

**Minutes of the Open-House Discussion on Protection of the Basic Human Rights of  
Refugees and Asylum Seekers in India**

**(Date: 20<sup>th</sup> January, 2022, Time: 11:30 a.m. to 02:00 p.m.)**

An Open-House Discussion on protection of the basic human rights of refugees and asylum seekers in India was held on 20<sup>th</sup> January, 2022 under the Chairmanship of Justice Shri M. M. Kumar, Hon'ble Member, National Human Rights Commission (NHRC). Justice Shri Arun Mishra, Hon'ble Chairperson, NHRC, was also present in the meeting in listening mode. The discussion was attended by Shri Bimbadhar Pradhan, Secretary General, NHRC and other Senior Officers of the Commission; representatives of the Ministry of External Affairs, Ministry of Law & Justice, United Nations High Commissioner for Refugees (UNHCR); domain experts, Civil Society Organisations (CSOs) *etc.* A complete list of participants is **annexed**.

**Shri H. C. Chaudhary, Joint Secretary, NHRC**, welcomed all the participants on behalf of the Commission and explained in brief the purpose of having the discussion. He stated that India is not a party to the 1951 Refugee Convention or its 1967 Protocol and does not have a specific legal framework to govern refugees and asylum seekers. In the absence of such framework, the refugees and asylum seekers face difficulties to have access to basic human rights pertaining to shelter, education, healthcare, livelihood, etc. He further stated that the open house discussion is being held to understand the policy framework and legal safeguards presently available to refugees and asylum seekers in India and also to understand issues and challenges in protection of right to life with dignity and access to other socio-economic, educational & cultural rights of refugees and asylum seekers in India.

**2. Shri Bimbadhar Pradhan, Secretary General, NHRC**, in his opening remarks highlighted India's track record in dealing with and providing protection to refugees which has also been internationally acclaimed. He stated that the Constitution of India guarantees basic rights such as right to life and personal liberty, equality before the law as well as equal protection of laws to all persons living in the country not merely to the citizens. While India does not have any specific legislation, all foreign nationals including the foreigners, refugees and asylum seekers are governed by the provisions of various Indian Acts, Rules and standard operating procedures (SoPs) issued thereunder. He also described in brief the efforts made by the India to provide the development and humanitarian assistance to refugees especially from the neighboring countries. He asked for the available options for refugees and asylum seekers to progressively move forward with sustainable development and growth so that as a country we can achieve the Sustainable Development Goals.

**3. Justice Shri M. M. Kumar, Hon'ble Member, NHRC,** in his inaugural address highlighted the concerns of the most marginalized section *i.e.*, refugee community across the globe. He stated that being a human, the refugees and asylum seekers are entitled to all the basic human rights while referring to the Article 14, Article 20 and 21 of the Constitution of India. He also pointed out the judgments of the Supreme Court for Bangladeshi refugees and Sri Lankan refugees were comprehensive enough to grant them requisite protection. However, he clarified that the citizenship can't be claimed as a matter of right, as it is regulated by the Citizenship Act of 1955. He mentioned that India has not signed the United Nations Refugee Convention, 1951 but India is signatory to various UN Conventions and human rights Treaties & Declarations. Some of these Conventions, Treaties and Declarations were mentioned by him during the address. He posed a question whether we can build a legal regime for protection of rights of refugees and asylum seekers on the basis of declarations and the international treaties which the India has signed. At the end of his address, he highlighted the lack of specific legislation to govern the refugees and asylum seekers in India. He expected from all the participants to be a part of a healthy discussion and to find innovative ways to deal with the emerging challenges faced by refugees and asylum seekers in India.

**4. Dr. Anju Rathi Rana, Joint Secretary and Legal advisor, Ministry of Law & Justice,** stated that mechanisms are in place in India to deal with issues concerning the refugees and asylum seekers. She further stated that absence of a specific legislation doesn't mean that no facility/assistance is offered to them. India has been providing shelter to the persecuted minorities of the neighboring countries as per India's international commitments. In addition, she said that all Indian laws including the anti-national laws or a criminal law applies to the refugees as equal to the citizens of India. She also mentioned that India would need a national law on refugees. However, before doing so the government has to see all consequences of doing so as such legislation can be misused by anti-nationals, terrorists and criminal elements. Further, it would also cause a financial burden on the country. Lastly, she added that any such law, if enacted, may create a rights-based approach on humanitarian grounds while providing for identification of illegal migrants and addressing all security concerns. The legislation, if enacted, may help India to avoid diplomatic problems.

**5. Shri Ninad S. Deshpande, Director (UNES), Ministry of External Affairs,** began his address by emphasizing that India has been very consistent in humanitarian protection of refugees and asylum seekers. He cited an example of Tripura where the refugee population was more than the citizens at one point of time. He further mentioned that India has always been committed to providing humanitarian assistance to refugees and displaced persons particularly from Sri Lanka, Tibet, Myanmar, and others countries. Same has been internationally acclaimed. Moreover, India strongly believes that the displaced people should be returned to their respective countries in a dignified and legal manner.

**6. Ms. Kavita Belani, Deputy Chief of Mission, UNHCR,** stated that at the end of 2020, around 82.4 million people worldwide were forcibly displaced as a result of persecution,

conflicts and human right violations. She added that India has been a hub for the protection of refugees and asylum seekers. She explained in brief the integration of refugees in India before and after the independence. She further stated that the governments and people of India have by and large allowed the refugees the freedom to exercise their rights to live in safety and dignity, access basic rights and be a part of the society. She stated that the refugees are the victims of human rights violations and we should ensure their personal freedom, right to life and liberty guaranteed by the constitution, and even the right to return when the situation improves in their respective countries. In the end, she emphasized that there are many best practices in India where various groups of refugees have been assisted and re-integrated. The same need to be documented in terms of policies or guidelines which will also balance both the national interest as well humanitarian needs of refugees and asylum seekers.

7. **Shri Surajit Dey, Registrar, (Law), NHRC**, stated that refugee mobility is an alarming trend where people have been crossing international borders for refuge and safety to avoid unfriendly conditions in their native countries. He further stated that the International Refugee Laws promote, support, and provide protection to refugees and people who require aid and assistance to cope with human distress and migration. Before concluding his address, he pointed out that the rich *vedic* philosophy of “*Atithi Devo Bhava*” (Guest is God) is the foundation of our country but in the matter of refugees and asylum seekers. He further added that in context of the humanitarian prospect and our constitutional ethos there is a need to formulate legislation to protect the rights of refugees and asylum seekers.

8. **Dr. K.M. Parivelan, Associate Professor, TISS**, highlighted that presently appropriate legislation and legal framework is not available for refugees and asylum seekers in India which hinders the uniformity and legal sanctity in protection of human rights of refugees and asylum seekers in the country. He stated that India has a good track record in dealing with international refugees and asylum-seekers which is evident in cases of Jews and Zoroastrians, partition refugees, 1971 Bangladeshi refugees, Tibetans and Sri Lankan Tamil refugees. He emphasized that there is a need to maintain a fine balance between humanitarian needs of the refugees and national security and national interest. He highlighted some of the good practices which are visible while dealing with the refugees in India. He emphasized that these good practices need to be documented and codified to serve the refugees even better across the country. Some of good practices which may be replicated in the entire country are as below:

- a. Govt. of India and UNHCR are providing support to non-mandate and mandate refugees, respectively.
- b. Tamil refugees were able to access health, education, informal sector livelihoods, free ration, utensils, clothing, free gas connection, etc.
- c. Recently the Tamil Nadu Govt. has announced several welfare measures at an estimated outlay of Rs. 300 crore to provide for housing, toilets and basic infrastructures.
- d. Enhanced financial assistance of Rs. 1.25 lakh to each of 621 SHGs working for welfare of the Tamil refugees.

- e. Skill building training programmes in refugee camps.

**9. Ms. Roshni Shanker, Exe. Director, Migration & Asylum Project** stated that the fundamental issue of refugees in our country is lack of proper legislation and ambiguity in the legal status of refugees. In India there is unique dual system i.e., different refugee groups have different legal status. There is a challenge of non-uniformity when it comes to documentation for refugees. There are different cards/documents for different refugee groups. She further stated that since there is no uniform legislation, we need to rely on jurisprudence. She mentioned the Supreme Court judgment (1996) in the case of National Human Rights Commission (NHRC) Vs State of Arunachal Pradesh and said this is a pioneer ruling which till date is helpful in ensuring socio-economic rights to the refugees. She further added that, several times High Courts in India have taken pro individual rights approach and have directed to follow due procedure for providing socio-economic rights to refugees. Lastly she highlighted the NHRC's contribution in developing a Domestic Asylum Law and a Model Law for Refugees in nineties. She noted with concern that these documents could not become a law till date. She suggested that the drafts needs to be updated and be converted into Laws.

**10. Mr. K. B. Linto, Project Manager, BOSCO Delhi,** highlighted the ground level issues of refugees and asylum seekers. He started with the issue of education of the children of refugees and stated that admission of children of refugees in government schools is possible with whatever documents they have but the other facilities such as scholarships, free books, mid-day meals, *etc.* are not available to them. Even the enrollment in secondary and higher secondary examination through the national open schooling system is possible, but since they don't have any legal documents, they are unable to open a bank account which again bars them from availing other benefits for higher education like scholarships, grants, *etc.* Further, he mentioned that the refugees are able to avail the national healthcare benefits provided by the Government, but due to non availability of proper documents and mobile numbers *etc.* they face difficulties in generating digital vaccine certificates, *etc.* He further highlighted that almost half of the issues refugees face are due to lack of legal documents such as inability in opening bank accounts, getting a mobile number, access to social welfare schemes (PDS, mid day meal scheme), *etc.* If the issue of identity documents is resolved it will serve a great purpose in facilitating them in accessing the basic services. Lastly he mentioned that most of the refugees and asylum seekers face the problems in getting jobs in the organized sector because of not having proper documents and bank account, *etc.*

**11. Mr. Mohd. Saud Tahir, Project Director, Socio Legal Information Center, Human Rights Law Network** stated that lack of Government issued documents put refugee's and asylum seeker's life at risk. He suggested that there is a need to provide a Long Term Visa for a reasonable duration to avoid risk of detention and deportation. He

suggested that asylum seekers and refugees may be allowed to register with the Foreigners Registration Office (FRO/FRRO). It will not only enable the authorities to have updated data in respect of them but also will save them from exploitation. He also pointed that lack of valid stay Visa hinders the process of Naturalization. His organization has been supporting the Naturalization of Hindu and Sikh Afghans since 2004 but the procedure of Naturalization cannot be completed in the absence of Visa documents. Lastly, he mentioned due to not having valid stay Visa, they have to pay penalty (over stay charges) at the time of issuance of required Exit permit and also face hindrance in the process of resettlement of refugees in third countries.

### **Open Discussion:**

**12. Smt. Jyotika Kalra, Hon'ble Member, NHRC,** suggested to compile all the policies, record of litigation, jurisprudence or the draft laws relating to refugees and asylum seekers to serve the individuals/ organizations working for the rights of refugees.

**13. Mr. Kiri Atri, Assistant External Relations Officer, UNHCR,** suggested to document and codify the good practices of the Government of India and the States such as ensuring vaccination, education of children, protection of rights of women & children and other basic amenities. There are many examples such as Parsis, who are thriving in India. Such testimonies may be developed into case studies.

**14. Shri Rajiv Jain, Hon'ble Member, NHRC,** suggested UNHCR to consider updating the previously published study-reports, documented 15 years ago, regarding the Government of India's policies pertaining to refugees from different countries.

### **Concluding Remarks:**

**15. Justice Shri M. M. Kumar, Hon'ble Member, NHRC,** in his concluding remarks highlighted the need to update the two old NHRC documents regarding the Domestic Asylum Laws and Model Law for Refugees. He suggested to constitute a panel/committee of scholars and domain experts to update these draft laws. He also noted that during the discussions need for an overarching law/legislation to protect the rights of refugees and asylum seekers and also to end ad-hocism and ambiguity in dealing with refugees and asylum seekers has been felt. He said that such law, if enacted, would bring uniformity and legal sanctity to ensure protection and realization of human rights of refugees and asylum seekers across the country and help them to avail the benefits of welfare measures of the government while safeguarding the national security interests. Presently there is a lack of clarity for different law enforcement agencies while dealing

with the refugees and asylum seekers. He also emphasized the need to have a specific policy framework, taking into account the concerns of refugees and asylum seekers, till the absence of law. He concluded the discussion by appreciating the inputs provided by various participants and assured that the Commission will take appropriate follow up measures to implement these suggestions.

The meeting ended with a vote of thanks to the Chair.

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## LIST OF PARTICIPANTS

### NHRC Officials /Staffs

1. **Justice Shri Arun Kumar Mishra**, Hon'ble Chairperson
2. **Justice Shri M. M. Kumar**, Hon'ble Member
3. **Smt. Jyotika Kalra**, Hon'ble Member
4. **Shri Rajiv Jain**, Hon'ble Member
5. **Shri Bimbadhar Pradhan**, Secretary General
6. **Shri Surjit Dey**, Registrar, (Law)
7. **Shri Harish Chandra Chaudhary**, Joint Secretary
8. **Dr. M. D. S. Tyagi**, Joint Director (Research)
9. **Shri Sanjay Kumar**, Under Secretary
10. **Mr. MasroofAnwer**, JRC
11. **Ms. Smriti Pandey**, JRC
12. **Mr. Maninder Singh**, JRC

### Government representatives

13. **Shri Ninad S. Deshpande**, Director (UNES), Ministry of External Affairs
14. **Ms. Jagpreet Kaur**, US (UNES), Ministry of External Affairs
15. **Dr. Anju Rathi Rana**, Joint Secretary and Legal advisor, Ministry of Law & Justice

### Academicians and representatives from CSOs/NGOs

16. **Ms. Kavita Belani**, Deputy Chief of Mission, UNHCR
17. **Mr. Kiri Atri**, Assistant External Relations Officer, UNHCR
18. **Dr. Parivelan K.M.**, Associate Professor, Centre for Statelessness and Refugee Studies, TISS
19. **Roshni Shanker**, Executive Director, Migration & Asylum Project (MAP)
20. **K. B Linto**, Project Manager, BOSCO
21. **Mohd. Saud Tahir**, Project Director, Human Rights Law Network (SLIC/HRLN)