



Human Rights of Refugees and Asylum Seekers in India

Issues and Challenges

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Introduction

India, being the signatory to multiple international instruments on Human Rights, is persistently striving to fulfil its concerned obligations diligently in all possible manner.

- ❖ Even the Constitution of India on numerous occasions reflects the ideals engrained in Universal Declaration of Human Rights (UDHR).
- ❖ Since the period of Independence, India had been witnessing a huge influx of refugees & asylum seekers from various corners of the world.
- ❖ Even amid such influx, India is still lacking a cogent framework of law to deal with issues of refugees & asylum seekers.

Scope

- ❑ Paper seeks to critically analyse the current situation of refugees and asylum seekers in India.
- ❑ Primarily focus on the rights and status of refugees in India
- ❑ Understanding international laws that ensures protection of human rights of refugees and asylum seekers.
- ❑ A case study of Rohingya refugees on the outskirts of new Delhi was made for this research project.
- ❑ Research paper addresses the issues of migration of refugees and Asylum seekers in India.

Research Objectives

- ❖ To investigate, examine and analyse the current situation, circumstances, problems, and difficulties encountered by refugees and asylum seekers in India with regards to human rights.
- ❖ To analyze regulation and implementation of policies by the government and adherence to UNHCR, and UNIDO.
- ❖ To examine how COVID-19, has affected employment, housing, health and education of refugees and asylum seekers.
- ❖ Examining the situation & problems of refugees particularly in Indian context
- ❖ To analyse data collected by researcher by way of case study and survey.
- ❖ To investigate loopholes and provide suitable recommendations to determine the way forward

Hypothesis

H1

Having policies for refugees creates pressure on local resources and conflict with local people.

H2

In the absence of specific laws regulating the status and situation of refugees and asylum seekers in India, the existing laws give refugees the same status as that of foreigners, which results in numerous abuses of human rights.

H3

Although, the refugees and asylum seekers comprise a weaker section of the community yet in India there are no stringent laws addressing issues relating to education, health and housing.

Research Methodology

A mixed approach has been used for the collection of information, i.e., both **primary and secondary** data. This study is based upon the observations, generating research questions, interviews, and surveys that result in the qualitative study.

- ❑ The study used primary data collected through a field survey conducted on 26th June, 2022.
- ❑ The field survey comprised of 20 sample households from the Rohingya Refugee Camp located on the outskirts of Shaheen Bagh, New Delhi.
- ❑ The camp leader and the refugees provided the appropriate information for the study of their own volition.
- ❑ This paper has gathered secondary data from various verified and reputable journals, news websites, and web data of myriad governmental agencies.

Indian Scenario

India has emerged as the top asylum seeker and refugee country for many refugees from numerous nations due to its **geographical location**, **democratic governance**, **religious tolerance**, and **friendliness** which has also been highlighted under **UNHCR Article 1** as its High Commissioners responsibility to make the project "totally non-political," "humanitarian and social."



Political Dimension

After the partition, ideas of citizenship have taken communal tint and the status of refugees in India is governed by numerous political and administrative choices, which have led to the provision of various types of aid to various refugee groups

Legal Dimension

In certain HC precedents, refugees can contact the UNHCR to apply for status and live in the country.

Socio-economic dimension

The greatest difficulty Refugees and Asylum seekers face in their new location is the difference between their income and spending. This is another reason why the country has not ratified the 1951 Refugee Convention, as planners are deeply concerned about the financial costs associated with CSR obligations.

Psychological Dimension

Data shows that long-lasting somatic and neurotic problems are common among migrant quarry workers. Also, they have very poor help-seeking behaviours as well as very low awareness of their mental health.

Issues Faced

As of 31 January 2022, more than 46,000 refugees and asylum-seekers are registered with UNHCR India. The number of people on the move is expected to grow due to poverty, lack of security, lack of access to basic services, conflict, environmental degradation and disasters.

Refugees and asylum-seekers in India primarily live in urban settings alongside host communities. 46% of the refugees are women and girls, and 36% are children.



ISSUES

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graph TD; ISSUES[ISSUES] --> HEALTH[HEALTH]; ISSUES --> EMPLOYMENT[EMPLOYMENT]; ISSUES --> HOUSING[HOUSING]; ISSUES --> EDUCATION[EDUCATION]; ISSUES --> LANGUAGE[LANGUAGE]; ISSUES --> WOMEN[WOMEN AND CHILDREN];
```

HEALTH

EMPLOYMENT

HOUSING

EDUCATION

LANGUAGE

WOMEN
AND
CHILDREN

International Assistance to Refugees and Asylum Seekers (UNHCR)

1. Issuance of Asylum Seeker Certificate & Refugee Cards for availing the policy benefits.
2. Furnished multiple health benefits including HIV, Reproductive health & Vaccine Distribution Programme during Covid-19 period.
3. Affording opportunities for primary & secondary education along with higher education programme.
4. Conducting Long term self-sufficiency & skill development programme for enabling them to earn a decent livelihood.
5. Providing shelter homes & services like legal aid to the persons subjected to multiple prosecutions.
6. Ending statelessness by assisting for the conferment of nationality of the host country upon refugees.
7. Rendering cash assistance in exceptional cases for meeting the basic amenities of dignified life.

Assistance provided by Indian Government and Indian NGOs

Indian Government

Schemes of Indian Government

LTVs and AADHAR



NGOs present in India.

BOSCO

SICLI

ROHRingya

OFeRR

Self-help Groups

Exploring India's Obligation under International Law

- Non-refoulement as Customary International Law
- Non-refoulement as Jus Cogens
- International Treaty Obligations
 - o UDHR
 - o ICCPR
 - o ICESCR
 - o CRC
- UNHCR Excom & United Nations Declaration on Territorial Asylum

Indian domestic laws

India does not have any specific legislation dealing with the problem of refugees and asylum seekers. At present, refugees were treated as par with the foreigners and all laws applied to foreigners were also applied to them.

- Passport (Entry into India) Act, 1920
- Passport Act, 1967
- Registration of Foreigners Act, 1939
- Foreigners Act, 1946
- Foreigners Order, 1948

Need for a Legislation

Pros

- ❑ Helps in tackling the constant exploitation
- ❑ Establishment of agreed upon criteria for status determination, protection and treatment
- ❑ As a peaceful, humanitarian and lawful action
- ❑ Easier influx regulation via set framework
- ❑ Strengthening of India's global standing on human rights violation

Cons

- ❑ Threat to national security
- ❑ Economic Burden on the country
- ❑ Social impact of refugees on local people

Case Studies

Noor Fatima

- She barely manages to meet basic requirements as last supply of ration was given by UNHRC on Ramzan in April 2022.
- Local NGO help in getting free health treatment. Nearby hospital, AL-Shifa send their ambulance every week for routine check-ups.

Noor Al-Amin

- They fled to India, fearing persecution in their country.
- His two children go to nearby government school.
- They use makeshift toilets.
- Works as a garbage segregator.

Case Studies

Muhammad Ismail

- He says he's feeling safe in India.
- They depend on rations from NGOs and water from handpumps.
- Children go to madrasas for education
- Owns a local ration shop- only source of his livelihood.

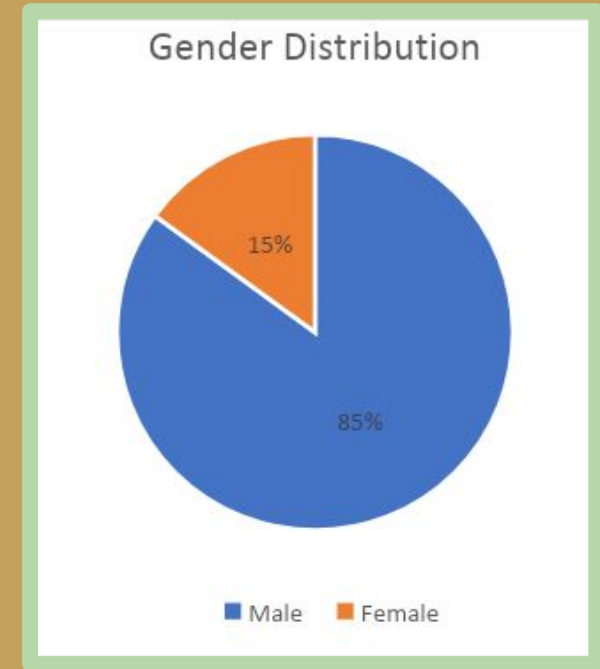
Muhammad Abdullah

- He is partially blind.
- Local NGO helps him in getting treatment from AIIMS, New Delhi.
- Unable to work due to his eyesight problem.
- He would like to go back to their homeland given the space is safe for their loved ones.

Findings

Respondent's Profile Analysis

- ❏ **Age Groups**- The Refugees who were analyzed in this study, fall under the bracket of 18-35 years of population.
- ❏ **Gender Distribution**- Figure indicates that out of 20 sample respondents, 15% (3) are female and 85% (17) are male respondents and no respondents fall under the other gender category.

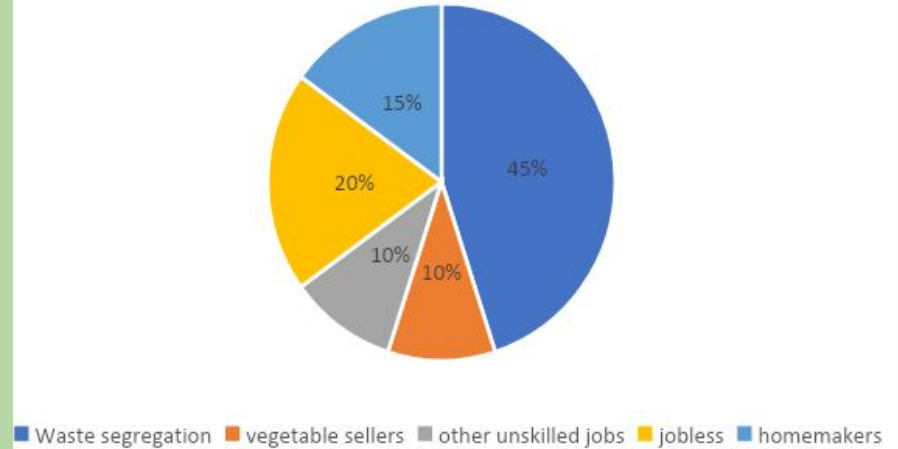


Findings

Employment Status

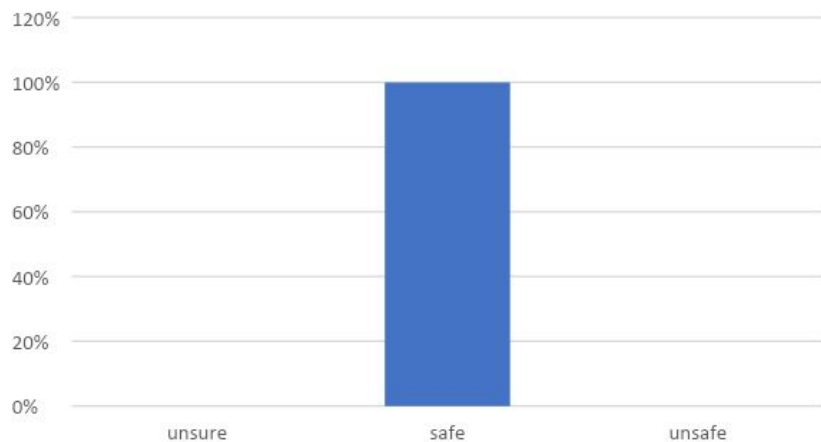
- Figure indicates that out of 20 total respondents, 9 (45%) worked in the waste segregation section of the garbage dump, 2 (10%) of them are vegetable sellers, 2 (10%) of them work in a nearby furniture factory, 4 (20%) of them are jobless currently, 3 (15%) are women who are homemakers.
- They do not have Aadhar cards and thus, finding jobs is a tedious task.

Employment Status



Findings

Are they feeling safe in India?



Would you like to go back to your homeland someday?



Findings

- ❑ Why did they leave their country?
 - ❑ Fear of persecution.
 - ❑ Save themselves from gross Human rights violation such as torture.
 - ❑ Did not feel safe
 - ❑ Felt they were being targeted.
-
- ❖ Why they chose India?
 - ❖ No asylum in countries such as Bangladesh, Thailand, Malaysia and Indonesia
 - ❖ India was nearby
 - ❖ Felt safe on Indian lands
 - ❖ Better prospects for job and education
 - ❖ Camps are situated in Delhi, Assam, West Bengal, Kerala, Jammu & Kashmir, Uttar Pradesh and Andhra Pradesh

Findings

Help and facilities provided by UNHCR, NGOs and Governmental authorities

☐ Health:

- ☐ Local NGO helps in getting free treatment from government hospital.
- ☐ Call NGO in case of emergency
- ☐ Routine check-ups every week by Al-Shifa hospital, Okhla

★ Toilet

- ★ Makeshift toilets near home
- ★ Some defecate in open

❖ Education

- ❖ children go to Madarasas.
- ❖ Attend Government school in Shaheen Bagh and Kalindi Kunj.

● Women and Children

- No specific Help
- Groceries from UNHCR, once in a while

Recommendations

Policy of voluntary repatriation to be encouraged by UNHCR and Government of India.

Draft provisions to provide them with temporary identity card by government for basic needs.

Modify labor formulations and work for all round development of the refugees largely.

Introducing a law to deal with matter only pertaining to the refugees holistically.

Legal protection to be provided while keeping in mind the conditions of women and children.

Reduce the financial costs associated with CSR through international cooperation.

Develop effective policy system for the settlement of refugees within specific territory of India.

Efforts for social integration of refugees with host community

Recommendations

Allowed to be employed in the formal sector or provided a separate mechanism for ensuring their Right to work and earn a livelihood.

Host country to be sensitized towards the grief of refugees and asylum seekers to protect women and children from exploitation and abuse from locals and authoritarianism.

Increase in opportunities in higher education programmes conducted by UNHCR.

Ensure free Legal Aid.

To encourage NGO's to assist refugees by providing needed benefits and incentives.

Protection must be afforded to asylum seekers in case of dismissal of Refugee Status Determination (RSD)

Fast and hassle free process for procuring long term visas(LTV) & Refugee Card would allow them to secure essential documents like AADHAR etc.

Hypothesis and Findings

	Hypothesis	Inference	Reasoning
H1	Having policies for refugees creates pressure on local resources and conflict with local people's sentiments.	Partially Affirmed & Partially Negated	While many people showcase prejudice towards the notion of accepting refugees, others agree to respect their human rights.
H2	In the absence of specific laws regulating the status and situation of refugees and asylum seekers in India, the existing laws give refugees the same status as that of foreigners, which results in numerous abuses of human rights.	Affirmed	Vacuum in the law leads to sporadic and discretionary state practice and creates scope for violation of international obligations.
H3	Although, the refugees and asylum seekers comprise a weaker section of the community yet in India there are no stringent laws addressing issues relating to education, health and housing.	Affirmed	Indian legal & policy framework fails to fulfil basic human rights obligations of the refugee community who are largely supported by NGOs and the UNHCR.

Conclusion

India continues to entertain refugees from several countries on humanitarian grounds.

- Immediate contemplation is necessarily warranted over the issue of absence of robust policy framework for refugees.
- Issues pertaining to Rohingya's refugee amid the huge influx of refugee from different countries
- Willingness of refugees to go back to their homeland, depending on the assurance of protection of their life.
- Durable solutions mechanism, for addressing the plight of refugees, on the part of Government of India is the need of the hour.



Thank you

NHRC ONLINE SHORT TERM INTERNSHIP- JUNE 2022



GROUP RESEARCH PROJECT

TOPIC:

HUMAN RIGHTS OF REFUGEES AND ASYLUM SEEKERS IN INDIA:
ISSUES AND CHALLENGES

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PART - I

1. ABSTRACT

India has no well-defined domestic law for refugee rehabilitation, yet it is the home of lakhs of refugees. These people live in poverty and lack access to basic necessities. In the absence of uniform refugee laws in India and taking into account political tactics, there is always the possibility of discrimination. The protection of refugees is limited to the Indian government's ad hoc measures, leaving them with minimal legal protection for their civil and political rights and practically no protection for their safety and welfare.

With a goal of helping asylum seekers, refugees, and other displaced populations realise their basic human rights and access the legal system, there is a need to defend the rights of refugees and to better their status in India.

The research paper is divided into several sections, beginning with the introduction of refugees and asylum seekers in India, ascertaining the impediments in the realisation of human rights of refugees, policy and legal framework, and ending up with the recommendation.

Key words: Refugees, Asylum Seekers, Human Rights, India, Legal Framework, International Commitments.

2. INTRODUCTION

On the global platform, India has built a formidable reputation of being an active participant in fulfilment of its obligations under the international laws on human rights. The very essence and spirit of the Universal Declaration of Human Rights (UDHR) is ingrained in India's constitutional principles. Since the early days of the Constitution of India, it has stood guard to protect the fundamental rights of Indian citizens as well as the basic human rights of foreigners. Indian independence had witnessed a huge influx of people into the country from the neighbouring countries, owing to the magnanimous displacement of people in wake of the country's partition. With time, the refugee crisis in our country as well as the influx of asylum seekers into the Indian borders has only seen a steep rise. To date, India remains to have enacted any legislation or to conclusively determine rules to regulate the status of these refugees and asylum seekers in India.¹

Who are "refugee" and "asylum seekers"?

¹ DRISHTI, <https://www.drishtias.com/daily-updates/daily-news-analysis/legislation-for-refugees> (last visited on July 1, 2022).

Before delving into an in-depth analysis on the instant topic, let us first distinguish and understand what the term “refugee” and “asylum seeker” stand for. The term ‘Refugee’ has a particular meaning in international law and its legal definition is laid down in the United Nations Convention on Status of Refugees, 1951. Article 1 of the said Convention defines the ‘refugee’ as- *“A person who owing to 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, unwilling to avail himself of the protection of that country.”*²

On the other hand, an asylum-seeker is someone whose request for sanctuary has yet to be processed.³ An asylum-seeker is therefore an individual who says he/she is a refugee, but whose claim has not yet been definitely evaluated. Seeking asylum is a human right as recognised by international laws.⁴ Not every asylum-seeker will ultimately be recognized as a refugee, but most refugees are initially asylum-seekers.⁵ The 1951 Convention does not have any specific procedural requirements for the refugee determination process. Therefore, States have developed differing procedures and standards.

Irrespective of this difference in meaning of these terminologies, both these classes of people, i.e., refugees and asylum seekers, flee from their respective countries and seek protection in another country to escape persecution and serious human right violations in their country. It must be appreciated that a person becomes a refugee and/or an asylum seeker compelled circumstances beyond their control. They have no other alternative but to flee from human rights violations, political and socio-economic insecurity, ethnic strife or civil war, etc. leading to well-founded grounds for fear of persecution.⁶ Thus the issue of rights of refugees and asylum seekers fall under the paradigm of human rights as addressed by the United Nations.

The bulk of the population of refugees and asylum seekers in India originate from Sri Lanka, Tibet, Myanmar and Afghanistan. However, only Tibetan and Sri Lankan refugees are recognized as such by the government.⁷ Although since time immemorial India has continued and will continue to host those in distress, irrespective of from where they come

² UNHRC, <https://www.unhcr.org/4d944c319.pdf> (last visited on Jun 30, 2022).

³ UNHRC, UNHRC, <https://www.unhcr.org/asylum-seekers.html> (last visited on Jun 30, 2022).

⁴ Nimrat Kaur, *Protection of Refugees in India- A Critical Analysis*, SSRN (Jun 29, 2022, 7:05PM), <https://deliverypdf.ssrn.com/delivery.php?ID=594113070013114113003123090119030078002069067087006050093067005030002070103112123093098031011119001029044109075116115084086030055057028032013002016126127124094085080046030023069118099071115022103119097093098104125125110027001029023074125016030085065005&EXT=pdf&INDEX=TRUE>.

⁵ *Supra* note 2.

⁶ *Id.*

⁷ *Supra* note 4.

to seek shelter, the problem at hand has three dimensions to it. *Firstly*, India, being a developing country, is yet to achieve the goal of ensuring each of its own citizens have access to the basic amenities and the increasing population of refugees and asylum seekers strain the country's resources. *Secondly*, in the absence of codified law(s) or regulation(s) to regulate the status and entry into the country or to ensure their rights and rehabilitation, the government deals with these issues on an ad-hoc basis. *Thirdly*, the existing laws give refugees the same status as that of foreigners, which results in numerous abuses of human rights.

The influx of refugees and asylum seekers is one of the oldest crises that the country continues to face. The instant paper makes a humble attempt to critically analyse how India deals with its population of refugees and asylum seekers, their rights in the country and explore the issues and challenges further.

2.1 Scope

The instant paper seeks to critically analyse the current situation of refugees and asylum seekers in India, with the primary focus being on their rights and status in the country. Besides this, the paper shall endeavour to look into the international laws which seek to ensure and protect the human rights of refugees and asylum seekers, India's adherence to them, the existing laws in India and the dilemma the country is going through. For the case study aspect of the research project, the authors have constricted themselves with a sample of 20 people from the Rohingya refugee Camp in the outskirts of New Delhi. The Research paper addresses the issue of migration of refugees and asylum seekers in India while scrutinizing the need for policies in our country. The discussion of the present research will be limited to the refugee situation in India and its response to the same.

2.2 Hypothesis

H₁: Having policies for refugees creates pressure on local resources and conflict with local people.

H₂: In the absence of specific laws regulating the status and situation of refugees and asylum seekers in India, the existing laws give refugees the same status as that of foreigners, which results in numerous abuses of human rights.

H₃: Although, the refugees and asylum seekers comprise a weaker section of the community yet in India there are no stringent laws addressing issues relating to education, health and housing.

2.3 Research Methodology

A mixed approach has been used for the collection of information, i.e., both primary and secondary data. This study is based upon the observations, generating research questions, interviews, and surveys that result in the qualitative study.

To analyse the problems of the refugees and their livelihood options and strategies in India, the study used primary data collected through a field survey conducted on 26th June, 2022. To analyse the problems of the refugees and their livelihood options and strategies in India, the study used primary data collected through a field survey conducted on 26th June, 2022. The field survey comprised of 20 sample households from the Rohingya Refugee Camp located on the outskirts of Shaheen Bagh, New Delhi. We, therefore decided to meet some of the refugees who were willing to reveal their life story. The camp leader and the refugees provided the appropriate information for the study of their own volition.

To address the issue of refugee migration in India, and the various rehabilitation mechanisms and government expenditure on them, this paper has gathered secondary data from various verified and reputable journals, news websites, and web data of myriad governmental agencies.

2.4 Research Objectives

The aim of this study is-

- To investigate, examine and analyse the current situation, circumstances, problems, and difficulties encountered by refugees and asylum seekers in India with regards to human rights.
- To analyze regulation and implementation of policies by the government and adherence to UNHCR, and UNIDO.
- To examine how COVID-19, has affected employment, housing, health and education of refugees and asylum seekers.
- To create a three-dimensional well-being model that takes into account the following factors with respect to assistance given by the UNHCR and the Indian government.
 - (a) political and legal aspects
 - (b) socio-economic aspects
 - (c) psychological aspects
- To analyse data collected by researcher by way of case study and survey

- To investigate loopholes and provide suitable recommendations to determine the way forward

2.5 Research Questions

- Whether the inability of refugees and asylum seekers to access adequate infrastructure, security, and sleep negatively impact these rights?
- Whether the barriers to accessing a better and more dignified life result from linguistic gap, discrimination, lack of education, access to electricity and water, poor health, and squalor?
- Whether India's lacks of national refugee protection system, have repercussions for refugees and asylum seekers?
- Whether documentation will be the first step towards establishing the identity of refugees and asylum seekers as well as giving several other benefits offered by the government?

2.6 Literature Review

I. **Article:** *India Needs a Refugee Law* by Saurabh Bhattacharjee⁸

The research paper titled India needs a refugee law is authored by Saurabh Bhattacharjee explores the fundamental aspects of refugee treatment under Indian law and administrative practice, as well as the implications of India's existing ad hoc legal structure that controls refugees. It addresses India's levels of commitment to refugee protection, judicial efforts to broaden it, and administrative policies that control a refugee's existence. It has been incorporated in this paper to offer an argument for the development of a distinct legislative framework that describes the legal status of refugees in India based on this discussion.

II. **Book:** *Refugees and the Law*, by Ragini Trakroo Zutshi, Jayshree Satpute and Md. Saood Tahir

This book holistically analyses the refugee law, both at Indian and international level. It also analyses the relationship between the domestic laws in India and the refugee protection. The book concentrates to link the question of refugees with the human rights law as well as other international laws. The need for national legislation in India has been elaborated upon this

⁸ Saurabh Bhattacharjee, *Economic and Political Weekly*, Mar. 1 - 7, 2008, Vol. 43, No. 9 (Mar. 1 - 7, 2008), pp. 71-75.

work. This book ultimately suggests some possible steps that can be adopted to transform the miserable lives of migrants and asylum seekers.

III. **Research Paper:** *The Legal Framework: The Convention Relating to the Status of Refugees and the Development of Law Half a Century Later* by T. Ananthachari⁹

This journal has analyzed how India has always permitted the refugees into the country with the feeling of brotherhood manifesting its great heritage and culture from centuries. The author, T. Ananthachari examined the Indian legal framework regarding the refugees through various judgements of Courts where justice is upholding in spite of having no refugee laws. The author describes that India is a homely country for the refugees which always priorities the fundamental rights and human rights. Finally, the author throws light on the disadvantages of lack of the law to deal with refugees and how it has become a drawback as the current existing laws doesn't differentiate between immigrants and refugees.

IV. **Research Paper:** *Creating Legal Space for Refugees in India: The Milestones Crossed and the Roadmap for the Future* by Prabodh Saxena¹⁰

This journal has examined the refugee care in India pre and post-independence, the idea behind not signing CSR, how India helps the refugees and also India's international commitments. The journey emphasized on India's socio-economic conditions.

V. **Report:** UNHCR Global Appeal 2011 by UNHCR¹¹

This report presents the working environment for the Refugees and asylum seekers in India with data analysis of the organizations and financial information in India for Refugees and asylum seekers in India. UNHCR also provides its main objectives and targets for the refugees in India.

VI. **Blog:** *'What challenges do refugees and migrants face* by Mohommad Malim¹²

In the blog titled 'What challenges do refugees and migrants face' Mohommad Malim discusses instances of various challenges and barriers that the refugees face. The blog reveals how language barrier, communication gap, difficulty in getting a job makes the life of a

⁹ Vol. 10, Cornelis D.Jong de, *The Legal Framework: The Convention Relating to the Status of Refugees and the Development of Law Half a Century Later*, International Journal of Refugee Law, pp.688-99, (1998).

¹⁰ Vol. 19, Issue 2, Prabodh Saxena, *Creating Legal Space for Refugees in India: the Milestones Crossed and the Roadmap for the Future*, (July 2007), P. 246-272, <https://doi.org/10.1093/ijrl/eem007>

¹¹ UNHCR, UNHCR Global Appeal 2011 Update (India), 202 India, 2011, <https://www.unhcr.org/4cd96e919.pdf>.

¹² Mohamed Malim What challenges do Refugees and Migrants face? <https://epimonia.com/blogs/news/challenges-refugees-face> (5 November 2019)

refugee miserable. The author explores how housing becomes expensive for the group of people. He further discusses how cultural barriers and their insufficient access to health services poses multiple sort hardships and struggles for them in the process. Towards the end, the author focuses on taking immediate actions to alleviate these very challenges.

PART - II

3. INDIAN SCENARIO

India has emerged as the top refugee country for many refugees from numerous nations due to its geographic location, democratic governance, religious tolerance, and friendliness.¹³ In addition to its size and population, India holds the top spot because of its geopolitical, strategic, and economic capacity to shape events on the subcontinent. Article 1 of the United Nations Human Right Commission's ("UNHRC") stipulates that the High Commissioner's primary responsibilities are to protect refugees and create long-lasting solutions. This is accomplished by offering support to governments in order to encourage the voluntary return of refugees or their integration into host-nation populations.¹⁴

Physical and cultural impediments, political and legal frameworks, and notions of nationalism, ethnicity, and roots all come into focus when analysing the nature or primary causes of relocation. People frequently take the identity of someone "in transit" as a result of displacement. People would leave their homes as a result, either legitimately or illegally, or they would relocate to refugee camps.¹⁵

3.1 Political Dimension

The socio-economic exclusion of Sikh Afghan, Christian Afghan, and Rohingya refugees in Delhi as well as the emergence of a bureaucratically "violent" management of their rights and entitlements are both a result of historically contingent identity politics, state-making, and urbanisation processes. In the post-Partition state, ideas of citizenship and "who counts" as a citizen have taken on a communal tint as Muslim refugees and migrants in particular have been subject to a politics of exclusion.¹⁶

Also, the status of refugees in India is governed by numerous political and administrative choices, which have led to the provision of various types of aid to various refugee groups.

¹³ UNHCR, *UNHCR Global Appeal 2011 Update (India)*, 202 India, 2011, <https://www.unhcr.org/4cd96e919.pdf>.

¹⁴*Id.*

¹⁵ De Haas, *A theory of migration: the aspirations-capabilities framework*. CMS 9, 8 (2021). <https://doi.org/10.1186/s40878-020-00210-4>

¹⁶ Jessica Field, Anubhav Dutt Tiwari and Yamini Mookherjee, *Urban refugees in Delhi Identity, entitlements and well-being*, p.33, (2017), <https://pubs.iied.org/sites/default/files/pdfs/migrate/10852IIED.pdf>

As an illustration, while certain refugee groups receive full legal advantages, others are criminalised and denied access to essential services.¹⁷

3.2 Legal Dimension

The Indian Constitution contains some provisions that apply to refugees in the same manner as they do to Indian citizens. The Fundamental Right Article 21 of the Indian Constitution, which protects everyone's right to life and personal liberty, has been upheld by the Supreme Court of India on numerous occasions. Given that the United Nations High Commissioner for Refugees (UNHCR) is crucial to the protection of refugees, the various High Courts in India have embraced the principles of natural justice to refugee concerns. By delaying the deportation orders, the Hon'ble High Court of Guwahati recognised the concerns of refugees and allowed them to contact the UNHCR to ascertain their status.¹⁸

The High Court of Madras stated its unwillingness to compel Sri Lankan refugees to return to their homeland against their choice in the case of *Gurunathan & Ors. v. Government of India & Ors.*¹⁹ and in *A.C. Mohd. Siddique v. Government of India & Ors.*²⁰

In *P. Nedumaran v. Union Of India*,²¹ Sri Lankan refugees had asked the Madras High Court for a writ of mandamus ordering the Union of India and the State of Tamil Nadu to permit UNHCR officials to assess the refugees' willingness to return to Sri Lanka and to permit the refugees to remain in the camps in India who do not want to return. As the UNHCR is involved in determining whether refugees' returns to Sri Lanka are voluntary, the Hon'ble Court affirmed that "*the Court is not required to assess whether the consent is voluntary or not.*"

The Court also recognised the representatives of the UNHCR for their objectivity and skill.

In *Syed Ata Mohammadi v. Union of India*,²² the Bombay High Court ruled that "*there is no question of expelling the Iranian refugee to Iran, as he is recognised as a refugee by the UNHCR.*" In conformity with the internationally recognised norms of "non-refoulement" of refugees to their place of origin, the Hon'ble Court also gave the refugee permission to travel to the country of his choosing.

The Supreme Court halted the deportation of Andaman Island Burmese refugees in *Malavika Karlekar v. Union of India*²³ because "*their claim for status of refugee was pending for adjudication*

¹⁷ T. Ananthachari, *Refugees In India: Legal Framework, Law Enforcement And Security*, [2001] ISILYBIHRL 7, <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html>.

¹⁸ Harshit Rai and Vaibhav Dwivedi, *Constitutional Provision Regarding Refugee Law in India*, 4 IJLMH (2021), <https://www.ijlmh.com/paper/constitutional-provision-regarding-refugee-law-in-india/>.

¹⁹ *Gurunathan and others vs. Government of India*, (1992) WP No.S 6708 and 7916.

²⁰ *A.C.Mohd.Siddique vs. Government of India and others*, (1998), (47)DRJ(DB) p.74.

²¹ *P.Nedumaran vs. Union Of India* (1997) (The case is pending before the National Human Rights Commission of India).

²² *Syed Ata Mohammadi vs. State, Criminal*, (1994), W.P. no.7504/1994, Bombay High Court.

²³ *Malavika Karlekar vs. Union of India*, (1998) CrI. WP No.243.

and is also a *prima facie* case filed for grant of refugee status." According to the Supreme Court's ruling in the Chakma refugee case, no one's life or freedom can be taken away from them without following the proper legal procedures.

3.3 Socio-economic Dimension

In their new communities, refugees and asylum seekers are exposed to novel social and living situations. Their native environment is in distress, which drives them to urban centres. The greatest difficulty they encounter in their new location is the difference between their income and spending.²⁴

The expenses of socio-economic protection may be the reason for the resistance to establishing a refugee regime, but that does not explain why there is no territorial asylum framework in place to at the very least uphold the principle of non-refoulement while safeguarding state interests.²⁵

Last but not least, the socio-economic situation is another reason why the country has not ratified the 1951 Refugee Convention, as planners are deeply concerned about the financial costs associated with CSR obligations when the country cannot meet the socioeconomic needs of its own millions of citizens.²⁶ However, empirical evidence suggests that refugees can actually contribute economically to their host countries.

3.4 Psychological- mental health dimensions

The psychological aspect explains how extended camp life contributes to the emergence of despair, social isolation, and family dissolution. In Lucknow, 9.6% of the migrated refugee population (who moved to India after partition) had mental disabilities, compared to only 4.2% of the non-migrant natives. Most migratory refugees with psychiatric illnesses (psychoneurosis, depression, and enuresis) are elderly and have been ill for more than ten years.²⁷

When compared to non-migrants, Kashmiri migrants at Jammu's Muthi camp had higher rates of psychiatric illness (mostly depression, post-traumatic stress disorder, and

²⁴ Veena A and Mr.Sudeep Rao, *Analysis of socio economic conditions and migration patterns of migrant settlements in Bengaluru*, (2017), https://www.researchgate.net/publication/322665731_Analysis_of_socio_economic_conditions_and_migration_patterns_of_migrant_settlements_in_Bengaluru.

²⁵ Kay Hailbronner & Jana Gogolin, *Asylum, Territorial in Max Planck Encyclopaedia of Public International Law* (Rüdiger Wolfrum ed., 2013), available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e757>.

²⁶ Prabodh Saxena, *Creating Legal Space for Refugees in India: the Milestones Crossed and the Roadmap for the Future*, 19 IJRL (July 2007), P. 246-272, <https://doi.org/10.1093/ijrl/eem007>

²⁷ H. G. Virupaksha, Ashok Kumar, Bergai Parthsarathy Nirmala, *Psychiatric morbidity in adult Kashmiri migrants living in a migrant camp at Jammu*. *Indian J Psychiatry*, J Nat Sci Biol Med. (July 2014) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4121889/>.

generalised anxiety disorders) (33.66%). The study's key finding is the necessity of raising the socioeconomic standing of migrants and offering them efficient psychiatric services.²⁸ Long-lasting somatic and neurotic problems are common among migrant quarry workers. They have very poor help-seeking behaviours as well as very low awareness of their mental health.

4. ISSUES FACED BY THE REFUGEES AND ASYLUM SEEKERS

As of 31 January 2022, more than 46,000 refugees and asylum-seekers are registered with UNHCR India. The number of people on the move is expected to grow due to poverty, lack of security, lack of access to basic services, conflict, environmental degradation and disasters.

Refugees and asylum-seekers in India primarily live in urban settings alongside host communities. 46% of the refugees are women and girls, and 36% are children.

4.1 Health

Refugees and asylum seekers are a diverse group and have a variety of health needs, which may differ from those of the host populations. Compared to the general population, far higher numbers of refugees suffer from depression, PTSD, or schizophrenia, due to traumatic experiences of war and systematic persecution.

Barriers are even greater for people with disabilities. Women and girls may find difficulty in accessing sexual and gender-based violence protection and response services. Refugee and migrant children, especially unaccompanied minors, are more likely to experience traumatic events and stressful situations, such as exploitation and abuse, and may struggle to access health care. The ability to access health services in humanitarian settings is usually compromised and complicated by shortages of medicines and lack of healthcare facilities.

4.2 Employment

Being non-citizens, the refugees and the asylum seekers face a lot of problems when it comes to their adequate access to employment in government education and health care services. Restricted movements on the side of the refugees, happens to be one of the major factors contributing for the refugees occupying a vulnerable status in the society. Adverse effects

²⁸ Banal R, Thappa J, Shah HU, Hussain A, Chowhan A, Kaur H, Bharti M, Thappa S., *Migration and mental health: An interface*, Indian J Psychiatry (2010) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2927886/>.

have been witnessed in their mental health too. They have been suffering both physically and mentally.

4.3 Education

Lack of documentation on the part of the refugees and asylum seekers and the absence of authentic documents relating to their current residents, act as obstacles when it comes to the enrolment of the children of refugees and asylum seekers, at the higher university level education. There is a section of this very group of people who are protected by the UNHCR who are not required to give additional documentation and are able to acquire education at higher levels.

4.4 Housing

The refugees and asylum seekers face a serious issue of lack of permanent shelter, thus in the long run are subjected to daily struggles and are not able to access stable livelihoods. The women and children of the refugees and the asylum seekers happen to become the worst sufferers.²⁹

4.5 Women and Children in wake of the Pandemic

Refugee and asylum seeking women in particular lack access to maternal and sexual healthcare. For many, the lockdown also means disrupted access to psycho-social support, psychiatric care and medications³⁰.

Women refugees are inherently isolated from their traditional support systems of family, friends and community, and the lockdown further bolstered isolation from support networks – a boon to abusers. In India, community engagement is dominated by men, and refugee women find themselves alone in a foreign land without a voice. Many naturally harbour a deep mistrust of authority, arising from their precarious legal status and fear of arrest and deportation, as well as past experiences of persecution and displacement. This anxiety is aggravated by poor access to news and information in languages they understand. All of these factors combine to severely limit their access to essential public services.

A refugee or an asylum seeker has additional challenges. Their kids are growing up in a completely different society. This puts them on a back foot as refugee or immigrant parents

²⁹ Migration Policy Institute, *Gaps in India's Treatment of Refugees and Vulnerable Internal Migrants Are Exposed by the Pandemic*, <https://www.migrationpolicy.org/article/gaps-india-refugees-vulnerable-internal-migrants-pandemic> (Sept 10, 2020).

³⁰ Shweta Malik, *A gendered pandemic: Refugee women in India left highly vulnerable in lockdown*, <https://www.thenewsminute.com/article/gendered-pandemic-refugee-women-india-left-highly-vulnerable-lockdown-125193> (May 24, 2020).

find it challenging on how to navigate through different situations. The number of shared instances keeps decreasing and the parent-child dynamic keeps changing as time goes by. If they're being raised in an English-speaking country, the culture and mannerisms are completely alien to them, but they're normal for the children as that is what they've seen their entire life. In such cases, children receive no educational support from their refugee or migrant parents and have to rely completely on schools and teachers.

4.6 Language

Daily communication, getting a job, filling documentation or buying food, all of these require knowledge of the English or Hindi language. For Instance the refugees moving from Myanmar to Bangladesh, don't speak their language.

This makes daily tasks more difficult for refugees. Granted, one can learn a new language, but doing so is no piece of cake either. There's the question of managing it along with surviving on a daily basis and taking care of your dependents.

4.7 Others

The recent Covid-19 pandemic has contributed a lot in creating a deplorable crisis of both the refugees and asylum seekers. A complete shutdown in the entire world for more than a year has proved to be a game changer basically for the vulnerable positions of the refugees and the asylum seekers. A fear was created in their minds that they would be identified as illegal because most of them did not have authentic documentation along with them to prove their legal stay in the country. In the process they mostly would not reveal their identity and even they were afraid to approach government hospitals for their treatment during the pandemic. Hence, all these factors are what is creating a chaotic situation amidst the refugees and asylum seekers in the country and a denial of at least the basic rights that must be guaranteed for them.

PART - III

5. ASSISTANCE TO REFUGEES- NATIONALLY & INTERNATIONALLY

This section proposes to evaluate and throw light on the Assistance received by the refugees. This has been analysed from two fronts - Indian assistance and International assistance.

5.1 INDIAN ASSISTANCE

Indian Assistance is provided by two agencies: the Indian Government and NGOs in India.

5.1.1 Indian Government

The Indian Government despite its non-committal policies towards refugees, has proposed eight schemes which are directed towards certain refugee groups.³¹

The following list provides the schemes.

- i. Central Assistance for one-time settlement of displaced families from Pak Occupied Jammu and Kashmir (PoJK) and Chhamb settled in the State of Jammu & Kashmir.
- ii. Rehabilitation Package and up-gradation of infrastructure of the Bangladeshi Enclaves and Cooch Behar District after transfer of enclaves between India and Bangladesh under Land Boundary Agreement to benefit the 911 returnees from erstwhile Indian enclaves in Bangladesh.
- iii. Relief assistance to Sri Lankan refugees staying in camps in Tamil Nadu and Odisha.
- iv. Grant-in-Aid to Central Tibetan Relief Committee (CTRC) for five years for administrative and social welfare expenses of Tibetan settlements.
- v. Grant-in-Aid to Government of Tripura for maintenance of Brus lodged in relief camps of Tripura.
- vi. Rehabilitation of Bru/Reang families from Tripura to Mizoram.

These schemes were started in 2011, and were extended in the subsequent years the recent extension being 2022.³²

However, these schemes, other assistance and basic documents like driving licence provided by the Government of India could be availed only by a person possessing a Long-Term Visa (LTV) which could be procured by producing the original and valid passport of the refugee. In fact, the AADHAR does not require citizenship details. It merely requires documentation regarding identity, date of birth and address ³³ which could be sufficiently met with by the LTVs³⁴. However even if a student does not possess any of the requisite documents, he/she can open a small banks account with a maximum balance of INR 1 Lakh keeping in mind

³¹ PRESS INFORMATION BUREAU GOVERNMENT OF INDIA (last visited on July 04, 2018)

³² <https://newsonair.gov.in/Main-News-Details.aspx?id=436470> (last visited on 29th June, 2022).

³³ AADHAR(Enrolment and update) Regulations 2016.

³⁴ It is noteworthy that Ajay Bhushan Pandey, ex CEO of UIDIAI had acknowledged in the Hon'ble Supreme Court of India in the K.S.Puttaswamy and Anr .v. UOI Writ petition No. 494 of 2012 that a Foreign National fulfilling the residence criteria is eligible for AADHAR provided the individual submits the acceptable identity and address as per UIDIAI valid list of documents.

that no foreign movement would be allowed in these accounts, according to the RBI's latest guidelines.³⁵

5.1.2 NGOs Based in India

There are a few NGOs based in India that are recognised by the UNHCR and work in unison with them. Some of them are listed below:

- a. **BOSCO, Delhi:** Bosco Organisation for Social Concern and Operation is a Delhi based NGO and is a part of the Don Bosco International Organisation dedicated to the service of poor. This organisation along with the Don Bosco Ashalayam trains refugees by running tuition for young children, housing for the homeless, vocational training like tailoring and helps in forming various SHGs.
- b. **SLIC Delhi:** Socio-Legal Information Centre in association with the Human Rights Law network helps in arranging Legal Aid for the refugees.
- c. **ROHRingya, Delhi:** Rohingya Human Rights Initiative conducts education programmes and mainly focuses to defend the Human rights of the Rohingya Refugees and expose the abuses they face.
- d. **OfeRR, Chennai:** Organisation for Eelam Refugees and Rehabilitation provides relief and rural development, free school shoes, spirulina training and tsunami rehabilitation to the Eelam refugees in Tamil Nadu.
- e. **Self-Help Groups:** Khalsa Diwan Welfare Society is one such SHG dedicated to the support of their refugee community. KDWS is funded through membership fees, and helps other Sikh and Hindu Afghan refugees (numbering around 15,000³⁶ in Delhi) struggling to receive the assistance they need from the Indian government. It focuses on education and skills development, including teaching devotional music, language classes, stitching, and computer skills. More informally it offers reconciliation and support for domestic disputes and grievances.

³⁵ Press Release, RBI recent simplified KYC measures for public awareness, dated 26th Aug 2014.

³⁶THE DIPLOMAT, <https://thediplomat.com/2016/08/longing-to-belong-afghan-sikhs-and-hindus-in-india/> (Last visited on 29th June, 2022).

Chin refugees from Myanmar, too, have their own community support systems. A minority religious and ethnic group persecuted by the Burmese military, they have fled to India in waves over the last four decades and are settled primarily in Mizoram, Manipur and Delhi³⁷. In Delhi they number around 4,000 and are largely clustered in the west of the city. The community has a hired floor in an apartment block where – with the support of their church and some NGOs – they run language, computer, and stitching classes, and also previously, their own clinic with a Chin doctor.

Apart from these, Afghan Refugees and Somali Refugees have set up small shops selling traditional Afghani food in Delhi, to meet up their ends as well. These shops have received great support from the youth of Delhi as well.³⁸

5.2 INTERNATIONAL ASSISTANCE

UNHCR, operates under the umbrella of the United Nations Development Programme (UNDP), acting as a watchdog provides refugees with numerous safeguards pertaining to medical assistance, rehabilitation & so on & so forth. Few of them are enumerated hereinbelow-

- a. **Refugee Status Determination (RSD):** The term ‘refugees’ & ‘asylum seekers’ have their own distinct connotation. The person, upon whom the refugee status conferred by UNHCR falls in the category of mandated refugee. UNHCR issued asylum seeker certificates to asylum seekers for availing the multiple benefits and refugee cards to recognize refugees enabling them to establish their identity and certify their refugee status. Till 30th April 2022, 48,665 refugees and asylum-seekers are registered with UNHCR in India. Conferring the legal status of refugee, it provides its own standard operating procedure for the verification & disposal of application for such status.
- b. **Health Services:** The wide range of activities of UNHCR also entails the medical assistance of multiple nature including **sexual & reproductive health, HIV, sanitation, nutrition & food security** to the refugees & asylum seekers without causing financial hardship. Acting as a next friend & considering the paramount importance of right to health, the UNHCR even during the period of Covid-19,

³⁷ Research and Practice within the Human Rights Centre, University of Essex | University of Essex (last visited on June 29, 2022)

³⁸ Delhi – Refugees in Towns (last visited on June 29, 2022).

passionately distributed the vaccines & other health care amenities to the refugees at large.

- c. **Education Assistance Programme:** The corner stone of the UNHCR policy is to afford an opportunity to the refugees & asylum seekers to access the basic academic resources, keeping in mind the apprehension of resorting to the illegal practices. Besides this, it also provides the higher education depending upon the merit of the applicant.
- d. **Self-reliant programme:** With a view to ensure the refugee's long-term self-sufficiency and skill building, the UNHCR focuses on helping refugees transition to recovery through a combination of livelihood responses& earning a decent standard of living.
- e. **Accommodation:** UNHCR also manages to accommodate the refugees by providing them the shelter homes. In rural settings, delivering protection and humanitarian assistance through refugee camps is common.
- f. **Subsistence Allowance:** A subsistence allowance is usually provided to vulnerable refugees with no other means of support. It is intended to cover basic expenses on items such as food, shelter and transportation on. The subsistence allowance is provided for a limited period of time.³⁹
- g. **Legal Assistance:** Ensuring the accessibility to the justice, the UNHCR widely promotes & works for providing a legal aid to the refugees & asylum seekers detained arbitrarily or subjected to malicious & unlawful prosecutions. Large share of the refugee's population is unable to access such services due to the associated costs, language barriers and other administrative and procedural difficulties.
- h. **Ending Statelessness:** UNHCR also carrying out the several programmes including the identification of refugees for the purpose of conferring nationality.⁴⁰
- i. **Cash Assistance:** On numerous occasions, owing to the inevitable calamities or unwarranted persecutions of different nature, people forced to flee empty handed. Apropos these issues, the UNHCR aims to furnish the cash-based intervention to the refugees, requiring the fulfilment of certain criteria.

6. EXPLORING INDIA'S OBLIGATION UNDER INTERNATIONAL LAW

³⁹ RAGINI TRAKROO ZUTSHI, REFUGEES AND THE LAW 185 (2nd Ed. 2011).

⁴⁰ UNHCR INDIA, <https://www.unhcr.org/en-in/ending-statelessness.html> (last visited on 29th June 2022).

India has not yet ratified the 1951 Refugee Convention and the 1967 Protocol. While India has a notable history of welcoming refugees from all over the world, recent cases of discrimination and denial⁴¹ of refugee status raise concerns about its equivocal positions on the legislation on refugee protection generally. The legal uncertainty brought on by India's unwillingness to ratify the 1951 Convention and the 1967 Protocol is exacerbated by the lack of national legislation. As a result, those who seek asylum are susceptible to the geopolitical and policy considerations of the ruling government and lack access to strong legal protections.

It has also been noted that the government only occasionally employs the defence that it is exempt from international legal obligations because it is not a signatory to the 1951 Convention and the 1967 Protocol. Thus, the primary question is whether there may be additional international legal requirements that pertain to the protection of refugees in India in addition to the Refugee Convention and its Protocol. The answer lies in the notion of non-refoulement, including its place in *jus cogens* and customary international law.

6.1 Non-refoulement

“Non-refoulement” or the prohibition on expelling or returning a refugee, is a provision of the 1951 Refugee Convention. As this idea is integrated into Article 33 of the 1951 Convention, states that are party to it are required to abide by it. The provision is vital to the protection of refugees, but it is not binding on states that have not ratified the 1951 Convention. In order to make the principle binding even on governments that are not party to the Refugee Convention, it is crucial to determine whether it can be found in other sources of international law.

The prohibition against returning refugees, as stated in Article 33 of the 1951 Convention and supplemented by non-refoulement obligations under international human rights law, satisfies the requirements of State practice and *opinio juris* and is a principle of customary international law, according to the UNHCR⁴². It is notable that the UNHCR mentions the practice of non-signatory governments hosting large numbers of refugees, frequently in conditions of mass inflow, in support of its conclusion. The fact that the UNHCR has

⁴¹ Bhatia, Gautam, ‘Complicity in Genocide: The Supreme Court’s Interim Order in the Rohingya Deportation Case,’ *Indian Constitutional Law and Philosophy* (2021), <https://indconlawphil.wordpress.com/2021/04/08/complicity-in-genocide-the-supreme-courts-interim-order-in-the-rohingya-deportation-case/>

⁴² UNHCR. (2007). Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, UNHCR, Geneva, 26 January 2007. <https://www.refworld.org/pdfid/45f17a1a4.pdf>.

recognised India's practise of taking in a sizable number of refugees despite the country not being a signatory to the Refugee Convention indicates that India's actions helped the rule against non-refoulement become a standard of customary international law.

India's position entails that the three sources i.e. custom, treaties and general principles of law play a crucial role in identifying *jus cogens* as a norm.⁴³ There is enough scholarly research to demonstrate that the *jus cogens* norm of non-refoulement has been attained.⁴⁴

6.2 UDHR, ICCPR, ICESCR

Under the UDHR, there are special provisions that concern refugee protection, such as Articles 13, 14, and 15. Given that the UDHR is now regarded as *jus cogens*, all State Parties uphold and uphold these rights. Aliens (including refugees) who are legally residing on the territory of a State Party may only be removed in line with a decision made in conformity with the law, according to Article 13 of the ICCPR. The refugee has the right to be allowed to offer arguments against being expelled, have the case examined, and be represented before a competent body (excluding matters of national security). The article establishes the right of non-refoulement, which protects a refugee from being sent back to the borders of a country where her life or freedom would be in danger. Along with the aforementioned clauses, the ICCPR also addresses the right to life and the prohibitions against torture, slavery, and arbitrary detention.

The ICESCR regime recognises a number of rights linked to work, including the right to fair working conditions, access to health care, and a minimum level of education. Article 1's right to self-determination, which is arguably one of the most significant rights it protects (1). This would mean that in the context of refugees, the country of asylum must permit people living on its territory to practise their own cultures and social customs, as well as to pursue their own education and economic endeavours, while imposing only the reasonable restrictions specified in the instrument.

6.3 Child Refugee

⁴³ Statement at the Sixth Committee of the 72nd session of the UNGA on 31 October 2017.

⁴⁴ Costello, Cathryn and Foster, Michelle. (2015). 'Non-refoulement as Custom and *Jus Cogens*? Putting the Prohibition to the Test,' *Netherlands Yearbook of International Law*. 46: pp. 273–327 ; International Law Commission. (2019b). Fourth Report on Peremptory Norms of General International Law (*jus cogens*) by Dire Tladi, Special Rapporteur, A/CN.4/727.

A child seeking refugee status (whether unaccompanied or with companions) shall receive appropriate protection and humanitarian assistance in order to appreciate the rights set forth in Child Rights Convention, which is specific to the refugee context. In other words, a State that is a party to the CRC but has not signed any refugee-related instruments and has not passed any national law on the matter is nonetheless required to offer the refugee child adequate protection and aid. In accordance with Article 22(2), the State Party shall help the UN or any other related organisation in protecting and assisting such a child and in facilitating family reunion.

6.4 United Nations Declaration on Territorial Asylum

On December 14, 1967, India accepted the United Nations Declaration on Territorial Asylum through the General Assembly, strengthening her commitments to protection, asylum, and non-refoulement. When India endorsed the Bangkok Principles in 1966, she specifically acknowledged the non-refoulement commitment. The Asian-African Legal Consultative Organisation's 8th Session made suggestions for member states addressing the status and treatment of refugees, which are included in the Bangkok Principles. The principles include clauses addressing repatriation, the right to reparation, granting refuge, and minimal treatment requirements in an asylum-granting state. The International Labour Organization's Convention No. 118, which offers social security to refugees and Stateless people in addition to other people on the territory of the signatory State, is another agreement that India is a party to. India has moreover been a part of ExCom since 1995. ExCom, a group with 79 members, provides fiscal oversight for UNHCR and counsels the Commissioner on refugee protection.

7. INDIA'S DOMESTIC LAWS

India does not have any specific legislation dealing with the problem of refugees and asylum seekers. At present, refugees were treated as par with the foreigners and all laws applied to foreigners were also applied to them.

Indian Judiciary determines the legal status of refugees and asylum seekers according to some domestic laws which deal with foreigners, and illegal migrants. Some of those are-

- i. Passport (Entry into India) Act, 1920
- ii. Passport Act, 1967
- iii. Registration of Foreigners Act, 1939

- iv. Foreigners Act, 1946
- v. Foreigners Order, 1948

7.1 Passport (Entry into India) Act, 1920

This act governs the people entering and leaving the country and requires the people entering into India to be in possession of a passport. It empowers the Central government to frame rules for the same, using which the Central government framed Passport (Entry into India) Rules, 1950. A person who is not in possession of a passport is prohibited from entering into India. But this rule would not apply to refugees because of the principle of 'non-refoulement'. In the case of *Nandita Haksar v. State of Manipur*⁴⁵, it was held that Article 21 of the Constitution encompasses the principle of 'non-refoulement'. Hence, they cannot be sent back to their country in case of absence of some travel documents nor they can be prohibited from entering into India to seek protection. It was also held by the Court that imposing domestic violations on these people who needs protection of their life is "*palpably inhuman*"⁴⁶.

7.2 Passport Act, 1967

This act provides for issuance of passports and other travel documents to citizens of India or others and regulates their departure from India. It defines various types of passports issued to different kinds of people. It also sets out the provision for arrest of those who try to provide their false information in order to get a passport. Article 20 of the act empowers the Central government to issue passports to non-citizens of India if it is necessary to do so in public interest. This provision allows the government to issue passports to refugees and asylum seekers in the public interest, so that they can travel abroad without any trouble.

7.3 Registration of Foreigners Act, 1939

This act provides the registration of foreigners in India. It empowers the Central government to make rules to require every foreigner to report his/her arrival, presence, movements, departure, proof of identity, etc. to the prescribed authority. Moreover, it also requires persons who are often in touch with foreigners, to report about their activities. Section 4 of

⁴⁵ Nandita Haksar v. State of Manipur, W.P.(Crl.) No. 6 of 2021.

⁴⁶ *Ibid.*

the act shifts the burden of proof to such a person, who is in question whether he/she is a foreigner or not. This is the most troublesome section of this act, when it is applied in the case of refugees and asylum seekers. These document requirements and onus of proof tends to add more troubles for them. It was on the prescribed authorities to verify the credibility of the applicants like refugees and asylum seekers, in consideration of their conditions.

7.4 Foreigners Act, 1946

This act empowers the Central government in respect of foreigners. The Central government can make orders for foreigners imposing various restrictions on them. This power is so wide that they can make different orders for any particular kind of foreigners or any prescribed class of them. Moreover, the empowered authorities were also given unlimited power to even 'force' the compliance needed for such provisions and in the case of non-compliance, their arrest and detention. The authorities were provided with rights like right to expel⁴⁷, right to enforce an order to expulsion and the right to use force, if necessary by the various provisions of this act and also upheld by the Court. Hence, this legislation sometimes brings heavy penalties on refugees and asylum seekers or they might be detained for long durations.

7.5 Foreigners Order, 1948

This order was passed by the Central Government in exercise of powers conferred by Section 3 of the Foreigners Act, 1946. It specifies the conditions for granting or refusing entry into India. When applicable to refugees, they might be deemed as illegal migrants and may be detained at transit areas. Authorities need to consider their situation on compassionate grounds as their conditions were different.

⁴⁷ Hans Muller Nuremberg vs. Superintendent Presidency Jail, (1955) 1 SCR 1284.

PART - IV

8. GROUND REALITIES

Out of the sample space of 20 refugees interviewed by the researchers, the following interviews have been provided as case study in the instant paper.

8.1 CASE STUDY I:

Name: Noor Fatima (Female)

Age: 27 years

Question (Q): What led you to leave your country and why did you choose India as your country of asylum?

Answer (A): She said she had faint memories of them fleeing the country, as she was only a child when they left. They came to India as almost everyone living around came here. She does not remember much.

Q: Are you feeling safe now?

A: Yes.

Q: Are you able to meet your basic requirements?

A: She barely manages to meet basic requirements as the last supply of ration was given to them on Ramzan in April, 2022 by the UNHCR. Post Ramzan, she cautiously uses the ration to feed her family. They buy ration when needed from whatever meagre savings they had.

Q: What facilities do the NGOs and Governmental agencies provide to you?

A: i. Health: A local NGO helps them in getting free treatment from the government hospitals in the vicinity. They are mainly taken to Safdarjung Hospital. NGOs make sure that the local leader calls them up in case of emergencies. A nearby hospital in Okhla, called Al-Shifa sends their Ambulances along with nurses every week for routine check-ups.

ii. Education: Her 7-year-old child goes to a Madrasa for his preliminary education.

iii. Toilet facilities: Make-shift Toilets with drainage to the gutter flowing nearby.

Q: Did you get any job opportunities here?

A: Not having an Indian identity does not fetch them jobs. Local people do not trust them enough to keep them as house helps. Also, the patriarchal household insists on them staying at home.

Q: Would you go back to your country, if provided with a solution?

A: She would like to go back to their homeland given the space is safe for their families and loved ones.

8.2 CASE STUDY II:

Name : Noor Al-Amin (Male)

Age : 49 years

Q: What led you to leave your country and why did you choose India as your country of asylum?

A: Noor Al-Amin and his family were forced to evacuate the village. Fearing persecution, they reached Bangladesh via Boats in the year 2010. When the situation worsened after the humanitarian assistance and other aids were stopped, they came to India in the year 2015.

Q: Are you feeling safe now?

A: Yes.

Q: Are you able to meet your basic requirements?

A: NGOs donate ration from time to time and water from handpumps are the only source of potable water they have.

Q: What facilities do the NGOs and Governmental agencies provide to you?

A: i. Health: A local NGO helps them in getting free treatment from the government hospitals in the vicinity. They are mainly taken to Safdarjung Hospital. NGOs make sure that the local leader calls them up in case of emergencies. A nearby hospital in Okhla, called Al-Shifa sends their Ambulances along with nurses every week for routine check

ii. Education: He has two children. They go to the nearby Government Schools. The girl child is in class 9th and the son is in class 6th.

iii. Toilet facilities: Make-shift Toilets with drainage to the gutter flowing nearby.

Q: Did you get any job opportunities here?

A: He works as a Garbage segregator.

Q: Would you go back to your country, if provided with a solution?

A: He would like to go back to their homeland given the space is safe for their families and loved ones.

8.3 CASE STUDY III:

Name: Muhammad Ismail (Male)

Age: 27 years

Q: What led you to leave your country and why did you choose India as your country of asylum?

A: Muhammad Ismail and his family were forced to evacuate the village. Fearing persecution, they reached Bangladesh via Boats in the year 2012. When the situation worsened after the humanitarian assistance and other aids were stopped, they came to India in the year 2017.

Q: Are you feeling safe now?

A: Yes.

Q: Are you able to meet your basic requirements?

A: NGOs donate ration from time to time and water from handpumps are the only source of potable water they have. He owns a shop from which other inhabitants of the area buy goods from.

Q: What facilities do the NGOs and Governmental agencies provide to you?

A: 1. Health: A local NGO helps them in getting free treatment from the government hospitals in the vicinity. They are mainly taken to Safdarjung Hospital. NGOs make sure that the local leader calls them up in case of emergencies. A nearby hospital in Okhla, called Al-Shifa sends their Ambulances along with nurses every week for routine check-ups. The Don Bosco network helps them in getting medical aid too.

2 Education: His children go to madrasas for education.

3 Toilet facilities: Make-shift Toilets with drainage to the gutter flowing nearby.

Q: Did you get any job opportunities here?

A: He owns a local-ration shop from which the inhabitants buy ration from. The shop is his only source of livelihood.

Q: Would you go back to your country, if provided with a solution?

A: He would like to go back to their homeland given the space is safe for their families and loved ones.

8.4 CASE STUDY IV

Name: Muhammad Abdullah (Male)

Age: 32 years

Q: What led you to leave your country and why did you choose India as your country of asylum?

A: Muhammad Abdullah and his family were forced to evacuate the village. Fearing persecution, they took asylum in India in the year 2017.

Q: Are you feeling safe now?

A: Yes.

Q: Are you able to meet your basic requirements?

A: He is partially blind. He started losing his eyesight some 3 years ago and haven't been able to work since then. NGOs donate ration from time to time and water from handpumps are the only source of potable water they have.

Q: What facilities do the NGOs and Governmental agencies provide to you?

A: 1. Health: He is being treated at AIIMS, New Delhi for his eyesight. A local NGO helps him in getting free treatment from the government hospitals in the vicinity. NGOs make sure that the local leader calls them up in case of emergencies. A nearby hospital in Okhla, called Al-Shifa sends their Ambulances along with nurses every week for routine check-ups. The Don Bosco network helps them in getting medical aid too.

2.Education: His children go to nearby madrasas.

3.Toilet facilities: Make-shift Toilets with drainage to the gutter flowing nearby.

Q: Did you get any job opportunities here?

A: He used to work in the waste segregation unit of the garbage dump yard before he turned partially blind. Right now, he is solely depended on Government aids and NGOs.

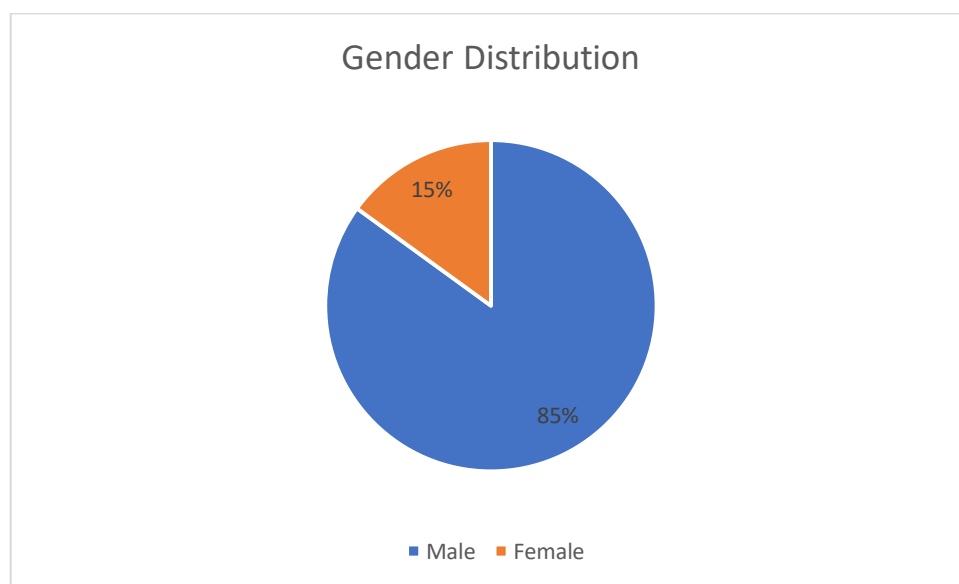
Q: Would you go back to your country, if provided with a solution?

A: He would like to go back to their homeland given the space is safe for their families and loved ones.

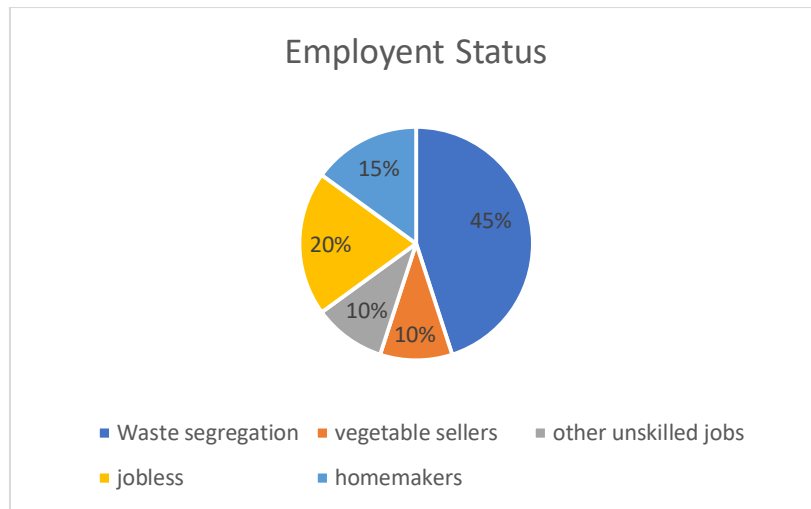
9. DATA ANALYSIS

i. Respondent's Profile Analysis

- Age Groups - The Refugees who were analyzed in this study, fall under the bracket of 18-35 years of population.
- Gender Distribution- Figure 1 below indicates that out of 20 sample respondents, 15% (3) are female respondents and 85% (17) are male respondents and no respondents fall under the other gender category.



- ii. Employment Status- Figure 2 below indicates that out of 20 total respondents, 9 (45%) worked in the waste segregation section of the garbage dump, 2 (10%) of them are vegetable sellers, 2 (10%) of them work in a nearby furniture factory, 4 (20%) of them are jobless currently, 3 (15%) are women who are homemakers. They do not have Aadhar cards and thus, finding jobs is a tedious task.



iii. Why did they leave their country?

Rohingya refugees left Myanmar for variety of reasons. Most of them said that they were forced to flee their country due to the fear of persecution. Millions fled to save themselves and their families from gross human rights violations such as torture. They no longer felt safe and they felt that they might have been targeted just because of who they are or what they do or believe. Apart from the reason mentioned above, they came to India because it was nearby. They felt that India, as an asylum country would help them get their lives on track. Job prospects and education were also the reasons as to why they chose India.

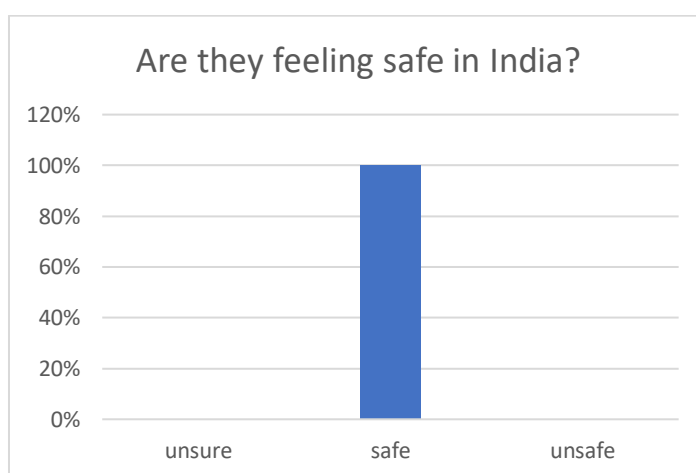
iv. Why did they choose India as their country of Asylum?

Rohingya refugees initially chose Bangladesh as their country of Asylum, but with the rising number of emigrants from Myanmar, Dhaka chose to stop all humanitarian assistance. With no jobs in hand, they went to Thailand. Thailand's navy gave them food and medicines but did not allow them land on its territories. They had kept an eye on the developments in Bangladesh. They later turned to Malaysia and Indonesia, but were meted with the same treatment. When all the doors were shut on them, they turned towards India. By 2013, Bangladesh had closed all the entry points for Rohingyas into its territory. They looked for entry points along India-Myanmar border and India-Myanmar-Bangladesh tri-junction. Rohingyas entered into northeast India through various routes. They avoided

staying near the Myanmar's borders. Rohingyas spread over a large area across various states. They have their camps in Assam, West Bengal, Uttar Pradesh, Delhi, Jammu and Kashmir, Andhra Pradesh and Kerala

- v. Are they feeling safe in India?

20/20 were respondents felt safe in India. They expressed gratitude for the same.



- vi. What facilities and help are you provided by the UNHCR, local NGOs and the governmental agencies?

- a) Health- A local NGO helps them in getting free treatment from the government hospitals in the vicinity. They are mainly taken to Safdarjung Hospital. NGOs make sure that the local leader calls them up in case of emergencies. A nearby hospital in Okhla, called Al-Shifa sends their Ambulances along with nurses every week for routine check-ups.
- b) Education- Most of the refugee children go to Madarasas for their education. A few of them send their children to the government schools in Shaheen Bagh and Kalindi Kunj.
- c) Toilet Facilities- Most of them have makeshift toilets near their houses. Those who do not have makeshift toilets, defecate in the open.
- d) Women and children - They do not get any specific help per se, but they did mention about getting groceries from UNHCR, once in a while.

vii. Would they go back to their country, if provided with solution?

20/20 would like to go back to their homeland given the space is safe for their families and loved ones.

10. CRITICAL REVIEW OF WHY INDIA NEEDS POLICY FOR REFUGEES AND ASYLUM SEEKERS

Every year we are noticing increase in number of refugee in India at very high numbers. Most of these refugees are from neighbouring countries such as Myanmar, Afghanistan, Sri Lanka, Bangladesh, Nepal and Tibet.

Present data shows that there are nearly more than one million refugees residing in India alone which is increasing every year. With such increasing population there comes challenges over the states with respect to dealing with issues like protection of Women and children from their exploration, providing health services, resistance, education, employment, and dealing with crime rates and ensuring that refugee is granted asylum. For all such purposes there comes the need for making policies for refugees and asylum seekers in India.

Our constitution ensures to provide protection to all human beings living in India, irrespective of nationality and there are Articles 14, 20, and 21 of the constitution which ensures these rights to all the people living within the territory of India.

The above mentioned problem and challenges cannot be dealt in an ad-hoc manner so there comes need for having laws and policies for refugees for a systematic arrangements and providing them resources, safety and security.

Refugee policies are laws and regulations that reflect a country's attitude toward non-citizens who have arrived to flee persecution in their home country because of their race, religion, nationality, participation in a specific social group, or political viewpoint.⁴⁸ These policies do away with arbitrary executive acts against refugees. The concern of refugees comes under the United Nations' human rights framework, despite that fact, India has yet to implement a proper legal spectrum to recognize and adjudicate the concerns of refugees.

⁴⁸ UNHCR, Convention relating to the status of refugees. <https://www.unhcr.org/4d934f5f9.pdf>

While India had many justifiable grounds for not joining the 1951 Refugee Convention or its 1967 Protocol, there were several legal provisions that gave Indian refugees an advantage. The lack of a formal refugee policy in India has resulted in a discretionary system in which the Ministry of Home Affairs has the ultimate authority to determine whether a person may be granted status as a refugee in India. There have been a few occasions when courts have recognized the concept of non-refoulement, i.e., a government's commitment not to return refugees to their home country, and granted sanctuary to certain refugees, but these judgements do not establish law. In practice, India lacks a refugee policy or legislation and relies on ad hoc notifications made by the Ministry of Home Affairs.⁴⁹ Because there is no national legislation governing the status of refugees, refugees have to rely on the state's mercy rather than a rights system to rebuild their lives in dignity.⁵⁰ Nevertheless, it is important to note that India has rules and enactments that give the Indian government the edge in dealing with a foreigner, but India fails to treat refugees from a geostrategic standpoint. As a result, it goes without saying that India urgently requires better refugee legislation.

10.1 Merits

Due to inaccessible human rights and constant exploitations, it is certain that the legislations in place for the displaced individuals highlight the underlying questionable standards of living conditions.

- a. The omnipresent reasons given behind nonexistence of refugee law by the Indian delegation at multilateral international conferences has been refuted thoroughly by watchdog agencies like that of UNHCR and NHRC. The designation of a refugee status by the Indian government comes with a set of benefits, however the questions of uniformity and equality remain unanswered. There are numerous instances of preferential treatment and a huge involvement of domestic or regional politics while consideration. Through a balanced and sustainable refugee law such concerns receive a high probable chance of being tackled to an extent.

⁴⁹ Singh, S. (2022). *Developing a balanced Indian refugee policy*. Gateway House; <https://www.gatewayhouse.in/developing-a-balanced-indian-refugee-policy/>

⁵⁰ Bhattacharjee, S. (2008). India Needs a Refugee Law. *Economic and Political Weekly*, 43(9), 71-75. <http://www.jstor.org/stable/40277209>

- b. Another major objection was formulated on the foundation of threat to national security mainly, particularly in reference to the complex south Asian geopolitics and nature of the porous international borders. However, refugee law has an advantageous side to it as the passage of refugee protection law will allow for the establishment of a framework for determining refugee status based on agreed-upon criteria for refugee status determination, protection, and treatment.
- c. Additionally, it may also be claimed that enacting refugee protection legislation will assist to avert tensions between the host nation and the refugees' home country. The act of providing refuge will thus be better perceived by other governments as a peaceful, humanitarian, and lawful action under a judicial system, rather than a hostile political gesture, if it is guided by law rather than an ad hoc policy. In this scenario, India's decisions to admit or reject refugees cannot be twisted to serve the political interests of the nation of origin or other countries in the area. The main criticism appears to be that the Convention does not 'adequately handle problems encountered by developing nations, as it is primarily designed to discuss specific instances rather than situations of mass inflow.' Considering the disdain for the Convention, it is apparent that the government must establish a legislation administered by a central authority in order to placate the UNHCR, which is protesting the bad circumstances of inhabitants in refugee camps.⁵¹
- d. The Government of India continues to be the primary political and legal authority in addressing the country's refugee concerns. International organizations, such as the UNHCR, have been increasingly proactive at all levels of policy development across several nations, and it should incorporate them into its policy framework as well. It must no longer delay on refugee matters, and it must rethink its refugee policy gridlock in accordance with best practices from throughout the world.

There are some cons of having laws and policies for refugees and asylum seekers, some of them are discussed briefly.

10.2 Security issues

With refugee influx there comes several threats and challenges to national security. India also houses innumerable refugees who illegally entered in the country regardless of being a

⁵¹ Arjun Nair (2017). IPCS Research Papers, National Refugee Law for India: Benefits and Roadblocks. Institute of Peace and Conflict Studies (IPCS), [Microsoft Word - IPCS-ResearchPaper11-ArjunNair.doc](#).

non-signatory member of the 1951 UN Refugee Convention. Through radicalization of refugee there are direct threats that terrorist may enter from across the border. Indirectly refugee hampers the national economy and resources that were available for the native people.

The National Security Advisor reported that there were cases of Rohingya migrants being used by the terror outfits like Lashkar-e-Taiba and Jaish-e-Mohammed in J&K. These refugees being socially and economically insecure easily become network with such terror organisation.

10.3 Economic Burden on host country

From the moment of arrival, refugees may compete with local citizens for scarce resources such as water, food, housing and medical services. Their presence increases the demands for education, health services, infrastructure such as water supply, sanitation and transportation, and also in some cases, for natural resources such as grazing and firewood.⁵²

10.4 Social impact of refugees on host country

Unrestrictive, integrative policy approach in hosting refugees gives them increased rights of mobility, access to social services such as health and education and opportunities for economic interactions with directly or indirectly influence social life of the people in proximity of the areas where refugees residing.⁵³

PART - V

11. FINDINGS

SL. NO.	HYPOTHESIS	INFERENCE	REASONING
H ₁	Having policies for refugees creates pressure on local resources and conflict with local people's sentiments.	Partially Affirmed & Partially Negated	While many people showcase prejudice towards the notion of accepting refugees, others

⁵² Barman, B.C. (2020), "Impact of Refugees on Host Developing Countries", Das, S.K. and Chowdhary, N. (Ed.) Refugee Crises and Third-World Economies, Emerald Publishing Limited, Bingley, pp. 103-111. <https://doi.org/10.1108/978-1-83982-190-520201011>

⁵³ Fajth, V., Bilgili, O., Loschmann, C. et al. How do refugees affect social life in host communities? The case of Congolese refugees in Rwanda. CMS 7, 33 (2019). <https://doi.org/10.1186/s40878-019-0139-1>

			agree to respect their human rights.
H ₂	In the absence of specific laws regulating the status and situation of refugees and asylum seekers in India, the existing laws give refugees the same status as that of foreigners, which results in numerous abuses of human rights.	Affirmed	Vacuum in the law leads to sporadic and discretionary state practice and creates scope for violation of international obligations.
H ₃	Although, the refugees and asylum seekers comprise a weaker section of the community yet in India there are no stringent laws addressing issues relating to education, health and housing.	Affirmed	Indian legal & policy framework fails to fulfill basic human rights obligations of the refugee community who are largely supported by NGOs and the UNHCR.

12. RECOMMENDATIONS

Based on the findings of the paper, the following recommendations are set forth:-

- i. Policy of voluntary repatriation must be encouraged both by the UNHCR & the Government of India on a bilateral basis with the country of origin. (As exponential growth is witnessed in the number of refugees repatriated to their native country).
- ii. The government can make some provision through some statute or policy that would provide them with temporary identity cards by Government, which enable them basic facilities like health, rations, temporary tenancy, etc.
- iii. Labor formulations should be modified by the government that would benefit the vulnerable section and work for all round development of the refugees largely.

- iv. Legal protection must be provided to the refugees & asylum seekers, keeping in mind the pathetic condition of vulnerable refugee women & children.
- v. The financial costs associated with CSR obligations should be reduced through international cooperation.
- vi. Creation of a distinct statutory body by introducing a law, intended to deal with matters only pertaining to the refugees holistically.
- vii. The refugees must be allowed to take employment in the formal sector or a separate mechanism must be introduced ensuring their right to work & livelihood.
- viii. Effective policy system may be developed for resettlement of refugees within the specific territory of India.
- ix. Though it's an arduous task, efforts could be made for the social integration of the refugees with the host community.
- x. There must be an increase in opportunities in higher education programmes conducted by UNHCR since at present a minimal percentage of the population are allowed to take on that.
- xi. Asylum seekers must be afforded the protection to certain extent in cases of dismissal of their application for Refugee Status Determination (RSD).
- xii. Government may encourage the NGOs to step in to assist the refugees by providing incentives or benefits of similar nature to the refugees.
- xiii. Natives of the host country must be sensitized towards the grief of the refugees & asylum seekers in order to protect the women & children particularly from exploitation and abuse by locals and authoritarianism.

13. CONCLUSION

Despite its burgeoning population where millions of people continue to be below the poverty line, India continues to entertain refugees from several countries on humanitarian grounds. The subject concerning the protection of refugees needs some serious and genuine contemplations by the policy-makers. It has become imperative for India to govern the refugees and what part our nation can play in facilitating long-standing solutions to the refugee crisis. As an analyst has rightly argued, the problem with India's Refugees' approach "is not that it is placing security over humanitarian but that it is doing so in a way that is imprudent and likely to be self-defeating."

The case study throws light on the plight of Rohingyas and India's approach in handling the Rohingya crisis. India has been incessantly questioned about the refugee inflow, particularly concerning Rohingyas' status, in the UN, and now that matter is sub-judice in the supreme court, any attempt to deport such refugees will be complicated. Our case study and findings show that cent percent of the refugees would like to return to their homeland, if the space is safe enough for their families and loved ones.

India has every right to prioritize its national security and fortify its national boundaries but it also needs to take into account the comprehensive long-term consequences. India has had a history of welcoming refugees and providing them with a shelter. It has time and again demonstrated that it is not driven by shallow political interests.

The only question remains is how India can effectively facilitate their safe return, play an active role in mitigating any potential terror related activities involving these refugees and lead a role in finding a resolution to such conflicts and crises.

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