

Refugee crisis in India: A study on socio-political status of Rohingya refugees

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Abstract

*The Rohingya crisis, at present, is the worst humanitarian crisis in the world and history which has often been ignored or forgotten by the international agencies and other countries. They are politically and socially excluded in their home country-Myanmar and are downgraded to a stateless community by the Myanmar government. The mass migration of Rohingyas into the neighboring states of Myanmar have created problems and posed several challenges to the refugee host countries like India. In this article books of eminent authors, articles in research journals, newspaper reports have been scanned and analyzed while doing the research. Several online databases and internet search engines have also been used to keep the study updated. The study revealed that India not being a signatory to the Refugee Convention of 1951 and its Protocol of 1967 and the absence of its own refugee law creates a huge problem for India towards governing its refugees. With the absence of domestic refugee law, there is no proper domestic law to define who are refugees and illegal immigrants in India and the fact that the Indian government has a power to dictate on these terms which creates an unequal situation for the asylum seekers as the authorities have started to carry out religious discrimination among refugee groups. The growing number of refugees in India without a proper documentation can put the national security at risk and that the Indian authorities need to adopt proper rules for its refugee management and instead of continuously balancing its humanitarian obligations and national security, India needs to frame its own refugee law in order to deal with them in a consistent and uniform. Therefore, we can say that the Rohingya crisis is not only a problem or issue of Myanmar as it has escalated into a larger refugee **problem and needs a solution**.*

Keywords: Discrimination; Humanitarian Crisis; Refugees; Rohingyas.

1.Introduction

“We may belong to different races and have different colors. We may speak different languages and follow different religions. We may have different perceptions and live in different realities. But we all live in one world and belong to a single humanity”.

Mouloud Benzadi¹

A refugee can be said as someone who has been forced to flee his or her own country due to persecution, war or violence. They have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they are afraid or cannot return home due to fear. War and violence in the name of ethnic, tribal and religion are leading causes of refugees fleeing their countries². Often people in the world have had the experience of leaving the place where they grew up. They may move only as far

¹ Mouloud Benzadi is a British writer, translator, linguist and researcher.

² USA for UNHCR The UN Refugee Agency, accessed 24th February, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>.

as the next village or a city. But sometimes for some people, they need to leave their country entirely for a short time or even forever. There are countless reasons why people around the globe seek to rebuild their lives in a country which is alien to them. Some leave to get a job or an education while some are forced to flee persecution or human rights violations. And millions leave to flee from armed conflicts or other crises or violence. And some due to insecurity for being targeted for who they are or what they do or believe and therefore no longer being or feel safe, for example, ethnicity, religion, sexuality or political opinions.

Thus, a person who fled their own country because they are at risk of serious human rights violations and persecution is a refugee, a situation where the government of the country itself fails to protect or denies protection from the dangers which are at risks to their safety and life and are so great that they had no choice but to leave and seek safety outside their country.³

The word refugee is evocative and even powerful as well. When one talks about refugees usually, images like fleeing populations struggling with their belongings, crossing borders desperately, refugee camps, images of people living in juggis with no source of employment, women cooking on roadsides to feed their starving children etc. that comes to our mind. In literal sense, the word refugee has a specific definition and social implications. Refugees are neither people who migrate in search of employment nor criminals but are people who migrate in fear of being persecuted in their homeland. People become refugees, either on an individual basis or as part of a mass exodus, because of political, religious, military and other problems in their home country.

The concept of refugees is not a new issue for India. India has been holding from different countries a great number of refugees for centuries without being a party to the Refugee Convention of 1951. In relation to refugees, it can be seen that India has always been quite tolerant to refugees. India has taken bilateral relations with other states as a basic part while dealing with this problem and applying the principles of Humanitarian Traditions, International legal obligations and the principles in our Constitution. India also maintained relations with Non-Government Organization (NGOs) and the United Nation High Commissioner for Refugee (“UNHCR”) to help to give protection, security and guarantee the basic human rights of the refugees in India. Recently, there are new refugees who set foot in India who came from Myanmar and are known as the Rohingya Refugee apart from other refugees in India, for example, Sri Lankan Tamil, the Afghanistan, the Chakma and Hajong refugees. The refugee crisis relating to Rohingya is a very complex case. This Community has been struggling for home and shelter for more than 35 years. The Rohingya Muslim have found to be in constant oppression and violence after a riot and conflict broke out in 2012, which can even be said as a case of genocide in that caused them to flee from their home land for life altogether. This led them straight to Bangladesh and India, where they enter illegally to which they would travel up to Delhi and Jaipur to get themselves registered under the UNHCR refugee status. However, in reality few were registered and most of them are considered by the Indian Government as illegal migrants.

2. India's policy on Refugees

Numerous aspects pertaining to refugees are there which are of major importance both to India, as a country and to the refugees, particularly in the context of law enforcement. An utterly humanitarian matter like the refugees has come to be influenced by considerations of national security given the security scenario prevailing in the country, particularly arising out of the role of some of the neighbor's in this regard⁴.

Due to her unique geography, liberal democratic polity and multi-ethnic society India has received a large number of refugees so far. Additionally, the conditions in many surrounding countries are such as to produce more refugees where India became a shelter home for them and this has resulted in the flight of refugee groups, who enter India through borders to seek protection.

Refugees in India are often regarded as “Foreigners’”, defined under section 2(a) of the Foreigners Act, 1946. It defines as “a person who is not a citizen of India” but there are also some foreigners which may be distinguish from refugees, such as tourist or travelers, internally displaced persons, illegal migrants, or in other words an “alien” which is defined in the Citizenship Act, 1955, which states that alien is a person who “either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India, or his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.” Thus, the current status of refugees in India are the same as “alien” and are dealt with under the same existing laws applicable to

³ Amnesty International, “Refugees, Asylum Seekers And Migrants”, accessed 20th February, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/>.

⁴ Pooja, “India's Refugee Policy”, Indian National Bar Association, accessed March 27, 2024. <https://www.indianbarassociation.org/indias-refugee-policy/>.

aliens whether general or specific⁵. In our Constitution the powers of the government are divided according to the lists mentioned between the Central Government and the State Governments. Law and order is a state subject whereas International relations and International borders are under the exclusive purview of the Central Government which has resulted in a variety of agencies, both of the central as well as state governments, having to deal with refugee matters connected with law enforcement. All policies governing refugees are laid down by the Union Government even though the impact of the refugee problem as such has to be borne by the state administration to a greater degree of not wholly.

In regard to refugees the state has to make sure that the laws of the land are enforced without in any way ignoring or neutralizing security considerations. At the same time, it is also their responsibility to make sure that the humanitarian overtones associated with refugees so characteristically and inseparably in general, are not lost sight of. A person becomes a refugee because of circumstances, which are beyond that person's control, often poignant. The person is left with no other options but rather to flee from human rights violations, social, economic and political insecurity, generalized violence, civil war or ethnic strife all leading to fear of persecution.

2.1. Constitutional Safeguards in India

The Constitution of India provides for the protection of refugees and treats them according to norms of humanitarian aspects despite not being a party to the Refugee Convention. A refugee can claim protection and safeguards which are given equally to all the foreigners as well as to the citizens of the country.

1. Article 14 guarantees equality earlier than law and same safety of regulation, the executive distinguishes foreigners in step with their wishes and copes with them otherwise based totally on intelligible differentia having the nexus with the item.
2. Article 21 offers the protection of life and private liberty; the splendid court has reinterpreted Article 21 to include substantial due method law which is followed against the state motion.
3. Article 20 offers ex post facto regulation, right against double jeopardy and right towards self-incrimination.
4. Article 22 offers proper opposition to arrest and detention.
5. Article 25-28 offers the right to freedom of judgment of right and wrong and loose exercise and propagation of faith.
6. Article 32 grants the right to transport to the best courtroom for enforcement of those above fundamental rights.
7. Article 51 (c) of the Indian charter gives that the state shall endeavor to foster recognize for global law and treaty obligations inside the dealings of organized peoples with one another.
8. Article 253 of the Constitution clearly states that "Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, or convention with any country or countries or any decision made at any international conference, association or other body." Read with entry 14 of the union list of the Seventh Schedule, there is a clear understanding that the power to enter into treaties, conferred by Parliament, carries with it the right to encroach on the state list to enable the union to implement a treaty. Therefore any law made in accordance with this Article giving effect to an international convention shall not be invalidated merely on the ground that it contains provisions relating to the state subjects.⁶

3. Reasons behind India's decision not to sign the 1951 Refugee Convention

With respect to treaties the basic principle of International Law states that it would be binding in nature and the parties must act in accordance with good faith. Treaties can also be named as an International agreement, protocol, covenant, convention, pact and other terms associated with.

⁵ D.L Marshilong, "Refugees Status in India: A Special Reference to Rohingya Refugees", *IJSR* 8, (2019). 1357-1358.

⁶ Swananda Banerjee, "Legal Status of the Refugees in India", SSRN, accessed March 4, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129225.

India has been a party to various conventions-the Convention on the reduction of Statelessness, Territorial Asylum 1967, Universal Declaration of Human Rights (Article.14), International Convention on Civil and Political Rights (ICCPR), Convention on the Elimination of Discrimination against Women (CEDAW), International Convention on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child etc.

To protect the refugees certain positive duties on India have been imposed by these treaties. Under Article 246 read with the entries 14, 15, 16 of the Union List of Indian Constitution Parliament has the exclusive power to make certain rules of conduct to govern the laws relating to treaties and other agreements with foreign countries. In order to ratify the Refugee Convention of 1951 and its protocol of 1967, it is needless to mention that India faces a lot of criticism and pressure. The Partition of India in 1947 that divided the country on the basis of religion and hatred was regarded as the most painful population displacement in history where millions of people from Pakistan settled in Delhi, Punjab and Bengal.

India hosts over 2,00,000 refugees, victims of civil strife, war in Tibet, Bangladesh, Sri Lanka, Pakistan, Afghanistan and Myanmar, about 1,00,000 people made a way from Nepal with no legal status, no citizenship, posing a threat to national security. Pt. Jawaharlal Nehru, then Prime Minister of India chose not to sign the UN Convention of 1951 at that time due to the unnecessary interference in internal matters of the country and the notorious nature of borders in South Asia. By not signing the convention, India retains the freedom to implement its own refugee policies. Even though India doesn't have in its statute book a specific and separate law to govern refugees but it has certain policies and privileges given to them.

Another reason may be due to the Issue with the definition of Refugees. According to the 1951 convention, they are the people who have been deprived of their civil and political rights, but not their economic rights. It would clearly pose a major burden on the developed world if in the definition of refugees the violation of economic rights were to be included.

India is one of the most populous countries in the world and already faces significant challenges in providing basic services and resources to its own population due to its limited resources. Increased responsibilities and resource burdens might result by signing the convention related to the protection and support of refugees.

India due to its dynamic region has been historically affected by various conflicts and displacement situations. It has faced influxes of refugees from neighboring countries, due to the porous nature of borders in South Asia. And the reason why India might have not chosen to sign the Refugee Convention of 1951.

4.Concerns related to Rohingyas in India

The Influx of the Rohingya refugees is not a surprise for India. It is what they brought along with them was not welcomed by India. India has taken steps to deport the Rohingya refugees from the country, which implies that India will not remain silent to issues such as national security of the country which it is non-negotiable to yield to. The threat of Rohingya to India is multifaceted and it is noted by the Intelligence agency which noted since the Burdwan Blast in 2014, West Bengal in which Mohammad Kahlid a Rohingya was arrested confessing that he had been trained by Pakistani Taliban and suspected terrorists Masood Azhar, Jaish-e-Muhammad chief and Lashkar-e-Taiba founder Hafiz Saeed, who operates out of Pakistan and exclusively targeting India, came out in support of the Rohingya Muslim.⁷

To be noted it is also seen that there is little truth to any of what is claimed by India. In true sense Rohingya refugees are in no condition to have any access to any terrorist group, as they are poor and mostly uneducated with little access to basic needs while ISIS and other terrorist groups which would require the need of technology and internet, the main method to recruit them. There is no chance for them to directly contact the Rohingya refugee with the high security and surveillance by India.

Moreover, the Arakan Salvation Army, ARSA seems to be perception-savvy and has rejected the jihadist label for fear of losing credibility on the world stage as well as condemned groups such as al Qaeda and ISIS. Further, there are no evidences or prove to such connections and the only crimes recorded so far are petty crimes of theft and fraudulent cases.⁸

4.1. Concerns Related to Rohingya: a struggle for life and liberty

⁷ Sreemoy Talukdar, "Rohingya crisis: Humanitarian grounds cannot undermine national security; India must defy coercive pressures", Firstpost, accessed March 4, 2024, <https://www.firstpost.com/india/rohingya-crisis-humanitarian-grounds-cannot-undermine-national-security-india-must-resist-unhrcs-coercion-4035877>

⁸ ibid

The hope in which Rohingya's fled from other countries to India proved nothing more than an illusion. In reality they're struggling for the basic necessities of life and the protection provided under fundamental rights of the Indian Constitution to everyone including aliens residing in India appears nothing more than a written document as its applicability is not what it claims to be. With the new citizenship amendment bill, Rohingya refugees are deprived of even basic human rights, including access to work, education, shelter, sanitation, healthcare, and basic human dignity, among others.

Indian authorities recently ceased to recognize the UNHCR-issued refugee cards of

Rohingya, taking away the little amount of legal protection effectively to some 18,000 registered Rohingya refugees had in the country. At the moment, it requires a residency based Aadhar card to function virtually all activities and services (including education, work, and healthcare). These were previously issued to some Rohingya who met the government's criteria, but has been ceased.

At times Rohingya also face increased surveillance, going as far as harassment, repeatedly collecting biometric data, fingerprints, and paperwork by the officials. In areas like Jammu and Haryana where the police are most hostile to refugees fleeing to other parts of the country or to Bangladesh, reports of extortion, arbitrary arrests and detentions, and beatings are also on the rise.

The government also bars Rohingya from owning property or building permanent structures limiting them to either renting dirt patches in remote settlements and constructing jhuggis

(slum-like shanties), or renting urban flats from sympathetic landlords for a fortunate few.

Jhuggi dwellers typically face the greatest hardships, as most work in rag picking or other irregular, poorly-paid labor.

Rag picking in particular perhaps the most common occupation among them posing serious health risks, as constantly handling and living amidst waste causes workers including children to contract myriad unidentifiable maladies, while dire sanitation conditions further exacerbate widespread illness.

A significant concern is about India's refusal to grant exit visas to Rohingya refugees who have completed refugee status determinations and gained approval for resettlement in third countries.

The Rohingya refugees face various challenges, including being labeled as "illegal migrants". This also placed them at risk of being deported back to Myanmar, from where they fled a genocidal regime other than hampering their integration into society. A desire to return to camps in Bangladesh have instilled due to the fear within them about the actual and threatened deportations compelling International conventions, obligating India not to return the Rohingya back to Myanmar. However, due the government's arguments regarding national security threats the Supreme Court has accepted the deportations to proceed.

5. Indian Judiciary and the deportation of Rohingya Refugees

The Indian government seems determined particularly to deport Rohingya refugees in India. In *Mohd. Salimullah v. Union of India* ("Mohd Salimullah") seeks to challenge the government's order to deport 40,000 Rohingya-Muslim-refugees but has been pending before the Supreme Court of India ("SCI") since 2017. Meanwhile, the Indian government has deported some Rohingyas, potentially imperiling their lives.

The government defends the deportations based on 'national security'. However, critics believe that since 2014 the deportations are colored with political motives and are linked to ideological shifts in the federal government. India's attitude towards refugees appears to have transitioned from accommodative to something else for gaining popularity and vote banks.⁹

The expedition of naturalization by the recent amendment to the Citizenship Act, for persecuted minorities from selected countries excluding Muslim minorities like the Ahmadiyahs or Rohingyas is more of a corroborated one. The case before the Supreme Court of India (SCI) is therefore ever more critical for the Rohingya refugees to remain.

India first deported seven Rohingya men to Myanmar In October 2018. Furthermore, in the second deportation, it deported a Rohingya family of five. However, the Calcutta High Court, in the first week of 2021, stayed the deportation of a Rohingya couple who had illegally entered India back in 2017 and were about to be deported. A notice to the Bengal Government was issued to provide basic amenities to the couple to help them live a life with dignity. The bench also said that it was taking this decision to "uphold the spirit of humanity."¹⁰

⁹ A.S. Kinseth, "India's Rohingya Shame", Al Jazeera, accessed March 5, 2024, <https://www.aljazeera.com/opinions/2019/1/29/indias-rohingya-shame/>

¹⁰ Navashree Nandini, "United Nations files plea in SC on India's decision to deport Rohingyas", Republic world, accessed March 5, 2024, <https://m.republicworld.com/india-news/law-and-order/un-files-plea-in-sc-on-indias-decision-to-deport-rohingyas.>

According to the principle of non-refoulement States must not return refugees to the territories where their life would be threatened on account of their race, religion, social group etc. It is recognized to have crystallized into customary international law. Indeed, despite India's dualist traditions, customary international law by Indian courts has been adopted by subsuming them under the constitution's guarantee of fundamental rights. In *Kataer Abbas Habib Al Qutaifi v. Union of India*¹¹. ("Habib Al Qutaifi"), the Gujarat High Court interpreted Article 21 in light of non-refoulement while dealing with the question on the deportation of Iraqi refugees from India, it noted that Article 21, which included in its scope non-citizens, protected the refugees too. The court held that the principle of non-refoulement is encompassed in Article 21 but inserted a limitation that the protection will be available so long as the refugees' presence is not prejudicial to any kind of national security. In *Delhi High Court in 2015, in Dongh Lian Kham v. Union of India*¹² a similar position was taken, except no caveat was inserted therein.¹³

The SCI refused to recognize non-refoulement as a custom in the past however, it should not dismiss this position so quickly, especially in light of these later decisions instead, should adopt the position based in the case of *Habib Al Qutaifi* and scrutinize the State's claim of national security.

6. Conclusion and recommendations

The above-mentioned analysis may not be sufficient to say that it has emphasized on the implications of India's approach in handling the Rohingya crisis. There needs to be some serious and genuine considerations by the policy makers regarding issues in the protection of Rohingya refugees. To determine the status of the refugees it has become important for India and what role the country can play in facilitating long-term solutions to the crisis. . Today the main question is about how India can make its approach work more effectively to ensure measures for prevention of renewed conflicts in Rakhine by mitigating any potential terror related activities involving the Rohingya refugees.

India should formally recognize the refugees as individuals with a right to asylum rather than as illegal migrants. Signing the 1951 Refugee Convention and establishing domestic laws on refugees and asylum can be crucial to achieve the above step.

India can recognize UNHCR cards issued by the United Nations High Commissioner for Refugees as sufficient for accessing basic education, work, and health services. These cards refer to identification of documents to individuals who have been recognized as refugees or asylum seekers.

These cards serve as proof of the individual's status as a refugee or asylum seeker. It may grant them certain rights and access to services in the country where they reside.

Treating refugees better would serve national security interests and enhance India's global credibility by documenting new arrivals and discouraging them from remaining under the radar. India also can play a proactive role in facilitating resettlement opportunities for Rohingya refugees by advocating for their acceptance in countries such as the U.S., Canada etc.

¹¹ 1999 CRI.L.J.(919)

¹² 2015 Delhi HC 1884

¹³ Debarshi Chakraborty, "The Indian Supreme Court and the Deportation of Rohingya Refugees: Constitutional Review and the Prospect of Success" ,I Connect, accessed March 5,2024,

<http://www.iconnectblog.com/2020/11/the-indian-supreme-court-and-the-deportation-of-rohingya-refugees-constitutional-review-and-the-prospect-of-success/> .