

Migrants, Refugees and the Stateless in India

Deploying Citizenship to Redefine the Secular State

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Introduction

South Asia's amalgam of political, ethnic and religious dynamics have caused several streams of cross-border movement of people over the ages. In a region where an oppressed minority community in one country might often be the oppressing majority in another, South Asians of many faiths and ethnicities have often sought shelter in the relatively safer shores of their neighbouring countries, resulting in a bevy of displacements. The template for this was the great Partition of 1947, creating the independent nation-states of India and Pakistan. This was accompanied by a mass (and in Punjab and the rest of the western borders, state-enforced) exchange of populations across the divided borders—Muslim minorities from India to Pakistan, and Hindu and Sikh minorities from Pakistan into India—although this was by no means an exhaustive exchange. Since Partition, in India, Pakistan and now Bangladesh, and across the rest of South Asia, cross-border displacements have continued, with a recent count putting the figure at 50 million refugees in the region.¹

By virtue of its geographic spread, its promise of economic opportunity, a diverse population and, compared to the rest of the region, an inclusive and stable polity, India has attracted a large number of refugees and migrants from different faiths and backgrounds over the years. But lately, majoritarian advances in India are influencing its stance on letting them in by welcoming

¹ Partha S. Ghosh, *Migrants, Refugees and the Stateless in South Asia* (New Delhi: SAGE Publications, 2016), 1-2.

those from the majority faith, while closing its doors to minorities. In parallel, there is a systematic effort to make foreigners of sections of Indian citizens, primarily Muslims, rendering them refugees in their own land. The spectre of mass statelessness in India's Assam, and potentially other parts of India, of an unprecedented magnitude, seems an actual possibility with every passing day.

This chapter deals with refugees, migrants and the stateless in India, to identify who the refugees and migrants are; what the circumstances of their displacement (or disenfranchisement) were; the consequences their displacement has had on their lives—their lived experiences of deprivation and violence—and finally, the nature of state actions, creating the conditions for the victims. Section 2 of this chapter dwells on the scope of the study, its methodology, and the process of data collection. We then report findings, starting with a quick mapping of the various refugees and stateless peoples in India. This is followed, in Section 4, by a deeper exploration of the causes and drivers of displacement to India of groups of our interest, as well as an account of their experiences. Section 5 is an examination of the consequences of displacement on individuals and Section 6 is a review of the Indian state's responses, against the backdrop of international norms and standards. In Section 7, we focus on the National Register of Citizens (NRC) update in Assam, an administrative process that has created 'non-citizens' and 'foreigners', and which the Indian government now wants to scale up across the country. In Section 8, we try to draw some concluding remarks on India's stance on refugee protection and integration and her commitment to relevant international norms, besides issues of citizenship and national identity. Section 9 is a compilation of a set of recommendations for reforms.

Scope of the Study, Methodology and Data Collection

For the purposes of this study, we focus on refugees in India escaping armed conflict, persecution, human rights violations and abuses from within South Asia—the stateless, and specific minority groups in India that have been targeted for disenfranchisement. The bulk of the refugees were religious minorities in their own countries: Hindus and Sikhs from Afghanistan, Pakistan and Bangladesh;

Buddhist Tibetans and Chakmas; Tamil Hindus from Sri Lanka; and Rohingya Muslims from Myanmar. Those being targeted for disenfranchisement in India are also religious minorities, mostly Bengali-speaking Muslims in Assam and elsewhere.

We studied the consequences of migration on the lives of the refugee subjects—by analysing their lived experiences of deprivation and violence, their socio-economic condition, access to basic rights, services and benefits, and their struggles for nationality and a permanent home. In doing so, we have also tried to examine the factors behind their difficulties, focusing on state responses, including the legislative framework, the role of the judiciary, state practices, and institutional mechanism and capacities as well as the role of politics in determining outcomes. The study is exploratory in nature, with the intent to connect accounts of the lived experiences of refugees and the disenfranchised with key factors that resulted in those outcomes, including the causes and drivers of the dispossession and displacement, and accounts of state responses.

The methodology we use is exploratory, based mostly on desk research and supplemented by primary field exploration with select targeted groups. We reviewed the literature available on the refugees and stateless groups in India—to understand both the conditions of refugees as well as the nature of state response. This required understanding the actions of relevant stakeholders, i.e., state actors, relief and research bodies working with specific groups, and those living in refugee camps. To understand the lived experiences of the groups and state response towards them, we needed to speak to the subjects and gather first-hand data through interviews. We conducted interviews with religious minorities from Pakistan in refugee camps in Delhi through September and October 2019, and in Assam to study the deprivation of citizenship. For the latter, we relied on documentation of Misaal Foundation's ongoing victim support work around the ongoing NRC process, supplemented by field data collection in Barpeta, Guwahati and Morigaon districts in August and October 2019. Secondary literature on refugees and migrants, including scholarly works as well as programme documents and media accounts, were also used. To be able to cover the range of cases, and for practical convenience,

we connected with civil society groups and community-based organisations (CBOs) to access existing accounts and reports.

An Overview of the Refugees and Stateless in India

There are four types of refugees in India: i) refugees who receive full state protection according to standards set by the Indian government, viz, Tibetans, Tamils from Sri Lanka, and Chakma and Hajongs from the Chittagong Hill Tracts of Bangladesh; ii) refugees whose presence in India is acknowledged by the United Nations High Commissioner for Refugees (UNHCR), also known as ‘mandate refugees’, viz, Afghans and the Rohingya; iii) refugees who have entered India and assimilated into the local communities, with their presence officially acknowledged by neither the UNHCR nor the Indian government, viz, Chins, Rakhines and Nagas, all from Myanmar, and ethnic Nepalis from Bhutan; and iv) refugees who are religious minorities in neighbouring countries who live in unofficial camps in India.²

Table 1 provides a snapshot of these groups, their locations in India, approximate numbers, and the proximate causes that led them to seek refuge in India.

Table 2 details groups in India who are *de facto* or *de jure* stateless, and those at risk of statelessness, along with their locations, approximate numbers, and the drivers of their statelessness.

Causal Factors and Refugee Movements

It is difficult to divide the various refugee and stateless groups in India into neat categories. Scholars have, however, identified several non-mutually exclusive causal factors for forced cross-border migration in South Asia. These include failure in nation-building, inter-ethnic conflict, open or virtually open borders, war-related qualms, developmental and environmental effects, intra-regional and extra-regional military interventions, and statelessness or virtual statelessness.³ Using this typology, we identify the following as the three main causal factors relevant to various refugee and stateless groups in India: (i) external military interventions; (ii) failure in nation-building, resulting in persecution of minorities;

² Ghosh, *Migrants, Refugees and the Stateless in South Asia*, 247-48.

³ Ghosh, *Migrants, Refugees and the Stateless in South Asia*, 1-2.

Table 1: Major Refugee Groups in India

Group	Major location(s)	Approximate numbers	Causes/drivers
Tibetans, from Tibet	Bylakuppe (Karnataka) and Dharamshala area in Himachal Pradesh	85,000*	External military aggression by China
Tamils, from Sri Lanka	Different places in Tamil Nadu	95,230†	State repression in Sri Lanka
Chakma and Hajong from the Chittagong Hill Tracts, Bangladesh	Different places in Arunachal Pradesh	52,000‡	Development-induced displacement and religious persecution
Afghans, from Afghanistan	Delhi	15,559§	External military interventions, by the Soviet Union in 1988 and by the USA in 2001; continuing military conflict with the Taliban
Rohingya, from Myanmar	Jammu, Delhi, Hyderabad, Chennai, Jaipur and Mewat	20,833 ^l	State repression in Myanmar
Other UNHCR-mandate refugees	Delhi	1969 (including asylum-seekers) [¶]	Various reasons
Chins and Rakhines, from Myanmar	Mizoram	4000 [#]	State repression in Myanmar; cross-border links in India
Nagas, from Myanmar	Nagaland	Unknown	State repression in Myanmar; cross-border links in India
Ethnic Nepalis (Lhotshampa), from Bhutan	Sikkim, West Bengal (Darjeeling, Jalpaiguri, Karseong districts)	107,923 ^Δ	Inter-ethnic conflict and state repression in Bhutan
Hindus and Sikhs from Pakistan, Bangladesh and Afghanistan	Across India, mainly in border states and in Delhi	No reliable estimates	Religious persecution

*According to a 2018 survey by the Tibetan Central Administration. See: Rahul Tripathi, 'Tibetan Refugees down from 1.5 Lakh to 85,000 in 7 Years,' *The Indian Express*, September 10, 2018, <https://indianexpress.com/article/india/tibetan-refugees-down-from-1-5-lakh-to-85000-in-7-years-5349587/>.

†Refugees and asylum seekers registered under the UNHCR's mandate, as of August 2019. See: 'Figures at

a glance,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/en-in/india-factsheets.html>

[†]'Chakma Refugees: That Chakmas Are 1L Is Goebbels-Speak: Suhas Chakma,' *The Times of India*, September 23, 2017, <https://timesofindia.indiatimes.com/india/that-chakmas-are-1l-is-goebbels-speak-suhas-chakma/articleshow/60802048.cms>.

[§]Refugees and asylum seekers registered under the UNHCR's mandate, as of August 2019. See: 'Figures at a glance,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/en-in/india-factsheets.html>.

^{||}ibid.

[¶]As of December 2014. Other Mandate Refugees in India include those from Somalia, Democratic Republic of Congo, Eritrea, Iran, Iraq, Somalia and Sudan. See: United Nations High Commissioner for Refugees—India, 'Figures at a glance'

[#]The exact number of Chins in India is contested. About 4,000 Chins were registered with the UNHCR in June 2018. In August 2018, the UNHCR decided to lift the Chins' refugee status. See: Sangeeta Barooah Pisharoty,

'UNHCR to Cancel Refugee Status of Chins of Myanmar,' *The Wire*, June 30, 2018, <https://thewire.in/rights/unhcr-to-lift-refugee-status-over-chins-of-myanmar>.

[^]There were about 20,000 Lhotshampa refugees in India by 1995, scattered across north-eastern India. A 2007 census put the figure at 107,923. See: Rosalind Evans, 'The Perils of Being a Borderland People: On the Lhotshampas of Bhutan'. In *Borderland Lives in Northern Asia*, ed. David N. Gellner, (Durham: Duke University Press), 117-40.

and (iii) potential statelessness. In reality, these categories overlap significantly.

External Military Intervention, Triggering Migration

The military invasion of Tibet in 1949 by the People's Republic of China, and their sustained state repression of Tibetans in subsequent years eventually culminated in an armed uprising against Chinese rule in 1959. The failure of this rebellion, and the ruthless Chinese crackdown that followed, led the Dalai Lama, the Tibetans' spiritual leader, and his followers to flee to India, where they have remained since. Similarly, the invasion and occupation of Afghanistan by the Soviet Union in 1979 and by the United States in 2001, and the decades of resultant violent conflict, have driven millions of Afghans to seek refuge in neighbouring countries. While Pakistan has been the first choice of destination for fleeing Afghans, thousands have sought shelter in India as well.

If we are to set aside the Partition-induced migrants from Pakistan, the Tibetans were the first to seek refuge in India. Following the Chinese invasion of Tibet, a small but steady number had continued to attempt the journey across the Himalayan ranges into the north-eastern state of Arunachal Pradesh, throughout the 1950s. But it was after the failed rebellion of 1959 that India saw a mass influx of Tibetans. The Tibetans, led by the then 25-year-old Dalai Lama, were given a grand reception by the Indian government

Table 2: The Stateless in India

Groups	Location	Numbers	Causes / process
Chakma (Buddhist) and Hajong (Hindu) from Bangladesh, settled in Arunachal Pradesh, between 1964 and 1969	Arunachal Pradesh	14,888 settled in AP (1964-69). 6087 alive today. Not obtained citizenship yet. Population: 47,471 (2011 Census). Estimated 45,000 born in India.*	A 1996 Supreme Court order directed issue of citizenship to the groups. 2015 order directs processing citizenship applications. Yet no action, due to local resistance and ongoing court cases.
Bengali-speaking persons profiled as 'illegal migrants'	Assam	Close to 100,000 declared 'foreigner' by Foreigners Tribunals, 1985 to present 1100 incarcerated in 'detention centres'. Including women and children.†	Identified by Assam Border Police as suspected foreigners, using Immigrants (Expulsion from Assam) Act, 1950, and later Foreigners Tribunal Order 1964. Election commission's identifying Doubtful Voters. Foreigner Tribunals declaring 'foreigner', majority in ex parte trials.
Bengali- and Nepali-speaking persons, among others, deemed 'illegal migrants'.	Assam	1,900,000 persons excluded from final NRC. A large cohort being children and women.‡	Deemed non-citizens under the NRC update process, 2015-2019, and risk being made stateless.
Kashmiri 'ex-militants' and their families	Kashmir	At least 400 families.§	Returned to India from Pakistan, in response to 2010 rehabilitation policy for ex-militants. Spouses and children with Pakistani documents, not granted Indian citizenship, nor returned original documents.

*Singh, Damini. 'The Chakma-Hajong Challenge,' Observer Research Foundation, September 27, 2017, <https://www.orfonline.org/expert-speak/chakma-hajong-challenge/>.

†'Unstarred Question No. 1724,' Supplementary Questions, Parliament of India, last modified July 2, 2019, <http://loksabhaph.nic.in/Questions/QResult15.aspx?qref=1909&lsno=17>.

‡Helen Regan, '1.9 Million Excluded from Indian Citizenship List in Assam,' *Cable News Network*, August 31, 2019, <https://edition.cnn.com/2019/08/30/asia/assam-national-register-india-intl-hnk/index.html>.

§'Pakistani Wives of Ex-Kashmiri Militants Appeal GoI for Travel Documents,' *Rising Kashmir*, May 5, 2019, <http://www.risingkashmir.com/news/pakistani-wives-of-ex-kashmiri-militants-appeal-goi-for-travel-documents--349436.html>.

and initially settled in two transit camps—one in Assam and another in West Bengal. Later, the alien climatic conditions in these places led the government to seek alternative settlements, mainly in Bylakuppe in Karnataka state, and in Dharamshala in Himachal Pradesh.

Failure in Nation-building Resulting in Persecution of Minorities

The bulk of refugees in India, however, are victims of what scholars call failures of nation-building. In South Asia, as in much of the decolonised world, state formation has often preceded nation formation. National borders have been drawn and governments have been put in place, but the inability to peacefully accommodate religious, ethnic and linguistic differences within these borders has resulted in a number of conflicts that have led to the persecution of minorities. Where the situation has become unbearable, and where minorities think they have a chance of a better life elsewhere, they have migrated. Hindus from Pakistan, Hindus and Sikhs from Afghanistan, and Hindus and Buddhists from Bangladesh have largely been the victims of this process. Hindu Tamils from Sri Lanka, fleeing state repression, and the Rohingya from Myanmar, escaping a brutal ethnic cleansing, are other examples of refugees in India who are victims of failure of nation-formation in their countries that has resulted in the persecution of minorities.

Although Pakistan was originally envisioned as a secular state by its founding father, subsequent developments have seen the share of its religious minorities in the total population dwindle from around 23 per cent to approximately 3 per cent today.⁴ Large-scale population transfers during the violent Partition, the transition to formally declaring itself an Islamic Republic, a genocide in erstwhile East Pakistan that resulted in the breakup of the country and the birth of Bangladesh, and numerous instances of religious violence throughout its history, have all resulted in many of Pakistan's minorities seeking refuge elsewhere. Similarly,

⁴ Farahnaz Ispahani, 'Cleansing Pakistan of Minorities,' Hudson Institute, July 31, 2013, <https://www.hudson.org/research/9781-cleansing-pakistan-of-minorities>.

in Bangladesh, even after its birth as an independent state in 1971 and its adoption of a Constitution that had secularism as one of its core tenets, discrimination against religious minorities has persisted. In Afghanistan, external intervention in the form of the Soviet invasion triggered dynamics that complicated an already fraught nation-building process, destabilising the region and creating space for extremist ideologies to fill the void. Minorities, particularly religious, have since continued to be targeted by the Islamist Taliban and other forces.

India, with its large Hindu and Sikh populations, reasonable scope for economic opportunity, and a largely stable polity, has been the first choice of destination for many Hindus and Sikhs who have sought to flee religious persecution in these countries. Of late, the Hindu majoritarian party in power, the Bharatiya Janata Party (BJP) has sought to fashion India as the land for persecuted Hindus and related minorities from the Muslim-majority countries in the neighbourhood, accelerating the trend of migrations.

Hindus have been fleeing to India from Pakistan since the two countries became independent in 1947, even after the initial Partition-induced mass migration. Earlier, clandestine migration through the then porous borders of the Indian states of Rajasthan and Gujarat was common, aided by the fact that people living in these areas often had kinship ties across the border. As religious persecution of minorities increased in Pakistan, so did the influx of Hindus into India. Recently, they have been arriving in small groups, carrying temporary pilgrimage visas whose extensions they repeatedly apply for in the hope that they would eventually be eligible for Indian citizenship. Around 5,000 Pakistani Hindus are estimated to arrive in India every year, settling in camps across the country, with major settlements in Rajasthan, Gujarat and Delhi.⁵

Persecuted Hindus from Bangladesh have also been seeking refuge in India for decades, aided previously by porous borders and more recently by using valid or even forged documents. Around 11.3 million Hindus are estimated to have left Bangladesh between

⁵ Irfan Haider, '5,000 Hindus Migrating to India Every Year, NA Told,' *Dawn*, May 13, 2014, <https://www.dawn.com/news/1105830>.

1964 and 2013.⁶ Most of them have sought refuge in India, where they are concentrated in the border states of Assam, Tripura and West Bengal.

Thousands of Buddhist Chakma and Hindu Hajongs also fled Bangladesh, then East Pakistan, to India when their settlements in the Chittagong Hill Tracts were submerged due to the commencement of a major hydroelectric project in the region. This movement can be attributed to a combination of religious discrimination and development-induced displacement. The Chakma and Hajong began arriving in India's North-East Frontier Agency (NEFA), present-day Arunachal Pradesh, in 1964. Between 1964 and 1969, around 15,000 of these refugees were settled across camps in the NEFA, partly motivated by the Indian state's need to beef up security in its sparsely populated border areas following defeat in the 1962 war against China.

Forced migration of Sikhs and Hindus from Afghanistan to India has taken place mainly in three phases: following the Soviet invasion in 1979, the establishment of Taliban rule in 1996, and, more recently, the ongoing civil unrest. In India, New Delhi is the preferred destination for the new wave of forced Afghan migrants, due to access to the UNHCR.

There are other sources of refugees in India. The brutal 25-years-long civil war till 2009 in Sri Lanka was characterised by large-scale human rights violations by both separatist Tamil militants and the Sri Lankan state, leading to over 80,000 deaths.⁷ For the ethnic Hindu Tamils, who sought to flee this large-scale violence, the southern Indian state of Tamil Nadu was the destination of choice by virtue of its geographic proximity, its shared religion, language and culture, and a sympathetic state structure. The Tamil exodus into India began following the anti-Tamil riots in Colombo in July 1983. As the ethno-political situation in Sri Lanka deteriorated in the years following the riots, the flow of Tamils into India continued with varying degrees of intensity for almost three

⁶ Mohammad Kamrul Hasan, 'No Hindus Will Be Left after 30 Years,' *Dhaka Tribune*, November 21, 2016, <https://www.dhakatribune.com/bangladesh/2016/11/20/abul-barkat-632-hindus-left-country-day/>.

⁷ 'Sri Lanka Starts Count of Civil War Dead,' *Al Jazeera America*, November 28, 2013, <http://america.aljazeera.com/articles/2013/11/28/sri-lanka-startscountingthecivilwardead.html>.

decades. More than 250,000 people are estimated to have arrived in Tamil Nadu from Sri Lanka between 1983 and 1991.⁸

In Myanmar, Rohingya Muslims have been subject to various forms of state repression, including the stripping of their citizenship rights, since the erstwhile Burma's Independence in 1948. More recently, a brutal military crackdown in their native Rakhine province has resulted in hundreds of thousands of Rohingya fleeing to neighbouring countries, particularly to Bangladesh. However, despite a massive humanitarian effort by the Bangladeshi government, the harsh conditions there have led many to make their way into India, in the hope of finding better and safer living conditions, increased economic opportunities, and a tolerant, if not accepting environment.⁹ The Rohingya in India are concentrated mostly in camps scattered across Jammu, Delhi, Hyderabad, Chennai, Jaipur and Mewat.

Statelessness: De Jure and De Facto

A case of *de facto*, if not *de jure*, statelessness in India is that of the Chakma and Hajongs. Of the 14,888 settled by the government of India, an estimated 6,087 are alive today and still await citizenship.¹⁰ According to the 2011 Census, the Chakma population is now 47,471, with the overwhelming majority born in India. In 1996, the Indian Supreme Court directed the government to grant them Indian citizenship.¹¹ But the process has faced hurdles from local student groups and politicians, with the Arunachal Pradesh state assembly even adopting a resolution against granting citizenship to the group. The opposition is built along the lines of disruption of local rights and culture. A challenge to the order was defeated by the Supreme Court in 2015, which directed for

8 Ghosh, *Migrants, Refugees and the Stateless in South Asia*, 29.

9 Yermi Brenner, 'Rohingya Migration to India: Patterns, Drivers and Experiences,' Mixed Migration Centre, April 1, 2019, <http://www.mixedmigration.org/resource/rohingya-migration-to-india/>.

10 Damini Singh, 'The Chakma-Hajong Challenge,' Observer Research Foundation, September 27, 2017. <https://www.orfonline.org/expert-speak/chakma-hajong-challenge/>.

11 Jarpum Gamlin, 'Why an SC Judgment Has Riled Up Arunachal's Frontier People,' *Daily O*, October 15, 2015, <https://www.dailyo.in/politics/arunachal-pradesh-chakma-and-hajong-refugees-supreme-court-bengal-eastern-frontier-regulation-1873/story/1/6813.html>.

citizenship applications to be processed on priority.¹² But these have remained stalled, with the citizenship status of Chakma and Hajongs continuing to be in limbo.

Another group that remains in legal limbo are in Kashmir. In the 1990s, when pro-freedom insurgency was at its peak, some 35,000 **Kashmiris** fled Jammu & Kashmir (J&K) state to settle in Pakistan. However, despite the passage of several years, Pakistan has not granted citizenship to up to 40 per cent of these migrants.¹³ The Pakistan government continues to insist that the 1948 United Nations Security Council (UNSC) Resolution calling for self-determination for the people of Jammu and Kashmir is the only acceptable mechanism through which to solve the Kashmir dispute with India. The Pakistan authorities maintain that granting the Kashmiris citizenship would mean negating their right to self-determination. This has resulted in many migrants remaining stateless, without any documents, and receiving only paltry government support. The UNHCR does not include them in their list of refugees.¹⁴ On the Indian side, in 2010, the J&K state government announced a rehabilitation policy for 'ex-militants' who had crossed over to Pakistan along with their families, promising rehabilitation, citizenship and essential documents, besides education, employment and financial assistance. In response, nearly 400 families returned to India between 2012 and 2015, mostly taking the Nepal route.¹⁵ Many were Pakistani wives of ex-militants, who had their travel documents taken from them upon entering India but have not been granted Indian citizenship in return. Now they are protesting their stateless status, demanding grant of Indian citizenship, 'or deportation to Pakistan'.¹⁶

12 'Grant Citizenship to Chakma, Hajong Tribals in 3 Months: Supreme Court,' *The Economic Times*, September 20, 2015, <https://economictimes.indiatimes.com/news/politics-and-nation/grant-citizenship-to-chakma-hajong-tribals-in-3-months-supreme-court/articleshow/49031353.cms>.

13 Issam Ahmed, 'Thousands Fled India-Controlled Kashmir. Are They Better off in Pakistan?', *The Christian Science Monitor*, October 13, 2010, <https://www.csmonitor.com/World/Asia-South-Central/2010/1013/Thousands-fled-India-controlled-Kashmir.-Are-they-better-off-in-Pakistan>.

14 Ibid.

15 Sameer Yasir, 'Kashmir: 377 Ex-Militants Returned from Pakistan Via Nepal, Bangladesh Since 2010,' *Firstpost*, January 12, 2017, <https://www.firstpost.com/india/kashmir-377-ex-militants-returned-from-pakistan-via-nepal-bangladesh-since-2010-3201294.html>.

16 'Pakistani Wives of Ex-Kashmiri Militants Appeal GoI for Travel

A group that had long remained stateless in India but have recently had nationality granted are the inhabitants of the India-Bangladesh enclaves. The enclaves, a result of the Partition of India in 1947, have hosted thousands of people who were neither nationals of India nor Bangladesh due to convoluted boundary demarcation. It was only in 1974, after Bangladesh's independence, that an agreement was signed by the two countries on boundary demarcation. It would take another 36 years for a protocol to the agreement to be agreed upon by the two parties, in 2011. In 2015, the enclave swap was ratified by the Indian Parliament. This was followed by a survey of families, resulting in 15,852 inhabitants opting for India, who were all granted citizenship. The rest opted to stay in Bangladesh.¹⁷

The Consequences of Migration

The UN Global Compact on Refugees, though not a legally binding document, represents the political will and ambition of the international community for strengthened cooperation and solidarity with refugees and affected host countries.¹⁸ It acts as a helpful yardstick for assessing how refugees are treated and services provided. The Global Compact lays out the range of duties of host states, namely, i) reception and admission arrangements, including safety and security, and notably, registration and documentation; ii) meeting the needs of the refugees, including education, jobs and livelihoods, health, accommodation, and food security, with priority to children, girls and women; and finally; and iii) providing solutions, including local integration, resettlement or voluntary repatriation. India has not signed the 1951 Refugee Convention, and its 1967 Protocol. Thus, adherence to the Global Compact is still a work in progress.

Even without referencing the Global Compact, it is clear that the

Documents,' *Rising Kashmir*, May 5, 2019, <http://www.risingkashmir.com/news/pakistani-wives-of-ex-kashmiri-militants-appeal-goi-for-travel-documents--349436.html>.

¹⁷ Ibid.

¹⁸ Other instruments include the 1951 Refugee Convention. See: 'The 1951 Refugee Convention,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/1951-refugee-convention.html>.

situation of refugees in India, their living conditions, and especially their access to 'rights' and basic services is very poor. The lack of a uniform national refugee law also means that different groups are treated differently and arbitrarily, with refugee protection being delivered in an ad hoc manner. The response received by refugees from the local population has also been varied, with some groups being treated with suspicion, while others are more positively received. While there is a marked contrast in the stated government policy towards persecuted non-Muslims and Muslims,¹⁹ the living conditions reported by all of them are broadly similar: poor security, lack of basic amenities, including sanitation, poor healthcare and education facilities, and limited employment and livelihood opportunities. Access to education and healthcare are abysmal, particularly for those living in camps. Private schools and hospitals are uniformly preferred, but few can afford them. With some exceptions, employment is limited to petty, informal, daily-wage labour across groups. In almost every case, in the absence of tangible action at different levels of government, civil society has been forced to step in and try to provide the little service it can.

There are no official figures for the number of Pakistani Hindus in India, but there are over 400 settlements for them in the state of Rajasthan alone.²⁰ Education and healthcare facilities are generally poor, with civil society organisations having to step in.²¹ Lack of employment opportunities continues to be a challenge despite Hindus from Pakistan, Bangladesh and Afghanistan being viewed favourably by the present national government.

Women have reported facing a different set of problems such as being married off at extremely young ages to protect their 'honour' and being forced to bear multiple children. 'Most deliver babies outside of hospitals, and maternal and infant mortality rates

19 The non-Muslims are treated favourably by the state while the Muslims, mainly, Rohingya Muslims from Myanmar and Muslims from Bangladesh, are viewed with suspicion and treated with hostility.

20 Shweta Desai, 'Pakistani Hindus 'Unwelcome' in India,' *Al Jazeera*, February 18, 2014, <https://www.aljazeera.com/indepth/features/2014/02/pakistani-hindus-unwelcome-india-201421063012210386.html>.

21 Anam Ajmal, 'For Pak Hindus, Home Is Where the Mind Is without Fear,' *The Times of India*, March 29, 2019, <https://timesofindia.indiatimes.com/city/delhi/for-pak-hindus-home-is-where-the-mind-is-without-fear/articleshow/68621792.cms>.

Pakistani Hindu Camp, Adarsh Nagar, Delhi: A profile

The residents of the makeshift settlement for Pakistani Hindu refugees in New Delhi's Adarsh Nagar area harbour a lot of hope in the Indian government. Prime Minister Narendra Modi, during his spirited national election campaign in 2014, had made a concerted effort to paint India as the natural homeland for persecuted Hindus from across the world. 'If there are atrocities on Hindus in Fiji, where will they go? Should they not come to India? If Hindus are persecuted in Mauritius, where should they go? Hindustan!' he had declared, emphatically.

That the story of the Pakistani Hindu refugees in India remains one of the unfulfilled promises is, however, apparent the minute one enters their colony in Adarsh Nagar. The colony, built over a low-lying site that was once a burial ground for small children, is located next to a landfill, leading to a pervasive pungency in the air. The buildings in the hutment are made of mud and thatched leaves, leaving the camp's 700-odd residents—including at least 150 children and 250 women, from over 100 families—glaringly exposed to nature's whims. We are immediately greeted by a bevy of children, who are happy but dishevelled. 'Jai Shri Ram,' they say, with broad smiles and folded arms. A lone Indian flag flails about in the background, surrounded by a swarm of mosquitoes.

'This camp was established in 2013, with around a hundred inhabitants. The number of people has increased over the years, but the conditions have not improved much,' says Hari Om Sahoo, our guide for the day, a local social worker who acts as a caretaker for the colony. 'As you can see, sanitation is terrible. Insect bites and snake bites are common. The children fall sick all the time. During the monsoon, the whole area floods and water rises up to here,' he adds, pointing to his knee.

Despite the harrowing conditions, most of the residents who spoke to us justify their decision to seek refuge in India, citing the deplorable situation for Hindus back in Pakistan. The adult males are mostly former bonded labourers and agricultural workers from Pakistan's Sindh province. 'If you are a Hindu bonded labourer in Pakistan, you are doubly vulnerable. You cannot fight back,' says Aakash*, who arrived from Tando Allahyar district a year ago, with most of his family accompanying him.

Historically easy targets for revenge attacks whenever tensions have flared up between the two countries, or whenever large-scale violence has been perpetrated against Muslims in India, Pakistan's Hindus cite an atmosphere of fear in their home country as their main reason for fleeing to India. A recent spate of abductions and forced conversions has added to their concerns, with South Asia Partnership Pakistan, a local NGO, estimating that around 1,000 girls are abducted and forcibly converted to Islam every year. A draconian blasphemy law that mainstream Pakistani

politicians are wary of speaking out against in public is another source of worry.

‘It is not like violence against us is happening in Pakistan every day, but the atmosphere is very insecure. When one incident happens, it has a chilling effect on the rest of our society. We did not feel safe practicing our religion in public there,’ says Aakash, who is quick to add that the situation is much better in Pakistan’s cities compared to its rural areas.

The launch in 2006 of the Thar Express, a rail service that links Pakistan to India, has led a multitude of Pakistani Hindus to attempt the journey to India. The rise to power of the Hindu nationalist BJP in India has further accelerated this trend. Most of the new arrivals come holding short-term pilgrimage visas, usually limited to 25 days and restricted to Hindu religious centres like Haridwar and Mathura, but many also come with regular visitor visas, claiming kinship ties on the Indian side of the border.

According to many respondents, obtaining a Pakistani passport and then an Indian visa is a long and harrowing process, with corruption, discrimination and nefarious middlemen involved in almost every step. Respondents have also reported a tendency among Indian authorities in Pakistan to break up families who apply for visas in groups. ‘Almost all the families in this camp are incomplete. Two of my daughters are still at home in Pakistan. My nine-year-old daughter, Anjali, has just managed to arrive recently with her uncle,’ says Aakash.

Once in India, they apply for repeated visa extensions, with the hope that one day they will meet the minimum residency requirement to apply for Indian citizenship. Harassment by Indian authorities during the visa extension process has substantially decreased since the rise of Modi and the BJP, say many residents. However, their status as Pakistani nationals in India, with Pakistani passports often being their only official documentation, has greatly restricted their life in India. ‘If you hold a Pakistani passport, the tendency of Indians is to assume you are a terrorist,’ says one resident.

The lack of official documentation has made it difficult for the able-bodied men to seek fruitful employment. Most of them are engaged in petty daily-wage labour such as hawking, garbage collection and other odd jobs, mainly in the nearby vegetable market. ‘We manage to earn around 150-250 rupees [USD 2-3.5] every day, and we have to support families of five to seven with this amount,’ laments one resident.

In the absence of tangible government support, civil society has had to step in to help the residents lead a dignified life. Ashutosh Joshi, a local finance professional, has run a number of crowdfunding initiatives for the colony residents. ‘The attempt has been to provide them with some basic

facilities, and to make them somewhat economically stable,' he says. The colony has no formal electricity or water connections. Attempts to draw electricity from nearby poles have, in fact, been repeatedly thwarted by local authorities in the past, causing extreme distress to the residents in the summer heat. Joshi's efforts have resulted in the installation of solar panels and generator sets within the camp.

The lack of official recognition as refugees has also made the residents' access to services difficult. While it is possible to use illegal means to obtain Indian documents like the Aadhaar card, not many are able to afford the exorbitant fees charged by middlemen. Those who do have such documents have managed to send their children to local government schools. However, many of the children, some as old as 12 or 13, are either illiterate or ill-versed in English and Hindi, requiring them to attend foundational classes within the camp before they are ready for formal schooling.

Healthcare also remains a major issue within the colony, particularly during the summer, when the prevalence of diseases flares up. Residents say that the nearest hospital is overcrowded, and that the local clinics are inadequate. Another crowdfunding campaign has resulted in the provision of basic medicines and periodic visits by doctors to the colony. Recently, Joshi's efforts have resulted in an arrangement where the residents' medical bills are taken care of by the fund.

While there is a palpable sense of discontent with government efforts, particularly the local authorities, most of the residents cling to the hope that things will change for the better soon. The Modi government has made a number of receptive moves, such as decentralising the process of granting citizenship to the district-level in certain states, and passing an amendment of the country's citizenship law that will reduce the minimum residency requirement for Pakistani Hindus to claim Indian citizenship.

However, Modi's appeal to the world's Hindus to make India their homeland is yet to translate into a real tangible change in the lives of the residents of the Adarsh Nagar settlement, many of whom will not be eligible for Indian citizenship even after the recent legislative amendments. A few have even sought to return to Pakistan, where they at least formally have the protection of citizenship. Others remain steadfast in their decision to leave Pakistan. 'There is discomfort here, but I am not scared for my family's safety. I am finally able to sleep peacefully at night,' says Aakash, as he greets his daughter who has just finished her classes for the day.

* Names of all camp inhabitants have been changed to protect their identity.

are high,' reported a voluntary health worker working with the Pakistani Hindu community in Jodhpur.²² While there have been many positive moves at the policy level, there are complaints that these are yet to translate to any tangible change in the communities' quality of life.

One non-Muslim group that has seen local pushback in India are the Hindus from Bangladesh. Influential student organisations have spearheaded a campaign since 1978 against the 'invasion' of Assam by 'land-hungry Bengali immigrants'.²³ A similar example of local pushback has been the case of Chakma and Hajongs in the state of Arunachal Pradesh, which has resulted in the systematic rolling back of many employment-related and food-related benefits that had been granted to the group. In addition to living in extreme poverty, citizenship, despite several decades of residence and birth of children, remains uncertain for them.

It is estimated that there are 64,208 Sri Lankan Tamil refugees living in over 100 government-run camps in Tamil Nadu (TN), and more than 40,000 elsewhere across the state.²⁴ While the conditions in these camps are described as woeful, lacking basic facilities in terms of sanitation and security, the Sri Lankan Tamils have benefited from the efforts of a receptive TN state government, which has claimed success in several healthcare and education initiatives. Yet, problems persist, especially with regard to finding gainful employment. The TN government has issued ration cards to the refugees, which enables them to buy essential goods at low prices. They also have free access to government hospitals. The state government also gives them cash assistance of INR 1,000 (c. USD 14) per month, which is woefully inadequate. 'The sum paid to us has not been revised despite the rising cost of living. We cannot live on with these trivial amounts even for a

22 Geetanjali Krishna, 'The Nowhere People: Pakistan Hindu Refugees in India Await a Normal Life,' *Business Standard*, September 23, 2018, https://www.business-standard.com/article/current-affairs/the-nowhere-people-pakistan-hindu-refugees-in-india-await-a-normal-life-118092300002_1.html.

23 'How Bangladeshi Muslims Wiped the Assamese Out in Their Own Land,' Assam Portal, accessed February 22, 2019, <https://assam.org/news/how-bangladeshi-muslims-wiped-assamese-out-their-own-land>

24 'Refugee Camps,' Organisation for Eelam Refugees Rehabilitation, Accessed January 26, 2020, <https://oferr.org/tbdonations/refugee-camps/>.

week. That is why we search for jobs,' says one refugee.²⁵

While there are no reported camps of Afghans, there are pockets within Delhi where the community has established an extensive presence. As of August 2019, there were 15,559 refugees and asylum-seekers from Afghanistan registered with UNHCR in India.²⁶ Those registered are able to find work in the informal economy, and also access the government healthcare and education system. Many are engaged in small businesses, running Afghan stores and eateries in partnership with local Indians. While the Indian government does extensive development work in Afghanistan, there are few significant government measures for Afghan nationals in India, apart from the announcement of scholarships for 1,000 Afghan students to study in Indian universities.²⁷ The Afghan student population forms a vital part of the Afghan community in India, which helps the new arrivals as they attempt to rebuild their lives in the country.

The Rohingya were in the news recently for having been forced by Indian authorities to return to Myanmar, without any guarantee of improved conditions for them there. For Rohingya Muslims who arrived in India from camps in Bangladesh, the conditions are not much better than those they were seeking to leave behind. Some 20,833 Rohingya had been registered with the UNHCR in India as of August 2019.²⁸ Unofficial estimates put the total number at around 40,000.²⁹ Inhabitants in refugee camps speak of food

25 Piyumi Fonseka, 'Desperate Lives inside Refugee Camps,' *Daily Mirror*, May 2, 2017, <http://www.dailymirror.lk/article/Desperate-lives-inside-refugee-camps-128128.html>.

26 Refugees and asylum seekers registered under the UNHCR's mandate, as of August 2019. See: 'Figures at a glance,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/en-in/india-factsheets.html>.

27 'India Pledges 1000 More Scholarships for the Afghan Students,' *The Khaama Press*, June 11, 2019, <https://www.khaama.com/india-pledges-1000-more-scholarships-for-the-afghan-students-03589/>.

28 Refugees and asylum seekers registered under the UNHCR's mandate, as of August 2019. See: 'Figures at a glance,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/en-in/india-factsheets.html>.

29 Vindu Goel and Shaikh Azizur Rahman, 'When Rohingya Refugees Fled to India, Hate on Facebook Followed,' *The New York Times*, June 14, 2019, <https://www.nytimes.com/2019/06/14/technology/facebook-hate-speech-rohingya-india.html>.

scarcity, erratic electricity charged at exploitative prices and poor sanitation facilities.³⁰ Most Rohingya are also engaged in menial wage labour like other refugee groups in the country and complain of exploitation at the hands of their employers.

Child labour is common, with a majority of Rohingya children being forced to stay out of school and work for a living. Some local NGOs have helped, aiding in the construction of schools, community sheds and toilets for the Rohingya. However, the rise in anti-Muslim rhetoric across the country since the assumption of power by the BJP, has resulted in increased hostility towards them among the local population. In Jammu, where most Rohingya refugees live, the chairman of the local Chamber of Commerce and Industry threatened to launch an 'identify and kill movement' against illegal foreign settlers.³¹ According to the UNHCR, a total of 306 Rohingya persons of concern are detained in 10 different states in India as of July 2019, and about a fourth of the Rohingya respondents in a survey reported being harassed by local police and intelligence services.³²

Of all these groups, only the estimated 85,000 Tibetans³³ seem to have relatively good access to rights and services. The Tibetan community in Karnataka is largely agricultural and lives in close-knit communities with economic interactions with the local Indian population. Those in Himachal Pradesh have more or less integrated with the pre-existing local economy. Dharamshala is now an internationally renowned Tibetan centre, where thousands of monks mingle freely with locals and tourists. The relatively better quality of life for Tibetans can be attributed to the strong community leadership, in the form of the Central Tibetan Authority

30 'The Most Unwanted: A Gripping Account of Rohingya Refugees Living in India,' *The Indian Express*, June 26, 2018, <https://indianexpress.com/article/india/the-most-unwanted-a-gripping-account-of-rohingya-refugees-living-in-india-4464103/>.

31 'Jammu Commerce Chamber Says It Will Identify and Kill Rohingya Muslims If State Does Not Deport Them,' *Scroll.in*, March 16, 2018, <https://scroll.in/latest/834067/jammu-commerce-chamber-says-it-will-identify-and-kill-rohingya-muslims-if-state-does-not-deport-them>.

32 'Figures at a glance,' United Nations High Commissioner for Refugees—India; Brenner, 'Rohingya Migration to India,' 8.

33 Rahul Tripathi, 'Tibetan Refugees down from 1.5 Lakh to 85,000 in 7 Years,' *The Indian Express*, September 10, 2018, <https://indianexpress.com/article/india/tibetan-refugees-down-from-1-5-lakh-to-85000-in-7-years-5349587/>.

(CTA), the Tibetan government-in-exile based in Dharamshala, as well as a historically friendly Indian government. The CTA administers a number of schools and health centres, which have ensured the provision of high-quality modern education and primary healthcare, and also the preservation of Tibetan culture. India's recently formalised Tibetan Rehabilitation Policy has promised to allow Tibetans to undertake any economic activity and pursue jobs in any field in which they are proficient, but some Tibetans claim that it has failed to result in any tangible change so far. The relative lack of economic opportunities in India has been flagged as an issue, leading many Tibetans to leave India for better opportunities in the West.³⁴

Refugees and Foreigners: Recognising Some, Stigmatising Others

India has neither signed the 1951 UN Convention on Refugees nor devised its own domestic refugee law. As a result, refugees and forced migrants are treated on a par with other foreigners, governed by the outdated Foreigners Act 1946. Some fundamental rights guaranteed by the Indian Constitution but denied to foreigners, and by extension also to refugees and asylum-seekers, include: prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15); equality of opportunity in matters of public employment (Article 16); freedom of speech and expression, freedom of assembly, freedom of movement, freedom to reside and settle anywhere in India, freedom to practice any profession or to carry on any occupation, trade or business (Article 19).³⁵ This legal vacuum has serious adverse implications for the refugees. For instance, despite cultural and ethnic similarities with the rest of the population in Tamil Nadu, refugees from Sri Lanka report being crippled by the restrictions imposed on them due to their official status as foreigners. 'We have no freedom here. We are treated as outsiders. We are neither

³⁴ Kunal Purohit, 'After 60 Years in India, Why Are Tibetans Leaving?', *Al Jazeera*, March 21, 2019, <https://www.aljazeera.com/indepth/features/60-years-india-tibetans-leaving-190319231424509.html>.

³⁵ 'Foreigners Not Entitled to All Fundamental Rights', *Zee News*, November 26, 2010, https://zeenews.india.com/news/nation/foreigners-not-entitled-to-all-fundamental-rights_670573.html.

here nor there,' says an inhabitant of the Gummidipoondi refugee camp near Chennai.³⁶

India has also not ratified the 1954 and 1961 Conventions on Statelessness, meaning there is no legal recognition of stateless persons—a prerequisite to access many rights. These deprive vulnerable groups such as Chakmas and Hajongs, and Kashmiri returnees, from the protection they need. There is also no official commitment to reduce statelessness.

Despite the absence of dedicated refugee laws, there are many instances when courts in India have ruled in favour of asylum-seekers on humanitarian grounds. The Supreme Court (SC) has, in several instances, applied Articles 14 and 21³⁷ to migrants and refugees living in India as well as conferred basic human rights on them as defined by the UN.³⁸ But the courts' interventionist stance on refugees and asylum-seekers has been selective. For instance, the Supreme Court refused to intervene against the deportation of Rohingya refugees back to Myanmar in 2018, in violation of the principle of non-refoulement, as will be discussed later.³⁹

There also exist many hurdles for these groups to claim citizenship in India. A 1986 amendment to the Citizenship Act, 1955 changed the basis of citizenship from *jus soli* (by virtue of birth) to *jus sanguinis* (by virtue of descent). Hence, citizenship has become conditional on the parents being Indian nationals as birth in India no longer suffices. This weakens safeguards for refugees and against statelessness. Another amendment, in 2003, while reducing the qualifying period for naturalisation from 14 years to nine, made citizenship ineligible

36 Piyumi Fonseka. 'Desperate Lives inside Refugee Camps', *Daily Mirror*, May 2, 2017, <http://www.dailymirror.lk/article/Desperate-lives-inside-refugee-camps-128128.html>.

37 Articles 14 and 21 of the Indian Constitution provide for equality before law, and the protection of life and liberty.

38 Some pieces of evidence of High Courts (HCs) upholding the basic human rights of refugees include: *Gurunathan and Others vs GoI and Others and A.C. Mohd. Siddique vs GoI and Others; Nedumaran vs Government of Tamil Nadu, both on Sri Lankan refugees. Syed Ata Mohammadi vs Union of India*, the Bombay HC, on Iranian refugees. See: Ghosh, *Migrants, Refugees and the Stateless in South Asia*, 243.

39 Krishnadas Rajagopal, 'SC Throws out Plea to Restrain Govt from Deporting 7 Rohingya to Myanmar,' *The Hindu*, October 4, 2018, <https://www.thehindu.com/news/national/sc-allows-deportation-of-seven-rohingya-from-assam-to-myanmar/article25119615.ece>.

for even those whose either parent was an ‘illegal migrant’. This and other strict exclusionary provisions such as the requirement for registration of minors to include copies of valid foreign passport, copy of valid residential permit, and proof that each parent was an Indian citizen, create statelessness as a by-product.⁴⁰ The lack of safeguards against statelessness at birth is in contravention of UN Child Rights Convention, International Covenant on Civil and Political Rights, Convention on the Rights of Persons with Disabilities and the Convention on Migrant Workers, which assert the right of a child to be registered immediately after birth and the right to acquire a nationality, under which India has not filed any reservations.

Recently, relaxations have been made in the citizenship regime, removing the 2003 proviso and other conditions. In 2015, the BJP government decreed to allow non-Muslim minority communities (specifically, Hindu, Sikh, Jain, Buddhist, Parsi and Christian) from Afghanistan, Bangladesh and Pakistan to stay on in India even without proper documentation on ‘humanitarian considerations’.⁴¹ The following year, the process of granting citizenship to those fleeing persecution in neighbouring countries was decentralised to the districts.⁴² And, in December 2019, Indian Parliament passed an amendment to the Citizenship Act, 1955, making it easier for persecuted non-Muslim minorities from the aforementioned countries to become Indian citizens. The Citizenship Amendment Act, 2019 i) makes Hindu, Sikh, Jain, Buddhist, Parsi and Christian illegal migrants from these countries eligible for Indian citizenship, and ii) relaxes the residence requirement for naturalisation for the said groups from 11 years to six years. No condition or tests to prove persecution have been outlined in the statute.

40 Asha Bangar, ‘Statelessness in India,’ Institution on Statelessness and Inclusion, June 2017, https://files.institutesi.org/WP2017_02.pdf.

41 ‘Government to Allow Pakistani Hindus to Buy Property, Open Bank Accounts.’ *Economic Times*, April 17, 2016, <https://economictimes.indiatimes.com/news/politics-and-nation/government-to-allow-pakistani-hindus-to-buy-property-open-bank-accounts/articleshow/51863383.cms>.

42 1595 Pakistanis were granted Indian citizenship in the three years since (till 2018). Since 2018, when religion-wise data began to be made public, 295 Hindus and Sikhs from Afghanistan and Pakistan were granted Indian citizenship (as of February 13, 2019). See: ‘Sikh and Hindu Refugees from Afghanistan and Pakistan.’ Ministry of Home Affairs, Press Information Bureau, February 13, 2019, <https://pib.gov.in/PressReleaseframePage.aspx?PRID=1564254>.

The amendment, while seeking to open India's doors to the persecuted groups mentioned above, excludes Muslims from its ambit. For instance, Ahmadiyas and Shias fleeing persecution in Pakistan, and Hazaras fleeing Afghanistan, have been left out. As have Rohingyas from Myanmar. The Tamils of Sri Lanka have also been excluded. This selective application is in contravention of international law, in particular the right to nationality 'without distinction as to race, colour, or national or ethnic origin' (Article 5, CERD), and against India's Constitution which guarantees equality before the law (Article 14) and does not permit discrimination on any ground (Article 15). The amendment has been challenged in court by 140 parties.

On other occasions too, Muslim refugees have been completely ignored by the national government while making any 'humanitarian considerations'. Home Minister Rajnath Singh declared in September 2018 that all Rohingya in India were 'illegal immigrants' who were to be deported on account of being a threat to national security. This is a direct violation of non-refoulement, a fundamental principle of international law.⁴³ A week later, the Indian Supreme Court refused to intervene in a plea by seven Rohingya Muslims to stop their deportation to Myanmar. The subsequent announcement of a systematic biometric data collection exercise at the state level stoked fears among the Rohingya that the government intended to follow through with its threat.⁴⁴ A second round of deportations followed in January 2019, and hundreds of Rohingya have begun returning to Bangladesh on their own. India's treatment of the Rohingya has come under particular criticism by international bodies. Meenakshi Ganguly, the South Asia director at Human Rights Watch, reckons that the Indian government views the Rohingya 'from a single obsessive prism—that they're Muslim.'⁴⁵

⁴³ 'Obtain Particulars of Rohingya for Deportation, Rajnath Singh Tells States,' *The Indian Express*, September 27, 2018, <https://indianexpress.com/article/india/obtain-particulars-of-rohingya-for-deportation-rajnath-singh-tells-states-5377088/>.

⁴⁴ 'Govt Tells States to Collect Biometrics of Rohingyas,' *Hindustan Times*, October 1, 2018, <https://www.hindustantimes.com/india-news/govt-tells-states-to-collect-biometrics-of-rohingyas/story-PyRqA1jw9JbPfQivAMo4rJ.html>

⁴⁵ Sadanand Dhume, 'Fear of Islam Leads India to Snub Refugees,' *The Wall*

Making Foreigners in Assam and elsewhere

In addition to introducing exclusionary, unfair and arbitrary policies toward refugees, India has also been disenfranchising some of its own citizens, making them foreigners in their own land, incarcerating them in detention centres, and putting them at risk of statelessness. The recently concluded exercise of drawing up a National Register of Citizens (NRC) in Assam in an effort to ‘detect and deport’ illegal foreigners has created havoc for millions of Indian citizens and has ended up disenfranchising citizens *en masse*.⁴⁶ The central government now plans to scale this up nationally to identify ‘illegal immigrants’ everywhere, which many believe refers to Muslims.

The long-winded NRC process in Assam has led to an atmosphere of pervasive fear and panic. In a region marked by chronic poverty, illiteracy, poor record-keeping and constant migrations due to floods that wash away entire settlements, individuals face potential disenfranchisement unless they are able to provide documentary evidence tracing their lineage back by almost five decades. In many cases, a mismatch of a mere letter in names in one of the many required documents has been enough to declare someone as a foreigner. The final NRC, published on 31 August 2019, left 1.9 million residents of Assam off the list. As the NRC is touted to be a list of citizens, fears of arbitrary deprivation of nationality of all those who were left off it is widespread. The legal redress awaiting these individuals is opaque, arbitrary and awash with prejudice among those implementing it.⁴⁷

The exclusion of such a large number of persons is an outcome of procedural failures in the administration of NRC. Populations have been arbitrarily segregated into ‘original’ and ‘non-original’ inhabitants—with Bengali-speaking minorities making up the bulk of the latter, and differential criteria used to verify claims

Street Journal, May 31, 2018. <https://www.wsj.com/articles/fear-of-islam-leads-india-to-snub-refugees-1527807807>.

46 Helen Regan, ‘1.9 Million Excluded from Indian Citizenship List in Assam,’ *Cable News Network*, August 31, 2019, <https://edition.cnn.com/2019/08/30/asia/assam-national-register-india-intl-hnk/index.html>.

47 Rohini Mohan, ‘Worse Than a Death Sentence’: Inside India’s Sham Trials That Could Strip Millions of Citizenship,’ *VICE News*, July 29, 2019, https://news.vice.com/en_us/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship.

depending on whether they come from someone deemed 'original' inhabitant or 'non-original'. Furthermore, arbitrariness is written into the law as Section 3(3) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003 mentions 'persons originally inhabitants of the State of Assam', without any definition or the basis for identifying such 'original inhabitants'. This fuzziness has been used by NRC authorities to arbitrarily reject documents provided by minorities in physical verification proceedings, resulting in the disproportionate exclusion from NRC of Bengali-speaking persons.

The state has had a long history of arbitrarily disenfranchising minorities in Assam, particularly Bengali-speaking Muslims. Immediately after Independence, The Immigrants (Expulsion from Assam) Act 1950 was used to identify 'suspected foreigners' and push them over the borders into the then East Pakistan. This was renamed the Prevention of Immigration Scheme (PIP) in the early 1960s, again targeting Bengali-speaking Muslims.⁴⁸ Under mounting criticism, the quasi-judicial Foreigners Tribunals (FTs) were established, under the Foreigners (Tribunal) Orders 1964, to provide a semblance of due process, and these have continued to function to this day. Since the tribunals test claims to citizenship using the Foreigners Act, 1946, the outcomes are generally foregone conclusions. The Foreigners Act shifts the burden of proof to the applicant, who is required to satisfy the tribunal of the genuineness of his or her claim. The fact that victims are mostly destitute and poorly educated, and that government record-keeping is neither efficient nor accessible, makes this requirement unfulfillable for many.

In 1983, the Illegal Migrants (Determination by Tribunal) Act (IMDT) corrected the reversal of burden of proof in FT proceedings, to the prosecution. But under an orchestrated campaign by a lobby of Assamese nativists and Hindu nationalists, the IMDT Act was struck down by the Supreme Court in 2005, reviving the arbitrariness of FTs in making foreigners out of long-standing

⁴⁸ Gaurav Das, 'NRC Tsunami Bypasses Assam Island,' *Telegraph India*, July 25, 2018, <https://www.telegraphindia.com/states/north-east/nrc-tsunami-bypasses-assam-island/cid/1455872>.

citizens.⁴⁹ And, in 1997, under political pressure, the Election Commission of India launched its own programme to mark out foreigners, identifying ‘doubtful’ voters and removing names from voter lists, again all through the FTs. Since 1985, some 100,000 persons have been declared foreigners, with a steep uptick since 2016, when BJP took power in Assam. Two thirds of these were in *ex parte* proceedings, where the accused never got a chance to make their case before the bench.⁵⁰ Individuals declared as foreigners, whose appeals in higher courts have been turned down, end up in detention centres where conditions are grim. In July 2019, India’s Home Ministry revealed in Parliament that Assam’s six functional detention centres housed 1133 such declared foreigners.⁵¹

While the NRC and associated exercise was designed primarily to drive Bengali-speaking Muslims out of the state, its actual impact has cut across religious, ethnic and linguistic minorities. Even among the minorities, the most affected are the poor and the vulnerable who cannot afford effective legal representation. Particularly at risk are women, many of whom have married young and moved away to their husbands’ villages, with no official documentation to prove their link to their families and to their places of birth. The documents they can manage to produce, usually issued by village-level authorities, are often considered inadequate by the FTs. The uncertainty and resultant panic have contributed to a spate of suicides by people who fear the indignity of disenfranchisement and the horror of detention. By June 2019, Citizens for Justice & Peace (CJP), a human rights organisation, had tracked 51 such cases in the state, with most of them being reported since the publication of the first draft list in January 2018.⁵² Many more suicides have been reported since the publication of the final list.⁵³

49 ‘SC Strikes down IMDT Act as Unconstitutional,’ *The Economic Times*, July 13, 2005, <https://economictimes.indiatimes.com/sc-strikes-down-imdt-act-as-unconstitutional/articleshow/1168803.cms?from=mdr>.

50 ‘Unstarred Question No. 1724,’ Supplementary Questions, Parliament of India, last modified July 2, 2019, <http://loksabhaph.nic.in/Questions/QResult15.aspx?qref=1909&lsno=17>.

51 *Ibid.*

52 *Ibid.*

54 ‘Fear over NRC Grips West Bengal, Two More Commit Suicide,’ *The Times of India*, September 24, 2019, <https://timesofindia.indiatimes.com/india/fear->

Notably, contrary to public expectations, the final NRC list reportedly has more Hindus on it than Muslims.⁵⁴ State and central governments—both under the Hindu nationalist BJP— sought a potential workaround for all non-Muslims excluded from the Assam NRC list. As the Indian Home Minister said:

I want to assure all Hindu, Sikh, Jain, Buddhist and Christian refugees that you will not be forced to leave India by the Centre. Don't believe rumours. Before NRC, we will bring the Citizenship Amendment Bill, which will ensure these people get Indian citizenship.⁵⁵

The bill the Home Minister was referring to, and was signed into law on 12 December 2019, has redefined the 'illegal immigrant' category on religious lines, by excluding all Hindu, Sikh, Jain, Buddhist and Christians from Bangladesh, Pakistan and Afghanistan, from its purview. All are thus made eligible for naturalisation. Muslims, however, will continue to be covered under the 'illegal migrant' category.

Over the past months, there has been a clamour by BJP-ruled states across the country to implement NRC-like exercises of their own. The central government's first policy statement after returning to power in May 2019 included a promise to implement the NRC as a priority in other areas in India 'affected by infiltration'.⁵⁶ In July 2019, an official notification laid the ground for a two-step process to prepare a National Register of Indian Citizens. Information sourced through Right to Information (RTI) applications reveals

[over-nrc-grips-west-bengal-two-more-commit-suicide/articleshow/71281560.cms](https://www.outlookindia.com/magazine/story/india-news-even-hindus-are-illegal-immigrants-in-assams-ambitious-national-register-of-citizens-bjp-on-backfoot/302099)

54 Anupam Bordoloi, 'Even Hindus are "Illegal Immigrants" in Assam's Ambitious National Register of Citizens! BJP on Backfoot?' *Outlook India*, September 2016, 2019, <https://www.outlookindia.com/magazine/story/india-news-even-hindus-are-illegal-immigrants-in-assams-ambitious-national-register-of-citizens-bjp-on-backfoot/302099>.

55 'Will Throw out Intruders: Amit Shah's Big NRC Push in West Bengal.' *India Today*, October 1, 2019, <https://www.indiatoday.in/india/story/amit-shah-nrc-speech-kolkata-bjp-elections-citizenship-illegal-immigrants-1605194-2019-10-01>.

56 'NRC to Be Implemented on Priority in Areas Affected by Infiltration: President,' *The Hindu Business Line*, June 20, 2019, <https://www.thehindubusinessline.com/news/national/nrc-to-be-implemented-on-priority-in-areas-affected-by-infiltration-president/article28085910.ece>.

that ‘identifying person whose citizenship is doubtful’ is central to this exercise. Furthermore, the national government has asked for detention centres to be established in each state, and Foreigners Tribunals to be set in districts across the country. And some BJP-ruled states, such as Uttar Pradesh⁵⁷ in the north and Karnataka⁵⁸ in the south are relying on the police to arbitrarily round up ‘suspected foreigners’, all of whom are Muslim. Rights scholars and activists point out that the goals of this exercise are irrational, and the costs far outweigh whatever gains there might be. The methods used to roll out the exercise are also unconstitutional, as they violate the provisions of non-discrimination and ensuring dignity and equality of all in the constitution and international law.⁵⁹

Conclusion

India has neither signed the 1951 UN Convention on Refugees nor devised its own domestic refugee law. Refugees and forced migrants are therefore treated on a par with other foreigners and not guaranteed basic rights, such as prohibition of discrimination, equality of opportunity, and freedom of speech and movement. The core principle of the UN Convention on Refugees is non-refoulement, which asserts that a refugee should not be forced to return to a country where they face serious threats to their life and freedom. This principle, considered a rule of customary international law, was violated when the Indian Supreme Court refused to intervene to stop the deportation of Rohingya refugees by the central government in October 2018.

India has also not ratified the 1954 Convention Relating to the Status of Stateless Persons, meaning that stateless persons are not recognised as legal entities deserving the minimum standards of treatment due to them, including the right to education,

57 ‘UP Cops to Launch Crackdown on Illegal Bangla Immigrants,’ *The Times of India*, October 2, 2019, <https://timesofindia.indiatimes.com/city/lucknow/up-cops-to-launch-crackdown-on-illegal-bangla-immigrants/articleshow/71402211.cms>.

58 ‘Karnataka Police Arrests 60 on Suspicion of Being Undocumented Bangladeshi Immigrants,’ *The Wire*, October 27, 2019, <https://thewire.in/rights/karnataka-police-arrests-60-on-suspicion-of-being-undocumented-bangladeshi-immigrants>.

59 Gautam Bhatia, ‘A Bill That Undercuts Key Constitutional Values,’ *The Hindu*, October 6, 2019, <https://www.thehindu.com/opinion/lead/a-bill-that-undercuts-key-constitutional-values/article29611770.ece>.

employment and housing, as well as the right to identity, travel documents and administrative assistance. India has also not signed the 1961 Convention on Reduction of Statelessness, that seeks to prevent statelessness and reduce it over time. This has enabled Indian citizenship laws to be rife with exclusionary and arbitrary provisions that produce statelessness such as the provision for citizenship which necessitates that parents of even those born in India not be 'illegal migrants'. Groups such as Chakma and Hajong in Arunachal Pradesh and large numbers of Bengali-speaking persons in Assam, face statelessness as a result.

India has been following selective practices with different refugee and displaced groups that do not accord with international norms. Irrespective of the official stand, the living conditions reported by all refugee groups we studied were abysmal with poor security, lack of basic amenities, and limited employment opportunities. Access to education and healthcare were poor, particularly for those living in camps. Across groups, employment was limited to petty, informal, daily-wage labour.

The lack of a national refugee law means rights and services, besides being below par, vary across groups, with different groups treated differently and arbitrarily, and refugee protection delivered in an ad hoc manner. There is a marked contrast between persecuted non-Muslims, who are viewed favourably, and Muslims, mainly Rohingyas from Myanmar and Muslims from Bangladesh, who are viewed with suspicion and treated with hostility.

This arbitrariness and discrimination, mostly directed at Muslim groups, is being institutionalised under the current Hindu-majoritarian dispensation, with citizenship laws effectively being used for political ends. The 1986 amendment to the Citizenship Act, 1955 moved the basis of citizenship from *jus sui* to *jus sanguinis* system, thus making citizenship contingent on descent in place of birth. In 2003, further amendments created the category of 'illegal migrants', completely excluding those deemed such from any route to citizenship, including of their children born in India. The amendment also laid the grounds for preparing National Register of Citizens, first rolled out in Assam. The completion of the NRC updation in Assam, the result of a 10-year-long administrative screening process, involving 52,000 state employees and at a cost

of USD 180 million, has left 1.9 million persons off the list. Further demonstrating the religious agenda of the government is the fact that central government and senior BJP leaders have assured Hindus excluded from NRC (along with Buddhist, Christian, Parsi, Sikh and Jains, if any) against any government moves to deport them.

This use of law and procedures, in claiming NRC as critical to identify and deport Muslim illegal immigrants, while offering the Citizenship Amendment Act 2019 as a refugee protection mechanism for Hindus who will not be deported, is remarkable, coming as it does from the highest authorities in government and the ruling party. Under the new citizenship dispensation, the government also wants to expand its NRC as a 'detect, detain and deport' machinery, to the rest of the country, to create a National Register of Indian Citizens. This does not portend well for the religious minorities in India.

Recommendations

There is a clear need to strengthen India's refugee laws and to democratise and make citizenship laws more inclusive for all kinds of persecuted people, including minorities.⁶⁰ Below are some of our recommendations.

For the state party:

- i. Refugees and asylum-seekers
 - Sign the 1951 Refugees Convention, and its 1967 Protocol.
 - Provide rights and services per existing international norms equally to all refugees.
- ii. Statelessness
 - Sign the 1954 Convention Relating to the Status of Statelessness Persons.
 - Sign the 1961 Convention on the Reduction of Statelessness.
 - Correct provisions of the Citizenship Act 1955 that create

⁶⁰ Mohsin Alam Bhat, 'The Constitutional Case against the Citizenship Amendment Bill,' *Economic & Political Weekly* 54, no. 3 (January 19, 2019). <https://www.epw.in/journal/2019/3/commentary/constitutional-case-against-citizenship.html>.

statelessness, i.e., *sui soli*, parents not ‘illegal migrants’, and residency and language requirement.

iii. Citizenship

- Revoke the Citizenship Amendment Act 1955, introducing a religion test in the determination of citizenship. Abolish ordinances that relax criteria selectively for refugees from specific countries and of specific religious faiths. Replace these with an inclusive, all-embracing law that makes India home to persecuted minorities—religious, ethnic and linguistic.
- Relax provisions for grant of citizenship to refugees and their children, and to prevent statelessness across all groups, and not selectively by religion, or countries.
- Remove arbitrariness in the Citizenship Act 1955, present in the form of complex procedures, language criterion, and denial of OCI⁶¹ to those with any links to Pakistan, Bangladesh, among others.

iv. Assam NRC and appeals against exclusion from NRC

- Provide effective redress to those excluded from NRC in Assam, through provision of legal aid, changes to appeals procedures set out in recent orders (30 May 2019 amendment to Foreigners Tribunal orders), and Foreigners Tribunals acting as effective redress bodies, removing arbitrariness in their proceedings.
- Close down detention centres in Assam and release all detainees. Conduct special audit of those declared foreigners already, including those currently in detention, to identify those who might have been the victims of arbitrary procedures. Initiate discussions with relevant foreign governments for deportation of illegal immigrants. and provide a route to appeals before FTs (part of the NRC process) for the rest.
- Address ‘immigrant’ anxieties of Assamese population by working on a policy of opportunity creation and identity safeguards that are equitable and inclusive for all individuals deemed citizens in Assam.

⁶¹ OCI or Overseas Citizen of India, grants life-long visa to persons of Indian origin. ‘India origin’ is defined arbitrarily.

v. Pan-India NRC:

- Abolish plans for all-India National Register of Indian Citizens (NRIC), relying
- rather on the existing biometric national registration system that already documents the entirety of the Indian population. Stop work on National Population Register (NPR), the first steps to NRIC.

For the international community:

- Encourage India to enforce its international obligations on refugees and asylum-seekers and citizenship, by codifying these in domestic legislations, case law and programmes.
- Encourage India to revoke the discriminatory CAA 2019, and replace it with an inclusive refugee law, that is founded on India's signing the refugee and statelessness conventions and protocols.
- Support India to resolve the conditions of uncertainty created by NRC in Assam, by providing opportunity for effective appeals for those excluded, and ensuring that no one is left at risk of statelessness.
- Provide technical assistance and training to Indian authorities towards creating an inclusive refugee and asylum framework, and non-discriminatory citizenship regime.
- Hold India to account in international fora on its treatment of refugees, and its role in disenfranchising citizens and creating statelessness.