal setup, we need to decode the strategies that India adopted in dealing with Refugee Crisis Management in the past.

India legally manages Refugees with a two pronged strategy: One, at the international level, and other at the national level. It's little critical to decipher its strategy at the *international level*, as India refused to sign the 1951 UN Convention on Refugees²⁶ and 1967 Protocol Relating to the Status of Refugees, which are the two most considered global legal documents on refugees, available in the aftermath of the Second World War. The possible reasons as to why India averted

²⁶Defines Refugee as a “person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of the protection of that country, or to return there, for fear of persecution.”

its accession, can be well cited by Myron Weiner's remark that "borders in the South Asian region are highly permeable and that each South Asian state lacks the political, administrative or military capacity to enforce rules with regard to population entry. That the cross border movements of people in South Asia are known to affect political stability, international relations and internal security." Additionally, South Asia's unstable geopolitics, volatile ethnicity, poverty and resource crunch are the most pressing postcolonial challenges, particularly, for the 'Union of States' like India to handle, making her vulnerable to fulfil the minimum standard of living to the refugees and especially when it is struggling hard to ensure one to its citizens. The 1971 exodus can be the best example to explain this aversion, when New Delhi expected the international community to refund a major part of the expenses that was incurred to look after the cholera-stricken refugee population along its eastern borders. The then permanent Indian representative at the UN, Samar Sen, requested for international aid. Following which, in May 1971, the UN High Commissioner for Refugees, Sadruddin Aga Khan, replied that it would be unrealistic to expect the UN to bear the full responsibility of financial burden. Nonetheless, an assistance of US\$70 million grant-in-aid was provided with a condition (made jointly by the then UN Secretary General U Thant and Aga Khan) that the UNHCR would act as the 'focal point' for the coordination of all UN assistance (by applying Art.35 of the Convention). This absence of direct aid commitment to the Indian government, tied with Sadruddin Aga Khan's visit to East Pakistan on the request of General Yahya Khan made Indira Gandhi suspicious of the 'neutral' operations of the UN. Hence, Indian stance towards the Global Refugee Regime became more sceptical due to the reflections of political realities of the Cold War conditions. As Pakistan, until 1973 held SEATO membership and had an effective liaison with the USA after the signing of 1971 Indo-Soviet Friendship Treaty. However, since 1981 UNHCR has been operating with its

offices in New Delhi and Chennai within its private capacities and a limited mandate under the nodal ministries of Ministry of External Affairs, Ministry of Home Affairs and NITI Aayog. Till date, there are no official reasons given by the GOI for this scepticism rather they ascribe to reasons that are generally inferred to its locale and adhere by the commonly observed political behaviour of South Asian countries (except Afghanistan) that defer as a consenting signatory owing to the euro-centric nature of the Convention, and also consider migration as a matter of bilateral subject discarding the intervention of any international monitoring all together. Though, India is a signatory to the following international conventions which filter its take on humanitarian commitments made for Refugees, namely - Convention on the reduction of statelessness Territorial Asylum (1967); Universal Declaration of Human Rights (1948); International Convention on Civil and Political Rights (1979); Convention on the Elimination of All Forms of Racial Discrimination (1969); Convention on Elimination of all Discrimination Against Women (1981); UN Convention against Torture (1984); UN Convention on the Rights of the Child (1989) and Bangkok Principles (1966). These conventions envisage the jus cogen of non-refoulement admissible, and also contain provisions relating to repatriation, right to compensation, granting asylum and the minimum standard of treatment in the state of asylum. Among these Conventions, some pertinent provisions under UDHR [Art.13 (Right to freedom of Movement), Art.14 (Right to Seek and Enjoy Asylum), Art.15 (Right to Nationality)]; ICCPR [Art.12 (Freedom to leave any country including the person's own), Art.13 (Prohibition of expulsion of aliens except by due process of law)]; UN Convention on the Rights of the Child [Art.2 A (State must ensure the rights of each child within its jurisdiction without discrimination of any kind); Art.3 (In all actions concerning the children, best interest of the child shall be a primary consideration); Art.24 (Right to Health), Art.28 (Right to Education), Art.37 (Juvenile

Justice)] and more recently, India became a signatory to the New York Declaration for Refugees and Migrants (2016), setting the stage for new equitable responsibility for the Global Compact on Refugees (GCR) which forms the base of general inferences drawn upon India's socially cohesive international commitments. But the question still remains whether these commitments are aligned with practicalities of Indian federal politics or do these commitments overlap with the powers/duties enumerated under the 7th schedule²⁷ of the Indian Constitution ? These questions can only be answered after analysing the available domestic governing provisions for foreign nationals.

At the *national level*, despite India's rich history in welcoming refugees and harbouring the idealist ancient moral code of 'Vasudhaiva Kutumbakam', any refugee who enters India is termed as a 'Foreign National'. Hence, there is no law to regulate the status, entry, rights and rehabilitation of refugees separately. Therefore, all the foreigners are governed by the provisions contained in the The Foreigners Act (1946), The Registration of Foreigners Act (1939), The Passport (Entry into India) Act (1920), The Citizenship Act (1955) and rules made thereunder. This paves a leeway for confusion to exist among the common masses, as people tend to misunderstand the difference between 'refugees' and various 'other categories of foreigners'. Though, there are 4 well defined (generally perceived) categories of 'Foreigners' who are different from 'Refugees' in their definitional aspect. These categories are : a.)Temporary residents, Tourists and Travellers; b.)Illegal Economic Migrants; c.)Criminal, Spies, Infiltrators, Militants, etc; d.)IDPs. According to a reply made by the Minister of State for Home Affairs, Shri Nityanand Rai to the questions posed in RajyaSabha, on the maintenance of refugee data, he stated that "since such foreign nationals enter into the country without valid travel documents in

²⁷Article 246 deals with the division of power between the Union and the states through lists.

a surreptitious and clandestine manner, data relating to foreign nationals residing in India claiming to be refugees, asylum seekers and Stateless Persons is not maintained centrally". This clearly shows that there are spaces of ambiguities left intentionally on the part of the government. But, this space of ambiguity, from time to time has been filled by the Indian Judiciary in its various judgements, where we see an interplay of Human Rights laws and International Refugee laws. The fundamental rights under Art.14, 21, 22, 25-28, 32 and 226 of the Constitution have been used by the refugees from time to time. As well, their cases have been dealt in accordance with the procedures established by the law. So, let us take a few cases as cardinal principles to substantiate the prominence of verdicts upholding non-citizens' fundamental rights of life, liberty and dignity. In the landmark judgements of the following cases:- (I.) Ktaer Abbas Habib Al Qutaifi Vs. Union of India (1999), the Gujarat HC upheld the principle of non-refoulement under the wide umbrella of Art.21.

(II.) State of Arunachal Pradesh Vs. Khudiram Chakma (1994), the SC stayed deportation of Chakmas and upheld that the state has to ensure their protection of life and liberty.

(III.) Malavika Karlekar Vs. Union of India (1992), the SC stayed the deportation of 21 Burmese Nationals from the Andaman Islands, pending their refugee status determination by UNHCR.

(IV.) Majid Ahmed Abdul Majeed Mohd. Jad Al-Hak Vs. Union of India (1997), the Delhi HC upheld that food and medical care should be provided to detainees as they are the bare minimum essentials for survival.

(V.) The SC bench of Justices D.Y. Chandrachud and A.S. Bopanna in response to a PIL filed by Fazal Abdali (2020), issued a notice to the Centre and several States seeking a response on ensuring 'Right to food' to Refugees and asylum-seekers.

Thus, deducing from these instances, we can observe that the Indian Judiciary has taken a liberal stance on most of the cases concerning the refugees, in absence of any specific national policy on asylum, either by mitigating the punishment or ordering the release on compassionate grounds. But again, these took a turn (based on republican model of citizenship), after 8th April 2021, the Hon'ble Supreme Court of India (SC) issued an order allowing the deportation of Rohingyas citing "rights guaranteed under Articles 14 [Equality before the law] and 21 [Protection against deprivation of Personal liberty] may be available to non-citizens, [but] the fundamental right to reside and settle in this country is available only to citizens". Former Chief Justice of India, Sharad Arvind Bobde also referenced "national security ramifications" and said that "India is not a signatory either to the United Nations Convention on the Status of Refugees 1951 or to the Protocol of the year 1967, so the principle of non-refoulement is inapplicable". This SC judgement passed in Mohammad Salimullah Vs. Union of India (2017) case sounds contradictory to the earlier judgements (of Malavika Karlekar Vs. Union of India/ NHRC Vs. State of Arunachal Pradesh/ N.D. Pancholi Vs. State of Punjab/ Khudiram Chakma Vs. State of Arunachal Pradesh) made on deportation. This jurisprudential development highlights a shift from its past generosity of providing relief to refugees to a more security centred outlook. Along with this, there are instances when discriminatory attitude between refugees of different nationalities is applied when it comes to their treatment under the legal protective measures. For example, the Tibetan refugees have the right to residence and have been granted lands to build their own villages but others like Chakmas and Sri Lankans are detained in camps and their freedom of movement is guaranteed only inside their camps. These pictorials clearly demonstrate the existence of fallacies and loopholes in legal sensitivity towards immigrants (in matters of detention, medical aid, women and child safety, work permits, freedoms, non-refoulement,

timely filing of charge sheet by the prosecution to enable pleading guilty, security against re-arrest on release from detention, etc.), that needs a proper policy intervention to avoid discrimination and pay heed to the global commitments.

Now it's easily comprehensible that India's form of federalism has sometimes been held up as a diminished version of the 'real thing'. From the time the constitution was crafted, observers described it as a 'quasi-federal' system (Kenneth C. Wheare, 1949) because of the weak protections it appeared to offer to the autonomy of states compared to other federal systems in terms of deciding policies on border related subjects. India stands out from other classic federal systems such as the United States of America (USA) that were forged after formerly independent territories pooled their sovereignty and designed a model of 'coming together' federation that would protect their autonomy. There have been multiple instances over time, in which India's central government has, in more and less egregious ways, compromised the autonomy of states. It's a centralised model with a strong degree of interdependence between the central government and the states. But it has a permissive approach to constitutional amendment providing flexibility to tackle issues, especially those concerning the accommodation of diversity or security of borders that could prove much more intractable in a more rigidly interlocked federal system. Over time, India has also become more genuinely 'federal' as a result of political and economic change. In the early decades, the dominance of the Congress party nationally and across states helped to unite the Indian Union together. The greatest tensions between the central government and the states emerged in the subsequent period during which the 'Congress system' (Rajni Kothari) was challenged. Centre-state relations, and calls for greater regional autonomy, formed part of the platform around which opposition to Indira Gandhi's leadership coalesced in the 1970s and 1980s. In 1983, Sarkaria Commission was formed to study the hyped federal tensions

between the Centre and States. The ensuing parallel processes of economic liberalisation and political regionalisation from the late 1980s increased the centrality and autonomy of states in political and economic life. The involvement of regional parties alongside national parties in coalition governments at the Centre from the 1990s also enhanced the extent to which regional voices were represented in the central government. (Yadav and Suhas Palshikar, 2003). This brought the regionalisation²⁸ of national political discourse, as the regional parties got chance to represent the coalition government between 1999 and 2014. The regional parties found it preferable to support either (UPA/NDA) of the national coalition groups to get more effective political representation and better access to the resources of power, reducing the regional confrontationist approach (Ambar Kumar Ghosh, 2020). Since 2014, when BJP came to power with the developmental narrative of ‘Sabka Saath, Sabka Vikas aur Sabka Vishwas’, it promised a vision to fill the void of expectations caused due to the frustration of UPA and INC’s corruption and policy failures on prioritising state’s development and autonomy. On October 2014, GOI announced the creation of a new States Division under the MEA, to be headed by a senior officer with the rank of Joint Secretary, this initiative was viewed as a departure from the earlier “Delhi-centric”²⁹ attitude of the Union, which allowed states to become a stakeholder in major foreign policy decisions. It was designed “to coordinate facilitation of efforts between the Mission/Post(s) and State/Union Territories Governments as well as foreign diplomatic and trade missions in India,”³⁰ this new division is unprecedented and indicative of the newfound recognition in New Delhi of the significant role that states have come to play in the country’s

²⁸ Signifies presence of political ‘decentralisation’ and ‘federalisation’ at the regional level influencing the legal constitutional political discourse at the national level.

²⁹ See, ‘PUTTING THE PERIPHERY AT THE CENTRE: Indian States’ Role in Foreign Policy’ by Happymon Jacob (2016).

³⁰ For the stated aim of the new division, see the Minister of External Affairs’ answer to a question asked in the Lok Sabha in November 2014. Ministry of External Affairs, Question No. 687_ SEPARATE DIVISION FOR CENTRE-STATE RELATIONS, November 26, 2014 and Question No. 2970_ New division of Centre-State Relations, on 11th May, 2016.

foreign policy engagements³¹ empowering the cooperative federal tendencies. The NDA even expanded its political wings in the north-east region, by forming a non-INC parties political coalition, NEDA on 24th May, 2016. This shows that even after securing the majority, BJP's reliance seems consistent over its political engineering on the basis of cooperative and competitive federalism (based on convergences and divergences), whether its in power (Assam and Mizoram) or opposition (West Bengal) in the state. As Modi's NDA government is a coalition government. However, it is a coalition of choice rather than one of necessity since the BJP has a majority of seats in the Lok Sabha on its own³². This has set a new trend of sub-nationalism and paradiplomacy, flourish through the notion of 'expressive federalism' (Ambar Ghosh, 2020) within the sphere of nationalism, where we see the regional political forces bargaining³³ with the dominant Union government for their fulfilment of local demands and welfare policies. Therefore, it also becomes clear that India has defined its own constitutional practice of federalism rather than following the earlier blueprints.

❖ CASE SELECTION AND METHODOLOGY

This research undertakes a three bi-partisan model of descriptive comparative case analysis of Indian states- namely, Assam (ruled by the same party at the centre and state, i.e. BJP); West Bengal (ruled by the oppositional forces, i.e. BJP at the centre and AITC in the state); and Mizoram (ruled by a coalition government comprising BJP and MNF), showcasing a sui generis presence of cooperative and competitive federal dialogues under the NDA-II regime, on the basis of partisan based ideological oscillations, in terms of deciding the fate of Refugees as a

³¹ Here foreign policy implies foreign policy, foreign economic engagement, and national security and strategic policy.

³² Happymon Jacob in his work, Putting Periphery at the Centre: Indian State's Role in Foreign Policy (2016).

³³ W.H. Morris Jones described Indian federalism as an example of "bargaining federalism" in his work, The Government and Politics of India (1971, 3rd edition).

meso-identity in Indian polity. It is also pertinent to mention that these three states along with the foreign countries (from where the problem of interlopers and Refugees have developed) were once territorially unified³⁴ under the British administration³⁵. This signifies that this selection of cartographical space will provide the research, the adequate opportunity to study the Refugees as an intermediate or meso-level identity in Indian polity shaping its federal trajectories. To answer the research queries, the paper employs the logical inference strategies of Retroduction³⁶ (which provides an implication of deliberately leading backward to an earlier date and make out something factually operative as of that date for analysis) and Abduction³⁷ (which provides the research to respond to the research gap by leading away from the conventional studies on federalism and supply to the literature on neo-federalism through the exploration of ‘Refugees’ as a meso-identity). There are certain limitations of this research - i.)Temporal reason: the case studies only highlights the occurrences happened under the NDA-II regime (post-2019), taking few sources from pre-2019 timeline to substantiate the hypothesis made thereunder. ii.)Categorical reason: the case studies take up selective communities of refugees³⁸ in terms of understanding the Centre-State interaction and their approach regarding the acceptance and rejection of Refugees. iii.)Language barrier, particularly in dealing with the case of Mizoram, as the public records, especially the website of Directorate of Information and Public Relations

³⁴ The State of Mizoram was once the part of the Greater Assam, in 1972, GOI carved out Mizoram as a UT, which later gained statehood on 20th Feb, 1987.

³⁵ In 1874, Assam was separated from Bengal as the ‘North-East Frontier’ non regulation province till 1905 and was incorporated as the new province of Eastern Bengal, then finally in 1912, it was bifurcated from the Eastern Bengal and became a Province under the British Administration. Similarly, Burma (presently Myanmar) was separated with the GOI Act (1935, came into effect from 1937) from India. Likewise, on 15th August, 1947 with the creation of Pakistan, the part of Eastern Bengal was partitioned as East Pakistan, which later in 1971 became an independent country, Bangladesh.

³⁶ See, Peirce, 1908 Essay. The word is a derivation of latin words with a combination of prefix “retro” (means going backward) and suffix “ductive” (means to lead).

³⁷ Meaning of latin derivations: prefix “ab” (away from) and suffix “duction” or “ducere” (to lead).

³⁸ For Assam:NRC Refugees; Mizoram:Chin Community; West Bengal:Matuas as Namashudras.

(Government of Mizoram), which provides intricate current administrative details on Chin Refugees are written in Mizo language.

1) ASSAM

The Indian State-nation challenges from the northeast region, particularly Assam came out of the continuation of the same colonial sovereignty and national identity legacies, which is a form of ‘colonial constitutionalism’ (Sanjay Baruah, 2010) maintained by the Centre³⁹. Identity politics and multiple shades of nationalism (be it political or ethnic), has been very decisive for the survival of Assamese Nationalism till today. It is pertinent to note that historically Assamese nationalism, which is primarily an ethnic nationalism (Plamenatz, 1976) is bonded by common language and common inheritance, predating to the Indian civic nationalism (formed after the formation of independent India as territorial political community). However, the Assamese nationalism has never been evoked so strongly during the time of India’s Independence⁴⁰ as it happened in the 1980s, this violent indigenous jaagriti or consciousness of identity in Assam, consequently brought the IMDT Act (1983) and Assam Accord (1986) to pacify the nativist demands to control the immigration of Bangladeshi and Nepali infiltrators by the Union. There have been various chains of temporal ideological events which politically victimised and incessantly targeted the Refugees, be it Nellie massacre or Assam Movement brawling over land rights, linguistic, cultural and social rights and also protection over the state’s resources, heritage and biodiversity sparking the discourses of citizenship and subnationalism.

³⁹ See, *Unheeded Hinterland: Identity and Sovereignty in Northeast India* (2016, Routledge Ed.) by Dilip Gogoi.

⁴⁰ As T.K.Oommen (1982) cites that there is a difference between Assamese “Nationalism” (which is a movement against the foreign nationals after 1947, currently active in the State’s politics) and Assamese “Chauvinism” (which was the movement against the fellow national’s mobilisation from other parts of India, namely, the Bengali Hindu migrants from West Bengal and Marwari and Punjabi businessmen, it has become opaque and dormant at the functional level of politics at present).

The Citizenship (Amendment) Act, 2019 was one such attempt by the Union government that gave rise to the academic dialectics on how 'religion' can convert the idealistic constitutional principles through the realistic functional intrusion of dominant discourses, by using the instrument of 'Representative Democracy' through the mechanism of policy intervention. This applied legislative 'intelligible differentia' on the basis of religion in the Act, demonstrated the contradictory tones to that of the NRC⁴¹, which was flagged in Assam by the BJP (State Cadre). Assam became the first state to oppose the CAA, particularly due to the Act's provisions of allowing the 6 communities⁴² a safe haven in the country who entered on or before 31st December, 2014 (including the Bangladeshi Hindus who stand exempted from any criminal charges made under the Foreigners Act, 1946 and the Passport Act, 1920 after 2019) and promised granting citizenship to members of these communities. Thus, the Union's promise of Assam Accord remained unfulfilled. Though, an observation can be made, as the State government viewed this Act as a sign of inclusive strategy of GOI, but the regional aspirations for grabbing power contrasted. As mentioned in the 'Sankalp Patra' (2021 Assam BJP's manifesto), correction of NRC was among the top 10 enlisted commitments and it also avoided any reference to the implementation of the contentious Citizenship (Amendment) Act and Clause 6 of the Assam Accord⁴³. But, during the 2021 Vidhan Sabha election campaigning, BJP seemed sceptical in proving the NRC's failure (CAA changed the year criteria for illegal immigrants from 1971 to 2014). On the one hand, BJP's President J.P.Nadda commenting on INC's promise of non-conformism to CAA implementation in the state, he said that "by voting in Assam, state

⁴¹ The National Register of Citizens (NRC) of Assam is basically a list of Indian citizens living in the state of Assam. The Citizens' Register sets out to identify foreign nationals in the state that borders Bangladesh and also timely upgraded it to weed out illegal Bangladeshi and neighbouring immigrants.

⁴² Non-muslim communities, namely, the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians.

⁴³ It specifies that "constitutional, legislative, and administrative safeguards, as may be appropriate, shall be provided to protect, preserve, and promote the cultural, social, linguistic identity and heritage of the Assamese people".

legislation cannot change the central legislation" and on the other hand replying to a question on the implementation of Clause 6, he said "it is under process and we are committed to it". The analysis of this case is pretty subtle because the Union and the State, both are ruled by the same party but the stand differs at the central level and state level. Here, the allegiance of State to fulfil the promised indigenous regional claims/demands (case of sub-nationalism⁴⁴ in total opposition to Refugees claims) and Centre's commitment towards implementing CAA (case of nationalism, though selective but pro-Refugees) reflected a sui generis explanation of cooperative and competitive federal tendencies. Significantly, the balance of Assamese nationalism was skillfully maintained by the Union in this case through the insertion of exceptions⁴⁵ in the CAA, which not only displayed the ideological cooperation of BJP at the state and the centre, but also the presence of competition where the Centre emphasised on giving political identity to the Refugees (with religious exception) and the State seemed sceptical in terms of outwardly supporting the Union's stance.

2) MIZORAM

The case of Mizoram, has a different ethnic story of refugee acceptance from Myanmar that shares a 510 km border (having a Free Movement Regime⁴⁶ established) with it. The Chin refugees are recognized ethnic minority group, who are fleeing Myanmar for over 4 decades to escape the persistent human rights abuses committed by the Tatmadaw⁴⁷ and also the natural

⁴⁴ Sanjib Baruah's India Against Itself, (1999).

⁴⁵ Section 6B, sub-section 4, which implies that "Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under 'The Inner Line' notified under the Bengal Eastern Frontier Regulation, 1873". This included the 3 tribal areas of the North Cachar Hills District, the Karbi Anglong District, the Bodoland Territorial Areas District of Assam.

⁴⁶ This FMR allows the tribal populace living along the border to travel 16 km across the boundary without any visa restrictions.

⁴⁷ Burmese army.

calamity⁴⁸, since the 1988 uprising in Myanmar. From February 1, 2021 coup d'état again began in Myanmar, which led to unrest between the Tatmadaw and the Armed Civilian groups. Following which, on 10th March, the North Eastern Division of the MHA issued a letter to the Chief Secretaries of 4 north-eastern states and the Director General of Assam Rifles. Directing them to strictly vigil the borders and not allow any refugee influx from Myanmar or provide shelter to displaced and also ordered to deport them back to their borders. It is to be noted here that Mizoram is ruled by Mizo National Front (which is an ally of BJP and NEDA). In sharp contrast to the notification, Mizoram CM Zoramthanga described the situation in Myanmar as a "human catastrophe of gigantic proportions". In a letter to PM Modi, he urged that India couldn't turn a "blind eye to this humanitarian crisis" in its backyard. And especially to the Chin community (one of the 135 recognized ethnicities in Myanmar, in contrast to Rohingyas who are merely treated as an 'associate citizens'), who share cultural affinity with the Mizos. The State government going against the SC ruling and the Union directives gave shelter to the refugees and provided them hospitable services (including education, medical care, shelter, food, ID cards, etc.) by arranging funds from the local NGOs and Churches. In December 2021, after meeting with the PM for assistance, Chief Minister Zoramthanga said that "he had been assured that the Centre was going to draw up a plan to assist the refugees" also "the Centre is willing to help but it cannot directly help the Myanmar refugees because India is not a signatory to the UN Refugee Convention of 1951 and its 1967 Protocol". Here, the cooperative and competitive tendencies are clearly visible in terms of handling the refugees. As State's inclusive allegiance to the customary law of non-refoulement and local governance responsibility stands contrary to the Union's non-allegiance to international commitments.

⁴⁸The Refugee International Field Report, 2009 stated that "In 2007, Chin state faced a widespread famine due to the flowering of bamboo forests, which occurs every fifty years, and the resulting plagues of rats that eat the bamboo fruit and any other crops in their path. Also the crops were expropriated by the Burmese Army."

3) WEST BENGAL

We generally know that Bengal went through the ‘mapmaker’s scalpel twice’, one in 1905 and the other in 1947. But, it actually happened thrice, that’s in 1971. Once Bengal, counted as an economically prosperous region which had numerous pull factors of migration. But again, the same Bengal later when got divided, developed push factors⁴⁹ as well. Matua, a weaker Hindu religious sect⁵⁰, who migrated to India during the partition and after the 1971 Bangladesh creation, they settled in border districts of West Bengal. Many of them have acquisitioned Indian citizenship but a considerable size has not been accorded the same. Matua is one such community (along with Gorkhas of Darjeeling, Rajbanshis and Adivasis of north Bengal, muslim minorities, etc.), who forms the major host of caste based community assertion in West Bengal’s politics, making caste a significant determinant during election (Praskanva Sinharay, 2014). Be it 2019 Lok Sabha elections or 2021 Vidhan Sabha election, Matua community is a perfect example of a meso-identity between the Centre and the State setting the neo-federal dialogues. Dr. Manosanto Biswas⁵¹ explained the reasons why the Matuas gravitated towards the BJP in 2019- i.) Hinduism, as they have been oppressed by the Muslims in Bangladesh; ii.) CAA, 2019 which guarantees them to lift their interloper tag; iii.) CM Mamta Banerjee’s critical responses towards CAA implementation on grounds of religion. But, the same Matuas became displeased with the BJP in 2019 and 2021 elections due to the reasons- i.) BJP’s poor promised service

⁴⁹ Hazarika’s (2000) study identified land hunger, population pressure and environmental factors in Bangladesh as the primary push factors. Pramanik (2006) also highlighted the political and religious factors in Bangladesh as the primary push factor.

⁵⁰ They are Namashudras who are counted as a Scheduled Caste. A detailed explanation was given by Dr. Manosanta Biswas, assistant professor of history at Netaji Subhas Open University in Kolkata, was quoted as saying in an interview with News18.com that, “In undivided Bengal, the Namasudras, commonly known as ‘Chandalas’, were outside the traditional four-fold Varna system of Hindu society. The Varnashram Dharma or caste system in Bengal was unique. Unlike the rest of India, Hindu society in Bengal was divided as Brahmin and Shudra segments.”

⁵¹ ibid

delivery of implementing CAA, 2019; ii.) AITC's assurance of providing legal pattas or land rights to all the tribal communities, including the Matuas (which also acted as a counter to Centre's decision to enforce NRC). Here, the role of 'Boro Ma'⁵² is pertinent to mention, as she was an eminent figure between the two leaders (PM Modi and CM Mamta) of the parties. One promised Citizenship and the other promised to ensure legal pattas. In 1977, the community approached the governments (both the Centre and State) but they were disillusioned and denied any help from the left government in terms of citizenship and land rights. In 2009, CM Mamta Banerjee came close to the community, and Boro Ma made her the chief patron of 'Matua Mahasabha'. In 2011, the state government also provided grant-in-aid for the welfare of the community. In 2018, CM Mamta met Boro Ma and announced the creation of a Welfare Board for the community. In 2019, Boro Ma's death divided the community⁵³ on party's lines, that is BJP (promising citizenship) and AITC (promising pattas). Shantanu Thakur, chairman of All India Matua Mahasangha, and a Loksabha MP (BJP), expressed his dejection over the Union's delay in implementing the CAA and the BJP's State leadership on ignoring the Matua representative in the state committee earlier. After the 2-year gap of 'Matua Dharma Maha Mela', in 2022, the event was organised which was virtually addressed by PM Modi and attended by around 20 lakh devotees. The arrangement of the congregation was supported by both. The AITC's local leadership (Shri Mamtabala Thakur) helped in terms of providing the nod for organising such a big gathering, and the BJP's national leadership arranged for 15 special trains and a ship to ferry devotees from the Andamans. The ideological differences and rivalry in terms of political party interests at the intra-community level among the Matuas were opaque.

This case portrays that Matuas are active gravitators, as they are strong enough to politically

⁵² Binapani Devi (1920-2019), arrived in India in 1947 with her husband Pramatha Ranjan Thakur, and established the Thakurnagar town in the North 24 Parganas region, where majority of the Matuas reside in West Bengal.

⁵³ As the family members became affiliates of these two parties.

mobilise the political parties both at the Centre and the State. Also, in 2019, the West Bengal government approved the building of 2 detention camps⁵⁴ on the lines of the MHA's 11 page Manual. Politically, the Chief Minister herself have been a staunch critic of implementing detention centres in her state, but the government officially confirmed to build these 2 camps. Though, the state government later clarified that it was the SC directives and not the Union's commands, which it has complied to and it has no relations with NRC in reality. Here, the case of opposition parties cooperating and competing on selective fronts highlights the development of neo-federal tendencies while operating Refugees as a meso-level identity.

❖ CONCLUDING OBSERVATIONS

India, being a post-colonial State-Nation, has evolved and is still evolving through different stages of community development. And, this evolution of the idea of Indian community includes the *Gemeinschaft* (representing the pre-modern communitarian view); *Gesellschaft* (signifying the positivist, modern, liberal individualist view); and the unique category of Nationalism (highlighting neutrality with amalgamated version of both of the above stated stances). So, the Indian community was redefined with time alongside certain definitive boundaries were set, as the colonial manoeuvrability had its roots in the European model of functioning. (*Lineages of Political Society: Studies in Postcolonial Democracy* by Partha Chatterjee, 2011). This model was applied in oriental set-up with a differential logic which was liberal for the sake of name, as instead of creating a society of 'homo equalis', it created 'homo hierarchicus' based on cartographic and ethnic borders. The development of Indian Federalism on partisan based ideological oscillations allowed a discretionary space to the Centre and the States to rely on

⁵⁴ One in New Town (Kolkata) and Bongaon (North 24 Parganas) for convicted foreign nationals awaiting deportation.

ethnicities at the functional level rather than any fixed structural constitutional provisions (i.e., having a national asylum policy to define Refugees), where the idea of subnationalism found its path to flourish in the Indian polity (in terms of viewing and managing the Refugees). Today, the focus of government is shifting more towards the idea of ‘Jus Doni’, which is defined in the legal lexicon as ‘Citizenship by investment’⁵⁵, though it has been referred for the emerging globalising market and neoliberal based tenets in migration. But this idea can also be extended to the electoral mobilisation and manipulation of Refugee communities, creating a strong-weak binary among the category through ideological-electoral investments, especially post-2019.

Political party’s notion of recognizing the Refugees can be classified into the two models of Citizenship, a.) Republican⁵⁶, b.) Liberal⁵⁷. Though here, the granting of citizenship rights remains with the Centre but the States are responsible to manage the local populace (including the refugees) through welfare oriented policies. It is difficult to categorise the Union and the States in a water-tight compartments, as the absence of a national asylum policy, allows them to adopt either Republican or Liberal model in terms of viewing the Refugee identity.

⁵⁵ See, ‘The Acquisition of Citizenship by Investment’ by Christaian H. Kalin (Pub: Brill Nijhoff, 2019)

⁵⁶ Based on the idea of civic self rule emphasising the political agency. The key principle of the republican model is embodied in classical institutions and practices like the rotation of offices through voting, underpinning Aristotle’s characterization of the citizen as one capable of ruling and being ruled in turn (based on the idea of discretionary exclusion and minimal accommodation of cultural diversity).

⁵⁷ It is more Walzerian (1989), which focuses on legal status rather than political status. It denotes membership in a community of shared common law, which may or may not be identical with a territorial community. It’s more universally inclusive compared to Republican model.

	UNI PARTY (Ruled by BJP)	OPPOSITION (Ruled by AITC)	COALITION (Ruled by MNF and NEDA)
Preferences on borders followed by:	ASSAM	WEST BENGAL	MIZORAM
UNION	Open (conditions applied)	Open	Closed
STATE	Closed	Open	Open

Fig: The Preferences of the Union and States based on political party’s ideological oscillation on border under the NDA-II Regime (only selective communities)

From the above prolegomena of understanding the GOI's legal approach of dealing with refugees on an ad hoc and case-by-case basis at two levels has provided neo-federalism (as a new dimension of Indian Federalism) to set in a new definition of competitive and cooperative federalism. Furthermore, it can be observed that there exists a shift of the commitments from the idealistic ancient moral codes of past universalism to the exercise of the hard core realistic electoral and ideological manipulative politics of interests with functional variants of nationalism, especially under the NDA-II regime. As, GOI’s focus under NDA-II remains the intra-refugee crisis management (for example, Bru-Reang historic agreement in 2020; NEDA; Development; Border Infra-Security and others) rather than the inter-refugee crisis management (which involves the foreigners). Thence, the legal inertia of national asylum policy is propitiously backing GOI’s application of flexi-approach, as it is able to balance the trio of: Internationalism, Nationalism and Subnationalism on a spatio-temporal basis, by employing the ideological-ethnic preferences, political interests and attitudes with a constructive force. But, for the sustenance of a true democratic future, India exigently needs a formal policy intervention to avoid such further neglect, discrimination and ambiguous treatment of 'Refugee' identity.

Indian Federalism can set an example, by allowing the ‘Politics of Hope’ and restricting the real borders of ‘Politics of Despair’.

❖ **ABBREVIATIONS:-**

GOI: Government of India

SC: Supreme Court

NDA: National Democratic Alliance

NEDA: North-East Democratic Alliance

UPA: United Progressive Alliance

MHA: Ministry of Home Affairs

MEA: Ministry of External Affairs

NRC: National Registers of Citizenship

CAA: Citizenship (Amendment) Act

BJP: Bharatiya Janata Party

MNF: Mizo National Front

AITC: All India Trinamool Congress

INC: Indian National Congress

PM: Prime Minister

CM: Chief Minister

MP: Member of Parliament

UT: Union Territory

UN: United Nations

UNHCR: United Nations High Commissioner of Refugees

NHCR: National Human Rights Commission

SEATO: Southeast Asia Treaty Organisation

CAD: Constituent Assembly Debates

NITI: National Institution for Transforming India

IDP: Internally Displaced Persons

IMDT: Illegal Migrants (Determination by Tribunals)

❖ **BIBLIOGRAPHY:-**

Books, Journals, Articles, Online Sources

1. Weiner, Myron. "Rejected Peoples and Unwanted Migrants in South Asia," In Economic and Political Weekly (1993).
2. Weiner, Myron. "Security, Stability and International Migration," (Draft of a paper in preparation for Publication December 1990).
3. Acharya, Bhairav. "The law, policy and practice of refugee protection in India," In ResearchGate.
4. Acharya, Bhairav. "The Future of Asylum in India: Four Principles to Appraise Recent Legislative Proposals" (2016).
5. Patel, Bimal. "The State Practice of India and the Development of International Law: Dynamic Interplay between Foreign Policy and Jurisprudence," (Published in 2016).
6. Chimni, B.S. "Status of Refugees in India: Strategic Ambiguity (Chapter 11)," In Samaddar Ranabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000 (2003 SAGE Publication).
7. Burch, Elias. "The Perils and Possibilities of Refugee Federalism," American University Law Review (2017).
8. Bhagwati, P.N. "Presidential Address", Refugees in the SAARC Region: Building a Legal Framework (1997).
9. Tharoor, Shashi. "The Asylum Bill" (2015).
10. Basu, Durga Das. "Introduction to the Constitution of India," (2015, 22nd edition).
11. Ghosh, Ambar Kumar. "The Paradox of 'Centralised Federalism': An Analysis of the Challenges to India's Federal Design," ORF Occasional Paper No. 272, (2020).
12. Varshney, Ashutosh. "How has Indian Federalism done?," (2010 and 2013 SAGE pub).
13. Deniker, Joseph. "The Races of Man: An Outline of Anthropology and Ethnography" (1990).
14. Oommen, T. K. "FOREIGNERS, REFUGEES AND OUTSIDERS IN THE INDIAN CONTEXT." Sociological Bulletin, vol. 31, no. 1, Indian Sociological Society, 1982, pp. 41-64, <http://www.jstor.org/stable/23619721>.
15. UNHCR India Factsheet (October, 2021).

16. <https://www.unhcr.org › protectPDF States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol>.
17. India's Refugee Policy (Faculty of Law) (<https://www.indianbarassociation.org/indias-refugee-policy/#>).
18. Varshney, Aushutosh. <https://www.journalofdemocracy.org/articles/book-review-discovering-the-state-nation/>
19. Why India is home to millions of refugees but doesn't have a policy for them (the print.in)
20. Article: Emigration, Immigration, and Diaspora Rel.. |migrationpolicy.org
21. <https://in.one.un.org/who-we-are/unhcr-india/>
22. <https://www.unhcr.org/4cd96e919.pdf>
23. Why India Did Not Sign the 1951 Refugee Convention - HG.org
24. <https://www.unhcr.org/en-in/publications/books/5e3174c54/global-compact-on-refugees-india-n-perspectives-and-experiences.html>
25. Insights Mind maps (insightsonindia.com)
26. <https://rli.blogs.sas.ac.uk/2021/05/06/india-is-chipping-away-at-its-past-generosity-towards-refugees/>
27. <https://prsindia.org/billtrack/the-citizenship-amendment-bill-2019> and [https://egazette.nic.in › pdf_THE_CITIZENSHIP \(AMENDMENT\) ACT, 2019 NO. 47 OF 2019](https://egazette.nic.in › pdf_THE_CITIZENSHIP_(AMENDMENT)_ACT,_2019_NO._47_OF_2019).
28. <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/rs-03022021/213.pdf>
29. <https://frontline.thehindu.com/the-nation/unmasking-hindutva-looking-back-on-dismantling-global-hindutva-online-conference-september-2021/article36628499.ece>
30. <https://www.legalserviceindia.com/legal/article-4616-refugee-law-the-constitution-perspective.html>
31. <https://thewire.in/government/foreigners-tribunals-order-mha-changes>
32. <https://www.news18.com/lok-sabha-elections-2019/alliance-wise-tally-live-results/>
33. <https://www.thehindu.com/news/national/what-are-the-guidelines-on-migrant-camps/article28809023.ece>
34. <https://economictimes.indiatimes.com/news/elections/assembly-elections/assam/corrected-nrc-to-protect-genuine-citizens-nadda/articleshow/81648806.cms?from=mdr>
35. <https://theprint.in/politics/caa-will-be-implemented-in-time-in-assam-says-jp-nadda/627034/>
36. <https://lifestyle.livemint.com/news/talking-point/why-mizoram-is-giving-shelter-to-refugees-fleeing-myanmar-111617128690291.html>

37. <https://www.thehindu.com/news/international/for-rohingyas-there-is-no-place-called-home/article19620567.ece>
38. <https://indianexpress.com/article/north-east-india/escaping-junta-more-myanmar-refugees-cross-over-into-mizoram-7736109/>
39. <https://nhrc.nic.in/media/press-release/nhrc-online-open-forum-unanimously-pitches-national-law-end-adhocism>
40. <https://www.epw.in/journal/2008/09/notes/india-needs-refugee-law.html>
41. <https://www.indiatoday.in/india/story/assam-final-nrc-list-out-over-19-lakh-people-excluded-1593769-2019-08-31>
42. eci.gov.in - (press release) - <https://www.news18.com/news/politics/assam-voters-excluded-nrc-assam-assembly-election-commission-sunil-arora-3318008.html>
43. <https://www.mea.gov.in/lok-sabha.htm?dtl/26812/question+no2970+new+division+for+centre+state+relations>
44. Hazarika, Sanjoy (2000), Rites of Passage: Border Crossings, Imagined Homelands, India's East and Bangladesh, Penguin Books, New Delhi.
45. Pramanik, Bimal (2006), "Illegal migration from Bangladesh: A case study of Bangladesh" in B.B. Kumar (ed), Illegal Migration from Bangladesh, Astha Bharati, Delhi. Pp. 137-147.
46. <https://www.thehindu.com/news/national/no-centralised-data-on-detention-centres-says-mha-in-rs/article38402593.ece/amp/>
47. <https://indianexpress.com/article/explained/this-word-means-matua-community-5567348/>
48. <https://indianexpress.com/article/explained/explained-who-was-harichand-thakur-matua-7844238/>
49. <https://www.telegraphindia.com/west-bengal/bjps-matua-face-shows-clout-calls-pm-tmc-leader/cid/1858063>
50. <https://www.indiatimes.com/amp/explainers/news/matua-community-in-west-bengal-559733.html>

51. <https://m.economictimes.com/news/politics-and-nation/bengal-gave-nod-for-2-detention-camps-on-mha-model-now-mamata-says-no/articleshow/73002609.cms>

52. Kannabiran, Kalpana (2020), "The Shifting Sands of Citizenship: Disposessions, Constitutional Ruptures and Borderlands." (SAGE pub).

53. Sinharay, Praskanva (2016). "Dalit Question in the Upcoming West Bengal Assembly Elections". (EPW).

54. Sinharay, Praskanva (2014). "The Caste Question: West Bengal's Election Story." (EPW).

55. Tillin, Louise (2019). "Oxford India Short Introductions: Indian Federalism." (OUP).