

Refugees within the National System of India: A Study of their Access to Socio- Economic and Educational Rights

Background

India hosts millions of refugees. It has a long demonstrated tradition of welcoming refugees from around the world during different times in global history. India as a nation was founded upon the basis of one of the largest forced displacements in human history. Partition of British (ruled) India into the independent nations of a Hindu majority India and Muslim majority Pakistan was followed by one of the largest forced migration in the human history. Being a country that has been witnessing mass influx and exodus of people since the very beginning of its creation, the discourse on displacement, forced migration and refugees isn't an unfamiliar one to it's government, academia, media and the general public. Surrounded by countries that are undergoing political instability, civil war, severe conflict and ethnic cleansing, the refugee influx to India continues to exist. This makes India a country that hosts sizable refugee populations in the world. It can also be noticed that India hosts refugees not only from her neighbouring countries, but also from other parts of the world as well. Partition in 1947 and the mass displacements followed was the first event of the mass refugee crisis that post-colonial India has handled. Millions of refugees were displaced and resettled in India during the time. In 1959, the Chinese suppression of an uprising in Tibet created a huge number of refugees who had fled to India and sought asylum. India has agreed to provide protection to the Tibetan refugees and has handled the crisis with limited assistance from international help. Again in 1971, as a result of the Bangladesh Liberation War, there was a mass inflow of people who were settled in various camps and they were repatriated later. From 1981 onwards, civil war in Sri Lanka has triggered the flow of a large number of Tamil refugees to Indian coasts and were accommodated in refugee camps in the state of Tamil Nadu.

However, despite having been home to refugees from several countries for so long, India does not have a uniform policy or domestic legal framework for the refugee population. India is not a signatory to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol which governs the rights of refugees and the obligations of host countries. But it provides protection and asylum to various refugees on humanitarian considerations. Albeit this, India has ratified a number of other human rights treaties which call for obligations to provide protection to refugees. UN Declaration on Territorial Asylum

1967, Universal Declaration of Human Right 1948, International Convention on Civil and Political Rights, Convention on the Elimination of Discrimination against Women, International Convention on Economic Social and Cultural Rights and Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment are some of the treaties that India has ratified. These treaties urge a positive duty on India to provide protection to refugees as long as they fear persecution. However, in the absence of any government policies or specific laws, socio-economic and educational rights of refugee communities in India have typically been vague and ambiguous. This paper attempts to explore the status of three major refugee communities within the national system of India and tries to understand India's approach towards extending socio-economic and educational rights and services to these three refugees communities. Their accessibility to educational rights, health services, employment and business opportunities and other legal provisions has been reviewed. It has then explored the challenges faced by these refugee communities in accessing these rights. The paper also looks into the available aid and assistance provided by both the governmental and non-governmental organisations.

Tibetan Refugees in India

Tibet was an independent Buddhist country in the Himalayas which had little contact with the rest of the world. Buddhism was a unifying factor among them, as was their own language, literature and art. The turning point of Tibet's history happened in 1949, when the Chinese army first crossed into Tibet and after defeating the small Tibetan army, occupied half of the country. In 1951, China imposed the 'Seventeen Point Agreement' upon an unwilling but helpless Tibetan government, compelled Tibet to co-exist with a resurgent communist China.¹ Since then, Tibet witnessed unfortunate socio-economic and political developments as China started implementing various systematic policies that are slowly destroying the ethnic identity, diverse cultural heritage and religion of Tibet. China followed many policies and ways to weaken the Dalai Lama's temporal as well as religious position and change Tibet's socio-cultural and political system. Attacks on the position of the Dalai Lama and on religious doctrines and religious establishments such as monasteries led to feelings of resentment among the Tibetans while the atmosphere was made even worse by economic

¹ The Department of Information and International Relations, Central Tibetan Administration. (2001). Facts about the 17-Point "Agreement" Between Tibet and China. DIIR Publications. <https://tibet.net/wp-content/uploads/2014/10/FACTS-ABOUT-17-POINT-AGREEMENT..pdf>

difficulties.² As a result an uprising broke out in Tibet which was suppressed by the Chinese army. In 1959, tens of thousands of Tibetan refugees led by the Dalai Lama fled to India as China took control of Lhasa, the Tibetan capital, massacring thousands of Tibetans. India received the Tibetan refugees on humanitarian grounds and accommodated them in transit camps at Missamari in Assam and Buxa in West Bengal in the beginning.

The Government of India agreed to provide all assistance to the Tibetan refugees to settle in India until their eventual return and requested the State Governments to provide available land for the Tibetans. Karnataka was the first state which gave a positive response and allotted nearly 3,000 acres of land at Bylakuppe in Mysore district for establishing a Tibetan settlement. The government of India with the support of different state governments have set up such settlements in other states as well. Himachal Pradesh, Karnataka, Odisha, Chattisgarh, Arunachal Pradesh, Sikkim, West Bengal, Uttarakhand, Maharashtra and Jammu & Kashmir are the Indian states which have Tibetan settlements. They have been provided with agricultural land on lease basis by the concerned State Governments. In certain areas such as Darjeeling, Sikkim and Arunachal Pradesh, the Tibetans adjusted quickly as the cultural practices were not dissimilar from theirs. In other places, such as Karnataka, they encountered challenges in adapting an unfamiliar culture and climate during their initial days. While Dharamshala in Himachal Pradesh houses the Dalai Lama and the Tibetan Government in Exile³, Karnataka hosts the most number of Tibetan refugees.

Tibetan Rehabilitation Policy

Degree of assistance and facilities provided to Tibetans by various State Governments were not uniform. In 2014, the Government of India, framed the Tibetan Rehabilitation Policy to provide a uniform guideline demarcating the facilities to be extended to the Tibetan refugees living in each state. Answering a starred question in Rajya Sabha, Minister of state in the Ministry of Home Affairs provided the details of benefits to be extended by the State Governments under the Tibetan Rehabilitation Policy. Benefits under the Tibetan Rehabilitation Policy are given as under:⁴

² Richardson, H. E. (1961). Tibet since 1950. *India Quarterly*, 17(2), 128–139.

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³ On April 29, 1959, His Holiness the Dalai Lama established the Tibetan exile administration in the north Indian hill station of Mussoorie. Named the Central Tibetan Administration (CTA) of His Holiness the Dalai Lama, this is the continuation of the government of independent Tibet. In May 1960, it was moved to Dharamshala, in the Indian state of Himachal Pradesh.

⁴ Ministry of Home Affairs, Government of India. (2015). Starred Question in Rajya Sabha. Ministry of Home Affairs. <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2015-pdfs/rs-290415/69.pdf>

(i) *The concerned State Governments must necessarily sign a lease document for the land occupied by the Tibetan Refugees. Such lease documents should be signed for a period of 20 years or till it is revoked/cancelled.*

(ii) *Rent Tenancy Certificate must be issued by the concerned State Governments.*

(iii) *The land under the occupation by Tibetan Refugees should not be disturbed.*(iv)*The State Governments have been advised to extend the benefits of the respective State Government Schemes and also the Centrally sponsored schemes such as Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS), Targeted Public Distribution System (TPDS) and National Food Security Act (NFSA), Indira AwasYojana (IAY), National Rural Livelihood Mission(NRLM), Rajiv Awas Yojna (RAY), National Rural Health Mission (NRHM) etc.*

(v) *The State Governments have been advised to extend the infrastructural facilities and basic amenities like Roads, Electrification, Drinking Water Schemes in or around the Tibetan Settlements.*

(vi) *The State Governments have been advised to undertake skill up-gradation and training programmes for the Tibetan Refugees.*

(vii) *State Governments have been requested to give permission to the Tibetan Refugees to run Tibetan Bazars to trade in Tibetan Artefacts, handlooms and handicrafts.*

(viii) *Tibetan refugees should be entitled for flood/famine relief as is extended to the Indian Citizens.*

(ix) *Qualified professionals from amongst the Tibetan Refugees may be permitted to pursue/take jobs in private and non-Government Sectors in any field for which they are professionally qualified.*

(x) *The State Governments have been advised to allow the Tibetans to undertake such economic activities as they may desire and to that extent trade licenses/permission be given*

'Model' Refugee Community

Tibetan refugees in India are one among the finely treated refugee community. They are being considered as a model refugee community. A notable characteristic of the Tibetan

refugees in India is their resourcefulness. In a relatively shorter period, they were able to make the best of India's generous assistance and became self-reliant. India provided land for settlements, education opportunities and other social services. (Mahiga, 2001). Tibetans in India are unique in many ways; they are the oldest population in exile and are lauded for their success in 'preserving' their culture and identity in exile. They are among one of the successful refugee communities which even contribute to the economic and social development of the host country. Tibetan refugees coexist with the local communities and the dynamics of their interaction are relatively peaceful. Even though many Tibetans initially experienced challenges in moving from a strongly traditional and almost closed society to a culturally diverse society such as India, in the course of time, they were able to adapt to the new environment and have successfully maintained their cultural and religious practices. They have established and run a well-functioning Government in Exile which is known as Central Administration in-Exile and serves the needs of the Tibetan community in-exile; from healthcare and education, to the establishment and maintenance of the Tibetan settlements in India, Bhutan, Nepal. Over the years, the Central Administration in-exile has expanded and developed a strong and thorough infrastructure, with seven departments taking on the responsibility of various requirements of the Tibetan community in-exile.

Tamil Refugees from Sri Lanka

Sri Lanka is one of the world's principal sources of refugees and internally displaced persons (IDPs). Discriminatory policies, riots, and civil war produced a large number of refugees. Tamilians, who are an ethnic minority in the island nation, were being persecuted at multiple levels and were forced to flee the country. With its proximity and accessibility, India has naturally turned to be the largest host to them. Constant ethnic tensions and growing intensity of armed conflict between Tamils and Sinhalese triggered the flow of minority Tamil refugees into India. The flow of refugees was a consequence of the Army Operations in the LTTE controlled areas. After trekking long distances, these refugees pay huge amounts to the boat operators to reach Indian coasts. There were instances where these boats drowned and many refugees lost their lives. The Tamil refugee influx to India took place in four waves beginning in 1983-1987⁵ (first Eelam War), then in 1989-1992 (second Eelam War) and 1995

⁵ As part of the India-Sri Lanka Accord, the Indian Government organised the repatriation of refugees to Sri Lanka when the situation in Sri Lanka improved. Many refugees have gone back to Sri Lanka under government arrangement as well as their own arrangement, but around half of them were seen returning to Tamil Nadu as the incidence of violence repeated.

(third Eelam War) and 2006-2010 (fourth Eelam War). Because of the geographical contiguity and shared ethnic relation, the Indian State of Tamil Nadu was a safe haven for the Sri Lankan Tamil refugees from the very beginning (Venkatesaiya, 2003). Considering the ethnic and geographical affinity with the Tamil Nadu and the language barrier they may encounter in other states, Indian government has decided not to send them to other states.

Tamil refugees from Sri Lanka fall under the mandate of the Government of India and through it, the respective State Government. A number of steps were taken by both Central and State Governments towards the welfare of Tamil refugees in the sectors of education, health, livelihood etc. Compared to the UNHCR mandate refugees, Government mandate refugees have greater access to various rights which are almost at par with Indian citizens. The Government provides them free housing, free medical care and free education. Cash doles, subsidized ration, clothes, and utensils were also provided. They were permitted to work outside the camps and access to higher educational institutions were also granted. Access to Documentation for Tamil refugees is relatively uncomplicated. Individual IDs have been issued to every Sri Lankan refugee above the age of 12 years in order to ensure their welfare and security. The government has relaxed the restrictions on issuing driving licenses to refugees who are staying in camps. Birth, death, marriage, income and refugee certificates are issued by the concerned officials upon request. A family card that includes a family photo, names of family members, their age, relationship, gender, location of arrival, date of arrival in India, education, as well as their address in Sri Lanka, is also issued by the government. Educational accessibility was also unchallenging for them. Special cash incentives, footwear, bags and geometry boxes, as well as bicycles, have been provided free of cost for Sri Lankan Tamil students studying in government and government-aided schools. Students in higher secondary schools were also provided laptops. For pursuing higher education in Arts and Science colleges in the State, refugees can avail of the seats falling vacant after regular admissions are completed. In the Tamil Nadu Engineering Admission, refugees are permitted to participate in the open quota. The government also provides residential facilities for refugee students who are studying far from home. The government has further extended the scheme of providing free bus passes to all refugee students in camps pursuing studies in Arts, Science and Engineering colleges in the State. The tuition fee is waived for first-generation graduates who are from families which have no other college graduate. However, the assassination of then prime minister Rajiv Gandhi in 1991 made the atmosphere hostile towards the Tamil refugees and they had lost sympathy and support. Tamil Nadu Government attempted to move the non-camp refugees into camps for security

reasons, and closed the education facilities for the refugee children. Camps in nearby coastal areas were closed down and shifted to isolated interior regions to prevent contact amongst the refugees in different camps. They came to be looked at as potential terrorists and faced arbitrary arrest detention and other forms of harassment. Due to pressure on the Centre from the state government a program of registration and deportation commenced in 1992. This has invited wide criticism as there were allegations that many of them were being forcibly repatriated. UNHCR, after negotiations with the government has managed to get the access to the refugees to the departure in the transit centres although they were not permitted to visit the refugee camps. Since the government took the mandate, involvement of UNHCR⁶ and other NGOs in the issue have been observed to be limited.

Rohingyan Refugees in India

The Rohingyas are an ethnic group from Myanmar who has been described as the “world’s most persecuted minority” by the United Nations. Muslims constitute the majority of this community, though a small number are Hindus.⁷ Most of them are native Rakhine⁸ state of Myanmar. Rohingyas are distinct to the other communities in Myanmar with their physical features and their dialect. The history of persecution of Rohingyas in Myanmar can be traced from the British colonization period and it can be seen exacerbating in the post-colonial period. Since the time it gained its independence from Britain in 1948, organised attempts of human rights abuses and discriminatory practices were escalated by the majoritarian Buddhist and Burman leadership of the country. They treated Rohingyas as illegal infiltrators from Bangladesh and worked to expel them out from the country by various means. Under the Citizenship Act in 1948, Rohingyas who had settled in Myanmar for two generations or more were allowed to apply for identity cards. But following the 1962 Military Coup, all citizens were required to obtain national registration cards and the Rohingyas were only issued with foreign identity cards, which drastically limited their educational and employment opportunities. It was the new Citizenship Law enacted in 1982 which came as a grievous blow to the already persecuted Rohingyas as it excluded their ethnic groups’ eligibility for

⁶ UNHCR’s role was limited to assisting the Sri Lankan refugees wanting to return home by providing them travel allowance and assistance in their home country; Sri Lanka.

⁷ Blakemore, E. (2019, February 9). Who are the Rohingya people? National Geographic. <https://www.nationalgeographic.com/culture/article/rohingya-people>

⁸ It was previously known as Arakan State. In the 1990s, it was renamed as Rakhine State, after the Rakhine ethnic group. However, the new name is not accepted as legitimate by many in both the Rakhine and Rohingya communities, instead prefer the historical term Arakan.

Myanmar's citizenship. Thus they were denied the very right to citizenship which made them a completely 'stateless' population.

Since 1970, hundreds of thousands of Rohingyas have been fleeing to other countries in order to escape from the gross human rights abuses and discriminatory practices against them by the army state. The largest forced displacement of the Rohingyas took place in 2016 and 2017, when episodes of violent and brutal suppression by the Myanmar army which caused more than 723,000 Rohingya to seek refuge in neighbouring countries. While the majority of them fled to Bangladesh, there are an estimated 18,000 Rohingya asylum seekers and refugees registered with UNHCR in India.⁹ Most of the Rohingya arrive in India through Bangladesh, and their travel is usually facilitated by smugglers. They are often subjected to exploitation due to the lack of official identification documents and inability to speak local languages. They have to bribe both smugglers as well as the officials at the border to enter Indian territory. They encounter a series of risks throughout their passage among which the women and children become more affected and vulnerable.

Rohingyas in India are mainly found to be living in Delhi, Jammu (Jammu and Kashmir), Mewat (Haryana), Hyderabad (Telangana), Jaipur (Rajasthan) and Chennai (Tamil Nadu). They are also living in some of the towns like Meerut, Saharanpur and Muzaffarnagar in the state of Uttar Pradesh and a few nearby Kolkata in West Bengal. Jammu hosts the largest share of Rohingya refugees which is followed by Hyderabad. Significant number of them live in refugee camps. However, a minority of them live in rented houses scattered among the local and internal migrant population. A few of the clusters are built on existing slum areas where internal migrants also live.¹⁰ Lands are being rented from the locals where the Rohingyas build the shanties. It can be observed that the living situation of Rohingya refugees in each of these locations varies in terms of their safety and access to different services. Refugees in Jammu enjoy relatively better employment opportunities and wages. Jammu is one of the first cities in which they found refuge in, and the rate of arrival in Jammu is also high.

Conclusion

⁹ Mixed Migration Centre. (2019). Rohingya migration to India: patterns, drivers and experiences (p. 3). Mixed Migration Centre Asia. https://mixedmigration.org/wp-content/uploads/2019/04/063_briefing-paper_Rohingya_India.pdf

¹⁰ Development and Justice Initiative. (2013). The Rohingya in India: Situational Analysis Report. Development and Justice Initiative. <https://www.daji.org.in/images/Report-Rohingya-Situational-Analysis-2013.pdf>

India does not give status to refugees, but in practice it has opened its borders and received a large scale of refugees fleeing their homeland due to violent conflicts, political unrest, civil war and other types of persecution. In the lack of a national refugee law or unified policy, India's refugee management mechanism has always been ad hoc. It deals with the refugee issue at political and administrative levels. Even without having a national refugee law or policy, it has traditionally hosted refugees from various countries and has refrained from deporting them. India's treatment of refugees is largely influenced by the political atmosphere prevailing in the country and the bilateral relation of India with the country where the refugees are fleeing from. The socio-religious and ethnic background of the refugee community and the level of affinity from the state governments and the local communities were also reflected in India's refugee management mechanism. Role of state governments is seen to be highly influential in the treatment of refugees in different parts of the country. It is evident from the case of Tamil refugees who were received and rehabilitated fairly in the southern state of Tamil Nadu. India's bilateral relation with China and the socio-cultural relation with the Buddhists were reflected in its treatment of Tibetan refugees. Case of Rohingyas provides a different and complex scenario as the crises were dealt indifferently by the respective governments.

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