

## **How Protected are the Refugees: A Comparative study of the contemporary states of Germany and India in light of the Geneva Convention, 1951**

The *1951 Refugee Convention* or the Geneva Convention, as known more popularly, is a multi-party treaty with the United Nations High Commission for Refugees as its guardian that lays down the foundation of refugee rights in the post World War II world. Several protocols and compacts have been adopted by the member-states of the United Nations for regulating migration and asylum since the Geneva Convention, the most recent being the *Global Compact for Safe, Orderly and Regular Migration* (2018). While the differences between a 'refugee' and a 'migrant' constitute the major differentiation in policy, the nation-state views both as 'aliens' – hence outside the ambit of its citizenry. International treaties such as the Geneva Convention and the Global Compact seek to regulate human security outside the nation-state.

Keeping the Geneva Convention of 1951 as the bedrock, this project will look into a comparative study of refugees and asylum-seekers in India and Germany. The key points for choosing these two countries are

- their respective membership of the Global South and the Global North;
- their experiences with partition of territories – Germany was split into East and West and later reunited; the Indian subcontinent was divided into India, Myanmar and Pakistan - later bifurcated to create Bangladesh.
- Germany's anti-Semitic history and India's experience with religious pogroms since the Partition of 1947;
- finally, the differences of execution of the protection regime as experienced in a signatory of the Geneva Convention (Germany) and another that has not signed and ratified the Geneva Convention (India).

### **India and the Geneva Convention**

India hosts a number of different communities fleeing persecution from political and religious violence. However, it has no defined legal framework stating the entitlements of refugees seeking asylum in the country. The Partition of the subcontinent in 1947 witnessed one of the largest and brutal population exchanges in the world. It had violently displaced millions of people across the divided provinces of Bengal and Punjab, and paved the way to problematic equations between the indigenous and the immigrant – characterising the politics of Northeast India till date. While the Partition was on the basis of religion, its implications were and continue to be extremely intersectional in nature. Among others, class and gender within class have played decisive roles in the nature of Partition-induced displacement and resettlement, as I have derived from my MA thesis.

The United Nations' 1951 Refugee Convention, the only refugee instrument that existed at the time, had been created to accord protection to people displaced in the aftermath of World War II. The Convention's Euro-centric nature was clear in its limitations – it was applicable to the events occurring in "Europe or elsewhere before 1 January 1951" and gave refugee status to someone "who has lost the protection of their state of origin or nationality" This essentially

meant that the 1951 Convention, in its original form, was only applicable to people who had fled a state-sponsored (or state-supported) persecution (Manuvie, 2019).

The Partition of India and the forced displacement of 1947, while within the Convention's timeline, did not fall into the category of 'state-supported/sponsored persecution'. People who had to leave their homeland were forced to do so due to 'social persecution' instead of 'state-sponsored persecution' or 'war on the civilians by the state'. Most importantly, as Manuvie (2019) opines in her article, "the subsequent concerns of both India and Pakistan to attribute a more liberal meaning to the term 'refugee' in order to include internally displaced people or those displaced due to social rifts were rejected at the international level. This created an overall scepticism towards the 1951 Refugee Convention". India under Jawaharlal Nehru did not sign the 1951 Convention and its 1967 Protocol for the fear of international interference in what it has considered its "internal affairs", as well as the fear of international criticism should it fail to provide the minimum living/housing conditions to refugees in its territory, as per the treaties.

### **Germany and the Geneva Convention**

In comparison, Germany has displayed a relatively consistent attitude to refugees and asylum seekers after the Nazi dictatorship was uprooted and replaced with a democratic government. Its citizenship and asylum laws are based on the experiences of German emigrants, who, on the run from the Nazis, became dependent on a country that had taken them in as refugees. A new article (article 16) was added to the Federal Republic's Basic Law (*Grundgesetz*) in 1948–49 stating: "Politically persecuted persons have the right of asylum." With this, the Federal Republic of Germany is obliged to grant a right of residence to the politically persecuted. The second legal basis for the asylum policy of the Federal Republic of Germany is the Geneva Convention. This sets out globally applicable minimum standards for the treatment of refugees.

In 2015, the migrant crisis in the world had peaked with the Syrian refugees becoming the most vulnerable group of asylum seekers. Under Chancellor Angela Merkel, Germany adopted an open door policy for the Syrians and displayed a welcoming stance for immigrants in general. Merkel's decision to welcome Syrian refugees had won her praise but also sparked a backlash, with some senior ministers openly questioning the approach and her usually-high poll ratings slipping several points" (Connolly, 2015).

### **Methodology**

This project will use the comparative case study method to contemplate the effectiveness of the global protection regime for refugees and migrants. The formulation of the Geneva Convention of 1951, the Protocol of 1967 and the Global Compact of 2018 all point north – literally and figuratively. Through a detailed analysis of the way the two countries tackle refugees and asylum seekers, it will contribute to fill the gaps in the effectiveness of international instruments in the Global South. It will ask:

- How has the precedence of right wing political parties in India and Germany affected their stance to immigration?
- Does the protection regime operate on the fault-lines of race, religion and gender?
- How do asylum seekers experience the protection regime in a country that is not a signatory to the Geneva Convention, as compared to one that is?

Global politics is perched on an interesting juncture, with a waxing wave of right wing political ideals and their manifestation in electoral politics. With statelessness and forced displacement at an all time high, it is imperative to ask questions for the rights of those outside the protection of the nation-state. This project aims to be a step in that direction.

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