

# Understanding the Refugee Crisis in India, with a special focus on the Rohingya Refugee Crisis

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**Abstract**— According to the Protocol Relating to the Status of Refugees, a refugee is defined as “a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

India, in its 76 years as an independent nation-state, has seen its fair share of refugee problems, starting with Partition itself. India, since the partition, has supported Bangladesh's 1971 war of independence from Pakistan and took in tens of thousands of refugees from there. After the 2021 Military Coup in Myanmar, there was a steep increase in widespread violence, internal displacement, and chaos. The human misery caused by this coup lead to a catastrophic refugee crisis in South Asia as refugees flooded into the neighbouring countries. Since this crisis began, India has welcomed over 40,000 Rohingya refugees into the country. And of these, over half of them are registered with UNHRC.

Through this review, our aim is to comprehend the current status of these refugees in the country, three years since they entered into the borders, with focus given to the various issues they face and the manner in which India has responded to this crisis over the years.

**Keywords:** Rohingya Refugees, Refugees, UNHCR, India, Myanmar

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## I. INTRODUCTION

The Rohingyas are possibly the worlds largest persecuted minority population. The Rohingya people originate from the Rakhine State of Myanmar and are a predominantly muslim community. They have faced years upon years of systematic oppression, discrimination, violence and statelessness at the hands of the Burmese Government. Having been denied citizenship since 1982, they have been subject to ethnic cleansing and other atrocities, this group has been subjected to gross human rights abuses that prompted a mass migration out of their homeland and into the neighbouring countries.

The Rohingya people have lived in Myanmar for millennia, having been ignored by the government, who also delegitimized their ethnic and linguistic identity. These people are seen as outsiders by the government and the people due to their ties with Bengal and as a result were pushed to the edges of the Burmese Society and were denied access to basic services such as education, and healthcare and they were denied their fundamental human rights.

The Burmese government's denial in recognising the Rohingya as an official ethnic group of Myanmar combined with the governments unrelenting efforts to deprive this group of their citizenship rights made them vulnerable to exploitation, violence and discrimination.

As hundreds of thousands of Rohingya tried to flee from their persecution using various means, taking risky voyages across the land and sea, the world saw the current refugee crisis. The sheer size of the displacement of these individuals overwhelmed the host communities and other humanitarian agencies that got involved in providing them with aid. This put a strain on resources that could be offered to this group as aid, leading to the worsening of the refugee's sufferings.

However, there has been certain degree of reluctance shown by the international community regarding the predicament of the Rohingyas, despite the international outrage and cries for action. This reluctance to address the core reason for this crisis and hold the responsible authorities accountable has lead to another cycle of violence and displacement which has trapped this entire community in a limbo with their futures being unknown.

As this crisis worsens over time, it has become a reminder for the need of international cooperation to sneure that the root cause of this displacement, ensure the defence of the refugee rights and dignity and promote long term solutions for this crisis that would ensure that justice, peace and human rights are upheld for all those who are involved. This tragedy involving the Rohingya requires international attention, solidarity and actions to put a stop to their suffering and ensure that their rights aren't violated.

## **II. STATUS OF THE REFUGEES IN INDIA**

India has had a long history of welcoming refugees despite it not being a signatory to the 1951 United Nations Refugee Convention and this is because of India's broad cultural fabric, secular legislation and a historic precedence of giving shelter to those in need. It has welcomed refugees of multiple nations, giving them protection and support within the Indian boundaries. However, a refugees legal status and their treatment in the country is still rather complex as it is governed by current laws and policies that apply to foreigners.

According to the Indian Law, these refugees are classified as 'foreigners' which refers to those who are not Indian nationals. While India lacks the proper legal framework that ensures the protection of refugees, refugees can enter and remain in the nation either lawfully or illegally based on the rules of the Foreigners Act of 1946 and any other applicable legislations. However, the absence of a specialised refugee law, leads to the refugees frequently facing barriers to accessing rights, resources and other legal safeguards.

Refugees in India, despite the various hurdles they face, are entitled to certain constitutional protections such as the Article 14 or Right to Equality Before Law, Article 21 or the protection of Life and Personal Liberty and various other articles that include but are not limited to Articles 5, 6, 7, 8, 9, 10, 11, 12, 20, 22, and 226. Additionally, they are also protected by international customary law, particularly the principle of non-refoulement that is granted by the United Nations High Commissioner for Human Rights. The Principle of Non-Refoulement forms an essential protection under international human rights, refugees and customary law that prohibits and prevents states from transferring or removing individuals, in this case refugees, from their jurisdiction or effective control when there are substantial grounds for believing that they would be at risk of irreparable harm upon return to their own state.

While confined by limited legal framework that addresses refugees, and despite not being a signatory for the Refugee Convention, India does follow the key concepts and rules in its treatment of Refugees, ensuring that their fundamental rights are protected. India is also a signatory of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and thus, ensures that the Principle of Non-Refoulement is adhered to and the customary international laws are adhered to.

The current situation of the Rohingya Refugees in India exemplifies the complexities of the Refugee Laws that exist in India while highlighting the hurdles that these refugees face while seeking refuge and sanctuary within the country. It also highlights the severe need for a proper Refugee Policy for the country as these refugees lack not just their formal refugee status but also have limited access to their basic rights and services.

Though they are granted asylum from persecution in Myanmar, the Rohingyas are often classified as Illegal Migrants and as a result they are vulnerable to arrest, detention and deportation at the hands of the Indian Authorities, regardless of the dangers they face when they return to Myanmar.

In recent years however, the legal challenges and court verdicts have shed some light on the predicament of the Rohingya refugees and have affirmed their rights of protection and non-refoulement under international and domestic laws. However, they still lack protection and security in India due to the lack of a comprehensive refugee policy and a formal process for seeking asylum in India.

## **II. UNDERSTANDING THE SITUATION OF THE ROHINGYAS IN INDIA**

India has taken over 40,000 Rohingya refugees into its borders however the way the government has reacted and handled this situation has sparked criticisms and debates on international and domestic platforms which have led to concerns related to India's commitment to Human Rights, national security and respect towards International Legal Principles.

The Government's attitude towards this issue is based on claims that call the Rohingya refugees a threat to national security and claim that they could possibly have ties to foreign terrorist organisation. And India has maintained this position even after several human rights organisations and the United Nations has urged it to offer protection to these refugees. India also has abstained from placing considerable amount of pressure on the source of this issue.

One of the most controversial aspects of India's approach is the Citizenship Amendment Act (CAA) of 2019. CAA grants Indian citizenship to persecuted minorities from countries around India, specifically to those from the Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities from countries such as Afghanistan, Bangladesh and Pakistan. However, the statute specifically excludes members of the Muslim community, especially the Rohingya from its scope. This exclusion raises concerns about discrimination and the violation of the principles of International Human Rights.

The CAA statute defines refugees based on religious grounds and ignores the other grounds of persecution that are recognised by International Law such as ethnicity, nationality, membership to a specific social group or political opinion. The CAA prevents the Rohingyas, who have fled Myanmar on the grounds of ethnic and religious persecution from claiming refuge and shelter in India.

India's failure to recognise the principle of non-refoulement in some cases has further aggravated the situation. While India is a signatory to various treaties such as the ICCPR (International convention on Civil and Political Rights; that recognises the rights of peoples to freely own, trade and dispose of their natural wealth and resources and ensures that the signatories ensure that all individuals within the countries borders have the right to self-determination), it doesn't claim to be bound by the Principle of Non-Refoulement because it is not a signatory to the Refugee Convention of 1951.

In 2018, the Indian government decided to deport the Rohingya Refugees back to Myanmar. This decision raised concerns related to the breach of the rights of the refugees and the principle of non-refoulement. And while the Government's decision was accepted by the Supreme Court of India for certain cases, various human rights authorities believe that such deportations violate the international law commitments that India has made and put these refugees at a risk of greater persecution and human rights violations upon return.

During a United Nations Human Rights Committee session that focussed on discussing the human rights violations that were taking place in Myanmar, India chose to abstain during the voting of a Bangladesh-backed resolution that condemned the human rights violations, stating that the international community needs to engage constructively with Myanmar instead.

Later on, in 2022, India once again abstained from voting on a similar resolution, this time in the UNSC. This resolution demanded an end to the human rights violations and violence that is occurring in Myanmar and demanded the release of the various political prisoners that had been taken, this time they stated that the way to go about solving the issue would be to use the route of diplomacy and to have constructive talks with the Myanmar government to ensure that there are implementable solutions that are brought about for the same.

### **III. THE LEGAL PERSPECTIVE TO THIS ISSUE**

The Judiciary system of India, along with its various organs, play a central role in ensuring that the rights of the individuals within the borders are protected. This becomes especially important for vulnerable groups and minorities such as the Rohingyas.

Mohd. Salimulla v. Union of India case from 2017 that was fought in the Supreme Court of India is one among many such cases that aim to highlight some of the issues related to the Rohingya Refugee deportation. This case raised concerns on and asked questions related to the following topics:

1. Deportation of the Rohingya Muslims and the Violation of Article 14.
2. Deportation of the Rohingya Muslims violating their Right to Life under Article 21.
3. Applicability of fundamental rights to non-citizens
4. India and the Non-Refoulement Principle.

The Supreme Court refused to comment on the military coup in Myanmar and ruled that while articles 14 and 21 applied to both citizens and non-citizens, Article 19 which grants them the right to reside and settle in any part of the country only applies to the citizens of India and as a result the refugees are excluded from.

The Indian Government has repeatedly defended its decision to deport the Rohingya Refugees on grounds of national security even in the face of critics who argues that the decision had political motivations and reflected the shift in ideologies of the federal government. Current efforts and approaches taken by the government are seen as increasingly exclusionary towards the Rohingya Refugees, something that has only been amplified by the recent amendments to the Citizenship Act as explained earlier.

Considering all of the recent developments with this issue, the role of the Indian Judiciary and its organs has become more important to ensure that the members of this community have their human rights preserved and are ensured protection.

There have been multiple legal precedents over the past few years where various lower courts in India have interpreted existing acts and laws to aid this community. One such example was seen in the case of Katar Abbas Habib v. the Union of India where the Gujarat High Court had interpreted Article 21 in light of Principles of Non-Refoulement. Another case was Dongh Lian Kham v. the Union of India where the principle of non-refoulement was upheld without any threat being posed to national security.

While the Supreme Court of India has been hesitant to recognise the Principle of Non-Refoulement as a customary law, as shown by the cases above, various lower courts have underscored the importance of scrutinizing the orders of deportation and giving a priority to the principles of human right.

#### **IV. CONSTITUTIONAL PROVISIONS FOR REFUGEES**

Every individual in India's borders are protected and are entitled to certain vital rights given to them by the Indian Constitution, this includes refugees. Some of the key provisions and statutes give the legal basis for the treatment for refugees in India.

According to these provisions and statutes, refugees are granted the right to life and personal liberty according to Article 21, the right to equal protection under the law according to Article 14, as well as Articles 32 and 226 that protect the rights of non-citizens among other articles and provisions. Aside from these articles, there are multiple other laws and acts that aim to help the refugees, some of these are:

1. Registration of Foreigners Act, 1939
2. The Foreigners Act of 1946
3. Administration of Evacuee Property Act of 1950
4. Citizenship Act 1955 (and its amendment, CAA 2019)
5. The Extradition Act of 1962
6. Passport Act or 1967
7. Illegal Migrant Act of 1983
8. Protection of Human Rights Act of 1993

Since Refugees are classified as foreigners according to the Indian definition of the term, there are certain rights that are exclusive to them. This includes work, freedom of residence and movement and other topics, all of which are detailed in several articles such as Articles 20 to Article 28 which ensures the protection of foreigners against arrest and detention on certain cases, protection against human trafficking and freedom to attend religions ceremonies, freedom from taxes for the promotion of religion, etc.

Refugees can also be entitled to certain special considerations based on various international agreements and standards such as exemptions from penalties, identity and travel document related considerations, etc.

While India's current legal framework give some level of recognition and protection to the refugees, the need of a proper legal framework to address Refugees is of the utmost importance to accommodate their special rights and needs. While the Refugee and Asylum Protection Bill of 2009 a step in the right direction, a lot more work is needed to ensure that proper legal safeguards and support systems are established for the refugees in India.

#### **V. POSSIBLE SOLUTIONS AND SUGGESTIONS**

The Rohingya refugee crisis has garnered international attention and sparked concern from the international community. The Rohingya's struggle for survival has continued long after they escaped their country and took sanctuary in the neighbouring countries. To address these issues, and to ensure that they are resolved at the earliest, a collaboration is required between the government, non-governmental organisations, the civil society and the international community. It would also require a holistic approach to ensure that the conditions and opportunities for this community are improved and that their rights, dignity and well-being are preserved.

To ensure that The first step would be to provide the refugees with legal recognition and protection as it is an important step to ensuring that their circumstances improve. The way to ensure this would be create a legal framework that can address the refugees as well as their status in the country. On top of this, the government could possibly also implement a national refugee law or to ratify some of the international accords related to refugee rights to ensure that they are protected while in the country.

After we ensure that the refugees get the legal recognition, the next step is to ensure that the refugees have access to services such as healthcare, education and employment opportunities. This can be ensured by collaborating with various NGOs and various International Organisations such as Amnesty International and work towards building more primary healthcare centres, and schools for these individuals and then hold vocational training for this community that has been specifically tailored to meet the needs of the community.

It is also important to conduct awareness campaigns and hold sensitization programs for the local communities to help them understand, tolerate and welcome these refugees. To ensure this, the government, NGOs and local community leaders all become key players as they help to build social cohesion and eliminate discrimination by giving the locals education and discourse. To

ensure the Rohingya community is empowered is important that they are able to utilize the opportunities made for them. And this can be ensured by providing this community with opportunities of skill training, education or other forms by which they can support their livelihoods.

The final step would be to address the mental health issues that could have possibly arose from the experience of these people. Given that they had to escape from violence and persecution, the provision of psychosocial support in the form of counselling, support groups and the use of culturally specific approaches that are lead by NGOs and mental health professionals is also important.

International cooperation and support is also key in this plan as collaborating with international partners or international NGOs can help improve resource mobilization, help with capacity building and help educate and exchange the best practices for refugee protection and support. This would not only reduce the burden on the Indian government but also ensure that the situation is resolved quickly and in its entirety.

## **VI. CONCLUSION**

The plight of the Rohingya refugees requires immediate action from not just the Indian Government but also NGOs, the civil society and the entirety of the international community. Adopting a comprehensive and methodological approach to address the various concerns of legal recognition, provision of essential services, ensure that the local communities are aware of and sensitive to the plight of the Rohingyas and the provide the community with empowerment and psychosocial and legal assistance is of the utmost importance when trying to resolve the issues faced by the Rohingyas. This would help India become the safe haven they need to escape persecution and violence in their home country and ensure a smooth integration into the Indian community as well.

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