
Workshop on Prevention and Response to Detention of Asylum Seekers, Refugees and Stateless Persons

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SLIC
Socio-Legal Information Centre



Background

Despite the fact that India is a host to diverse groups of refugees, India is not a signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The protection of refugees is confined to ad-hoc measures taken by the Government of India, leaving refugees with little protection for their basic human rights and virtually no legal provisions for their safety and welfare. In the absence of a central enactment on refugee, The Foreigners Act, 1946 governs the entry, stay and exit of foreigners in India. The outdated Foreigners Act poses a severe challenge to the rights of refugees in India as it does not distinguish between refugees fleeing persecution from illegal immigrants. Under such laws it is a criminal offence for a non-citizen to be in India without valid travel or residence documents. Consequently, refugees suffer deportation and detention.

In recent years there have been several instances in West Bengal where asylum seekers have been arrested and subjected to criminal proceedings under Foreigners Act. Asylum seekers of Burmese origin have been entering India through Indo-Bangladesh border in the recent years. They are often mistaken as Bangladeshis by the authorities and are arrested at the border. Many

including women and children are languishing in jail and juvenile homes in West Bengal with little or no access to legal remedies or access to United Nations High Commissioner for Refugees (UNHCR) for protection. Asylum seekers are thus being deprived of access to UNHCR to claim refugee status.

In this backdrop, a consultation was organized by Socio-Legal Information Centre (SLIC) with the assistance of UNHCR. The aim of the consultation was (a) to raise awareness among government officials regarding the issue of detention of refugees, (b) to foster partnerships with various governmental departments and (c) to bridge the gaps between the various state and central governmental agencies and departments as well as non-governmental organizations and UNHCR with a view to promote information sharing, data collection, reporting, securing access to and monitoring places of immigration detention.

Representatives of West Bengal, Kolkata Police, Department of Correctional Services, Department of Women & Child Development & Social Welfare, Directorate of Social Welfare, Railway Police Force, Border Security Force, Bureau of Immigration, Foreigners Regional Registration Office, Ministry of Home Affairs, Ministry of External Affairs, State Legal Services Authority were invited for the workshop. Although, many of the invitees had confirmed their participation in the workshop, the workshop was attended only by officials from the Department of Correctional Services, Kolkata Police and Bureau of Immigration and participants from UNHCR, SLIC and Commonwealth Human Rights Initiative.

Address by Mr. Adhir Sharma

The workshop started with an introductory address by Mr. Adhir Sharma, IPS who is the Additional Director General and Inspector General of Correctional Services, Government West Bengal. He began his address by stating that West Bengal shares boundaries with Bangladesh, Bhutan and Nepal. He stated that of late there are movements of people from South Eastern countries like Myanmar. There is population pressure in South Eastern countries and that causes various economic problems. After the colonial rule, because of decisions of the subcontinent,

subsequent developments have seen the birth of Bangladesh, thus giving rise to the problems of refugees and detention of such refugees has burdened the administration machinery.

He stated that the law enforcement agencies detain people who they suspect are not of Indian origin. It is seen that non-Indians are obtained for long periods in Indian Correctional homes. There are certain problems in the Criminal Judiciary system like, the laws are not up to date and the guidelines are not clear. There are also complicated issues revolving around who is to be grant citizenship status.

He reported that there are about 150 persons from Myanmar in detention homes in West Bengal. After conviction, they are either released or they become '*Jaan-Khalas*'. There has been no clarification on the part of Government regarding the repatriation of the detained refugees. They are at least detained for about six months. In 2010, India has signed on an agreement with Bangladesh that after 6 months of detention, those who wish to go back can be released or transferred. It has been 4-5 years now and still not a single transfer took place. The local solution is that, there is a list of prisoners and there is verification of their address and then Bangladesh takes them back after the completion of the conviction. Around 3000-3500 are still in jail. In some cases, it has not been determined that their claim for citizenship is bona fide or not. They usually leave due to economic, religious or other factors.

Mr. Adhir Sharma informed that a number of the detainees are unable to prove to which country they belong. About three to five percent of such stateless persons remain in the correctional homes. There are some detainees in their own country due to religious or political reasons.

Session by representatives from UNHCR

Ms. Praveena Nair and Ms. Ragini Trakroo Zutshi representing UNHCR facilitated the next session. During the session, the participants were informed that UNCHR was created after World War II and UN created it to deal with forces displacement in Europe in 1950. The 1967 Protocol widened the scope of UN agency. The main aim of UNHCR is to provide assistance to the

asylum seekers, refugees, returnees and stateless people so that they can be accessible to some kind of solution to bring an end to their 'refugee' status.

The types of persons of concern to UNHCR were explained in detail to the participants. The participants were informed that the term 'refugee' has a very narrow legal definition. The 1951 convention defines a refugee. The term 'refugee' is not always used in the correct sense. There are different interpretations of the term 'refugee' by different people. 'Refugee' is somebody who is outside the country of nationality. He has to cross an international boundary. For a person to come within the definition of 'refugee' s/he must involuntarily cross the borders due to a justified fear of persecution and violation of human rights owing to any of the five reasons: racial or ethnical reasons, religious differences, nationality – real or perceived bond with another country, political opinion and affiliation with a social group. Thus, a refugee is a foreigner who has crossed the border out of fear when state is not able to provide protection or when the state is creating a situation which is compelling them to flee. People who merely migrate are not refugees. Migration takes place on one's own choice but refugees are displaced, forced by circumstances. Presently, when they move due to climatic or other environment reasons, they are not counted as refugees. The definition under the Organization of African Unity Convention includes two more grounds for determining refugees: war and internal conflict. It was explained that if immigration takes place for economic reasons, then the immigrant is not to be treated as a refugee. Bangladeshis are not regarded as refugees when they move out of their country for better economic stability. People migrating because of environmental concerns are also not covered in the refugee definition.

The difference between a refugee and asylum seekers was explained in detail. It was explained that an asylum seeker is a person who crosses the international border and is unable to return and hence seeks asylum. When asylum is granted the asylum seeker becomes a refugee. The representative from Bureau of Immigration commented that the term asylum seeker is used for individuals and asylum seekers in large groups are termed as refugees. Praveena Nair clarified that refugees do not necessarily refer to groups.

Ms. Nair further cited the example of Syria where millions of people have been displaced. She clarified that every country has the sovereign right and ideally the government should screen who is a refugee and who is not. In many countries asylum claims are adjudicated by courts of law. In countries, where there is a functioning system UNHCR has a board, which plays only an advisory role.

It was explained that in some countries UNHCR also works with returnees and helps the local governments to reintegrate the returnees who were previously forcibly displaced from that country. The participants were also informed that UNHCR also work with internally displaced persons in countries where the Government requests them to do so.

The concept of stateless persons was also discussed. Stateless persons have no legal bond with any sovereign state. A stateless person not necessarily crosses the boundary, he might be just residing in a territory and be stateless by not being considering a citizen. Even though, they technically stay on a particular soil, there is no legal bond. All refugees are not stateless people, but some stateless people could be refugees.

The Foreigners Act, 1948 has one definition which probably had not been envisaged the situation that crossing boundaries could be for different reasons such as one could cross the boundary because she was a victim of trafficking. The present system is unable to respond to the problem of forced migration. Unfortunately, there is a gap in the policies of the Foreigners Act, it does not recognize that some people come to seek asylum in India. The Supreme Court has laid down in several instances that when there is a gap in the domestic law, one must refer to the international law regarding the particular issue in question.

The issue of Rohingyas fleeing from Myanmar and entering India through Bangladesh was discussed in detail. These Rohingyas look as same as Indians and so they are booked as Bangladeshis. The root cause of their discrimination in Myanmar is because of their looks. They are separate ethnic groups in Myanmar. They are denied citizenship in their country. Majority of the Myanmar population look like Mongols. But, the Rohingyas look different and are insulted with derogatory terms such as “kalas”.

The Myanmar government does not recognise them as citizens. There are many ethnic minorities recognised under the Myanmar constitution, but these Rohingya Muslims are not recognised. The nationals of Myanmar receive a pink card, but these people don't receive the pink card. They receive a white card. It is a temporary registration card. They can't access any service because they don't have a pink card as it is necessary for access to health, jobs, education etc. In Myanmar there is a family list of every family in the country. This list is possessed by the local authorities, in village it is possessed by the village headman. Each person has to inform the headman before leaving the village. But Rohingyas have to seek permission to leave their place. The currency is very weak as the cost of basic living is very high. The cost of rice, wheat, salt is very high. They need to pay in lakhs to seek permission and to pay bribes to the authorities. They face restricted movement.

They can't marry without permission from the government and they need to pay bribes in lakhs to apply for permission. They face indignity and humiliation. They have to marry secretly. As a result, when the Rohingya woman moves to her husband's family, her name does not appear in that family list. There is unannounced verification from the authorities and when the concerned woman is not found in her paternal home, her name is deleted from the list, which means that she is non-existent. There is a limit on the number of children in a Rohingya family. If the number of children exceeds, their names do not appear on the family list. Many ethnic minorities are facing discrimination, but still they receive a national identity card. Residents in the village have to visit the military camps for odd jobs without any pay. There is sexual violence on women.

Thus surviving in Myanmar is next to impossible for them. So, from the past few years, the Rohingya people have started leaving their country. In 2010, they moved in large numbers due to a massive violence, in which lakhs were displaced in their own country. There are rough estimates of these people from the UNHCR camps in Bangladesh. West Bengal has become important because these groups enter India through West Bengal. The problem is that these people speak different language. It's more or less similar to the language spoken in Chittagong hill tract. These people can't register themselves with their Muslim names. They have to register themselves by using a Burmese name. They always change their names each and every day. So,

there is confusion. The reason of their detention is because they come to India with Bangladeshis.

Interactive Session

The representative from Bureau of Immigration discussed in detail an incident in which SLIC is making an intervention. A private vessel rescued from Bay of Bengal, a group of six persons whose boat was wrecked at sea and were brought to Kolkata. Out of them 3 (three) were Bangladeshi nationals, who handed over to Bangladesh governmental authorities. The remaining three rescued victims, from Burma (Myanmar), were brought to Kolkata. One of them was a Rohingya woman who had lost her children in the boat wreck. The other two are Burmese Buddhists. The Rohingya woman wishes to be reunited with her husband and the other two rescued persons wish to return to Myanmar. Accordingly, the Myanmar Consulate was approached which denied that these persons were Burmese nationals. SLIC has filed a case in the High Court which is still pending. The representative from Bureau of Immigration enquired what UNHCR can do in the situation. He further elaborated that since the rescued persons had not voluntarily entered India they have not been detained. However, for their own security the company which owns the vessel has been sheltering them and the authorities have also provided them with guards. The representatives from UNHCR stated that in the circumstances, the Rohingya woman could approach UNHCR for refugee status.

A representative from Department of Correctional Administration stated that the Bangladeshi government often delays or stalls the repatriation of Bangladeshi children who had entered India and enquired if the UN Refugee Agency provides any assistance in such cases. He further stated that due to this many Bangladeshi children in India become stateless. Ms. Nair answered the query by stating that UNHCR would not usually have any role in such circumstances. However, she added that the person who is on the verge of becoming stateless can approach UNHCR.

Mr. Debashish Boral, Joint Commissioner of Armed Police, Kolkata Police discussed the issues faced by the police authorities when they apprehend Rohingyas. According to him, these

problems are to be addressed at a much higher level. He stated that the Rohingyas are yet to be declared as refugees and hence police officials initiate cases under Section 14 of the Foreigners Act, 1948.

When Mr. Boral was the Superintendent of Police at Kharagpur, 30 Rohingyas were apprehended. The group consisted of men, women, elderly persons, children and even infants who were a few weeks old. The police authorities were at loss as to what steps were to be taken subsequently. Since the Rohingya people arrested did not speak the local language, they were unable to answer any of the questions put to them by the police officials. For the Rohingyas who travel through Bangladesh, communication is relatively easy. When the police officials managed to communicate with the Rohingyas, a horrific story was unveiled. When they were travelling across the border, they were beaten like anything and were compelled to flee. Most of them were Muslims. In the Rakhine province, there was a civil war between Buddhist and the Muslims, thus they were converted. Thus the problems faced by them were numerous. As police officers all that they could do for them, was send them to courts. It was in the hands of the court to decide their relief. When another such group was caught they could utter only one name, Mustaq and could name the city Hyderabad.

These people lead a life of complete gloom. It is extremely difficult for them to adjust once they come to India. They are unable to communicate or mingle with others due to cultural and linguistic differences and hence they are deprived of education and other means by which they could be brought into the mainstream. Thus, Rohingyas are deprived of even the primary human rights.

Recently, the social welfare department has had a 'Memorandum of Understanding' with the Bangladesh Government for the repatriation of Bangladeshi nationals. Many of them had come to India and spread to Mumbai and other states of India several years back. Some had come to India at a very tender age of about four to five years. They had picked up the local language could communicate well in Hindi. Now when the Bangladeshi delegation came for a visit, they denied them to be Bangladeshis as they were fluently speaking Hindi. Due to their denial, many

were not taken back. Such kind of Treaty or Memorandum of Understanding is not signed between Myanmar and India.

Mr. Boral suggested that UNHCR should take it to the Government of India and request them to initiate or come up with a fixed policy. Care should be taken to ensure that the culture identity of the Rohingyas is preserved. He clarified that whether the government would allow them to settle or treat them as refugee is wholly up to the government, but a stand is to be taken in this regard. If they are given the status of refugee they too can earn a living. Moreover, they will contribute to the economy in whatever small way they can. For this, primarily, the Central Government ought to settle its policy and this is not in the purview of the State Government.

Conclusion

The workshop came to its conclusion after Ms. Nair thanked everyone for their participation and the information that they had shared.