

HUMAN RIGHTS FEATURES

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Burmese Refugees in Delhi - The Travails of everyday life

India lacks a coherent legal framework for the protection of refugees, treating them simply as non-citizens who may be a potential threat to society. As a result of this treatment, which is also reflected in societal attitudes, many of India's refugees suffer severe hardship. The South Asia Human Rights Documentation Centre (SAHRDC) recently interviewed seven representative Burmese refugees about their experiences as refugees in Delhi. Each of the seven refugees detailed a grim life of poverty and insecurity, often accompanied by physical danger. Their stories underscore the urgent need for India to adopt national legislation that grants refugees rights and protects them from exploitation and abuse inherent in the vulnerable situation in which refugees find themselves.

Becoming a Refugee¹

In the citizen-state relationship it is assumed that there exists "a bond of trust, loyalty, protection and assistance."² The state is expected not only to refrain from harming its citizens, but also to protect them from harm while meeting their basic needs. In the case of refugees, this citizen-state bond has been severed³ and the citizen no longer has access to citizen's rights and protections. Subject to persecution at home, these citizens flee, requesting refuge in a third country where no such citizen-state bond can be assumed. International law seeks to make up for what is essentially statelessness for refugees by granting them rights and protections in their host countries, at least until they can return home and avail themselves of citizen protection. International law, thus, guarantees the

¹ Portions of this Human Rights Feature were taken from a draft book on refugees in India being prepared by SAHRDC.

² Shacknove, Andrew E. 'Who is a Refugee', *Ethics*, Vol. 95, No. 2, January 1985, p. 275.

³ *Ibid.*

rights to life, liberty, security of person, equality, equal protection of the law, freedom of movement, to seek and enjoy asylum, to work, and to education; it further prohibits slavery, forced servitude, and torture or cruel, inhumane, or degrading treatment or punishment. The United Nations High Commissioner of Refugees is tasked with protecting refugees and with assisting them in accessing their rights, including by providing important services and material support.⁴

India's Refugee Protection

Refugees arrive in India hoping to change their desperate circumstances but are often met with bleak prospects for greater security and rights. India refuses to acknowledge refugees as a unique category of “non-citizens” in law deserving of special rights and protections that are unnecessary for other types of non-citizens. There is no specific national law governing refugees;⁵ instead they are treated identically to tourists and immigrants.⁶ The non-citizen legal framework is designed to give the Indian government unfettered powers to govern the entry, stay, and departure of all foreigners within its territorial jurisdiction. It is premised on the need to protect the state from an archetypal foreigner who may eventually pose a threat to the State and society.⁷ This underlying premise lends support to a pervasive societal attitude that casts refugees as threats. It further fails to recognize refugees as foreigners who are particularly vulnerable to abuse and exploitation in India.

Making this bleak legal framework worse, India severely limits the jurisdiction of UNHCR, which has the power to ameliorate the vulnerability of refugees in India. The government permits UNHCR to operate only in the Union Territory of Delhi and primarily through implementing partners. This means that refugees located elsewhere in India cannot easily apply for refugee status or access UNHCR sponsored services unless they come to Delhi.

Burmese Refugees

Choosing to flee one's home country to live in a place without the rights and protections that flow from citizenship is a fraught decision at best. Each of the interviewees detailed escaping Burma after being physically threatened and/or abused by Burmese soldiers,

⁴ Protecting Refugees and the Role of UNHCR, p. 21 available at <http://www.unhcr.org/4034b6a34.html>.

⁵ Ananthachari, T. (2001): 'Refugees in India: Legal Framework, Law Enforcement and Security' in *Indian Society of International Law Yearbook on International Humanitarian and Refugee Law*.

⁶ 'Foreigner' and 'alien' are used interchangeably in Indian legislation. B. S. Chimni, 'The Legal Condition of Refugees in India', *Journal of Refugee Studies* (Vol. 7, No. 4), pp. 378-81.

⁷ "The Foreigners Act, 1946. *Commentary*" Dewan, V.K. in *Law of Citizenship, Foreigners and Passports*. Second Edition (Allahabad, Orient Law House: 1987) p. 205.

hoping for greater security in India. Several refugees sought to escape forced servitude in Burma and/or the repercussions from having a family member escape it.⁸ The Burmese military regularly forces its citizens, including women, children and the elderly, to perform manual labor, to serve as prostitutes, or even to march through dangerous areas to detonate mines in front of the military.⁹

Another common reason for fleeing Burma was to avoid the retribution of the Burmese military set on silencing its opposition. One refugee interviewed was a pro-democracy activist who, along with his wife, was being harassed and tortured by the military for their activist work;¹⁰ both spouses were interviewed by SAHRDC. Another refugee fled, fearful for his life or of being imprisoned as a “revolutionary” after an opposition group came through his village collecting money for its campaign.¹¹

One Burmese refugee was reluctant to tell us her reasons for fleeing, but others told us that she escaped after having been sexually assaulted and left for dead by the military.¹² Each of these stories illustrates how the state can sever its bond of trust and protection with its citizens and why these refugees would choose to live in India despite their uncertain future there.

A Picture of Insecurity

Consistent with previous interviews conducted by SAHRDC of Burmese refugees, our interviewees painted a picture of insecurity and discrimination in New Delhi. Three of the seven refugees told horrifying stories of rape and sexual abuse and in the cases where the refugee sought police intervention, their efforts at seeking justice were stymied by the Indian police.¹³ One man recounted how his 3 year old daughter was molested by an Indian neighbor.¹⁴ Another man told the story of his deaf sister who was gang-raped by several neighbors. Although his sister submitted to rape testing at the hospital, the police closed the case claiming no evidence had been found.¹⁵ Finally, a third refugee reported

⁸ Interview, Refugee 1, July 15, 2011; Interview, Refugee 6, July 15, 2011; Interview, Refugee 4, July 15, 2011. Names of refugees interviewed are confidential; copies of their interviews are on file with SAHRDC.

⁹ Reign of Discrimination – Draft – p. 4.

¹⁰ Interview, Refugee 2, July 27, 2011; Interview, Refugee 3, July 27, 2011.

¹¹ Interview, Refugee 7, July 15, 2011.

¹² Interview, Refugee 5, July 15, 2011.

¹³ A fourth refugee described that while she was standing in line waiting for treatment at a hospital, the man behind her unzipped his pants and was poking her in the back with his genitals. Refugee 5, supra note 12.

¹⁴ Refugee 1, supra note 8.

¹⁵ Refugee 6, supra note 8.

how the son of her Indian neighbor attempted to rape her.¹⁶ She filed a complaint with the police; however, the police reportedly released the accused from custody after he signed an agreement promising not to abuse Burmese refugees.

Burmese refugees in Delhi also face consistent harassment and discrimination from their Indian neighbors.¹⁷ Refugees report nasty commentary about the smells from the kitchen of Burmese refugees.¹⁸ The neighbors of one refugee swarmed her menacingly because of her cooking.¹⁹ Many complain of being treated as “lower than the lowest caste” in India²⁰ and all report generally feeling threatened by Indians. As one refugee explained, “in the community we feel unsafe whenever we go outside because they are looking down on us. We can feel it.”²¹ In addition to the sexual violence described above, a child of one refugee was pelted with stones by Indian neighbors;²² and another refugee was chased by an Indian neighbor with a hatchet when he refused to leave a shared bathroom in the middle of his bath.²³

Such abuse of Burmese refugees is systemic, as evidenced by how these refugees are treated in government schools and hospitals. Refugees can study at Indian schools, but that does not assure Burmese refugees of equal access to education. One refugee pulled his 5 year old out of a government school because of discrimination. He reported that refugees were segregated within the school due to lack of “proper seating;”²⁴ and further described how Burmese refugees are being assaulted in the school.²⁵ In public hospitals, Burmese refugees perceive discrimination after being shunted to the end of the line of people and treated last.²⁶

Finally, because they are characterized simply as non-Indians and fall under The Foreigners Act, Burmese refugees are not legally entitled to work. There are some programs available for legal employment, which one refugee was able to use until she became disabled.²⁷ The job making handicrafts paid Rs20 per hour (\$.45 per hour) and she earned around Rs3600 per month (approximately \$80 per month). For most Burmese refugees, however, in order to survive, they are forced to take insecure and informal jobs

¹⁶ Refugee 7, supra note 11.

¹⁷ Refugee 3, supra note 10.

¹⁸ Refugee 5, supra note 12; Refugee 1, supra note 1.

¹⁹ Refugee 5, supra note 12.

²⁰ Refugee 5, supra note 12. See also, Refugee 1, supra note 8.

²¹ Refugee 1, supra note 8.

²² Refugee 2, supra note 10.

²³ Refugee 4, supra note 8.

²⁴ Refugee 1, supra note 8.

²⁵ Refugee 1, supra note 8.

²⁶ Refugee 6, supra note 8; Refugee 2, supra note 10.

²⁷ Refugee 4, supra note 8.

that pay ludicrously low considering the cost of living in Delhi. Two of the refugees interviewed are employed – one works as a pastor earning Rs4500 per month (approximately \$100 per month);²⁸ another has part-time work at a restaurant two to three nights a week, earning Rs200 a night (approximately \$4.45 per night).²⁹ The husbands of two other refugees are earning Rs3000 per month (approximately \$67 per month).³⁰ One family was in debt from medical bills,³¹ and three described being unable to afford the medical care and/or medicine they needed.³² Three refugees explained they were unable to work because of ill health or injuries.³³ All of the refugees interviewed initially received financial assistance from UNHCR, but none do currently. The Burmese refugees interviewed by SAHRDC painted a bleak picture of lives of poverty and financial insecurity.

Conclusion

Coherent national legislation granting refugees rights and protections in India could go a long way toward alleviating the climate of fear and insecurity in which Burmese refugees live in India. It could start to shift governmental and societal attitudes towards refugees. Instead of the current legal framework that sees foreign threats everywhere; new legislation could send the right message that refugees are not threats but rather persons unfairly persecuted by their country of origin who deserve India's protection.

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²⁸ Refugee 2, supra note 10.

²⁹ Refugee 6, supra note 8.

³⁰ Refugee 1, supra note 8; Refugee 5, supra note 12.

³¹ Refugees 2 and 3, supra note 10 (married couple);

³² Refugee 4, supra note 8; Refugee 1, supra note 8; and Refugee 3, supra note 10;

³³ Refugee 7, supra note 11; Refugee 3, supra note 10; Refugee 4, supra note 8. The last refugee previously worked earning Rs3600 per month (approximately \$80 per month) and has a son earning Rs180 per night (\$4 per night) as well.