
Lawyers Training
on
Legal Protection for Asylum Seekers and Refugees in India

22nd November, 2015

Indian Institute of Public Administration, Jammu

Introduction

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 The outdated Foreigners Act poses a severe challenge to the rights of refugees in India as it does not distinguish between refugees fleeing persecution from illegal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.

There is a big concentration of Rohingya population in Jammu and in recent years there have instances of eight Rohingya asylum seekers being arrested and subjected to criminal proceedings under Foreigners Act. There is unawareness about the United Nations High Commissioner for Refugees (UNHCR) and its operation among the authorities and lawyers in Jammu. In these particular cases, the relatives of the detainees somehow managed to hire private lawyers who defended the cases. During the trail process, the detainees were allowed to have access to UNHCR office in Delhi for registration process and granted refugee status subsequently.

However, 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.

In this backdrop, a Lawyers Training was organized on 22 November 2015 at Jammu by Socio-Legal Information Centre (SLIC) with the assistance of UNHCR. The aim of the training were (a) to introduce UNHCR and 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 with specific reference to Jammu 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 training was also to promote information sharing, data collection, reporting, securing access to and monitoring places of detention issue in Jammu.

Lawyers from Jammu District and Session including High Court lawyers and HRLN Lawyers from Srinagar were present for the training. Apart from SLIC and UNHCR, DAJI also participated in the training. The total participants were eighteen.

Opening Remark by Mr. Ravi Hemadri, DAJI

The training started with an introductory and welcome note from Belover Hutten, SLIC and the opening remark was addressed by Mr. Ravi Hemadri, Director, Development and Justice Initiative. Mr. Ravi began his address by introducing Rohingya community and their population in Jammu. The reason of their persecution in their country and the circumstances in which, they fled to seek asylum and protection in India.

Mr. Ravi highlighted about the lack of legal framework on refugees in India and how Foreigners Act governs to address legal matters involving refugees and foreigners alike. In absence of legal mechanism for refugees in India, refugees suffer perennial duration of detention without any

hope for release. He highlighted about the detention issue of Rohingya in Jammu where despite being registered as refugees by UNHCR, they still continues to languish in jail.

Further Mr. Ravi, shared about the presence of other categories of refugees such as Tibetans, Srilankans, Chakmas etc. who are being recognized and assisted by the Government of India unlike the mandate refugees who are solely protected by UNHCR.

Session by Praveena Nair, UNHCR

Ms. Praveena Nair from UNHCR facilitated the next session. During the session, the participants were informed that UNCHR was created to deal with forces displacement in Europe in 1950 after the war. The 1967 Protocol widened the scope of UN agency. The main aim of UNHCR is to provide assistance to 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 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.

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.

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.

Ms. Nair explained in detailed about UNHCR operation, she 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. Further information was provided on internally displaced persons and the stateless.

Ms. Nair 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.

Session by Adv. Fazal Abdali, SLIC

Advocate Fazal Abdali presented on the Legal Protection for asylum seekers and refugees in India and its challenges. The applicable laws stipulated in the Indian Constitution and the administrative policies with regard to refugees including India's adherence to International treaties.

Advocate Fazal 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 Fazal Abdali 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 Fazal, 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 Fazal 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

Some vital points required in filing writ petition before the court to challenge deportation were also shared by Advocate Fazal 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

Session by DAJI (Ravi Hemadri)

Mr. Ravi Hemadri, Director of Development and Justice Initiative provided introductory summary of the Rohingya population in Jammu. As there were many queries during the presentation session of SLIC and UNHCR.

Mr. Ravi represented the economic condition of the Rohingya community, their access level to basic necessity to have a dignified existence such as safe drinking water, education, access to health care and hygiene and livelihood. He highlighted Rohingyas in Jammu are residing in very pitiable condition with no proper access to safe water, health care or livelihood options. DAJI as a partner of UNHCR struggles to secure admission procedure for Rohingya children in Government schools in Jammu as school authority is not forthcoming to admit them. Owing to their poor living condition, Rohingyas cannot afford medical expenses hence DAJI tries to

identify or build linkage with charity organizations for free medical services. According to Mr. Ravi, there are about 7000 Rohingyas in Jammu residing in 25 clusters in different parts of Jammu. Each cluster has plot leaders who maintain cluster status of the community residing in each plot. The leaders maintain proper documentation /record and detail list of the people staying in the plot. They are the ones who act as a spoke person or focal point of their respective plots and intervene at times of any untoward incident in matter related to police.

Mr. Ravi further shared about the existing detention cases in Jammu and how despite completing the sentences, the detainees still continue to languish in jail under J&K Public Safety Act.

Interactive session

The training saw a very healthy and interactive session with the participants. Some of them were already aware about the presence of Rohingya population in Jammu. Given the whole issue of refugees in general, some lawyers questioned why UNHCR is unable to provide proper assistance to refugees (Rohingyas in Jammu context) in terms of registration process. The lawyers mentioned that the existing Rohingya detainees in Jammu 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 Jammu itself.

The participants were explained that DAJI is present in Jammu to conduct preliminary registration of Rohingyas in Jammu, however, it is not possible to identify all asylum seekers as they sometime do not approach UNHCR or its partners' offices.

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 in writ petition to challenge in cases of deportation order.

Identification of Lawyers for free legal aid

SLIC and UNHCR reiterated and explained to the participants that one of the objectives of the training was to identify pro-bono lawyers who could voluntarily extend legal aid to refugees in Jammu as refugees (Rohingyas) cannot afford private lawyer's fees. It was explained that such trainings 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 in Jammu. The names of the advocates are as under:

1. Advocate Nadia Qadeer Naikoo, HC, Jammu (7298959468)
2. Advocate Shahla Rafiqi, HC , Jammu (9796447359)
3. Advocate Mohammad Irfan Khan , HC, Jammu (9419247099)
4. Advocate Manik Gupta, HC, Jammu (9858931235)
5. Advocate Kabla Singh, District court and HC, Jammu (9469239103)
6. Advocate Ajay Singh Manhas, District court and HC, Jammu (9419225338)

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. When it came to filing an RTI to find out for any other detention case in Jammu, Advocate Mohd. Shafiq Ahmed Wani agreed to volunteer the task and Mamta Thappa from DAJI also showed her interest.

Post Lunch Meeting

After the training session, SLIC with UNHCR and DAJI, met Advocate Shafiq Wani to discuss on the existing detention cases and way forward and plan of action for further intervention in the cases. During the meeting, Adv. Shafiq Wani reported of an arrest one Rohingya named Musid Ullah, FIR no. 97/2013. This case was handed over to him by a legal aid lawyer. The matter was transferred from Railway Magistrate to Session Court in July 2015 and the next dates of hearing are on 28th and 30th of November 2015.

Regarding the earlier cases, Adv. Shafiq Wani informed that since the PSA was imposed on the detainees, the family members or relatives were not allowed to meet the detainees. There is no separate shelter home available (for refugees) hence, they are kept in general jails like other prisoners. On the way forward of the cases, Adv. Shafiq Wani suggested that UNHCR should write a letter to Chief Principal Secretary, Home Department for possible intervention.

Conclusion

The training session witnessed enthusiastic atmosphere and positive response from the participants. They were several queries that were clarified by the resource persons. The training saw volunteers who came forward willing to support the refugees (Rohingyas) in providing legal assistance whenever required. Advocate Manik Gupta specifically agreed to file petition at the High Court of Jammu 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 in Jammu was a big achievement of the training. Given the population of about 7000 Rohingyas in Jammu, SLIC was till now unable 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 Jammu is established.

Advocate Shafiq Wani also agreed to file RTI to find out whether there are any other Rohingyas in detention in Jammu apart from the existing ones.

The training also had a negative aspect in the sense that SLIC did not receive positive response from the President, Bar Association, Jammu who assured his presence to give the Opening Remark and mobilize the Bar lawyers for the training. The last minute changes in his plan

(demise of close family member) resulted to low attendance of lawyers in the training. However, overall, the training was healthy and interactive which met the objective of the training and produced six new lawyers who agreed to assist refugees in legal matters for free in Jammu.
