

A COMPARATIVE OVERVIEW OF REFUGEE RIGHTS IN EUROPE AND INDIA

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ABSTRACT: *By the end of 2016, nearly 5.2 million refugees and migrants reached Europe undergoing severe hardships. Torn apart by war and persecution, most people arrived in Europe from Syria, Iraq, Afghanistan, and other countries. Since 2015 many have lost their lives or have gone missing. Women and Children are among the most vulnerable. Policymakers and academics have long proposed cross-regional comparative analyses of policies and laws to enable different regions to learn from the experiences of each other. Against this background, the article provides a comparative overview of the refugee rights and concerns in the EU and in India. The article demonstrates the possibilities for sharing and learning from each other good practices concerning protection of the rights of vulnerable groups and integration provisions.*

KEY WORDS: comparative overview, refugee rights, Europe, India

INTRODUCTION

The Global refugee regime has its origins in the Inter-War years. In the aftermath of the First World War, the League of Nations High Commissioner for Refugees (LNHCR) did not represent a formal treaty-based regime but tried to develop ad hoc solutions to human displacement.² In contrast, the post-Second World War era has led to the development of a formal, treaty-based regime with a surveillance mechanism. The contemporary regime is based on, firstly, the 1951 Convention on the Status of Refugees, which defines who qualifies as a refugee and the rights to which refugees are entitled.³ The preamble of the 1951 Refugee Convention emphasis on international cooperation to provide base for an effective refugee regime. The Convention encompasses the rules, norms, principles, and decision-making procedures that govern states' responses to refugees. It also defines who is a refugee and rights thereto.⁴ Article 35 of the 1951 Convention gives UNHCR⁵ an explicit mandate to monitor

¹ <https://www.unrefugees.org/emergencies/refugee-crisis-in-europe/#:~:text=By%20the%20end%20of%202016,apart%20by%20war%20and%20persecution.&text=In%202018%2C%20more%20than%20138%2C000,than%202%2C000%20of%20them%20drowned> (accessed on May 7, 2021).

² Skran, C. *Refugees in Inter-war Europe: The Emergence of a Regime*, pp. 21-35.

³ Ibid.

⁴ Betts, A. "The Normative Terrain of the Global Refugee Regime,"

<https://www.ethicsandinternationalaffairs.org/2015/the-normative-terrain-of-the-global-refugee-regime/#fn-9725-2> (accessed on April 22, 2021); Loescher, G. 2001. *The UNHCR and World Politics: A Perilous Path* New York: Oxford University Press; Betts, A, Loescher, G. and Milner, J. 2012. *UNHCR: The Politics and Practice of Refugee Protection*, Abingdon, U.K.: Routledge.

⁵ United Nations High Commissioner for Refugees.

implementation of the Convention.⁶ However, the growing prominence of economic and survival migrants, has driven a debate about whether the 1951 Convention should be reopened and renegotiated.⁷ Perhaps that has driven a call to “rethink” the definition of refugee. The definition fails to address the concerns of those people who are fleeing war, civil strife, and environmental catastrophe, or in essence those who have become “stateless”. However, there are strong arguments against the revision of The Convention regarding the classification of who is a refugee. Most obviously, as applications become much more interpretive, a large amount of international resources would be required to satisfy the predictably large number of claims and “half the world would become bona fide refugees overnight [as] refugee programs will become indistinguishable from development programs.”⁸ The total number of States Parties to the 1951 Convention is 149.⁹ In contrast to this, there are still 43 members of the United Nations that have neither signed nor ratified the Convention.¹⁰

It has been reported by the UNHCR that 86 percent of the world refugees are coming from developing regions.¹¹ There are several reasons which deprive refugees from seeking their basic rights. Countries like India have less capacity to accommodate asylum seekers or refugees due to lack of space or financial instability followed by political reluctance. Lack of resources, fear of crimes, public policy and order are among other reasons. There has been increasing dissatisfaction with the level of burden-sharing with the richer states of the world. They argue that they receive disproportionate support to overcome the extra expenditure associated with the presence of large amounts of refugees.¹² Hence, the existing regime, although effective, falls short in terms of fulfilment of norms related to burden-sharing and rights of refugees. The norms are still weak and discretionary.¹³ The existing global regime imposes larger responsibility on the neighboring states than on those far off. Currently countries like Australia, UK are more inclined towards extending protection to those who are within their proximity. To the contrary, they also argue that protection should be provided in the country of origin.¹⁴ To this effect, the UK has openly declared its wish towards reciprocal migration. Also, currently, with a larger number of Syrian people seeking protection, the existing refugee regime has given a new twist to the very definition of ‘refugee’.

With respect to the EU, the Geneva Convention definition of refugees remains dominant in the Treaty on the functioning of the European Union (Article 78) and the EU Charter of Fundamental Rights (Article 18). The EU has an extensive set of legislation on asylum-

6Betts, A. “International Cooperation in the Global Refugee Regime,” GEG Working Paper Nov. 2008/44, p.3, op. cit.

7“The Global Humanitarian Regime: Priorities and Prospects for Reform, Council on Foreign Relations’ (CFR) International Institutions and Global Governance, workshop, March 2016
http://www.cfr.org/content/publications/attachments/Workshop_Report_IIGG_Humanitarian_OR.pdf (accessed on April 29, 2021).

8Shacknove, A. ‘Who is a Refugee?’ (1985), 95 (2) *Ethics*. 277. P.281

9<https://www.unhcr.org/1951-refugee-convention.html> (accessed May 05, 2021).

10<http://www.fmreview.org/non-signatories.html> (accessed on April 28, 2021).

11UNHCR, *Global Trends Report: Forced Displacement in 2014*, June 18, 2015.

12Schultz, M.A. “The Global Refugee Regime in International or World Society? An English School Perspective on the Global Management of Refugees,” op. cit. p.65.

13Ibid, see Betts, A. 2009. *Protection by Persuasion: International Cooperation in the Refugee Regime*, pp. 1-52, op. cit.

14Betts, A. “The Normative Terrain of the Global Refugee Regime,” op. cit.

seekers.¹⁵ However, several European countries are closing their borders to refugees by making asylum conditional.

Contemporary Refugee Crisis in Europe

More than a million migrants and refugees crossed into Europe in 2015.¹⁶ In the first nine months of 2015 alone, refugee influx raised net immigration to Germany to the record level of more than one million. More than half of the asylum seekers came from Syria, Albania, Serbia, Afghanistan, and Iraq.¹⁷ More than 300,000 people have risked their lives to cross the Mediterranean Sea (including 200,000 to Greece). Over 2,600 did not survive this dangerous journey. More than 70 people were found dead in an abandoned truck in Austria. In the year 2016 about 3500 people were reported dead or missing in the Mediterranean Sea. The UNHCR has clearly declared that “this is primarily a refugee crisis, not only a migration phenomenon.”¹⁸

Blaming the western world for their policies on this refugee crisis, Gulshan Sachdeva describes the ‘burden-sharing’ problem in the EU. He states:

“.....the way different EU governments have responded to the present crisis has again exposed structural flaws of common EU policies. The Dublin procedure established that the first EU country where a migrant or refugees enters is responsible for processing his or her asylum claim. This obviously put tremendous pressure on countries like Greece and Italy where most asylum seekers arrived first. In recent months, Hungary has also joined frontline status as refugees are entering its territory from neighboring Serbia. As most asylum seekers want to go to Germany, Sweden, France or Italy, questions are raised as to why register and house them in a country where they do not want to stay any way.....

.....to alleviate the problem, the EU proposed a quota system to distribute migrants among different nations. All 28 EU member states were required to accept asylum seekers in proportion to the size of their economy, unemployment rate and population. Although the plan was initially backed by Germany, France, and Italy, they have now suggested many corrections. The UK was already out of the system. Many East Europeans say it will not work as most asylum seekers want to settle in West Europe. Spain has also rejected the plan. Some have objected to the principle itself.....

As per the UNHCR, over 4 million Syrians are now refugees. It is not that all Syrians are moving towards Europe. About 1.9 million have taken refuge in Turkey. Similarly, about 1.1 million and 630,000 have found shelter in Lebanon and Jordan, respectively. Only about 350,000 Syrians have applied for asylum in Europe. Europeans know that they cannot run away from their responsibility as many of these people have become refugees due to European involvement in shaping conflict outcomes in Syria, Iraq, Afghanistan, Libya and Kosovo.....”

15[http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/569051/EPRS_ATA\(2015\)569051_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/569051/EPRS_ATA(2015)569051_EN.pdf) (accessed on March 4, 2021).

16<https://en.jrs.net/assets/Publications/File/Legal%20Rights%20of%20Refugees%20in%20India.pdf> (accessed on April 1, 2021).

17Folkerts-Landau, D. “Influx of refugees: An opportunity for Germany,”

[https://www.dbresearch.com/PROD/DBR_INTERNET_EN-](https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000365616/Influx_of_refugees%3A_An_opportunity_for_Germany.pdf)

[PROD/PROD000000000365616/Influx_of_refugees%3A_An_opportunity_for_Germany.pdf](https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000365616/Influx_of_refugees%3A_An_opportunity_for_Germany.pdf) (accessed on April 4, 2021).

18Sachdeva, G. “Europe’s Refugee Crisis,”

http://www.idsa.in/idsacomments/EuropesRefugeeCrisis_gsachdeva_090915 (accessed on April 3, 2021).

The report of the Secretary General on refugees and migrants presented in an informal meeting of the UN General Assembly noted that the estimated number of people on the move globally is close to 250 million, of which the number of refugees stands at nearly 15 million.¹⁹

According to India's Deputy Permanent Representative to the U.N. Ambassador, Tanmaya Lal, ".....75 percent of the refugees come from just 11 countries and seven countries host more than half of all refugees. Even more tellingly, it is important to recognize that 86 per cent of all refugees are hosted in developing countries..... cross-border movements of both refugees and migrants have existed for generations and human mobility has fundamentally shaped and influenced the current community of nations as well as the international system....."²⁰

Legal Status of Refugees in India

In contrast to the situation in the EU, among developing countries, India has a long practice of welcoming refugees from all over the world. The Parsis were the first to enter India around the 10th Century A.D. to escape Arab persecution in Persia which began in the 7th Century. For the same reason, Syrian Christians and Jews took refuge in India.²¹ Although India has not signed the 1951 Refugee Convention and the 1967 Protocol relating to the status of refugees, there are refugees coming from China, Myanmar, Burma, Bhutan, Nepal, Afghanistan, Iran, Iraq, Bangladesh and Sri Lanka. The World Refugee Survey 2009, conducted by the U.S. Committee for Refugees and Immigrants, revealed that there are nearly 411,000 refugees in India, out of which the largest number are from Tibet.²² As per the UNHRC, persons of concern as of January 2014 are 197,850.²³ It has been reported that in the State of Tamil Nadu, there are 66,509 Sri Lankan refugees living in 110 camps and 2 special camps.²⁴ Until today, India has dealt with the issue of 'refugees' only on a bilateral basis. India does offer de facto protection to refugees. Refugees are treated as 'foreigners' and are extended legal protection under the existing Indian laws, which are otherwise also applicable to all foreigners. There are no special legislations dealing exclusively with the needs of refugees, but some provisions²⁵ of the Indian Constitution are equally applicable even to refugees. Additionally, proposed bills for refugees' protection were drafted in 1997,²⁶ 2006,²⁷ and 2015²⁸, but the Indian government has kept these bills in abeyance on justified grounds of national security.

In India, refugees are governed by the Foreigners Act, 1946; Foreigners Order, 1948; Passport Act, 1967 etc. In addition, the Criminal Procedure Code, 1973; Indian Penal Code, 1860; Indian

19<http://www.thehindu.com/news/migration-refugee-issues-need-differentiated-approaches-india/article8555676.ece> (accessed on March 4, 2021).

20<http://www.thehindu.com/news/migration-refugee-issues-need-differentiated-approaches-india/article8555676.ece> (accessed on March 4, 2021).

21See Houtsma, M.T. 1936. *First Encyclopaedia of Islam 1913-1936*, E.J.Brill's, First (9 Vols.)

22Bhalla, N. "ANALYSIS-Lack of India refugee law leaves many in limbo."

<http://news.trust.org/item/20100325172400-d70r9> (accessed on April 29, 2021).

23<https://en.jrs.net/assets/Publications/File/Legal%20Rights%20of%20Refugees%20in%20India.pdf> (accessed on April 11, 2021).

24Ibid.

25Articles 14, 21, 22(1), 22(2) and 25(1).

26In 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.

27Refugees and Asylum Seekers Protection Bill, 2006 <https://notacoda.files.wordpress.com/2014/08/refugees-and-asylum-seekers-protection-bill-2006.pdf> (accessed on April 29, 2021).

28The Asylum Bill, 2015 <http://www.shashitharoor.in/pdf/Asylum-Bill-2015.pdf> (accessed on April 29, 2021).

Evidence Act, 1872 are also applicable. Special laws to deal with refugees have been used primarily by various State Governments.²⁹ India is accountable to abide by the principle of non-refoulement, the principle being a significant part of customary international law. This principle is binding on every state irrespective of whether that state has ratified the 1951 Convention or its 1967 Protocol. The accountability is stronger due to India's commitment as a signatory to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention against Torture elaborately emphasises on the adherence for respect towards customary international law and to the principle of non-refoulement.³⁰

Furthermore, the Indian Judiciary is quite vibrant towards protecting the rights of refugees. Lower Courts have provided a certain measure of socio-economic protection in special circumstances.³¹ They have enjoined deportation proceedings and ordered the release of individual refugees in order to provide an opportunity to approach the UNHCR for refugee status determination or to allow resettlement to take place.³² The Supreme Court of India has consistently held that the fundamental right enshrined under article 21³³ of the Indian Constitution regarding the right to life and personal liberty - applies to all individuals irrespective of the fact whether they are citizens or non-citizens. Hence, articles 14³⁴, 22(1),³⁵ 22(2)³⁶ and 25(1)³⁷ of the Indian Constitution are equally applicable even to refugees.

Although there is no real and specific recognition of the right against non-refoulement, courts have on rare occasions accorded to individual refugees the right against forced

29Special measures to respond to refugee influxes were most extensive in the aftermath of the Partition of India in 1947, the Tibetan influx in 1959 and the Bangladeshi mass influx in 1971. See, Rajeev Dhavan, *Refugee Law and Policy in India*, New Delhi: PILSARC, 2004.

30Sen, S. "Understanding India's refusal to accede to the 1951 Refugee Convention: context and critique." op. cit. <https://refugeereview2.wordpress.com/opinion-pieces/understanding-indias-refusal-to-accede-to-the-1951-refugee-convention-context-and-critique-by-sreya-sen/> (accessed on April 28, 2021).

31See, Digvijay Mote (unreported) WA 354/1994, Karnataka High Court, as cited in Acharya, B. "The Law, Policy, and Practice of Refugee Protection in India," op. cit.

32See Malvika Karlekar (unreported) WP 583/1992, Supreme Court; Bogyi (unreported) WP 1847/1989; Khy Toon (unreported) WP 525/1990, (both Guwahati High Court); Shah Gazai (unreported) WP 499/1996, Punjab & Haryana High Court; Ktaer Abbas Habib Al Qutaifi 1999 Cri LJ 919 (Gujarat High Court) at paras 18 – 20; Lailoma Wafa (unreported) WP 312/1998 (Delhi High Court) as cited in Acharya, B. "The Law, Policy, and Practice of Refugee Protection in India," op. cit.

33Article 21 confers right to life.

34Article 14 guarantees equality before the law and the equal treatment of the law.

35Article 22 (1) "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

36Article 22 (2) "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

37Article 25 (1) "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

repatriation.³⁸The UNHCR Refugee Certificates are technically recognized by the government as legitimate proof of a refugee's status.³⁹

This attitude of the Government was influenced by the judiciary through its landmark verdict, *National Human Rights Commission versus State of Arunachal Pradesh* also known as Chakma Refugees case.⁴⁰ In that case the Supreme Court of India held that Chakma Refugees who had come to India from Bangladesh cannot be forcibly sent back to Bangladesh as they might be killed there and thus would be deprived of their right under article 21 of the Indian Constitution. The Court observed:

"We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus, the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, to threaten the Chakmas to leave the State."⁴¹

On the other hand, Indian jurisprudence has evolved to now require the general norms of international law be respected and incorporated into the Fundamental Rights chapter of the Indian Constitution even if not ratified by India, where the principles or norms are such that they are deserving of universal application - especially in relation to human rights enhancing provisions of international conventions even where they have not been specifically incorporated into Indian law by legislation. Hence, it is now a generally well-established rule that treaty obligations which are rights-enhancing are to be read as part of the right to life, liberty, and due process provision.⁴² In this regard, the Court has observed:

"Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, [and] to promote the object of the constitutional guarantee."⁴³

Besides, India has signed several international conventions that impinge upon its obligations towards refugees. These include the Universal Declaration of Human Rights, 1948; the International Convention on Civil and Political Rights, 1966; the International Convention on Economic, Social and Cultural Rights, 1966; the International Convention on the Elimination of all Forms of Racial Discrimination, 1966; the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, 1984; and the Convention for

38See, P. Nedumaran (unreported) WPs 12298 & 12313/1992, Madras High Court; and Gurunathan (unreported) WPs 6708 & 79168/1992, Madras High Court, as cited in Acharya, B. "The Law, Policy, and Practice of Refugee Protection in India," op. cit.

39Sen, S. "Understanding India's refusal to accede to the 1951 Refugee Convention: context and critique." op. cit.

40AIR 1996 SC 1234

41AIR 1996 SC 1234 at para 20.

42See Nilabati Behera (1993) 2 SCC 746 at pr. 21; Vishaka (1997) 6 SCC 241 at para. 7; People's Union for Civil Liberties (1997) 3 SCC 433 at para. 13; People's Union for Civil Liberties (1997) 1 SCC 301 at paras. 23-25; Apparel Export Promotion Council (1999) 1 SCC 759 at paras. 26-27; Githa Hariharan (1999) 2 SCC 228 at para. 14; and Chandrima Das (2000) 2 SCC 465 at paras. 24-27; Dhavan, R. "Treaties and People: Indian Reflections", 44 JILI 1996, pp. 362-376.

43Vishaka (1997) 6 SCC 241 at para. 7.

the Elimination of all Forms of Discrimination Against Women, 1979.⁴⁴ All these legislations do make provisions for the rights and protection of refugees. Thus, without ratifying the Convention India serves as a good illustration for initiating a pro-refugee campaign.

It was Herbert Krauss, from the Ministry of Foreign Affairs, Austria, and Head of the Department for the Common Foreign and Security Policy (EU) who stated that the EU can learn from India's treatment of its refugees. To quote Krauss:

"In the migration issue, because India has experience with migration... you have refugees from Bangladesh... so you learn how to integrate; you learn how to deal with them.⁴⁵.....We are trying to tap into some of the migration problems India had faced in the past and also facing now and planning to learn from it. And we are trying to do this under the Common Agenda on Migration and Mobility (CAMM)."⁴⁶

To that effect, a Joint Declaration on a Common Agenda on Migration and Mobility between India and the European Union and its Member States has already been concluded on 29th of March 2016.⁴⁷

Former United Nations High Commissioner for Refugees, Antonio Guterres, has rightly acknowledged the reintegration and sustainable development programmes undertaken by India in Afghanistan. Praising India's contribution as a good lesson to the international community Guterres stated as under:

"India which has opened its doors for refugees and asylum seekers has set an example for other countries to emulate.....India with its history, culture, traditions, is today an example of generosity in the way it has opened its borders to all people who have come looking for safety and sanctuary. There are Tibetans, Afghans, Myanmarers in India, and it has maintained an open-door policy for all. India has a generous approach in relation to all people and a proof of that is the granting of long term visas and work permits to refugees..... India is focused towards creating opportunities for the voluntary repatriation of the Tamils into Sri Lanka.....India's solution strategy is based on attracting reintegration in 48 areas in Afghanistan that were found sufficiently conducive for the return of people..... India is already running the biggest cooperation programme in Afghanistan. Indian involvement is an important factor in trying to create conditions for the country [Afghanistan] to have a sustainable development. Indian programme is the largest programme, and as a government has its own people and its own country to run, nobody can ask India to do more. What is important is that its example is followed by the international community."⁴⁸

Further, providing a backdrop on Europe's history, it is significant to remember that during World War II in Europe over 40 million refugees sought shelter away from the catastrophic

44Sen, S. opt. cit., See HalaShetti, J.S. "The Status of International Law under the Constitution of India," op. cit., Ananthachari, T. "Refugees in India: Legal Framework, Law Enforcement and Security," <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html> (accessed on April 29, 2021).

45Sriram Lakshman "We can learn from India on refugee crisis," <http://www.thehindu.com/news/international/we-can-learn-from-india-on-refugee-crisis/article8541629.ece> (accessed on March 30, 2021).

46Basu, N. "EU to tap into India's migration problem management," <http://www.thehindubusinessline.com/news/world/eu-to-tap-into-indias-migration-problem-management/article8541733.ece> (accessed on March 30, 2021).

47https://www.mea.gov.in/Images/attach/Migration_and_Mobility_between_India_and_the_European_Union.pdf (accessed on March 14, 2021).

48Ramachandran, S.K. "India's refugee policy is an example for the rest of the world to follow," <http://www.thehindu.com/opinion/interview/indias-refugee-policy-is-an-example-for-the-rest-of-the-world-to-follow/article4269430.ece> (accessed on March 3, 2021).

bloodshed that engulfed the continent for over six years. Majority of these refugees were citizens of East Poland who had been displaced because of the Soviet invasion of Poland in September 1939 which led to the death of about 500,000 Polish citizens and deportation of a number close to 1 million.⁴⁹

Today as Europe struggles to deal with a huge refugee influx, it might be useful to remember that a similar route was taken by European refugees about half a century back. In January 1942, the Maharaja of Nawanagar in India accepted 500 Polish children into his territories. By March 1943, the Valivade camp in Maharashtra was established and it became a thriving Polish town with 5,000 refugees.⁵⁰ These refugee camps were established in areas that were under British colonial rule.

Suggesting a probable solution to the current refugee crisis Piotr Puchalski, a researcher on Polish African relations stated as following:

“It is possible that if Europeans today retained more formal control over the flow of refugees in the Middle East, Asia and Africa region through an international organization, then it might be easier to channel refugees to various places closer to their homes.”⁵¹

Comparing India with the EU

As stated above, the EU can learn from India’s experience and treatment of its refugees. India, which has comparable diversity, can teach much. Europeans should be willing to learn from an emerging economy. In a few years starting in 1947, India integrated 600 independent and semi-independent kingdoms and the erstwhile British India and consolidated them into language-based states. There are 29 Indian states today, as opposed to 28 European Member States. Both the EU and India have multitude of official languages (24 in India and 23 in the EU). Both have similar religious diversity i.e., Christianity in the EU and Hinduism in India. “Both are home to many minority religions that are practiced by large numbers. Also, the cultural and social customs are diverse especially concerning food, popular cultures or myths.”⁵²

Apart from this, there are some structural differences and similarities between India and the European Union concerning the economic, political, and legal structure such as the centralization or decentralization of powers, freedom of movement, residence permissions etc. Firstly, the EU is an association of sovereign nations, India is a sovereign nation. The Indian government unilaterally can decide to split its states. It may abolish some states or

49Roychowdhury, A. “Lest we forget: European refugees in India, Africa and the Middle East,” <http://indianexpress.com/article/research/lest-we-forget-european-refugees-in-india-africa-and-the-middle-east/> (accessed on March 3, 2021).

50Ibid.

51Ibid.

52Dann, P. “Federal Democracy in India and the European Union: Towards Transcontinental Comparison of Constitutional Law,” http://dann.rewi.hu-berlin.de/doc/Dann_2011_Federal_Democracy_in_India_and_EU_VRUE_11_02.pdf (accessed on March 2,

2021), Mukherjee, A.S. “What Europe can learn from India?” <http://m.jpost.com/Opinion/What-Europe-can-learn-from-India-420011#article=6022MTI2OTc4QkQ5QUI2RjhFRUYzRDM5OTVDMzBFODYxODA=> (accessed on March 30, 2021).

create new ones. On the other hand, the EU cannot unilaterally decide to split Denmark, merge Germany and Netherlands or create a new state from scratch.

Secondly, the European Parliament looks like the Parliament of India in structure, but it has very limited powers. Each nation has its own constitution, legal system, own flag, and own sovereign government. Member states are sovereign enough to quit the EU at any point of time. No one can stop them from doing that. Also, the EU cannot dismiss the elected government of any of the member states. On the other hand, no state in India is free to quit the union. If Kolkata wants to quit India for some reason, it must bear the brunt of the Indian Army. The Central Government in India has the power to dismiss the Kolkata government and arrest anyone who is seeking to separate Kolkata from India.

Thirdly, the EU looks like India in economic aspects. Both have a single currency and a single market. However, the EU member states are free to choose to retain their own currencies (notably, UK and Sweden are not part of the Eurozone). The EU members are more in a Currency Union. People can move freely among the member states. Companies can operate freely across the whole system. India is far more centralized than the EU, but most EU Members States are even more centralized than India. Sovereignty lies with the countries in both cases i.e., with India, rather than with the states; and with the EU Member states, rather than the EU itself. Thus, other countries deal with India / EU members and not with the Indian states or the EU itself.

Fourthly, all Indians have a fundamental right to travel, to live and work in any part of India (although subject to security restrictions in some places). The EU citizens freedom of movement is governed by the EU treaties. In that respect, each person residing in the EU, irrespective of their member state of domicile is acutely affected by the EU law as it regulates ever more areas of their conduct.⁵³ In various ways therefore, the EU presents a unique constitutional experiment, which struggles to find its place somewhere in between a single federal structure of law and a superimposed system of International law.⁵⁴

Putting it in the words of Phillip Dann, “.....The EU integration process with its various pulls and pressures mirrors that of the Indian Constitutional law process in ways which are more familiar than alien. That apart, traditional constitutional studies relating to the division of competences between states and the union, judicial review of legislative and administrative acts, interpretation of fundamental rights and the internal market/trade and commerce clause to mention a few. ...both India and the EU are relatively young and fragile constructions which were originally created by elites and are still somewhat engaged in a process of creating and defining their collective identity.....”⁵⁵

“In certain allied legal disciplines, the interrelationship is more readily discernible than others especially in the case of competition law. Indian competition rules lean heavily towards the EU as opposed to the US antitrust laws, it will not be an exaggeration to observe that definitive points of enquiry for competition teams across law firms in India are indeed, relevant

53Falk Daviter (2007) POLICY FRAMING IN THE EUROPEAN UNION, Journal of European Public Policy, 14:4, 654-666, DOI: 10.1080/13501760701314474

54Ibid.

55Dann, P. “Federal Democracy in India and the European Union: Towards Transcontinental Comparison of Constitutional Law,” http://dann.rewi.hu-berlin.de/doc/Dann_2011_Federal_Democracy_in_India_and_EU_VRUE_11_02.pdf (accessed on March 2, 2021).

competition norms in the EU.”⁵⁶ Even the Competition Commission of India invariably refers to the European Commission notices and guidelines while passing orders under section 3 and 4 of the Competition Act, 2002. “Unsurprisingly therefore, officials from the CCI undertake periodic study and training visits to the European Commission and the engagement at the level of cooperation and enforcement has only intensified over the years. Apart of the above, there are potentially several other fields of convergence, like telecommunication laws, patent regimes (life sciences), banking supervision and stress analysis.”⁵⁷

It is interesting to note the thesis devised by leading Indian historian Ramachandra Guha. He wrote we can find both in India: a mirror of Europe’s past – and at the same time a taste of Europe’s future. To put it in Guha’s words:⁵⁸

“In comparative terms, it is intriguing to think of India of being both Europe’s past, in that it has reproduced, albeit more fiercely and intensely, the conflicts of a modernising, industrialising, and urbanising society. But it is also its future, in that it anticipated, by some 50 years, the European attempt to create a multi-religious, multi-ethnic, political and economic community.”

However, by understanding the difference between the EU and India Philip Dann observes:

“.....While India and the EU embody two different approaches to the challenge of governing democratically a continental and heterogeneous polity, both systems are also not static. It is interesting to note their dynamics. Coming from different directions, they seem to move towards each other. Whilst India was doubtlessly created as a democracy, it is only slowly becoming a more pointedly federal polity. In contrast, the EU was created as a federation but is only slowly evolving into a democracy. This observation does not necessarily imply convergence. Differences are abundant – and often more interesting.....
.....both polities do face similar challenges and it will be interesting to observe how they will meet and overcome them in the future....”⁵⁹

Hence, in essence it would not be incorrect to say that ‘there is an India within Europe and there is a Europe within India.

Concluding remarks

In today’s context if a question is asked, why does the EU exist? Certainly, the reason is not to prevent World War III. In contrast, India’s efforts at forging a common identity – “India” which did not exist for millennia in fact have been a substantial success. It adopted a national anthem that lauded, by name, every part of the country, and a flag with colors associated with the three major religions.⁶⁰ Indian Politicians took decisions that made no logical or economic sense, but that helped manage diversity and build oneness among citizens.⁶¹ Every child learned the message of “Unity in Diversity” from primary school onward. And despite its periodic,

56Falk Daviter (2007) POLICY FRAMING IN THE EUROPEAN UNION, Journal of European Public Policy, 14:4, 654-666, DOI: 10.1080/13501760701314474

57Ibid.

58Guha, R. Past and Present, The Hindu Sunday Magazine, 10th April 2005.

59Dann, P. Federal Democracy in India and the European Union: Towards Transcontinental Comparison of Constitutional Law, p. 176, http://dann.rewi.hu-berlin.de/doc/Dann_2011_Federal_Democracy_in_India_and_EU_VRUE_11_02.pdf (accessed on March 12, 2021).

60Mukherjee, A. “What Europe can learn from India,” <http://www.imd.org/research/challenges/upload/TC077-15-India-Europe-PDF.pdf> (accessed on March 9, 2021).

61Ibid.

ugly, politics-driven religious killings, India championed religious diversity. And so, during the 1971 bloodbath that birthed Bangladesh, poor India, plagued with regular famines, hosted roughly 10 million Muslim refugees.”⁶²

In comparison to this, instead of celebrating Europe’s cultural richness and unifying people, European leaders / politicians are currently holding them behind. For instance, “Wolfgang Schäuble mused that indolent Greece should temporarily leave the Eurozone. With Brexit the UK Left the EU. Greece is playing tricks with Russia. Viktor Orban wants the EU refugee/migrant policy to ensure that Europe remains Christian. This list is unending leading to disunity in diversity. And so, the very rich EU cannot deal effectively with the present refugee crisis. On the other hand, during the 1971 bloodbath that birthed Bangladesh, dirt poor India, plagued with regular famines, hosted roughly 10 million Muslim refugees.”⁶³ Even during the recent few decades India has hosted refugees from Tibet, Sri Lanka and Myanmar. Thus, India might have got a lot wrong, but it has tackled the problem of refugees without any crisis or panic.

⁶²Ibid.

⁶³Ibid.