

Refugees and Asylum Seekers

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During the second Universal Periodic Review in May 2012 at the UN Human Rights Council, India received only one recommendation number 25 (made by Ghana) related to the situation of refugees. It asked India to consider the recommendation made by UNHCR to ratifying the Conventions relating to refugees and stateless persons. India did not accept the recommendation.

India did not sign the 1951 United Nations Refugee Convention on the Status of Refugees, or its 1967 Protocol. India has, however, acceded to several international and regional treaties and conventions that have a direct bearing on refugee rights and protection. These include UDHR 1948; the Genocide Convention, 1948; ICCPR 1966; ICESCR 1966; CERD 1965; CEDAW 1979 and CRC 1989. India also voted in favour of the adoption of the Declaration on Territorial Asylum 1967.

All these Conventions impose legally binding obligations on state parties regarding the rights of peoples under their jurisdiction. Article 12, paragraph 2 of the ICCPR can be specifically applied to refugees which states that "everyone shall be free to leave any country including his own" as well as Article 13 of the above stated Covenant which refers to expulsion of aliens only being permitted after a decision has been reached according to law.

NATIONAL LEGAL FRAMEWORK

According to the June 2016 statistics from the United Nations High Commissioner for Refugees (UNHCR), India has a total of 210,259 people of concern which includes 19,924 from Myanmar, 14,464 from Afghanistan, 688 from Somalia and others 1739. There are religious minorities from neighbouring countries like 110,095 Tibetans and 64,689 Sri Lankans (as of 31 May 2015,) assisted by the Government of India. After 2012 India has witnessed steady influx of Rohingya Muslim refugees belonging to Arakan region of Myanmar who have been expelled from their homeland following the clashes with Rakhine Buddhist population. According to data from the UNHCR, out of 28,000 refugees registered with it in India, around 16,341 registered refugees are from Myanmar (May 2016).

India does not have any domestic law or legal procedure governing the protection of refugees. Although the Indian government claims that its policies conform to international standards, no Indian law refers directly to refugees. India has not signed the 1951 United Nations Refugee Convention on the Status of Refugees, or its 1967 Protocol that stipulates the rights and services host states must provide to refugees. In the absence of a legal framework or a cohesive policy for the refugee communities in India there are inconsistencies in the treatment by the Indian Government to different communities of refugees on its land. The management of Refugees is done through a combination of ad hoc executive policies and judicial pronouncements, often influenced by political considerations rather than any genuine sympathy for the plight of the displaced communities.

India draws no distinction between a "foreigner" and a "refugee". Under Indian law, the term "foreigner" is the only reference to aliens of any kind; this places refugees, immigrants, and tourists in the same broad category. The Passport (Entry of India) Act, 1920, the Passport Act, 1967, the Registration of Foreigners Act, 1939, the Foreigners Act, 1946, and the Foreigners Order, 1948, are consulted by Indian authorities with regard to the entry of refugees and asylum seekers. Article 2 of the 1939 Registration of Foreigners Act defines a foreigner as "a person who is not a citizen of India." These laws apply to all non-citizens equally and, consequently, fail to distinguish the special status of refugees fleeing their countries of origin deserving humanitarian protection. Both the Act and the Order affirmatively give the Indian government the power to restrict movement inside India, to mandate medical examinations, to limit employment opportunities, and to control the opportunity to associate, as well as the ability to refole, or "return," refugees. The Refugee Convention bars these actions.

Eminent Persons' Group under the chairmanship of former Chief Justice of India, P.N. Bhagwati, drafted a model law in 2002 based on international instruments on refugee law, and pushed forward by the National Human Rights Commission of India. This was followed up by a draft Refugee Protection Bill 2006, but it did not find favour in the Legislature. In December 2015, a Private Member's Bill called the Asylum Bill, 2015 was introduced in the Indian Parliament to provide for the establishment of a legal framework to consolidate and harmonise India's refugee policies. The Bill is yet to be taken up for consideration.

CHALLENGES

Ad hoc administrative Policy

Refugees in India can be classified as mandate or non-mandate refugees. Those under the protection of the United Nations High Commissioner for Refugees (UNHCR) are known as mandate refugees. Non-mandate refugees are those who are under the direct protection of the Government of India. Government of India prefers to discuss refugee issues at a bilateral level with the country of origin of the refugees. At present Tibetan and Sri Lankan refugees are directly protected and assisted by the Indian Government. Refugees and asylum-seekers from India's non-neighbouring countries and Myanmar are registered and protected by UNHCR under its mandate. UNHCR is directly involved with groups arriving from other countries and conducts registration and refugee status determination (RSD), mostly for arrivals from Afghanistan and Myanmar.

In July 2016, the government approved several facilities aimed at easing difficulties faced by minority communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians — of Afghanistan, Bangladesh and Pakistan staying in India on Long Term Visas. The government decided to exempt Bangladeshis and Pakistanis belonging to minority communities who entered India on or before December 31, 2014, from the relevant provisions of rules and order made under the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946, in respect of their entry and stay in India without such documents, or after the expiry of those documents.

ISSUES AND IMPACTS

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Discriminatory and Inequitable Regulations

An examination of India's treatment of Tibetan refugees arriving in the 1960s and 1970s versus Tibetan refugees arriving since the 1980s provides an example of India's discriminatory policies. Although Tibetan refugees who arrived prior to 1980 received adequate assistance from the Indian government, assistance to the Tibetan refugees who arrived after 1980 has declined greatly, forcing them to live in inhumane conditions. In the same manner, heavy restrictions are placed on the Sri Lankan refugees in Tamil Nadu as well as on Afghan refugees.

India's ability to refole – violation of international customary law

Refugees and asylum-seekers are subjected to exploitation and forced to suffer discrimination and abuses. They are trafficked, subject to arbitrary arrest and detention, left destitute, and on top of it all, are vilified as "illegal immigrants". Without a protective law, refugees are left in indefinite limbo; forced to be dependent on charity; re-traumatized and desperate; and eventually are forcibly returned to situations of atrocity, torture, and possibly death.

India's ability to refole persons seeking asylum in India violates international customary law on the treatment of refugees. As part of customary international law, the policy of non-refoulement prevents a country from expelling refugees to countries where their lives or liberties would be threatened. In the absence of a uniform national asylum policy, Indian government deals with asylum matters on a case-to-case or nationality-to-nationality basis.

Limitations for Judicial System

The absence of law or policy for refugees in India serves as a limitation on the power of the judiciary, especially the Supreme Court, to formally recognize the human rights of refugees. However, the Supreme Court of India has held in cases that Article 21 of Constitution protects life and personal liberty of all persons. This was stressed by the Supreme Court in National Human Rights Commission v. State of Arunachal Pradesh while addressing the rights of Chakma refugees. In this judgement, the Supreme Court stated that aliens on Indian Territory shall not be deprived of rights protected by the Constitution except according to procedure established by law.

RECOMMENDATIONS

India should accede to the 1951 Refugee Convention Relating to the Status of Refugees and its 1967 Protocol.

The Government should adopt a national legal framework along the lines of the 1951 Convention and the Protocol of 1967 to process matters in respect of determination of refugee status, protection from refoulement of individuals seeking asylum and treatment during stay of refugees.

India should develop a mechanism to implement the Refugee and Asylum related law effectively to bring it in conformity with the international community. The law should be enacted in such a way that it not only fills the legal vacuum in the refugee regime but also rationalises the entry of refugees into India.

Ensures that no refugee or asylum seeker shall be expelled or returned to a place where there are reasons to believe his or her life or freedom would be threatened.

India should adopt mechanism to extend facilities for vocational training, health facilities and primary education, in order to enable refugees to exercise the universal rights to fulfil its obligations under the international refugee protection regime.

The Indian government should work with civil society groups to facilitate the process of voluntary repatriation and rehabilitation through education and vocational training.

Develop livelihood strategies to target each of the refugee groups as each refugee community faces different challenges in terms of access to employment, housing and finances as well as in relation to physical safety.

Adopt policies to link refugees with public and private sector initiatives to build their skills and develop a common platform to bring together Indian and refugee women to address gender based violence.

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