

Access to Legal Rights for Refugee Populations in India

“‘Where’ is my home, ‘what’ is my home?” asked the old Tibetan *mola* or grandmother, seated outside the Buddhist monastery in my hill-town of Dehradun, continuing to weave a prayer thread as I prodded her with questions about her journey from Tibet to India. Her question was particularly poignant since I knew that she had lived in this town for nearly 50 years, taught music to most children of the neighborhood, including me, and her grandchildren, born here, were playing in the courtyard that stood in front of us. And yet, 50 years later, the answer to her question had not become easier.

South Asia has a population of over 2.5 million refugees, arising from a spectrum of intra-regional, political, ethnic and racial conflicts, but despite the scale and variation of this experience, the region does not have a legal regime to guide its refugee and migrant policies.¹ This has manifested in India in the form of the absence of a universally applicable law to govern refugees and their treatment by the state, a consequent lack of government obligation, and an immense disparity in the treatment of different groups such as Tibetans, Chin and Afghans.² Furthermore, despite its stated commitment to democratization and liberal principles of the present international order, India has demonstrated varying degrees of non-adherence to international norms and regulations around refugee issues. It has enacted ‘extraordinary laws’ as political tools to address and circumvent issues of refugee rights, established precarity and prolonged detention for refugees in areas such as Assam, and, under the present regime of

¹ “Refugee Population by Country or Territory of Asylum – South Asia,” *The World Bank*, accessed December 27, 2019, <https://data.worldbank.org/indicator/SM.POP.REFG>.; Partha Ghosh, “Introduction,” in *Migrants, Refugees, and the Stateless in South Asia*, (New Delhi: SAGE Publications India Pvt Ltd, 2016), xix.; Ghosh, xx.; Nasreen Chowdhory, “Introduction,” *Refugees, Citizenship and Belonging in South Asia*, (New York: Springer, 2018), 4

² Ella Rolfe, “Refugee, Minority, Citizen, Threat: Tibetans and the Indian Refugee Script,” *South Asia Research* 28, no. 3 (Nov 2008): 256.; Chowdhory, 5.

Narendra Modi, has passed a discriminatory bill that excludes groups of refugees on the basis of their religion.³ In part due to such policies, *mola* is still legally a ‘foreigner’ in India, seeking a place to call home.

Despite this massive scale, the issue of refugee rights in South Asia and in India, is often left unaddressed in political, popular and academic discourse, both domestically and globally. My awareness of this fact and of the compelling factors discussed above, accompanied by personal interactions with the Tibetan community in India, have contributed immensely to my drive to delve into issues around the treatment and recognition of refugees in India.

My research seeks to answer the question of what access to legal rights is available to refugee populations in India and to what degree does this adhere to the international legal and normative systems? It aims to assess the specific mechanisms of legal treatment of refugees by the Indian state, particularly in the post-Cold War era. This includes situating these groups within the changing conditions of domestic politics and geopolitics and the ongoing redefinition of Indian democracy. Additionally, it aims to situate the behavior of the Indian state within the international legal regime, evaluating the extent of its adherence. It also seeks to place this treatment within discourse on the global refugee crisis, particularly considering India’s role as a rising power on both the regional and global stage.

The project will cover a span of eight weeks, starting on the 18th of June and ending on the 13th of August. My methodology will involve comparative case studies but will begin with an in-depth examination of any primary legal precedents or national-level policy directions adopted

³ Ella Rolfe, “Refugee, Minority, Citizen, Threat: Tibetans and the Indian Refugee Script,” *South Asia Research* 28, no. 3 (Nov 2008): 256.; Monica Encinas, “Migrant Rights and Extraordinary Law in India: The Cases of Assam and Jammu & Kashmir,” *South Asia: Journal of South Asian Studies* 40, no. 3 (2018): 464, 467.; The Citizenship (Amendment) Act, 2019, Ministry of Law and Justice, *The Gazette of India*, December 12, 2019, <http://egazette.nic.in/WriteReadData/2019/214646.pdf>.

by the Indian state in its approach to refugees, in general. With this background, it will then delve into the comparative case studies, identifying major groups within the diverse refugee population of India, focusing primarily on Tibetan, Chin, Afghan and Rohingya refugees. However, this identification may adapt based on information gathered in the process.

For each of these cases, the analysis will begin with an investigation of the domestic and geopolitical background of the bid for refuge. Then, it will primarily focus on the precise legal precedents, policy approaches and ground-level realities of the extent and nature of legal rights awarded by the Indian state in that specific case. Finally, it will highlight any unique characteristics and important differences within these, for each group. Bringing these case studies together, I will seek to complete an assessment of India's disparate approach to the legal rights of refugee populations. I will then examine the adherence of this approach to international norms and regulations on refugee rights, analyzing its significance in the context of India as a rising power in the global and regional order.

This process will rely primarily on studying available literature, secondary sources, Indian legislation, extraordinary laws, acts and court rulings, and various forms of international legislation. However, effectively examining the access to legal rights for refugees in India must consider ground-level realities and disparities between official and practical accounts of these conditions. Therefore, as an alternative to traveling to India, this research will be supplemented by a wide range of interviews conducted with lawyers, NGOs, government officials and community members.

The research is inherently international through its assessment of the role of a rising global power within the international legal system. It will also employ lenses provided by political science, history, geography and economics in understanding the varying treatment of

refugees, will engage my own fields of study, international relations and contemporary Asian studies, and tie these into extensive legal analysis for a successful examination of the international and domestic legal regimes governing refugee rights in India.

My research advisor, Dr. Arne Kislenko, is an expert and prolific author in the fields of international relations, international history, immigration, and security issues, fields that are foundational to my research. His immense experience and network of scholars working on issues of international law and refugee rights have already been significant in shaping the direction of my proposal and will be invaluable in gathering the appropriate resources required in my analysis. As a guide to multiple experiential learning programs and director of a prolific lecture series, his advice on appropriate methods of interviewing multiple people of diverse backgrounds will be immensely important. Furthermore, Dr. Kislenko has an excellent understanding of my skills and weaknesses as I have not only taken courses with him but also worked with him extensively at the International Issues Discussion Series. Therefore, he can foresee and help me overcome any challenges I am most likely to face. Through his guidance, I have also been working to build the particular skill set required for legal analysis.

The proposed research will also engage personal relationships built during an internship over the summer at Dasra, a strategic philanthropy organization in India. These include local NGOs such as the Commonwealth Human Rights Initiative, the HRLN, the Ara Legal Initiative and Sanlaap, each of which conduct important work with refugee populations and access to justice issues in India, and can provide essential insights into ground-level realities.

Through this project, I hope to contribute to the limited discourse around the precarity of refugee populations in India, and in South Asia, situating India, a state of increasing significance as a regional and global leader, within the international legal and normative system. I also hope

to build the skills and experience required to eventually embark on an undergraduate thesis project, while aiming, at the very least, to spark this discourse amongst my peers at the University of Toronto. In completing this program, I hope to grow as a resourceful communicator, learn from and contribute to a phenomenal network of peers, and develop an independent voice as a leader and scholar.

Works Cited

Chowdhory, Nasreen. "Introduction." In *Refugees, Citizenship and Belonging in South Asia*.

New York: Springer, 2018.

Encinas, Monica. "Migrant Rights and Extraordinary Law in India: The Cases of Assam and

Jammu & Kashmir." *South Asia: Journal of South Asian Studies* 40, no. 3 (2018): 463-

480.

Ghosh, Partha. "Introduction." In *Migrants, Refugees, and the Stateless in South Asia*. New

Delhi: SAGE Publications India Pvt Ltd, 2016.

"Refugee Population by Country or Territory of Asylum – South Asia." *The World Bank*.

Accessed December 27, 2019. <https://data.worldbank.org/indicator/SM.POP.REFG>.

Rolfe, Ella. "Refugee, Minority, Citizen, Threat: Tibetans and the Indian Refugee Script," *South*

Asia Research 28, no. 3 (Nov 2008): 253-283.

The Citizenship (Amendment) Act, 2019, Ministry of Law and Justice, The Gazette of India,

December 12, 2019, <http://egazette.nic.in/WriteReadData/2019/214646.pdf>.