
Workshop on Prevention and Response to Detention of Asylum seekers, Refugees and Stateless Person

Dated: 12th December, 2015

Venue: Balurghat, Dakshin Dinajpur

PARTICIPANTS: 34

Introduction

India is a host to diverse groups of refugees from the very beginning but India is not a signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. India has welcomed refugees at different time like Chakmas in 1964 just before the partition of the Bangladesh-Pakistan. India has recognized two communities as refugees i.e. Tibetans and Sri-Lankans. 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 The outdated Foreigners Act poses a severe challenge to the rights of refugees in India as it does not distinguish between refugees fleeing persecution from illegal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.

There is a big concentration of Rohingya population in West Bengal and in recent years there have been a huge number of cases where they are detained and charged under the provisions of the Foreigners Act. There is unawareness about the United Nations High Commissioner for Refugees

(UNHCR) and its operation among the authorities and lawyers. In general, many PoCs in detention especially in West Bengal have 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. The local lawyers, administration and the judiciary are not sensitized about the issue and many Rohingya are detained even after the completion of their sentences. The administration fails to deport them as State refuses to acknowledge them as their citizen.

In this backdrop, a Workshop was organized on 12th December 2015 at Balurghat, West Bengal by Socio-Legal Information Centre (SLIC). The aim of the workshop was (a) to introduce legal partners on its work on refugees and asylum seeker (b) to disseminate information on refugees situation in India (c) to aware on legal challenges faced to address PoCs detention cases cases (d) to aware on Legal Protection for asylum seekers and refugees and its challenges laws/Jurisprudence/International Law/Administrative Policies (e) to foster partnerships with lawyers for free legal aid services to PoCs on voluntary basis. The workshop was also to promote information sharing, data collection, reporting, securing access to and monitoring places of detention issue.

Lawyers from different District Courts, Students and HRLN Lawyers were present for the workshop. The total number of participants were thirty-four.

Introductory session by Advocate Sayanti Sengupta, SLIC

The workshop commenced with an introductory and welcome note from Sayanti Sengupta, SLIC. She also delineated the issues that were going to be discussed at the seminar, namely, the rights of refugees, their condition in West Bengal, and their legal status. She also marked that in North Bengal the problems relating to the refugees are more than South Bengal as the northern part of

the West Bengal shares the most of the border with Bangladesh. Further she requested everyone, who came from different districts to introduce themselves.

She explained the participants briefly the raising issues of refugees being detained and denied of their rights. The recent incidents reported by the media making Rohingya issue, a world known issue was also being discussed. She also informed the participants about the existence and working of UNHCR and SLIC. Further she introduced the speaker of the workshop and requested the welfare officer of the District Correctional Home, Balurghat to share his experience and guidance.

Session by Debapriya Mukherjee, SLIC

Advocate Debapriya Mukherjee presented on the Legal Protection for asylum seekers and refugees in India and its challenges. She highlighted on the international protection of refugees and asylum seekers and the International covenants/conventions/treaties signed by India. The rights of a refugee and the principle of non refoulement were explained in detail. The applicable laws stipulated in the Indian Constitution and the administrative policies with regard to refugees including India's adherence to International treaties.

The participants were asked what they understand by the term “refugee” and they provided as per their understanding the meaning of a refugee. The responses were somewhat similar to the definition provided by the 1951 UN convention on refugees.

The definition as per the UN convention was explained to the participants. ‘Refugee’ is somebody who is outside the country of nationality. 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.

The difference between a refugee and economic migrant was explained in detail. It was explained that a refugee crosses the international border and is unable to return due to well-founded fear of

persecution and hence seeks asylum in another country. Whereas people who merely migrate for better opportunity or livelihood purpose in another country and can return to their country without any threat to life are not refugees but economic migrants. Ms. Nair provided the number of refugees registered under UNHCR and different nationalities from different countries who approach UNHCR for assistance.

Advocate Debapriya addressed on the absence of municipal law relating to Refugees in India, unawareness of the local administration on refugee issues, India not a signatory to UN convention relating to refugee 1951 and application of the Foreigners Act where foreigners and refugees are treated alike. Despite the lacunae in the Indian legal system, the refugees are protected in India by International treaties and Conventions, Constitutional Provisions and Case laws. Some of the International treaties to which India is signatory to are :

- Universal Declaration of Human Rights (UDHR) 1948
- International Covenant on Civil and Political Rights (ICCPR) 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
- Convention on the Elimination of All Forms of Discrimination Against Women, 1979
- Convention on the Rights of the Child, 1990
- Genocide Convention, 1948

The principle of non-refoulement which is, not to forcibly return a refugee to his/her country where she/he faces fear of persecution was clearly explained. Adv Debapriya cited and gave reference of the International treaties

Article 14 of UDHR

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution;
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations

International Covenant on Civil and Political Rights, 1966: An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Explaining further on the protection of refugees, Advocate Debapriya, highlighted the Indian Constitution provision such as **Article 14 of the Constitution of India**

- **Equality before Law** – The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. With an example of the case law/Judgment provided in *the National Human Rights Commission v. State of Arunachal Pradesh*, (1996 (1) SCC 742)

Our Constitution confer certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. This State is bound to protect the life and liberty of every human being, be he a citizen or otherwise and it cannot permit anybody or group or persons e.g. the AAPSU, to threaten the Chakmas to leave the state.

- **Article 21 of the Constitution of India**

Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law. With an example as provided in *The Chairman Railway Board and Others v. Chandrima Das and Others* (2000 (2) SCC 465)

The Supreme Court held that since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation

as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this Country, but also to a "person" who may not be a citizen of the country

- **Article 51(C) of the Constitution of India**

Foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration.

Advocate Debapriya further explained to the participants that a registered refugee cannot be forced to be deported to his/her country where there is danger to his/her life. Hence, it is imperative that incase of any exit or deportation order is served to a refugee must be challenged at the Court where ever possible to secure safety of the life of a refugee. He highlighted refugee related case laws and judgment that could be inserted or presented in the petition to the court.

- Ktaer Abbas Habib Al Qutaifi vs Union of India, (1999 CrI. LJ 919)
- State of A.P. vs Khudiram Chakma[1994 Sup(1) SCC 615]
- Premanand & Arn. V. State of Kerala (S.S. Satheesachandran, J) 2013(3) KLJ 543
- Anthony Omandi Osino vs FRRO (Cr.W.P. 2033 of 2005)
- Dr. Malvika Karlekar vs. UOI and Anr. [W.P. (CrI) 583/1992]
- Mr. Syed Ata Mohammadi vs Union of India (Criminal Writ Petition No. 7504 of 1994)
- Mr. Syed Ata Mohammadi vs Union of India (Criminal Writ Petition No. 7504 of 1994)
- State V. Chandra Kumar & Others

Session by Mr. A. Glorh (Welfare Officer, Balurghat Correctional Home)

Mr.A. Glorh, Welfare Officer, Balurghat District Correctional Home started with thanking SLIC for hosting such informative workshop. He shared his experiences while working as a welfare officer. If a person from Bangladesh enters West Bengal it is difficult to identify him or her, since the language, food culture and habits are almost identical. Where do they land up? Most of these people are girls, and they are easier to exploit than boys. They go where there are economic prospects, namely, the brothels of Mumbai and Pune. The Mumbai Police catch these women and send them back to West Bengal.

Once a person who has come from Bangladesh has been identified as a foreigner, he or she is prosecuted under Section 14 of the Foreigners Act. He or she is placed in a correctional Home. Then comes up the question of his or her deportation. This process is very long. Earlier, the Police would hand such people over to the Border Security Forces (BSF), who would push them out of the country. This is how these people are pushed away by both sides.

He further shared that the Rohingyas are stateless as they are disowned by their state i.e. Myanmar. The recent Nobel laureate and Presidential election winner is also silent on the condition of Rohingyas which is alarming. This news is used to create communal disharmony in India by posting pictures of the Government of Myanmar oppressing Rohingyas as Indian Muslims being oppressed by the Government of India. According to the definition of the UNHCR, they are indeed refugees. But the Indian government is silent on the treatment of Rohingyas, unlike the case of the Tibetans. There is no declared policy of the Indian government on refugees.

He also raised a concern that the Rohingyas are now not informing the administration as Rohingya. They are claiming themselves as Bangladeshi because they believe that they will be pushed back and then they can re-enter and will have a safe passage to UNHCR where they will be registered as Refugees.

Session by Sonmitra Basak (Subhayan Home, Balurghat)

Mrs. Sonmitra Basak started by the day to day issues faced by the refugee child in homes. She shared that the Rohingyas child are charged with section 14 of the Foreigners Act and are sent in the homes. The Rohingya Child has many barriers like language, culture etc. That many of these are waiting for their parents as they are not aware whether they are in India or are pushed back.

The child is placed in the Home before he or she is restored and during the time when the processing of the request of the parents to get refugee status is going on. The Abhas Yojana/Smile does not talk about the percentage that ought to be reserved for refugees. The UNHCR can give a status to the refugee, and a card to prove it. But what about the things that they actually need? Forget about kids, whom we try to raise with a compartmental effort. The CWC can reject the request if it does not approve of the HSR. The first thing the children ask at the Home is when they will go back home. An amount of Rs 2000 is spent for one kid. But increasing the amount being spent on them is not the solution because they all want to be free and they all want to go home. They slash their wrists with different things found around the Home, like pieces of glass or remnants from building construction.

These children have travelled a long way and their language cannot be understood by Indians. In the beginning they couldn't even eat. Now they speak fluent Bengali. And their wish is to return to their parents. Rohingyas and Kashmiris are Muslims, who can be married at puberty. These kids are taken to Kashmir where they are bought over with bride price and forced into marriage. After that they are used for various appalling deeds. This is the outcome as after the children are restored, no follow-up is carried out.

Livelihood is absolutely essential. For this reason, refugee specific schemes are necessary. A law may not be framed specifically for Rohingyas, but a scheme can certainly be thought of. Because they belong to the Muslim minority, they ought to receive the benefits of housing schemes. In Myanmar they were treated very badly by the Government. In India too they have to live in congested areas without any water or sewerage system, and there is rampant spread of disease.

The Indian Government ought to pool human resource for the welfare of refugees. If some people are dedicated to work for it, and are paid for it, then surely we can find a way forward. The difference between Bangladeshi children and Rohingya children in India is that Bangladeshi children are to be repatriated whereas Rohingya children are to be restored within India. Thus

Rohingya children ought to be able to avail of the mechanisms are available for Indian children in India.

Other Speakers:

- **Advocate Syed Anish, Balurghat District Court**

Mr. Sayed Anish thanked SLIC for organising this workshop. He appealed to every participant that the issues related to the refugees i.e. detention, deportation/ push back, other fundamental rights, should be taken on the humanitarian grounds. Further informed that in some cases the children of Rohingya refugee wrongfully identify themselves as Bangladeshi and not as Mayanmari. That on the basis of wrong identification they are pushed back to the Bangladesh and that there is no trace of those children. Sometimes the middle man involved in trafficking push the children back to India through Bangladesh, but unfortunately they never meet their refugee parents.

He shared that incident where he personally used to provide clothes to these children in the correctional home but from the third time he was also not allowed to do the same. He raised one more concern that when they want to represent these people in court, they find that on FIR they are mentioned as Bangladeshi and not Myanmar. He further shared that this information confused us and that when Rohingyas doesn't have any relevant documents with them and look alike to Bangladeshi it is difficult to prove the case in court.

- **Advocate Mritunjay Das, Malda District Court**

He started with the historical aspect and the existence of refugees' pre- independence. Not only from the time of 1947 but from much earlier India is receiving number of refugee from different parts of the world. But only for last two-three years, people are getting to know about the Rohingya and other refugee because of the media and other sources.

The Rohingya Muslims belongs to Arakan State of Myanmar. They are facing atrocities and also they are vulnerable. He also highlighted the clash between the Buddhist and the minorities in Myanmar.

He shared that Malda District has an influx of Rohingya Muslims as the District is near the India-Bangladesh border and it is very porous. He further raised his concern and stated that the courts are not sensitized in Malda District about the rights of the refugee. In most of the cases Malda court treats the Rohingya refugee as the foreigners and passes adverse judgment.

- **Advocate Shibashis, Malda District Court**

Advocate Shibahis highlighted the issues faced by an advocate in trial with the Rohingya Refugees. It is most strange that we are celebrating 10th December as our Human Rights Day but situation of the Rohingya refugee is most vulnerable in our country.

In Dakshin Dinajpore trial under section 14 of the Foreigners Act, requires minimum 2 years and the cost of the trial is near about Rs.10000. Also in trial courts in Dakshin Dinajpore does not give any importance to the cases of refugee. Beside the border area people deposit their ID cards to the BSF to get entry in India later they get arrested and produced before BSF's court only, where they don't get justice.

There are lots of Indian refugee inside India only, we should also focus on their situation also. People who are living near the border area every time they are being tortured by the BSF and BDR. The BSF and BDR are not having any humanitarian feeling towards their own people, the expectation for the Rohingyas are the least.

That he also shared that due to monetary issues most of the cases of the refugees goes unrepresented and the lawyer appointed by the DLSA (District Legal Services Authorities), is just for name sake. Most of the lawyers does not have any knowledge on the Foreigners Act and they don't know how to represent the case of the refugees. They during trial tries to prove the refugees as the citizen by the forged documents.

Interactive session

The workshop saw a very healthy and interactive session with the participants. They were already aware about the presence of Rohingya population in Dakshin Dinajpore. Given the whole issue of refugees in general, some lawyers questioned why UNHCR is unable to provide proper assistance to refugees (Rohingyas) in terms of registration process. The lawyers mentioned that the existing Rohingya detainees were found without any documentation from UNHCR at the time of arrest. Hence, UNHCR should register all these people to avoid any legal implication in future. Some of them also highlighted that these poor people have to travel all the way to Delhi to get registered with UNHCR. Therefore, UNHCR should come out with mechanism to register them in West Bengal itself.

The participants were explained that SLIC and CHRI are present in West Bengal to conduct preliminary registration of Rohingyas, however, it is not possible to identify all asylum seekers as they sometime identify themselves as Bangladeshi in the Correctional Homes.

With regard to Legal Protection of refugees and asylum seekers in India, there was a lengthy discussion on the lack of municipal laws and the unfriendly provision of Foreigners Act to address refugee issue. Some lawyers opined that unless a legal framework on refugees is realised, addressing a legal issue of a refugee in India will continue to be a challenge. Further clarification was made on the International Conventions/treaties, Indian constitution provisions, case laws that are used as support materials for representing the refugees in the trial courts.

Session on Strategy/Drafting by Advocate Debapriya Mukherjee

The lawyers were further explained about the procedure to followed in the trail court. SLIC explained that once they identify the client to be from Myanmar and not registered, they should inform about SLIC or CHRI about such people. If the Rohingya has been registered as aylum seeker than we should initially move a bail petition to get them released and that they can approach

UNHCR to get themselves as mandate refugees. Once they are registered as mandate refugee the next step should be filing of discharge petition if the chargesheet has been filed by the police.

The Rohingya refugees who have completed the awarded sentence by the competent court for them the lawyers have to file the writ petition seeking the release of such people and also the prayer should be not to deport the petitioner.

Advocate Debapriya took a session explaining that how at different stages of trial strategy should be and also how to place the arguments before the court of law. Advocate also shared the arguments to made before the court of law and that how to legally differentiate the foreigners from the refugees. She also shared the writ for stopping the deportation with the participants, which they will be needing while drafting the petitions.

Some vital points required in filing writ petition before the court to challenge deportation were also shared by Advocate Debapriya which will essentially form the content of the petition such as the petitioner/refugee's case of fear of Persecution in the country of Origin, political situation of the country of Origin, whether he is a recognized as a mandate refugee by UNHCR, Lacuna in the Municipal Laws.

Identification of Lawyers for free legal aid

SLIC reiterated and explained to the participants that one of the objectives of the workshop was to identify pro-bono lawyers who could voluntarily extend legal aid to refugees as refugees (Rohingyas) cannot afford private lawyer's fees. It was explained that such workshops/training are conducted in other parts of the country in refugee's concentrated areas, whereby, the objective of seeking pro-bono lawyers remain the same, be it from State Legal Service Authority or otherwise.

The participants were very forthcoming and agreed to volunteer to provide free legal services to Rohingyas. The names of the advocates are as under:

1. Advocate Md. Kamruzzaman , Mednipore District Court (9733676155)
2. Advocate Rumki Sajdew, Balurghat District Court (9434963826)

3. Advocate Syed Anish, Balurghat District Court (7501016514)
4. Advocate Shafiqulla, Malda District Court (9800021629)
5. Advocate Siddhartha De, District court (9433800613)

The selected volunteer lawyers informed that they would provide legal assistance to Refugees in case of need. They also shared that they would work in coordination in group.

Conclusion

The workshop session witnessed enthusiastic atmosphere and positive response from the participants. They were several queries that were clarified by the resource persons. The workshop saw volunteers who came forward willing to support the refugees (Rohingyas) in providing legal assistance whenever required. Advocate specifically agreed to file petition at the Trial Courts in case of need. The volunteer suggested that they would work in consensus and in collaboration whenever a case is presented to them. This aspect of getting volunteers for free legal aid for refugees was a big achievement of the workshop. Given the population of about 200 Rohingyas detained at different Correctional Homes of West Bengal, SLIC was able to establish network of lawyers who could support legal services to refugees in the state. With these volunteers coming forward, the legal support for PoCs in Balurghat is established.

Advocates also agreed to file RTI to find out whether there are any other Rohingyas in detention in different districts of West Bengal apart from the existing ones.
