

## **RIGHT TO EDUCATION OF REFUGEES IN INDIA**

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### **Introduction**

Refugees are individuals who have been forced to flee their homes and countries due to circumstances beyond their control, such as human rights violations, socio-economic instability, political insecurity, armed conflicts, and persecution. They often face lack of basic necessities and safety, making them highly vulnerable populations in need of protection and support. Refugees are considered as “creatures of circumstances” because they have been driven from their homes by external forces, leaving them with no choice but to seek safety and protection elsewhere. The Article 1 of Convention relating to the status of Refugees of 1951 (hereinafter referred to as the “*Refugee Convention*”) define refugees as those who

*“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership 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.”*

The Refugee Convention emphasis that it is crucial for both the states where they seek refuge and the international community as a whole to provide adequate protection and assistance to refugees. States have a responsibility under international law to protect refugees within their territories and uphold their fundamental human rights, as enshrined in various international conventions, such as the Refugee Convention and the Universal Declaration of Human Rights. All human rights are interconnected and interdependent therefore violation of one right may lead to violation of other rights. The right to education as a fundamental right supports the exercise of other human rights and is essential for the development of individuals, especially in culturally diverse democratic societies. The protection of the right to education for refugees is especially important because education plays a crucial role in their integration into host societies, empowerment, and peaceful coexistence with others. Denying refugees access to education can perpetuate a cycle of exclusion, marginalization, and hinder their ability to

participate effectively in the culture of democracy. Therefore, the scope of research will be limited in understanding the circumstances that underlie the problem related to educational rights of refugees living in India. India, while not a party to the Refugee Convention, is a signatory to other conventions which deals with rights related to refugees.

### **The Right to Education**

Education is crucial in fostering international peace, justice and societies free from fear and violence. It helps them efficiently engage in the political process and civic structures. Education has been recognised as

*“An important tool to help prevent terrorism and violent extremism, as well as racial and religious intolerance, genocide, war crimes, and crimes against humanity worldwide and a way to ensure stability and sustainable peace, human rights, social justice, diversity, gender equality and environmental sustainability, as well as to empower learners to be responsible citizens within their communities, countries and globally.”<sup>1</sup>*

Education is not just a means to gain knowledge but also a crucial tool for empowerment and integration into society. It equips refugees, including children and adults, with the skills and knowledge necessary to build a better future for themselves and their communities. Moreover, education can be instrumental in breaking the cycle of poverty and enabling refugees to participate meaningfully in their host societies. Furthermore, education should be seen as a protective factor for children in emergencies and displacement. It provides stability, structure, and a sense of normalcy during challenging times. By investing in the education, one can contribute in building a more inclusive and equitable world.

It is important to ensure that education remains accessible and supportive for refugee populations at all stages of their displacement as refugees face challenges to access education, at different stages of their displacement. At the primary level, it might be relatively easier for refugee children to find schools and receive basic education, as the curriculum and teaching methods are often more adaptable. However, as they progress to the secondary level, the challenges become more significant. Switching to a new curriculum, language barriers, and the

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<sup>1</sup> UNESCO, “A Teacher’s guide on the prevention of violent extremism” < <https://unesdoc.unesco.org/ark:/48223/pf0000244676> > accessed on 10th June 2021.

pressure on school capacity can make it difficult for refugee students to continue their education smoothly.

The Council of Europe's Strategy for the Rights of the Child (2016-2021)<sup>2</sup> highlights the vulnerability of children from migrant backgrounds, including refugees and asylum seekers. These children often face significant challenges in accessing essential services like education, healthcare, and justice. Education is recognized as a fundamental right for all children, regardless of their migration status.

### **The Challenges**

As discussed above, International Human Rights Conventions, such as the Universal Declaration of Human Rights and the Convention on the Rights of the Child, emphasize the importance of providing education to all children, including refugees. Despite efforts to provide shelter and humanitarian aid to refugees, the right to education is often overlooked or inadequately addressed. There are several reasons for this:

1. **Limited Resources:** Many countries that host a large number of refugees may struggle to provide adequate resources, including funding and infrastructure, to support education for all refugee children.
2. **Language Barriers:** Language differences can hinder access to education, especially if the education system in the host country operates in a language that refugee children do not understand.
3. **Recognition of Qualifications:** Refugee children might face challenges in having their previous educational achievements recognized, leading to difficulties in accessing appropriate levels of education.
4. **Trauma and Disruption:** The experiences of forced displacement and living in refugee camps can have a profound impact on children's mental health and well-being, making it difficult for them to engage effectively in education.
5. **Discrimination and Stigmatization:** Refugee children may face discrimination and stigmatization in the host communities, which can create additional barriers to their integration into the education system.

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<sup>2</sup> Counsel De L'europe "Council of Europe Strategy for the Rights of the Child" < <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066cff8> > accessed on 10th June 2021.

Additionally, in some cases, refugee schools have limited capacity, leading to age restrictions on attending schools. The limited options for further education or vocational training and the necessity to engage in low-paid jobs to survive can indeed make it challenging for refugee children and adolescents to hold onto hope and aspirations for a better future. These difficulties can take a toll on their mental well-being and hinder their ability to fully develop their potential.

### **The Right in India**

The fundamental rights are guaranteed under Part III of the Constitution of India and include rights such as the Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, and Right to Constitutional Remedies. The rights enshrined in the Constitution of India can be broadly categorized into two categories *firstly*, available to every person and *secondly*, available only to the citizens of India.

The Right to Education is a fundamental right available to every person in India and is considered a basic human right that flows directly from the Right to Life guaranteed under Article 21 of the Constitution. It means that every individual, whether a citizen or not, has the right to education as a fundamental entitlement. However, the scope and extent of this right are subject to limitations and conditions as laid down by the state. Articles 41 and 45 of the Constitution of India provide guidelines to the state to frame policies and legislation to ensure that the right to education is implemented effectively and that every person, especially children, are provided with free and compulsory education.

The 86th Constitutional Amendment of 2002 was a significant step towards the Right to Education in India. It declared the Right to Education as an independent fundamental right and inserted Article 21-A into the Constitution of India, which stipulates that the state shall provide free and compulsory education to all children between the ages of six and fourteen years in such a manner as the state may determine.

It is important to note that while the Right to Education has been recognized as a fundamental right, there are challenges in its implementation, especially in ensuring access and quality education for all.

The protection of rights of refugee is a complex issue, especially in the absence of a uniform legal framework. This situation leads to variations in how different refugee communities are treated and interventions for refugee rights are often handled on a case-by-case basis. While this approach may lead to some communities being reasonably treated well, it can also result

in discrepancies and inconsistencies in the treatment of different refugee groups. Additionally, different refugee groups in India might receive varying levels of attention and support, depending on the circumstances of their displacement and the policies in place at the time.

For instance, in case of Sri Lanka Tamilian Refugees, organizations like OFERR (Organization for Eelam Refugees Rehabilitation) play a crucial role in advocating for the rights of refugees and facilitating their access to education. By working closely with the local community and government authorities, OFERR has been able to secure special concessions from the state and central government, which likely include measures such as waivers or reduced fees for educational services and language support. Efforts have led to improved educational infrastructure and resources in refugee camps, such as schools, textbooks, and learning materials. At the same time, the refugees understand the importance of education and take proper measures to attain the same. For instance, if a particular child is not attending school, neighbours intervene and take responsibility to ensure the child's education.

By addressing these critical issues, OFERR and similar organizations empower Sri Lankan Tamilian refugees to pursue education and gain skills that can enhance their future opportunities.

Similarly, in case of Rohingyas Refugees, the lack of a solid framework and the challenges faced by the community have resulted in many Rohingya children being deprived of formal education, despite the rights guaranteed by the UN Convention on the Rights of the Child. So, specific organizations, such as the Zakat Foundation and the BOSCO Foundation, have made efforts to support Rohingya refugees in India and provide aid and educational opportunities, however there are still limitations and issues that hinder consistent support. Regarding the Zakat Foundation's efforts, it is laudable that they have sponsored children attending schools like God's Grace and Gyandeeep Vidya Mandir. However, the interruption in payment of fees due to issues with the school administration, especially during the pandemic, has negatively impacted the education of these children. Further, the United Nations High Commissioner for Refugees (UNHCR), through the BOSCO Foundation<sup>3</sup>, is involved in implementing the rights of refugees, including educational rights. However, there is a need for greater coverage and outreach to ensure that all refugee children, including those in areas like Shaheen Bagh, Delhi, can access their educational rights.

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<sup>3</sup> BOSCO foundation, present across 135 countries and in established in Delhi renders help to the refugees.

In the absence of a robust legal framework, refugees in India have often taken matters into their own hands to address their specific needs. Various initiatives led by refugees themselves, along with charitable trusts and non-profit organizations, have been established to provide support, including access to education. This highlights the need for a comprehensive and uniform legal framework to ensure consistent and equitable treatment for all refugees in the country as the disparities in access to rights and educational opportunities among different refugee camps or areas within India are concerning. It is crucial for charitable organizations and humanitarian agencies to strive for equal and consistent support to all refugees.

### **Conclusion and Suggestions**

India does not have a specific comprehensive refugee law or a standardized legal framework for dealing with refugees and asylum seekers. Instead, the treatment of refugees and asylum seekers in India has largely been ad hoc and case-specific, leading to inconsistent government policies and interventions. Also, the rights and protections of refugees are not adequately guaranteed, leaving them vulnerable to various risks, including the lack of access to essential services like education, healthcare, and employment.

To cater to the educational needs of refugee children, it is essential for governments, international organizations, and civil society to work together in developing and implementing inclusive education policies. This involves ensuring that refugee children have access to schools, qualified teachers, and appropriate language support, considering the linguistic diversity often present among refugees. Educational programs can also incorporate psychosocial support, helping children cope with the traumas they may have experienced. Adequate financial support and sustainable funding mechanisms are essential to ensure that initiatives supporting refugee education can operate effectively and provide the necessary resources to help refugees thrive and rebuild their lives in India. It requires a collective effort and commitment from the international community to uphold the rights of all children, regardless of their migration status as refugees living in refugee camps and facing constant police surveillance can be extremely challenging for refugees, especially for children and young people who are eager to continue their education and build a better future.

Further, a comprehensive refugee law could provide a clear and transparent process for the recognition of refugee status, ensuring that those in need of international protection receive the necessary assistance and support. Also, a law could establish the rights and responsibilities of

refugees, outline their access to education, healthcare, and employment, and specify their legal status within the country.

Therefore, it is essential to:

1. Advocate for a comprehensive legal framework that guarantees the right to education for all refugees, including the Rohingya community.
2. Strengthen collaboration between governmental agencies, international organizations, and grassroots organizations to provide sustainable and consistent support to refugees.
3. Increase awareness about the importance of education for refugee children and the long-term benefits it brings to both individuals and communities.
4. Address specific barriers, such as language differences, to facilitate the integration of refugee children into the formal education system.
5. Work towards reducing discrimination and social stigmas that may prevent Rohingya children from accessing education.

Overall, providing quality education to Refugee children requires a coordinated and concerted effort from various stakeholders to ensure that every child's right to education is upheld.