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‘ILLEGAL MIGRANT’ OR ‘REFUGEE’? ASYLUM SANS LEGISLATIVE FRAMEWORK

AUTHORED BY - PRIYANKA BISWAS

“We can't deter people fleeing for their lives. They will come. The choice we have is how well we manage their arrival, and how humanely.”

(Antonio Guterres)

Abstract

This paper aims to explore the discourse on Asylum Seekers and their Status Verification process in the Indian context. It looks into the technical challenges of status verification operating in a legislative void. The paper uses the example of the Tibetan and Rohingya people residing in India, hereafter referred to as the communities, to study how gaps in legislation and policy impacts the lives of asylum seekers. It aims to investigate the similarities and dissimilarities of their lived experience as asylum seekers in exile and adapting to life in a different cultural setting. In the absence of a central legislative framework for Refugee Status Determination (RSD) with only Supreme Court judgments pronounced under Article 21 of the Constitution, protecting life and personal liberty of all Persons irrespective of them being Citizens or not, as the guiding principle renders the communities doubly vulnerable to persecution. Due to diplomatic maneuvers protecting domestic interests in the international fora and geopolitics of the region, administrations over the years have used these terms interchangeably which in turn leads to more confusion. The paper seeks to clarify the differences amongst vulnerable communities i.e., *Refugees, Stateless People, Internally Displaced Persons (IDP), Asylum Seekers*; how the above-mentioned communities are different from ‘*Illegal Migrants*’; how the current definition of ‘*Illegal Migrant*’ in The Foreigners Act, 1946 is obsolete; how the existing customary international law i.e., the principle of *Non-Refoulement* is toothless due to its non-binding nature and exists only in fine print on official UN documents, used only as ‘guidelines’ by countries as and when it suits their interests.

Keywords: Asylum seekers, Refugee, Statelessness, Internally Displaced Persons, Refugee Status Verification, Non-Refoulement, Voluntary Repatriation (VOLREP).

1. Introduction:

There is a plethora of reasons for one to leave their country of origin, nationality, or citizenship but it is a known fact that no individual or group of people ever decide to leave their home unless their very survival is at stake. Reasons for leaving one's homeland could be in fear of persecution based on their race, ethnicity, sex, religion, nationality, being member of a particular political group as defined in the 1951 *UN Convention on the Status of Refugees*¹.

However, there are quite a few instances which can render a person to seek refuge in another country, which are not included in the definition such as:

- i. climate included refugees
- ii. lack of employment
- iii. internal conflicts which aggravate to such proportions that IDPs are forced to leave the country.
- iv. ethnic cleansing
- v. civil war

The first step to protecting the rights of refugees is to provide them Recognition; the author cannot stress enough on the importance of this step. If a government does not have a systemic process to verify the credentials of persons seeking asylum in its country, then such persons will go unprocessed and remain as 'Illegal Migrants' and will have no rights to claim protection as 'Refugees'.

Presently, the administration does not conduct Refugee Status Verification, and neither is the nature of entry of asylum seekers registered by officials. Due to this discrepancy, when people fleeing persecution arrive in India, they directly approach UNHCR, India office as it is the only official channel for seeking recognition. Unlike the developed nations of global north where RSD is done individually, including India prefers to bestow recognition on an entire community.

2. International Conventions:

Every Refugee at one point is an Asylum Seeker but all Asylum Seekers are not Refugees. Asylum-seeker must be processed at once after reaching the destination country to ascertain their rights as refugees. The major difference between an asylum seeker and a refugee is the degree of

¹ Convention Relating to the Status of Refugees, July 28th, 1951.

danger to one's life, which in case of the latter is very serious i.e., danger to life due to persecution on grounds of Race, Sex, Religion, Ethnicity, Political affiliations, belonging to a particular social group. In case of Asylum-seekers the level of threat is relatively low and the causes of seeking asylum are varied; Political asylum-seekers, for example Edward Snowden, who is charged with espionage for which he is to be prosecuted under the law of the land, sought safe-haven in Moscow and has been living in Russia ever since. Similarly, economic offenders who are prosecuted in their country also seek asylum in foreign countries, where the acts committed are not a crime and which does not have an extradition treaty with their country where the offense is committed.

A person seeking political asylum is different from a refugee. These terms are often misinterpreted, especially in instances when there exists no central policy and thus a gap in technical awareness. The *UN Convention relating to the Status of Refugees, 1951* was drafted in the aftermath of the two world wars which saw unprecedented bloodshed and damage to life and property. The definition of a 'Refugee' provided in the 1951 Convention has been widely criticised by India and other South Asian countries for having a Euro-centric approach, catering only to the displaced Jewish population of the Holocaust. However, this was rectified in the 1967 Protocol to include displaced people fleeing from persecution from all parts of the world. As per the definition provided in *Article 1* of the 1951 Convention, the term 'Refugee' has been defined as:

For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) *Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;*

(2) *As a result of events occurring before 1 January 1951 and 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, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

*In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.*²

In more recent times, the UN General Assembly has adopted the Global Compact on Refugees³ to better tackle the global refugee crisis. It aims to mobilise the international community, create pressure on the global north to help host countries to accommodate and provide basic facilities to the refugees. The objectives of GCR include:

1. *“Ease the pressures on host countries;*
2. *Enhance refugee self-reliance by providing them skill training;*
3. *Expand access to third-country solutions;*
4. *Support conditions in countries of origin for return in safety and dignity”*⁴

This is one of the first steps under the Comprehensive Refugee Response Framework (CRRF), which was proposed in the New York Declaration for Refugees and Migrants, 2016; its agenda is to help refugees access their rights, have a better life in the country they move to and help them decide what to do next. In simple terms, an asylum seeker is a person whose request for sanctuary is under consideration. As per the definition provided by the UNHCR glossary, *“An asylum-seeker is an individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker.”*⁵

The New York Declaration introduced a unique solution to deal with the refugee crisis: The *Comprehensive Refugee Response Framework (CRRF)* aims to help refugees to “get their rights”, “have a better life in the countries they move to” and “decide what to do next”. The objectives of

² Convention Relating to the Status of Refugees, Article 1, July 28th, 1951.

³ Global Compact on Refugees, December 17th, 2018.

⁴ UN High Commissioner for Refugees (UNHCR), *Towards a global compact on refugees: a roadmap*, REFworld (April 4, 2017, 10:04 PM), <https://www.refworld.org/docid/59195d0e4.html>.

⁵ UN HIGH COMMISSIONER FOR REFUGEES (UNHCR), *UNHCR Master Glossary of Terms*, (June, 2006, 11.30 AM),

CRRF are:

- i. *Ease the pressures on host countries and communities;*
- ii. *Enhance refugee self-reliance;*
- iii. *Expand third-country solutions; and*
- iv. *Support conditions in countries of origin for return in safety and dignity.*⁶

It aims to make assimilation into a new community seamless. This transition is supposed to happen with the help of signatory countries who are supposed to firstly, give them refugee recognition and once recognised provide them identity documents, most importantly birth certificates to children born in India, provide them with access to basic amenities such as food, water, shelter, healthcare, sanitation, education for children. It beseeches signatory parties not to seclude refugee communities in camps or settlements on the outskirts of towns but to assimilate them with mainstream population so that they feel welcome.

India being a signatory to the *New York Declaration* is bound to respect its obligations under international law. However, on the very onset, India fails on the very first and most important duty of a signatory nation i.e., implementing a status verification mechanism for Refugees. Due to the absence of an asylum policy, there is no set procedure for granting recognition to refugees, which increases the confusion on how to deal with persons seeking asylum in India. Ministry of External Affairs combs through individual applications on a case-to-case basis.

5. LEGAL STATUS OF TIBETAN REFUGEES RESIDING IN INDIA:

of the founding members of United Nations, signatory to the “*six core humanitarian covenants*” namely,

- a. *Universal Declaration of Human Rights*
- b. *International Covenant on Civil Political Rights*
- c. *International Covenant on Economic, Social and Cultural Rights*
- d. *Convention on the Elimination of all forms of Discrimination Against Women*
- e. *Convention on the Rights of the Child International Covenant on the Elimination of All forms of*

⁶ *Ibid.*

Racial Discrimination

India is yet to sign and ratify the 1951 Convention on Refugee Status or the 1967 Protocol. Due to its non-signatory status, India being a sovereign state is under no obligation to recognise or provide refuge to asylum seekers. However, customary international law makes it mandatory for even non-signatory countries to adhere to international obligations.

In case of the first wave Tibetan refugees who arrived with His Holiness in 1959, researcher uses the term 'refugee' here as they were officially accorded refugee status by the government of India⁷; the second wave of Tibetans arrived in the late 80s when the government in Beijing took a comparatively lenient stance on the Tibetan cause. Granted the community asylum, recognising the Tibetan people as refugees and not forcefully deporting them back to their homeland, the Indian government has thus fulfilled its obligation under customary international law's principle of Non-Refoulement.

As stated by P.R. Chari in his book *Missing Boundaries: Refugees, Migrants, Stateless and Internally Displaced Persons in South Asia*⁸, the lack of a specific law to regulate refugee influx, granting them recognition, documentation, has led to a lot of "ad-hocism" which is not conducive to bring uniformity to the way refugees are dealt with and leads to every individual case to be treated differently.⁹ Thus, in the absence of a central legislation, Tibetans can be persecuted under the existing foreigners act which makes the presence of UNHCR becomes all the more important to ensure their rights of asylum seekers are not abused.

India, along with majority of South Asian nations, is not a signatory to the 1951 Refugee Convention. Post partition the newly independent nation was grappling with a massive influx of refugees, both on its eastern and western front; it was crucial for the government to vet individual cases as it did not have the financial resources to host such a large group of people. Therefore, the law of the country defines who is an 'Alien', who is a 'Foreigner', who is an 'Illegal Migrant' i.e., grounds on which an individual is barred from gaining Citizenship; but it does not talk about the

⁷ ROLE OF THE GOVERNMENT OF INDIA IN PROMOTION AND PROTECTION OF HUMAN RIGHTS OF TIBETAN REFUGEES – A SURVEY, Shodhganga, https://shodhganga.inflibnet.ac.in/bitstream/10603/128419/16/13_chapter%205.pdf.

⁸ P.R. CHARI, MISSING BOUNDARIES: REFUGEES, MIGRANTS, STATELESS AND INTERNALLY DISPLACED PERSONS

IN SOUTH ASIA (Suba Chandran ed., 2003).

⁹ Id.

rights of people who do not seek Citizenship, rather asylum.

Thus, in the context of the refugee protection, the Tibetans are the most well to do refugee community in India. The Tibetans who arrived in 1959 and after did not seek status verification from UNHCR, India and hence the latter do not have any documentations on the community residing in India. They are the only refugee community in the world who have been successful in running a government-in-exile. As per legal provisions with regard to documentation, the community must apply for *Registration Certificate* (R.C.) i.e., stay permit and *Identity Certificate* (I.C.) i.e., travel document at the office of Foreigner Registration Office (FRO). For easier access registration certificate can be applied for and updated online. Registration certificate in simple terms is a document of stay permit in India under the category of ‘*Foreigners*’ and NOT ‘*Refugees*’; they need to apply for Long Term Visas (LTV) in order to continue their stay in India. All Tibetans who are born in India between 1959 to 1987, prior to the *Citizenship (Amendment) Act, 1987* are eligible to apply for Indian Passport. In 2016, as per a directive issued by the MHA, every Tibetan child must be registered as ‘*Foreigner*’. Previously, once a child attained the age of sixteen, they had to get themselves registered at the local Foreigners Regional Registration Office (FRRO).¹⁰

6. LEGAL STATUS OF ROHINGYAS RESIDING IN INDIA:

The legal status of Rohingyas in India is yet to be determined as they are not processed on arrival. The only documentation they have is the refugee identity card provided by UNHCR after a thorough scrutiny. As per Ministry of Home Affairs, all Rohingya people have been tagged as ‘*Illegal Migrants*’, who have entered India ‘*illegally*’ without any valid travel documents. As per government directives all Rohingyas living in India without documents should be determined and deported at the earliest.

As India is not a signatory to the UN Refugee Convention, 1951 or the 1967 Protocol on refugees, without any domestic refugee policy, it is well within its right to deport ‘*foreigners*’, who in this case also fall under the category of ‘*illegal migrants*’. Even though India is bound by obligations

¹⁰ *Regulations applicable to foreigners in India (2018) Ministry of Home Affairs.* Available at: https://www.mha.gov.in/PDF_Other/Annex%20II_01022018.pdf (Accessed: 20 July 2023).

under “*Peremptory Norms of International Law*”, in this particular instance, the government has deported seven Rohingya men in October 2018 and a family of five in January 2019 terming it as voluntary repatriation; clearly the present administration is in violation of the customary principle of *Non-Refoulement*.

7. CONCLUSION

In this chapter the author has thematically analysed the data collected on the two communities and examine the patterns that emerge out of it. The reason for studying the Tibetan and Rohingya people is their unique lived experiences as displaced communities which is vastly different from each other; it covers two ends of the spectrum, be it on grounds of ethnicity, language, cultural dimension, traditions, customs. The unifying experience for both the communities has been being persecuted on grounds of their ethnicity and race. Both the communities have faced state sponsored pogroms to annihilate their race and religion. United Nations is yet to recognise the Tibetan and Rohingya exodus is a result of ‘Genocide’. UN is yet to frame a working definition of the term ‘Ethnic Cleansing’ which was coined after the civil war in Bosnia. During the International Criminal Tribunal for the former Yugoslavia (ICTY) trials an interim report S/25274 defined ‘ethnic cleansing’:

“... rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area.”

The same commission in its final report S/1994/674 has defined ethnic cleansing as,

“... a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.”¹¹

5.1. DOCUMENTATION ISSUES OF REFUGEES:

In context of documentation, which happens to be the most important facet of providing refugees

¹¹ *Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution, 780(1992), (January 26, 1993).*

protection, the Tibetans are faring far better than the Rohingyas. The Tibetans are the only community which has been recognised as ‘refugees’ by the Indian government. This courtesy has not been extended to the Rohingyas. The Rohingyas have been explicitly termed as ‘illegal migrants’ by the Ministry of Home Affairs. The attitude of the present government in hosting refugees has long deviated from the age of Nehruvian foreign policy, when even though India was not financially sound to host a large influx of displaced people, the government was gracious enough to provide them asylum. Somewhere over time we have lost the capacity to empathise with the less fortunate.

Through the analysis of data collected from the field and by referring to secondary data, it has emerged that there is a stark difference between the opinions of Ministry of External Affairs and the Ministry of Home Affairs, wherein the former claims that Tibetans born between 1959 to 1987 are eligible to apply for Indian passport, which means they are Indian citizens but the latter still insists on treating all Tibetans as ‘Foreigners’. The researcher has attached the MEA office memorandum which grants passport facilities to both Tibetan parents and children who were born in India between 1959 and 1987 and whose children are Indian citizens by birth. Post Delhi high court judgment in the cases of *Tashi v. UOI*¹² and *Tenzin Tsomo v. UOI*¹³ wherein the court held that children born to Tibetan refugees born on or after 1987 and before 2003 are Indian citizens by birth.

Comparing this data with that on the Rohingyas, they are faring far worse. They have no documentation, save the refugee identity card provided to them by UNHCR after conducting RSD. The Indian government has not processed the legal status of the Rohingya people. MHA’s office is of the opinion that the Rohingyas are “illegally entering India without any travel documents”, therefore, it is the government’s legal prerogative to deport them back to Myanmar. MHA took a rigid stance after Myanmar’s State Counsellor, Aung San Suu Kyi’s November 2016 statements, which led to all Rohingya people entering India to be termed as “Illegal Migrants”. In 2017 when MHA issued a circular directing all states to identify and deport all illegal migrants living in India. The Rohingyas do not have any valid travel document as they are not recognised as citizens of Myanmar; this matter of procedural discrepancy is of no value to the Indian government. Due to lack of a stay permit, similar to that of the Tibetans, the Rohingyas are completely left to their

¹² W.P. (C) 1023/2018, CM APPL.4304/2018.

¹³ W.P.(C) 5298/2018.

own means. They depend heavily on the help given by UNHCR, India and Technical Assistance to Non-Governmental Organisations (TANGO), a sister organisation of UNHCR, India.

5.2. EDUCATION:

Similarly, in the sphere of education the Tibetan community is way ahead of the Rohingyas. As per the data mentioned in the previous chapter, the Tibetans are one of the most educated refugee communities in the world; His Holiness himself being a learned man has always stressed on the importance of education, how education will help the Tibetan community to better serve its people and finally bring a solution to the long-drawn conflict in the Tibetan plateau. To this purpose once the government-in-exile was set up in Dharamshala, they constituted a Department of Education, which is one of the seven main departments of the Central Tibetan Administration (CTA). The Department of Education established the *Central Tibetan Schools Administration* which is an autonomous body working under the aegis of the Ministry of Human Resource Development, which currently has twenty-eight operating schools, eighteen Tibetan Children's Villages, three Tibetan Homes Foundation schools, Sambhota Tibetan Schools Society which has twelve schools, and twelve schools under the Snow Lion Foundation.¹⁴

According to the data collected, promising students do receive scholarships from the Department of Education, which has helped many a student to complete their higher education in reputed colleges from both India and abroad. The sample group size from the Self-Help Centre, Darjeeling is of second-generation Tibetans who were born in India right after the 1959 exodus; their rate of education is lower than the third generation i.e., incomplete primary education, but all their children are educated having finished schooling at Central Tibetan Schools, private and public schools.

The Rohingyas, on the other hand, are not on equal footing with the Tibetans on education. The grown-ups are mostly uneducated and the children who were previously enrolled in schools back in Myanmar are finding it difficult to cope up in class as the language of instruction is different. Even in the midst of grave despair there are instances of hope and for the education of Rohingya children, Tasmida Johar is a beacon of hope; out of 40,000 Rohingya refugees currently residing in India, she happens to be the very first girl to have completed her higher secondary education.

¹⁴ Central Tibetan Administration, Department of Education, <https://tibet.net/department/education/#code0slide2>.

Tasmida was took interest in political science back in school, finally making up her mind to study law in college. Unfortunately, the family could not afford the yearly fee of Jamila Milia Islamia which is a whopping 2.45 lakh, an exorbitant amount for a refugee family.¹⁵ Thankfully, UNHCR along with its sister NGOs such as BOSCO, Zakat foundation, Development and Justice Initiative (DAJI) work to provide access to health, education, livelihood, documentation to the community; promising students are given scholarships by UNHCR. Tasmida's brother too has completed his higher secondary education and is currently pursuing B.A. political science from Delhi University. The Johar family is faring better than majority Rohingya families as their father was a businessman by profession, thus having the resources to sustain the family, first in Bangladesh and now in India, since 2005.¹⁶

With rampant fires in the Rohingya settlements children tend to lose their books, uniforms and most importantly their will to go back to school, especially when parents are of the opinion that there is no point getting an education as their children will never geta decent jobs that help them to assimilate with the local population. With that said the Rohingya children are bright and eager to learn.

5.3. LIVELIHOOD:

On the scale of livelihood, the Tibetan are way ahead that the Rohingyas, reasons being they have access to education, scholarship by the CTA, parents' willingness to send their children to school and secondly, the Tibetans have all important documents like Aadhar, ration, PAN, voter id. The first- and second-generation Tibetan refugees relied on their self-vocation of traditional arts and crafts such as knitting, spinning yarn, carpet weaving, wood carvings and likewise. The third generation is mostly working in both public and private sectors, academia, policy reform organisations and few exceptional individuals have also been placed within CTA in different departments. This makes application for jobs, running businesses much easier for the Tibetans. They are working in the public and private sector, academia, NGOs. Many finish their higher education and get absorbed by CTA in various departments.

The Rohingyas are barely managing two square meals, living in settlements and not government

¹⁵ Trisha & Oindrila Das ,*Tents and Textbooks: The Rohingya's Struggle with Schooling in India*, THE WIRE, (May 19, 2020), <https://thewire.in/rights/tents-and-textbooks-the-rohingyas-struggle-with-schooling-in-india>.

¹⁶ *Ibid.*

sponsored camps, working mostly in the unskilled sectors as ragpickers, construction labourers in cement factories. The only documentation they have is the refugee identity card by UNHCR, also known as the 'Blue Paper'; being declared as 'illegal migrant' has negated all opportunities to earn a decent livelihood.

5.4. SOCIO-POLITICAL RIGHTS:

The Tibetans got the right to vote in 2014 but refrain from doing so. They are the only refugee community, recognised by the Indian government, who have the right to vote. The reason for not voting is they do not want to lose their Tibetan nationality. They chose to remain 'foreigners' even though they are eligible to apply for Indian passport. Those Tibetans born after 1987 and before 2003 are Indian citizens by birth; this opened up a whole gamut of socio-political rights and freedoms for the Tibetans. In case of infringement of their fundamental rights, they can move to court and file a writ petition under articles 32 and 226, they have the freedom to move freely from one part of the country to another, they have the right to practice and profession of their choice, they have freedom of free speech and expression, unless they are not protesting for a free Tibet and speaking out against the atrocities of Beijing. Rest apart, the Tibetans, though MHA continues to term them as 'Foreigners', have lived a life of dignity and peace in India.

In comparison, the Rohingyas have no rights as they have no documents. The irony is Ministry of Home Affairs is asking for documents from people who have been rendered 'stateless' since 1982. As they do not have travel documents when they entered India, they are foreigners first and then illegal migrants. The Rohingyas are not recognised as 'Asylum seekers' who need protection; rather the community is looked upon with distrust, who have entered the country illegally and are affiliated with terrorist organisations just because they happen to be Muslims. The only recourse the Rohingyas have is moving to the Supreme Court, beseeching them to protect the rights guaranteed to even non-citizens: Article 21 i.e., right to life and personal liberty to be read with article 51 (c). Unfortunately, the apex court has taken a very tepid stance on the Rohingya matter as the deportation case, where the question of law is can India deport 40,000 Rohingyas back to Myanmar by violating the principle of non-refoulement, is still pending.

8. SUGGESTIONS:

It has been suggested by academia, independent researchers, policy reform organisations such as PILSARC before and the author reiterates the same that the concerned authorities must draft a Asylum Status Verification mechanism. Absence of a national policy on asylum increases the vulnerability of people fleeing persecution, who are genuinely in need of help and protection. The vulnerable communities, especially the women and children are falling through the cracks of law, their whole lives mired in uncertainty and despair, hoping to someday return to their homes.

6.1. LEGISLATE A COMPACT ASYLUM-SEEKER POLICY:

As India is a signatory to the New York Convention, which has adopted the CRRF and GCR, it is time the government should legislate on a domestic asylum-seeker policy, with a distinct “Refugee Status Determination”. Without refugee status determination, asylum-seekers are not processed for refugee recognition, which increases their vulnerability. Due to lack of an asylum-seeker policy, both the Tibetan and Rohingyas are falling through the cracks of procedural discrepancies.

6.2. AMENDMENT TO THE DEFINITION OF ‘ILLEGAL MIGRANT’: The researcher proposes that the term “illegal migrant” as defined under the Foreigners’ Act should be amended at the soonest to exclude asylum-seekers from its purview. As per the present definition all foreigners who have entered India without valid travel documents or those who have overstayed their stay are classified as illegal migrants. This is very problematic for those individuals who are fleeing persecution, who obviously will not be carrying their travel documents. In case of the Rohingyas, who have been stateless since 1982 due to the amendment to Myanmar’s Citizenship Act, do not get issued any identity or travel document, thus classifying all 40,000 Rohingyas currently seeking refuge in India being declared as illegal migrant is illogical.

6.3. PROVISION FOR LONG TERM VISAS:

Researcher further suggests that Rohingyas should be provided “Registration Certificate” similar to the Tibetans, who have been granted Long Term Visas (LTVs) i.e., stay document similar to that of Tibetan refugees. Even in the absence of a refugee policy India is obligated to uphold the principles of Non- Refoulement, according to which no individuals should be sent back to areas of conflict where they might be an obvious threat to their lives or face persecution on grounds of

race, political affiliations, sex, ethnicity, social groups. No Tibetans since 1959 have been forcefully deported but in 2018 seven Rohingya men, a family of five in 2019 have been deported and handled over to the border police of Myanmar.

6.4. LACK OF POLITICAL WILL MUST BE REMEDIED:

The private member bill moved by Congress M.P. Shashi Tharoor on rights of Asylum- seekers i.e., Asylum Act, 2015 which was drafted along the lines of the PILSARC Bill i.e., The Refugees and Asylum Seekers (protection) Bill, 2006, is the most succinct piece of legislation on refugee rights, which due to lack of political never got to see the light of day. Being a leading power amongst the SAARC and ASEAN nations, India should take the lead in adopting a refugee policy to safeguard and protect the rights of asylum seekers in the region. As India is a signatory to the New York Declaration and other international legal instruments like CEDAW¹⁷, CRC¹⁸, UDHR¹⁹, ICCPR²⁰, India should take a proactive step in the positive direction by legislating and implementing a asylum seeker policy.

6.5. INCREASED GOVERNMENT INVOLVEMENT:

The author highly recommends that active government co-operation needs to be extended to the UNHCR and its sister organizations so that the good work done by these organisations is recognised and allowed to be continued in a better organised manner. These NGOs have been working in a tireless manner ensuring that the fundamental rights of the refugees have been protected- the one State has been turning a blind eye to.

During the COVID-19 lockdown the Rohingya community faced a fate similar to that of the migrant workers who were bereft of access to food, water, sanitation and healthcare. Delhi High Court disposed a PIL filed by Mr. Fazal Abdali at Delhi High Court seeking relief for Rohingya families

¹⁷ UN General Assembly, *Declaration on the Elimination of Violence against Women*, REFWORLD, (December 20, 1993), <https://www.refworld.org/docid/3b00f25d2c.html>.

¹⁸ UN General Assembly, *Convention on the Rights of the Child*, REFWORLD, (November 20, 1989), United Nations, Treaty Series, vol. 1577, p. 3, <https://www.refworld.org/docid/3ae6b38f0.html>.

¹⁹ UN General Assembly, *Universal Declaration of Human Rights*, REFWORLD, (December 10, 1948), 217 A(III), <https://www.refworld.org/docid/3ae6b3712c.html>.

²⁰ UN General Assembly, *International Covenant on Civil and Political Rights*, REFWORLD, (December 16, 1966), United Nations, Treaty Series, vol. 999, p. 171, <https://www.refworld.org/docid/3ae6b3aa0.html>.

living in the resettlement at Khajuri Khas, Sharm Vihar and Madanpur Khadar.²¹ The judgment directed the petitioner to approach the nodal officer appointed with grievances regarding basic amenities. As the contentions made are generic in nature and not with regards to a specific individual or family, the Court felt it most appropriate to dispose the matter. Here instead of directing the respective authority i.e., the Revenue Magistrate to ensure that basic amenities are provided to the community at the soonest, especially with the knowledge that community transmission is a reality and no longer a speculation in this time of crisis the Court has chosen to stay neutral and not risk going beyond its ambit into judicial activism.

6.6. INCLUDE IHL PRINCIPLES ON REFUGEES INTO INDIA'S LEGAL FRAMEWORK:

India is not a signatory to the 1951 Convention but is still bound to follow the customary principle of international law. There is a grave necessity to formulate a robust legal framework to bridge the legislative gap. To ensure protection of the persons fleeing persecution, which the State is bound to protect as per its international humanitarian obligation, and ensure they have access to healthcare, education and a means to earn a livelihood it is of vital importance to issue asylum seekers a valid government documentation. Non-Refoulement is covered under Right to Life and Personal Liberty under Part III, A.21 of the Constitution of India as per the various judgments given by the Supreme Court. India can lead the way by setting a standard of Asylum Status Verification in the Indian Ocean Region (IOR) which will strengthen its claim as a leading power in the subcontinent.

²¹ W.P.(C) 3063/2020.