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**A Critical Review and Comparison of  
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 **Title of Article**

***A Critical Review and Comparison of Eswatini, India and Zimbabwe's Refugee Laws***

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**Abstract**

This research makes a comparison of three countries' refugee laws and policies, namely the Kingdom of Eswatini (formerly Swaziland), India and Zimbabwe. The findings of the research suggests' that Eswatini has better policies and regulations guiding treatment of refugees followed by Zimbabwe. The study further reveals that while India receives the largest number of refugees in the world, it does not have laws governing refugees and did not ratify the 1951 Refugee Convention. India has many contested cases in the Courts of Laws.

**Keywords:** *Refugees, Non-refoulement, Human Rights, Convention, Citizens.*

**Introduction**

Immigration is the process of peoples moving to a country and can be either voluntary or involuntary. Immigration is a broad area and there are four broad areas of immigration namely, voluntary immigration, involuntary immigration, emigration and internal immigration. This research focuses on involuntary immigration policies of three countries namely Eswatini, India and Zimbabwe.

Immigration law regulates which non-citizens may enter a country, for how long and for what purposes; which non-citizens may work in a country, which citizens may become citizens, and Law; and which citizens must leave a country. Many countries grant protection to individuals who in their home countries, have been persecuted, or fear persecution in the future, based on their race, religion, nationality, political opinion, or membership in a particular social group.

Most of the countries that offer this protection are guided by the 1951 United Nations Convention. The protection is classified either "asylum" or "refugee status", depending on where the determination about this persecution is made.

## Methodology

Primary data was collected through questionnaires (India - n=20), (Eswatini - n=20); (Zimbabwe - n=20) and secondary data and information was collected from Home Affairs Departments archival records in Eswatini and Zimbabwe, and Court cases from India Courts. Further case analysis was done using desk research to verify the collected data.

A comparison of the policies and refugees' regulations from the three countries was done as to identify which country had favourable regulations and policy managing refugees.

## Discussion and Results

The world is riddled with movement of people during various challenges like war and political instability which has seen a huge increase of involuntary migration.

### Zimbabwe

The Convention Relating to the status of Refugees, done at Geneva on the 28<sup>th</sup> July 1951, further to the Protocol Relating to the Status of the Refugees of the 31<sup>st</sup> January, 1967 and the Convention Governing the Specific Aspects of Refugee Problems in Africa, done at Addis Ababa on the 10<sup>th</sup> September 1969, Zimbabwe enacted the Refugees Act Chapter 4:03 which commenced on 28<sup>th</sup> October 1983, and subsequently made amendment up to 31 December 2017 to strengthen the Law. Article 2 of the Act, Section 3 clearly define the meaning of "Refugee".

The Zimbabwe Refugees Act is well thought out and protects the rights of those persons who have sought asylum or refuge. The Act respects the principle of non-refoulement hence it makes persons of concern safe, even in the event that their application to be recognized as refugees was not successful, the person is given an opportunity to extensively exhaust the right of appeal in terms of Sections (5). It goes further to allow the person to be given three months to decide to move to another country of their choice in the event that their appeal was not successful. Article 13 of the Act is very pertinent; as it guides on non-return of refugees, their families or other persons. It clearly states that no individual shall be denied entry into Zimbabwe, extradited, expelled or returned from Zimbabwe. This is very important in the protection of the people of concern.

However, the Act, specifically Article 16, deals with circumstances regarding detention of recognized refugees and protected persons pending expulsion. This Section was found crucial as it lays the procedures to be followed in the circumstances of expulsion of a recognized refugee.

### Eswatini

While the Kingdom of Eswatini has been a host of refugees since time immemorial, hosting Mozambique refugees fleeing the war from Mozambique and South Africans during Apartheid, the King and the Parliament of Swaziland enacted the Refugees Act, 2017(Act No.15 of 2017), in 2017. The Act

was enacted to provide for the recognition, protection, support and control of people of concern (refugees) to give effect to the 1951 Convention Relating to the Status of Refugees, as well as the 1967 Protocol Relations to the status of Refugees.

Article 4 of the Act clearly defines who a refugee is. The Act further clearly show the committees mandated to deal with matters relating to refugee cases. A critical and interesting point of the Act is Article 8 which deals with illegal entry and presence in the Kingdom. It protects persons who enter illegally in the country claiming to be refugees. This part of the Act asserts that such persons shall not be declared prohibited immigrants, imprisoned, detained or penalized in any other way merely by cause of the illegal entry or presence in the Kingdom provided that upon entry they personally present themselves before the nearest Authorized Officer without delay.

The Act is very authoritative on non-refoulment. It clearly emphasizes that no person shall be refused entry, returned to any other country, expelled or extradited if the person will be subjected to persecution or if their life is threatened on account of external aggression, foreign domination or occupation. The Act also empowers the Minister to expel a refugee on the grounds of national security or public order but it makes it clear that, the refugee can not be returned to a country where they face danger. It further allows for affected person to make representations against the expulsion order.

## India

Generally, India has always witnessed a serious inflow of refugees from neighboring countries and an example is when there was a military coup and crackdown in Myanmar. There is no doubt that taking care of persons of concern (refugees) is now regarded as a key component of human rights dispensation. Moreover, the fact is that, refugee influx to India is unlikely to end soon seeing the geopolitical, ethnic, economic and the religious precincts and contexts of the region.

India has no clear and specific law to deal with the problem of people of concern in spite of their increased entry into the country. India relies on the Foreigners Act, of 1946 which in reality fails to deal with the peculiar challenges confronting refugees as a people. One major fundamental concern of the Foreigner Act, is its excess power extension to Central Government to deport any foreign citizen, in contravention of the Principle of non-refoulment.

It is important to note that India didn't ratify and acceded to the 1951 Convention for Refugees and the subsequent 1967 Protocol. The 1951 Convention and the 1967 Protocol are very pertinent legal documents regarding the protection of refugees. It goes without saying that, in spite of the fact that India did not ratify the 1951 Refugee Convention, India has a good record on the protection of Refugees. India has to some extent exercised a moral tradition of integrating foreign persons and culture. However, there has been a major problem with the India Refugee Policy especially the Citizen Amendment Act, 2019 which shockingly excludes Muslims from its apprehension and seek to give citizenship to only Christian, Hindu, Sikh, Jain, Buddhist and Parsi Immigrants who are being persecuted in Pakistan, Afghanistan and Bangladesh.

## Results

Sixty respondents participated in a survey by the researcher, twenty from each country (Eswatini, India and Zimbabwe). Ninety two percent (92%) of the respondents in Eswatini felt that the Refugees Act in the Kingdom of Eswatini is sufficient in the protection of refugees and eight percent (8%) were not sure of the extent of the protection.

On the Indian side, only 21% of the respondents were in support of the non-availability of a clear law that governs refugees, and 70% felt that it is important to adhere to global and international standards and norms given that despite not having ratified the 1951 Refugees Convention, India still accepts refugees. Nine percent (9%) were not sure of the extent of the problems regarding the matter.

Eighty -three (83%) percent of the respondents felt that the Zimbabwean Refugee Law was intact and favourable, while 18% where not sure of the extent of protection of the law.

## Conclusion

The governments of Eswatini and Zimbabwe are commended for the ratification of the 1951 Convention on Refugees and its 1967 Protocol and the continued assistance rendered to refugees. It however came out that there is need for both governments to improve the services, and facilities that are given to people of concern. The most commendable thing to both governments is adhering to the non-refoulment principle.

In spite of not having ratified the 1951 Refugee Convention, India has been the largest recipient of people of concern in the world, and it has somehow done well. However there has been quite a number of matters that ended up being resolved by the Courts for example the case of National Human Rights Commission vs. State of Arunachal Pradesh (1996) among many. This is attributed to the rigidity of the Foreigners Act 1946 and the Citizenship Amendment Act 2019. There is further scope of work that need to be carried out to bring solid recommendations to all the three countries so as to enhance their policies or rather maintain the good.

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