

Persecution to Protection? Analyzing the Scope of International Refugee Laws in the Rohingya Refugee Crisis within Indian Borders

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Due to the high levels of violence and ethnic disparity in Myanmar, the Rohingya Muslims native to the region are under the threat of genocide. My argument is that Indian domestic institutions lack the framework and policies to safeguard the rights of Rohingya refugees seeking asylum in India. Additionally, the Supreme Court of India is proving to be extremely inactive in trying to save these refugees from the persecution that is rampant in their nation. This research highlights the pressing concerns around the interpretations and implementations of principles emphasized in international human rights conventions, like the principle of non-refoulement, and the apparent inaction of the Supreme Court to address the humanitarian crisis faced by the Rohingya community. This paper analyses the response of Indian institutions towards international obligations for these displaced individuals and assesses the extent of adherence to international commitments aimed at safeguarding refugee rights.

Introduction

The rights in place for refugees are of critical importance in ensuring their well-being and protection. Currently, the Rohingya refugee crisis is one that is concerning officials from all over the world, with more than 1.1 million people having fled Myanmar¹, and India particularly is seeing an influx of refugees in certain areas of the state, hosting thousands of Rohingya refugees. However, there is a haze of ambiguity when it comes to the extent of public knowledge regarding the implementation of international commitments made by the Indian government, established with international bodies like the United Nations, to domesticate laws regarding the protection of Refugees. While we have some understanding of the existing international commitments and the challenges faced by refugees, there remains a significant gap in the literature regarding how these commitments have been translated into domestic law. This research aims to address this gap and shed light on the implementation of refugee rights for Rohingya Muslims seeking refuge in India.

The central research question guiding this paper is: To what extent has the Supreme Court of India implemented and adhered to principles of international human rights for refugees, and how has their actions affected the treatment of Rohingya refugees in India? This question will be addressed through an analysis of how primary governmental institutions both internationally and domestically interact surrounding the deportation of Rohingya refugees back to Myanmar. The arguments in this paper are mostly based on the intersection between the apparent inaction of the Indian Supreme Court and governmental institutions in providing a safe habitat for this particular group of refugees, which is not in accordance with international regimes.

There are two main points as to why this research is important, both at the theoretical and empirical level. Empirically, it can be inferred the fact that India is not a signatory to international refugee conventions has resulted in an unfair treatment of Rohingya refugees, who are a Muslim minority. Critics of the government's policies argue that deportation of Rohingya refugees violates fundamental rights prescribed in the Indian Constitution, including those to Equality, Liberty, and Life. Moreover, the Indian judiciary has been criticized for its piecemeal and humanitarian approach to refugee claims, which some argue fails to make true advancements in jurisprudence. Theoretically, very few authors have written about the treatment of Rohingya refugees by the Indian government. In Indian scholarship, I found an extremely small number of articles that talk about international refugee obligations that the government is not implementing in its Constitutional policies, despite the government having faced international condemnation for its actions.

I collected data on the Supreme Court case of Mohammad Salimullah, through which I analyzed the actions of the Supreme Court of India towards Rohingya refugees, as well as international responses of the Human Rights Watch and the United Nations to deepen my study of how the inactivity of the Supreme Court has affected these refugees. The unique circumstances of the Rohingya crisis and the specific legal arguments made in this case make it difficult to find directly comparable cases, however I have included an analysis on the international guidelines for treatment of refugees as outlined by international human rights organizations, which is done in the first section of this paper. The first section also includes India's engagement and adherence to these international conventions. The second section of the paper analyses the Indian government's actions through

the case of Mohammad Salimullah, illustrating how the lack of legal frameworks for refugees in India has made them vulnerable to human rights violations. The research findings have the potential to broaden our understanding of the interpretation of refugee laws by Indian government, and whether the variation between interpretation and original law is adversely affecting asylum-seekers coming to India.

Understanding Refugee Rights and International Commitments

Understanding Refugee Rights

As prescribed by the United Nations, refugees are people who have fled war, violence, conflict, or persecution and have crossed an international border to find safety in another country². The 1951 United Nations Convention Relating to the Status of Refugees define a refugee as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, member of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution³.” While this definition has been used by multiple international organizations including the United Nations, inconsistencies arise in every-day language and media stories. For example, people migrating for economic reasons are economic migrants, not refugees, and persecuted groups who remain within their own country and don’t cross an international border are internally displaced persons, not refugees⁴.

The displacement of people from countries all around the world and the growing global issue of refugees is one of the most complex and multifaceted challenges faced by the international community today. The United Nations is actively involved in prompting discussions on various approaches to combat the issue of the growing number of internally displaced people. On a global scale, however, different actors have different perspectives – some advocate for increased cooperation and coordination among relief agencies, while others emphasize the need for stronger international legislation to address gaps in protection of displaced people.

But before discussing the facets and conventions in place for the protection of refugee rights, it is important to address the question of what refugee rights in the first place are, and how the concept of refugee rights is given importance internationally.

The United Nations High Commissioner for Refugees (UNHCR) defines the term ‘protection’ as all “activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law⁵.” To understand this term in a broader sense of the definition, it is protection that covers any and all activities or

projects for the betterment of refugees, implemented by different agents (states, international organizations, or non-governmental organizations) working with refugees. This includes the legal protection, like the provision and documentation of refugee citizenship documents, as well as more general and menial tasks of casework and recreational activities.

At the international level, the primary responsibility for the safeguarding of refugees lies with the authorities of respective states. International organizations like the United Nations play a role in verifying the compliance of states with International Conventions. However, in situations where a state or its government is unwilling or incapable of ensuring protection of its own citizens or external persons entering into its territory, those affected have the right to seek asylum in another country. This principle is explicitly stated in the 1951 Geneva Convention, which clearly defines the criteria for recognizing individuals as refugees and highlights their right to seek refuge and protection elsewhere when necessitated by the environment surrounding them⁶. The UNHCR emphasizes on the vulnerability of refugees and the volatility of their situation, claiming that if other countries do not offer them protection and security that their own country was unable to, “they may be condemned to an intolerable situation where their basic rights, security and even their lives are in danger⁷.”

The Rohingya refugee crisis in India is a multifaceted issue. India has not ratified the 1951 Refugee Convention or its 1967 Protocol, pivotal legal instruments that delineate the rights of refugees and the corresponding legal responsibilities of states. Consequently, India is not legally bound by the principles articulated in these conventions. Nonetheless, arguments have been made asserting that India is morally obligated to uphold its commitments and provide protection to the Rohingya community under international human rights law.

India has a history of hosting diverse refugee groups for many years and has successfully addressed the needs of numerous forcibly displaced individuals. As of January 31, 2022, UNHCR India has registered more than 46,000 refugees and asylum-seekers, primarily from Myanmar and Afghanistan, with these individuals predominantly residing in urban areas alongside local communities⁵.

Despite this, the treatment of Rohingya refugees in India has faced criticism. Advocacy organizations have condemned India for its efforts to repatriate Rohingya refugees rather than granting them asylum. The Indian government’s approach to Myanmar’s Rohingya Muslim minority is contrasted with its financial support for over 20,000 Chin refugees from Myanmar who sought refuge in Mizoram following the 2021 military coup, reflecting a perceived inconsistency in the treatment of refugees driven by political considerations.

International Commitments and Conventions

The 1951 Refugee Convention and the 1967 Protocol are the two forerunners of the international legal framework for refugee protection on an international platform, especially because they clearly establish the main principles of refugee protection – including the Principle of Non-Refoulement and Non-discrimination.

The Principle of Non-Refoulement is defined as a principle under international human rights law that “guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm⁸. The Principle of Non-discrimination is defined as people in “comparable situations should not be treated less favorably simply because of a particular characteristic such as their sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation⁹.

The Refugee Convention, more formally known as the United Nations Convention Relating to the Status of Refugees, is the primary legal document relating solely to refugee protection and rights. The document contains official definitions of refugees and outlines detailed rights of refugees, as well as legal obligations of states towards refugees and people seeking asylum, which will be expanded upon in later areas of this paper. The Refugee Convention was adopted by the UN in 1951 but became legally binding in 1954. Unlike the Universal Declaration of Human Rights, which is a type of “soft law” document¹⁰, the Refugee Convention is a legally binding treaty. This means that signatories of the treaty are legally obligated to protect refugees and ensure they are not returned to a situation where their life or freedom is at risk (non-refoulement).

Both the Refugee Convention as well as the 1967 Protocol emphasize the principle of non-refoulement. This principle has been described as “the central feature of international refugee law, obligating nations to willingly suspend their sovereignty and offer protection to people with no other claim to be present in their territory¹¹.” The Office of the High Commissioner for Human Rights (OHCHR) states that, “Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman, or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status¹².” The principle of non-refoulement is a fundamental block of the international conventions on refugees. In the Refugee Convention, under Article 33, it states that refugees cannot be sent to a place where they may be persecuted. The OHCHR placing the principle of non-refoulement under international human rights law is extremely significant, making it officially part of our human rights, which are “the basic rights and freedoms that belong to every person in the world, from birth until death¹³.” This principle has now become applicable to any place where a person may suffer

torture or other cruel, inhuman, or degrading treatment. It is now considered to apply even to countries which have not signed the Refugee Convention. It has also been explicitly specified in the convention that countries cannot send refugees overseas, or ‘expel’ them from the country’s sovereign territory, except if they pose a risk to national security or public order. This principle of non-refoulement has become an explicitly mentioned detail for human rights treaties and conventions by the OHCHR and other international organizations. In the OHCHR, the principle of non-refoulement is mentioned in Article 3 in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴, and in Article 7 and 13 in the UN International Covenant on Civil and Political Rights¹⁵. Other than UN organizations, emphasis on the principle of non-refoulement has been placed in Article 3 of the European Convention of Human Rights (ECHR)¹⁶. The principle of non-refoulement is extremely important in terms of refugee rights due to the fact that despite not being signatories of the Refugee Convention or the 1967 Protocol, all states recognize and accept the principle of non-refoulement under international law.

The 1951 Refugee Convention and the 1967 Protocol are the frontrunners for the international legal framework for refugee protection. The establishment of essential human rights clauses, these treaties emphasize the necessity of global commitment to safeguarding the rights and protection of refugees on an international scale. With the fundamental principles and objectives falling under international human rights law, the applications of the ideals presented in these treaties expand beyond signatories, ensuring that all states acknowledge the importance of protecting individuals from torture, cruel, inhuman, or degrading treatment.

India’s Engagement with International Conventions on Refugee Rights

India is not a signatory to the 1951 Refugee Convention or the 1967 Protocol. The legal framework of India does not officially include national refugee protection laws or guidelines, and by not being party to either treaty mentioned above, India is legally not obligated to do so. The response of India to refugees is mainly dependent on the Government of India and their decisions on specific cases¹⁷. Despite this, India grants asylum to a large number of refugees, primarily from Afghanistan and Myanmar¹⁸. By January 2022, more than 46,000 UNHCR registered refugees are stationed in India from these two countries¹⁹. By the end of 2022, India hosted approximately 405,000 refugees, of which around 213,578 refugees were officially recognized by the Government of India and housed in various camps²⁰. The Government of India does have legal framework for fundamental human rights as per the Protection of Human Rights Act (1993).

As per this act, the Indian Constitution defines human rights

as “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India²¹.” India explicitly abides by the principle of non-refoulement and brings in refugee protection under Article 21 of the Constitution²². India respects the principle of non-refoulement for holders of UNHCR documentation, according to UNHCR reports¹⁸.

From 2012 to 2017, there has been a steady increase of the number of Rohingya refugees entering India due to the escalating violence and persecution in Myanmar’s Rakhine state. The Rohingya minority faced brutal human rights abuses which forced them to seek asylum in different states. Due to India’s close proximity and internationally perceived stability, people from this community saw it as the best option for refuge. For these asylum-seekers, India was a safer and cheaper choice as compared to countries like Malaysia, despite not being a signatory for refugee conventions or having legitimate legal frameworks for refugee rights. The primary concern for Rohingya refugees travelling to India, especially in terms of protection, was the risk of being detained for illegal entry to the country²³.

Due to the absence of national legal and administrative framework for refugee rights and the large number of stateless people the country hosts, the UNHCR based in New Delhi conducts Refugee Status Determinations (RSDs) for asylum-seekers from Myanmar and non-neighboring countries. The UNHCR also has presence in other areas of India, especially in the south in Chennai and Tamil Nadu, to support the voluntary repatriation of Sri Lankan refugees.

As for the protection of human rights in the constitution, India has taken several legal measures to ensure the implementation and provision of fundamental human rights, including the Protection of Human Rights Act (1993) and the National Human Rights Commission (NHRC) established under this act. “Article 14, 20 and 21 of the Constitution extend rights to all persons, including refugees and asylum seekers. But their permit to stay in the country cannot be extended forever without them acquiring citizenship, as also observed by the Supreme Court.” The NHRC embodies the Paris Principles and advocates for the encouragement and safeguarding of Human Rights which influences policy making in national institutions. The NHRC is invested with certain capabilities and powers, such as “the power of a civil court while dealing with a case under the Code of Civil Procedure, 1908; the power to furnish information about any claimed privilege of the person under the law; the power to investigate and inquire or seize any relevant documents with reason; and the power to take suo moto cognizance in matters related to the violation of human rights²⁴.”

In January 2022, the NHRC called for national legal frameworks to end the ambiguity surrounding the documentation and rights for refugees and asylum seekers in the country. The panel concluded that a national law is essential to “ensure uniformity and legal sanctity in the protection of human rights” for refugees

across the country. Justice Arun Kumar, the chairperson of the NHRC argued that. For the avoidance of unnecessary litigation, Justice Kumar emphasized on the legislature needing to be impressed upon, and that an enactment of a national law for refugees was vital. The Deputy Chief Mission at UNHCR, Kavita Belani, defined refugees as victims of human rights violations. She noted India’s support for refugees being in line with global commitments but concluded with how these changes needed formalization in structured policy to form a national response and gain legitimate appreciation by international communities. Moreover, a structured policy with the implementation of clear laws for refugee rights would make it easier for asylum seekers to get access to their rights and potentially gain legal citizenship²⁵.

This need for refugee rights, and the requests filtering in from governmental institutions like the NHRC, are based on the fact that legislative gaps in refugee laws in India mean that asylum seekers in India can be subject to arbitrary treatment. This can include protection or even imprisonment and deportation, determined by political whim since India governs refugees as per domestic laws, which conflate two distinct categories with two distinct sets of rights. The arbitrary treatment concerns are legitimate, and stem from past policy and decisions made by the Government of India.

India has offered protection to Tamil refugees coming in from Tiber and Sri Lanka, while not extending these advances to the Rohingya refugees. Moreover, the government has issued Legal Registration Certificates to Tibetan refugees coming in from China, safeguarding them with de-facto residence, even including work permits. The state of Tamil Nadu issued relief packages for Sri Lankan refugees. But the support and protection offered to refugees is not uniform, and often is inconsistent. Specific examples include three Sri Lankan “economic” refugees who were imprisoned in Chennai under various sections of the Passport Act and Foreigners Act²⁶. Additionally, Rohingya Muslim refugees are being detained in large numbers in Jammu, some even having been deported or fleeing to Bangladesh, after being labelled as “illegal immigrants and security threats.” The Indian Constitution does not explicitly mention the rights of refugees, but it extends certain fundamental rights to all persons, including refugees. These include the Right to Equality under Article 14, and the Right to Life and Personal Liberty under Article 21. The Supreme Court of India has consistently held that these rights apply to all, irrespective of whether they are citizens of India or aliens. The Supreme Court plays a crucial role in interpreting these rights, particularly in relation to refugees. It has been noted that the Court has applied its progressive interpretation of dignity, particularly in relation to the fundamental right to life under Article 21 of the Constitution, to refugees as a marginalized community. This interpretation of dignity has played a pivotal role in the Court’s human rights decisions and is essential in recognizing the constitutional rights of refugees

in India.

However, the political landscape can significantly influence the implementation of refugee rights. The Bharatiya Janata Party (BJP), currently in power, has been criticized for its stance on refugee issues. Critics argue that the BJP government's approach to refugee policy has allowed it to selectively admit asylum-seekers, which some suspect is politically motivated. For instance, the government has been accused of treating Myanmar's Rohingya Muslim minority as "untouchables" while providing support to over 20,000 Chin refugees from Myanmar.

Inconsistencies in policies and actions can also be noted during the rise of the Taliban in Afghanistan, when India introduced emergency electronic visas for Afghan nationals to enter the country and seek refuge. In late 2021, over 60,000 Afghan refugees had submitted applications for the e-visa, however only 200 visas were granted. However, after an attack on Gurudwara Karte Parwan in Kabul which was attributed to Islamic State, the Indian government granted the same electronic visas to over 100 Sikh and Hindi refugees coming in from Afghanistan. The differential treatment in the permits issued for refugees and foreign nationals to gain asylum into the country has raised concerns over India's asylum policies, claiming them to be extremely selective and based on geopolitics and religion. These concerns have risen from existing arguments over the widely criticized Citizenship Amendment Act, which offers citizenship to people fleeing persecution in neighboring states, but is only applicable to Hindus, Buddhists, Parsis, Sikhs, Jains, and Christians, notably excluding Muslims²⁷. Despite this Act, it goes beyond the scope of this paper to analyze the broader political conjectures that explain differential treatment of refugees by the Indian government, which could be attributed to the social landscape of the state. However, the Act passed by the Indian government already sheds light on the societal disparities in the state, providing evidence for the treatment of refugees that can be termed as discriminatory. For instance, Muslim refugees will now be impacted not only by expulsion (ref to case) but also by the impossibility of claiming citizenship, which is now proclaimed in the new Citizenship Act. Thus, the Act leaves out huge refugee groups from South Asia, including most Afghan refugees and Rohingya refugees on the whole²⁸.

India's involvement in international conventions, as well as its proactiveness and simultaneous criticisms, on refugee rights highlights the complexities in legal frameworks and political policies, India hosts a huge portion of refugees and adheres to certain principles pertaining to refugee protection, choosing to operate based on domestic necessities, which does pose as a challenge for asylum-seekers to find safety and security in India. The call for national laws and structured policies reflects the growing recognition of the need for a more uniform and coherent approach to safeguarding the rights of refugees and asylum-seekers within the country. Addressing the legislative gaps and adopting more inclusive asylum policies are essential

in ensuring the protection of those seeking refuge in the country.

Discussion

The Indian Supreme Court and the Rohingya Refugees

In India, the absence of specific legislation addressing refugee matters has indeed created a legislative gap, leaving many issues regarding refugees unaddressed. This legislative void is particularly pronounced due to India's non-ratification of the International Convention on Refugees. An analysis of the cases from the Indian Supreme Court highlights the prominent challenges faced by Rohingya refugees in India. These cases bring forward legal battles that have been brought to the Supreme Court due to the absence of a comprehensive legal framework for refugee rights in the country. The Supreme Court's actions and policies have had significant implications for the protection and rights of Rohingya refugees in the country and determine the conditions for future asylum-seekers as well. The analysis of the case of Mohammad Salimullah²⁹ is a good example to demonstrate patterns of inaction and inconsistency in addressing the crisis, allowing for a closer examination as to how India, and particularly the Supreme Court, examines the extent of adherence to international commitments and the patterns of inaction and inconsistency in addressing the crisis. This case involves domestic actors including Mohammad Salimullah, his lawyer Prashant Bhushan, the Indian Supreme court, as well as international actors like the Human Rights Watch.

The case stems from the Supreme Court's refusal to stop the deportation to Myanmar of nearly 200 Rohingya refugees who are currently detained in Jammu, the Indian-administered region in Kashmir. "Possibly that is the fear that if they go back to Myanmar, they will be slaughtered. But we cannot control all that," claimed the Supreme Court³⁰. Following this claim, the Supreme Court has been involved in several significant decisions that have influenced the treatment and safety of Rohingya refugees. One significant decision by the Supreme Court of India concerning the treatment and safety of Rohingya refugees occurred in August 2021. The court ordered the central government not to deport Rohingya refugees detained in Jammu and directed the authorities to provide them with basic amenities such as food, clothing, and medical care. This decision came after reports surfaced of Rohingya refugees being detained and facing the threat of deportation to Myanmar, where they could potentially face persecution and violence.

The Supreme Court's intervention in this case highlighted the importance of protecting the rights of refugees and ensuring their safety, particularly in situations where they face the risk of harm if forcibly returned to their home countries. This decision underscored the judiciary's role in upholding constitutional principles and international human rights norms, even in the absence of specific legislation addressing refugee issues in India.

This incident followed the Supreme Court's decision to detain and deport nearly 160 Rohingya refugees in March 2021 raised concerns about the protection and fundamental human rights of the individuals.

The Court argued its decision was in context with the Indian government's claim that Rohingya refugees posed a "threat to internal security of the country"³¹ as it declined petitions to release the Rohingya refugees who were detained in Jammu. Despite the United Nations having confirmed that the 2017 military crackdown in Buddhist-majority Myanmar is carried out with "genocidal intent," refugees that had been living in various camps and slums of Jammu for over three years were summoned or picked up by police raids and taken to a jail in Hiranagar, which was termed to be a "holding center."

Indian authorities stood firm with their claim of Rohingya refugees being "illegal immigrants," since most of them were undocumented, and started proceedings to deport them to Myanmar. This was in contrast to India's response during the initial influx of Afghan refugees, post the withdrawal of the U.S. from Afghanistan. India launched the concept of electronic emergency visas in 2021 for Afghan nationals seeking refugees in India, receiving 60,000 applications from Afghan refugees. The visas would be processed after security clearance was completed. However, in the Rohingya refugee crisis, refugees stood for hours outside UNHCR headquarters in Delhi to try and renew refugee cards, which ultimately put them in greater danger.

This case prominently highlights how the lack of formal legal status for refugees in Indian territory are susceptible to arbitrary detention and deportation. Following this incident, hundreds of Rohingya refugees camped outside the UNHCR headquarters in New Delhi to renew their refugee cards, since they were still being considered undocumented by Indian authorities. However, all the refugees camped outside the UN body's headquarters were subsequently detained in the holding areas in Jammu, which has been described as a "jail-type facility for refugees"³².

Following the Indian government's actions, the Human Rights Watch issued a statement, claiming that "the Indian government should halt any plans to deport ethnic Rohingya and others to Myanmar" because they would be at high risk from oppressive and violent military forces in the country³³. In a UN Press release, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance E. Tendayi Achiume, said that "The Indian Government has an international legal obligation to fully acknowledge the institutionalized discrimination, persecution, hate and gross human rights violations these people have faced in their country of origin and provide them the necessary protection"³⁴. The report continues to state that prolonged detention is prohibited and could fall under inhuman and degrading treatment.

The Myanmar military junta has overthrown the democratically elected government and are using security forces with excessive and violent tactics against peaceful protestors. The

junta has killed over 50 people and continues to make arbitrary arrests, detentions, and enforced disappearances. Additionally, the junta has amended laws to strop basic rights and enforced politically motivated prosecutions. The South Asia director of the Human Rights Watch, Meenakshi Ganguly, said that Myanmar's military has spiraled into an area of extreme lawlessness and violence, and that the "Indian government should uphold its international law obligations and protect those in need of refuge within its borders"³³. The Indian government's approach to handling the situation as well as the Supreme Court's interpretations of international laws, specifically the principle of non-refoulement, have been heavily criticized by international organizations such as the UN, the Human Rights Watch, and the ICJ, as well as various advocacy groups.

The actual case that was brought to the Indian Supreme Court was from Rohingya refugee Mohammad Salimulla, with the help of the esteemed lawyer Prashant Bhushan. After the crackdown by local police forces in India, and the new policies of deportation, Mohammad Salimullah filed a petition in the Supreme Court for the government to stop the deportation of the detained refugees in Jammu and release them. However, during the hearings, the solicitor general of India Tushar Mehta stood by the Indian government's claims of Rohingya Muslims being a threat to national sovereignty, and that once their nationality was confirmed they would be deported back to their home country. The argument presented by the Indian government and the solicitor general are outrageous for several reasons. There has been no clear justification for why the Rohingya refugees have been deemed a national threat to security, which lends masses to believe that this label is solely based on ethnicity or religion as a threat to national sovereignty, which is neglecting the complexities of the circumstance of this community. Decisions regarding the status of asylum seekers should be based on the consideration of factors including persecution, violence, and human rights violations in their home state. Deporting individuals to potentially perilous situations go against the essence of non-refoulement principles, which prohibit returning individuals to environments where they could face severe harm.

Salimullah and Bhushan's case was based on the order passed by the International Court of Justice (ICJ), that stated that Myanmar was subjecting the Rohingya Muslims to genocidal threats. The ICJ has unanimously adopted "provisional measures" that are set in place to prevent the genocide in Myanmar and to take steps to preserve evidence for future trials³⁵. The associate international justice director at Human Rights Watch, Param-Preet Singh, issued a statement claiming that "concerned governments and UN bodies should now weigh in to ensure that the order [to stop further atrocities against one of the world's most persecuted people] is enforced as the genocide case moves forward"³⁶. Additionally, the International Independent Fact-Finding Mission on Myanmar, supported by the United Nations, confirmed that the Rohingya refugees remaining in Myanmar "may face a

greater threat of genocide than ever³⁷.” Despite presenting these arguments in the Indian Supreme Court, the government’s council claimed that India cannot be a capital for these refugees³⁸.

Despite the writ petitions submitted by Mohammad Salimulla, and the international criticism received by India’s Supreme Court from various international organizations, the legal framework necessary to ensure the safety of incoming and existing asylum seekers is still lacking.

Furthermore, the analysis of the case of Mohammad Salimullah, amidst these challenges, provides a clear example of inaction and inconsistency in addressing the refugee crisis. Notably, this case intersects with another significant concern – the Citizenship Amendment Act of 2019. This legislation, while claiming to offer refuge to persecuted religious minorities from neighboring countries, excluded Muslims from its scope. The exclusion of Muslims in this Act has drawn widespread criticism, both domestically and internationally, for contravening the principles of non-discrimination and equal protection under the law.

The ‘Mohammad Salimullah v. Union of India’ case becomes even more pertinent within this context. This case underscores India’s engagement with international conventions on refugee rights while raising questions about its treatment of Rohingya refugees in light of its own domestic policies. By excluding Muslims from the ambit of protection under the Citizenship Amendment Act, India’s stance appears contradictory and challenges the principles of non-discrimination upheld in international human rights norms. This aspect of Indian policy further complicates the already intricate refugee rights landscape and underscores the urgency for a comprehensive legal framework for refugee protection that aligns with both international standards and India’s own commitment to human rights.

There are very few cases from before the Indian Supreme Court, and it is yet too soon to predict if this specific decision on the expulsion of the Rohingya refugees is going to have a broader impact in future court cases. Court cases may lead to policy change and alter the course of legislation. The Supreme Court’s decision in this case will have far-reaching consequences for the protection and rights of Rohingya and other ethnic minority refugees in India, as well as the cooperation of liberal international organizations and advocacy groups with India in the future. This case clearly demonstrates the pressing need for India to develop a comprehensive and all-inclusive legal framework for refugee protection that aligns with international human rights norms and is respected and adhered to by the Indian governing institutions.

Methods

This paper is based on the analysis of the Rohingya Refugees internationally and domestically. At an international level, I analyzed the UN Periodic Review Report, Reports for the UNHCR

on India, Human Rights Watch Press Releases, news articles released by the UN, and websites from International Courts.

At a domestic level, I searched for domestic cases brought forward before the Indian Supreme Court (directly from the Indian Supreme Court’s database)³⁹, and focused on analyzing the context and case of the ‘*Mohammad Salimullah Vs. The Supreme Court*’ Case. I also analyzed the Citizenship (Amendment) Bill, 2019, and reports released by the National Human Rights Commission of India (NHRC).

Results

In terms of domestic actors, specifically actors in the Indian government – such as the solicitor general of India Tushar Mehta – and the Supreme court of India, this research aimed to address the extent to which these domestic institutions adhere to international human rights conventions through the case study of the Rohingya refugee crisis. Through the findings presented in this paper, it can be argued that the treatment towards this particular sect of refugees violates their fundamental human rights, forcing them back to dangerous circumstances while Indian institutions do not intervene or act. In terms of policy making, there are two ways in which Indian institutions may deal with the non-refoulement of Rohingya refugees. The first and more urgent one would be for India to ratify the 1951 Refugee Convention. In that way, the Supreme Court would not have to deal with legal doctrines such as legal dualism and legal monism, giving space for the Convention to be fully accepted in domestic legal realm. The second policy avenue could be for the Supreme Court to take the lead and provide decisions that would oppose the Salimullah case, which is a recommendation that other legal scholars and practitioners – such as Katrak and Kulkarni – also recommend.

This research reaffirms the notion that Indian institutions should consider ratifying the 1951 UN Refugee Convention through legislative acts that would incorporate this international convention to the domestic legal system. The Supreme Court in particular, should take an active role in comprehensively reinterpreting Article 21 of the Indian Constitution, in light of the 1951 UN Refugee Convention. This would allow the constitution to make sure that the protection of refugees and their fundamental rights are in line with international norms. Through this a significant precedent would be set for recognizing the rights of all refugees within the framework of Indian domestic law. The Supreme Court should use its judicial activism to challenge aspects of the Citizenship Bills that disproportionately impact Muslim refugees. The Court could address discriminatory articles that are contradictory with principles of equality mentioned in the Indian Constitution.

The Indian government and the Supreme Court are actively refraining from taking action to stop deportation proceedings. This paper highlights the paradox between India’s non-signatory

status to international conventions and the scrutiny it receives from international organizations for not upholding certain expected standards of refugee protection, and underscores this with the lack of action from domestic institutions. The combination between the analysis of international convention and consequent reactions from domestic institutions and actors, the discriminatory and insufficient attitude towards the treatment of this particular sect of refugees is clearly demonstrated.

Internationally, the findings underscore a paradox between India's non-signatory status to international conventions and the criticisms it faces from global organizations like the Human Rights Watch, the ICJ, and the UN itself for falling short of expected standards of refugee protection. The international perspective from different actors illuminates this contradiction between India's stance as a non-signatory state and the expectations of states to uphold certain standard for the protection of human rights.

Domestic actors and institutions can no longer avoid or ignore the urgency of the Rohingya Refugee Crisis due to the alarming number of displaced people from this community that continue to rise. The findings of this research highlight the pressing need for India to develop a comprehensive legal framework that aligns with international human rights norms and guarantees the protection and rights of all refugees, including the thousands of Rohingya refugees seeking safe asylum in the country. The importance of these findings stems from the fact that the Rohingya community today faces some of the highest human rights violations and seeks international aid and safe harbor. The complexities of regulations set forth by the Indian government and international bodies for refugee rights are not embodying the basic principles of refugee rights and human rights doctrines. The treatment and inefficiency of Indian governmental institutions towards Rohingya refugees highlights secular concerns by raising inconsistencies and discriminatory language particularly towards Muslim communities in Article 21 of the Constitution, thus questioning India's status as a democratic and humanitarian nation.

In conclusion, through this research paper the discrepancies in international expectations and obligations and the reality of Indian framework and policy implementation shows that the current domestic laws for refugees are insufficient. The importance of these findings stems from the fact that the Rohingya community today faces some of the most grotesque human rights violations and seeks international aid and safe harbor. The complexities of regulations set forth by the Indian government and international bodies for refugee rights are not embodying the basic principles of refugee rights and human rights doctrines. The treatment and inefficiency of Indian governmental institutions towards Rohingya refugees highlights secular concerns for future asylum-seekers as well, and questions India's status as a democratic and humanitarian nation. The findings of this research highlight the pressing need for India to develop a

comprehensive legal framework that aligns with international human rights norms and guarantees the protection and rights of all refugees, including the thousands of Rohingya refugees seeking safe asylum in the country.

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