

india

THE STATUS OF REFUGEES - 2021



RIGHTS AND RISKS ANALYSIS GROUP

**INDIA:
THE STATUS
OF
REFUGEES - 2021**

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Abbreviation

ATS	Anti-Terrorist Squad
BJP	Bhartiya Janata Party
BSF	Border Security Force
CAA	Citizenship Amendment Act
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CBA	Cash-Based Assistance
CRC	UN Convention on the Rights of the Child
CTA	Central Tibetan Administration
CTRC	Central Tibetan Relief Committee
DYFI	Democratic Youth Federation of India
ExCOM	Executive Committee of the High Commissioner's Programme
FRO	Foreigner Registration Office
FRRO	Foreigners Regional Registration Office
GoI	Government of India
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic and Social Rights
ICCPR	International Covenant on Civil and Political Rights
IPC	Indian Penal Code
J&K	Jammu & Kashmir
LC	Legislative Council
LTTE	Liberation Tigers of the Tamil Eelam



LTV	Long Term Visa
MHA	Ministry of Home Affairs
MNF	Mizo National Front
MP	Member of Parliament
NLD	National League for Democracy
PAN	Permanent Account Number
PIL	Public Interest Litigation
RC	Refugee certificate
RHRI	Rohingya Human Rights Initiative
RPF	Railway Protection Force
RSS	Rashtriya Swayamsevak Sangh
SOP	Standard Operating Procedure
TRP	Tibetan Rehabilitation Policy
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UT	Union Territory
ZORO	Zo Reunification Organisation

1. Executive summary

India admits that “there is no national law on refugees”¹. The Ministry of Home Affairs had circulated a “Standard Operating Procedure (SOP) w.e.f. 29-12-2011 for dealing with foreign nationals who claim to be refugees” for grant of the Long Term Visa (LTV)” where “prima facie the claim (of refugee) is justified, (on the grounds of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion)” and “the general perceived condition in the home country of the people belonging to the community of the foreigner making the claim.” However, the SOP is seldom followed. India treats all foreigners whether illegal immigrants, refugees/asylum seekers or those overstaying following grant of visa under – the Foreigners Act of 1946, the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act of 1939, and the Citizenship Act, 1955.

In 2021, about 20,000 refugees including 18,000 from Myanmar, mostly Chins,² unknown number of Rohingya refugees and about 206 Afghan nationals including 94 primarily those belonging to Afghan Hindu and Sikh communities evacuated by India following the Taliban takeover.³ They joined about 400,000 refugees already living in India i.e. (i) about 4,557 Afghan refugees were on Long Term Visa (LTVs) as on December 2021;⁴ (ii) about 238,222 recognised and documented refugees i.e. 95,829 Sri Lankan refugees; 73,404 Tibetan refugees; 41,315 refugees recognised by the United Nations High Commissioner for Refugees (UNHCR)⁵; (iii) about 31,313 refugees belonging to minority communities from neighbouring countries who have been given LTV on the basis of their claims of religious persecution and want Indian citizenship,⁶ and (iv) about 123,000 unregistered refugees i.e. about 100,000 Chin refugees from Myanmar residing in Mizoram since 1990s⁷ and about 23,000 Rohingya refugees not registered with UNHCR.⁸

There is no accurate data on the total population of refugees living in India. Similarly the exact population of the Rohingyas from Myanmar is not known. Then Minister of State in the Ministry of Home Affairs Kiren Rijiju in a written reply to a question in the Rajya Sabha on 9 August 2017 stated that as per available estimate there were around 40,000 Rohingya illegal immigrants in India.

In 2021, at least 414 refugees mainly from Myanmar i.e. about 354 Rohingyas and 60 Chins and other ethnic Myanmarese nationals who were arrested by police in various States of India. The highest number of

arrest was reported from Jammu and Kashmir with 174, followed by Delhi (95), Assam (55), Manipur (30), Uttar Pradesh and Haryana (19 each), West Bengal (13), Telangana (6) and Tripura (3). Non-Myanmarese refugees like the Tibetans and Sri Lankan Tamils do not face such arrest and detention for illegal entry into India. These arrests show continuous influx of refugees in the country.

Given that no refugee law exist in India, there is no uniformity in the treatment of refugees in the country. The treatment of refugees is guided by geo-political interest and vote bank politics.

For example, the Government of India (GoI) adopted the Tibetan Rehabilitation Policy (TRP) in 2014 and sanctioned Rs 40 crore to His Holiness The *Dalai Lama's* Central Tibetan Relief Committee (CTRC) for the period 2015-16 to 2019-20 to meet the administrative and social welfare activities expenses of 36 Tibetan Settlement offices located in different states of the country.⁹

For its vote bank politics, India continues to house the Sri Lankan Tamil refugees even though the armed conflicts in Sri Lanka had ended in May 2009 following the killing of the Supremo of the Liberation Tigers of Tamil Eelam (LTTE) Velupillai Prabhakaran.¹⁰ India approved Rs.1021 crore (approximately) for the Sri Lankan refugees between July 1983 and 31 December 2020 to provide the facilities such as shelter in camps, cash doles, subsidized ration, clothing, utensils, medical care, and educational assistance.¹¹ On 27 August 2021, Tamil Nadu government announced welfare measures worth Rs 317.40 crore for Sri Lankan Tamil refugees including for building 7,469 houses and provide better access to education¹²

On the other hand, refugees recognised by the UNHCR are left to fend for themselves. The government of India provides no assistance to these refugees. UNHCR's 'Cash-Based Assistance' (CBA) to a small number of recognized refugees based on an assessment of their exceptionally compelling situation such as protection, health, disability, and age-related concerns is like a drop in the ocean.¹³

The treatment of the unregistered refugees further exposes India's discriminatory refugee policy. About 1,00,000 Chin refugees from Myanmar who entered India in the 1990s have effectively integrated themselves in Mizoram while about 40,000 Rohingya refugees from Myanmar living in different states across the country¹⁴ face prosecution and persecution. About 18,000 Myanmarese refugees, mostly Chins, who crossed over to India since the military seized power in the neighboring

country on 1 February 2021¹⁵ continue to enjoy the same hospitality as their predecessors. In fact, in December 2021, Prime Minister Narendra Modi assured Mizoram Chief Minister Zoramthanga to provide humanitarian assistance to the Myanmarese refugees.¹⁶

In contrast, throughout 2021, India sought to repatriate the Rohingya refugees from Myanmar including with sanction from the Supreme Court subject to following procedure prescribed by law in clear violations of the SOP dated 29-12-2011 which calls for consideration of well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion and the general perceived condition in the home country of the asylum seekers i.e. Myanmar. However, on 8 April 2021 the Supreme Court in a departure declined to issue direction to the Union of India and Jammu & Kashmir (J&K) administration to release the 168 Rohingya refugees detained at sub-jail in Jammu. It merely directed not to deport any of them to Myanmar without the procedure prescribed for such deportation despite they facing imminent danger of being persecuted on return.¹⁷ However, the Manipur High Court in its order and judgment dated 3 May 2021 in *Nandita Haksar Vs. State of Manipur & Others*¹⁸ allowed seven Myanmar nationals of non Rohingya origin to seek asylum in India.

The consequence of this discriminatory policy is clear: while Chin refugees from Myanmar received modicum of protection including non-refoulement, at least 1,177 Rohingya immigrants were arrested/detained or rescued from trafficking by police in different states during 2017 – 2021. These arrests included 386 in West Bengal; 187 in Jammu and Kashmir; 141 in Telangana; 123 in Tripura; 98 Rohingyas in Delhi; 98 in Assam; 53 in Manipur; 35 in Mizoram; 19 each in Haryana and Uttar Pradesh; 7 in Karnataka; 8 in Kerala; and 3 in Rajasthan.

The COVID-19 pandemic had a ravaging impact on different refugee communities in India. UNHCR's 'Cash Based Assistance' has been found to be highly inadequate¹⁹ both in scale and coverage. Without the permit to work and due to lack of the requisite documentation, refugees lost their employment due to the lockdown. According to a survey conducted by the Rohingya Human Rights Initiative (RHRI) in August 2021, nearly 56% Rohingya refugees living across India lost employment due to the pandemic.²⁰ As many as six Chin refugees succumbed to Covid-19 infection during the second wave of the pandemic, often without any medical care in government hospitals because they lacked the documentation or money required for private hospitalisation.²¹ For vaccination against COVID-19, registration with CoWin platform requires use of the government-

approved identity card such as an Aadhar card, passport, Permanent Account Number (PAN) card or voter identity card.²² The refugees especially the unrecognised and undocumented ones are not eligible for these documents and further, private healthcare services are inaccessible due to high costs.

The taking over of Afghanistan by the Taliban on 15 August 2021 exposed inadequacy of India's controversial Citizenship Amendment Act (CAA) to protect any asylum seeker belonging to minority communities from the war ravaged nation. Before the last United States aircraft took off from Kabul airport, India had evacuated at least 67 Afghan Sikh and Hindu minorities, including lawmakers Anarkali Kaur Honaryar and Narender Singh Khalsa.²³ These Afghan Sikh and Hindu minorities are not eligible for protection under the CAA applicable as they have not entered India on or before 31.12.2014, the date set by the CAA.

Further, dozens of lawmakers from Afghanistan and Myanmar have taken shelter in India during 2021. India's Standard Operating Procedure²⁴ with respect to the grant of the Long Term Visas (LTV) to foreign nationals who claim to be refugees issued vide letter dated 29.12.2011 is highly inadequate to address their needs and vulnerabilities.

The refugees shall continue to flee to India. Unless, India adopts a refugee law, the asylum seekers shall not register for mere deportation. This will not address the security concerns and close the possibility for any repatriation. The absence of any refugee law is counter-productive. India needs to enact a refugee law.

¹. Lok Sabha Unstarred Question No.2623 answered on 2 August 2016 <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2016-pdfs/ls-020816/2623%20E.pdf>

². Around 15,500 Myanmar refugees deepen Covid distress in Mizoram, Assam Tribune, 20 May 2021, available at: <https://assamtribune.com/international/around-15500-myanmar-refugees-deepen-covid-distress-in-mizoram-1093022?infinitemscroll=1>

³. 'India's Cold Feet in Granting Afghans Emergency Visas Disheartening': Ambassador, The Wire, 13 December 2021, <https://thewire.in/diplomacy/afghanistan-ambassador-india-emergency-visa-taliban>

⁴. Rajya Sabha Unstarred Question No.380 answered on 1 December 2021, <https://pqars.nic.in/annex/255/Au380.pdf>

⁵. UNHCR INDIA FACT SHEET, 31 MARCH 2021, available at: <https://reporting.unhcr.org/sites/default/files/India%20fact%20sheet%20April%202021.pdf>

⁶. Lok Sabha, Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016 (Sixteenth Lok Sabha)

7. Press Release: CAA Impact – About 6,00,000 Refugees Made Forever Stateless, India Urged To Using Stop Refugees As Pawns As Stated In The Counter-Affidavit To The Supreme Court, 18 March 2020, available at: <http://www.uncat.org/press-release/press-release-cao-impact-about-600000-refugees-made-forever-stateless-india-urged-to-using-stop-refugees-as-pawns-as-stated-in-the-counter-affidavit-to-the-supreme-court/>
8. Minister of State in the Ministry of Home Affairs (Shri Kiren Rijiju) in his reply to the parliament stated that more than 40,000 illegal Rohingya immigrants were staying in India. As UNHCR registered about 23,000 Rohingya refugees, it implies that about 23,000 refugees remained unregistered. The written reply to Unstarred Question No.534 on 20.12.2017 in the Rajya Sabha by Rijiju is available at: <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2017-pdfs/rs-20122017/534.pdf>
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10. Prabhakaran was with 18 men when he was killed: Karuna. The Hindustan Times, 20 May 2009, <https://www.hindustantimes.com/world/prabhakaran-was-with-18-men-when-he-was-killed-karuna/story-UfaVjat36kCwDhBclajfL.html>
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12. CM Stalin announces Rs 317-crore welfare package for Sri Lankan Tamil refugees, India Today, 27 August 2021, <https://www.indiatoday.in/cities/chennai/story/mk-stalin-announces-rs-317-crore-welfare-package-for-sri-lankan-tamil-refugees-1846136-2021-08-27>
13. Available at: <https://help.unhcr.org/india/protection-assistance/>
14. Press Release: CAA Impact – About 6,00,000 Refugees Made Forever Stateless, India Urged To Using Stop Refugees As Pawns As Stated In The Counter-Affidavit To The Supreme Court, 18 March 2020, available at: <http://www.uncat.org/press-release/press-release-cao-impact-about-600000-refugees-made-forever-stateless-india-urged-to-using-stop-refugees-as-pawns-as-stated-in-the-counter-affidavit-to-the-supreme-court/>
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16. Mizoram: Centre has assured support for Myanmar refugees, says CM, Eastmojo, 6 December 2021, <https://www.eastmojo.com/mizoram/2021/12/06/mizoram-centre-has-assured-support-for-myanmar-refugees-says-cm/>
17. The order passed by a Supreme Court bench headed by Chief Justice S.A. Bobde on 8 April 2021 in Mohammad Salimullah and Another vs. Union of India and Others [Writ Petition (C) No. 793 of 2017], available at: https://main.sci.gov.in/supremecourt/2017/27338/27338_2017_31_1502_27493_Judgement_08-Apr-2021.pdf
18. Judgment and order passed by the Manipur High Court on 3 May 2021 in Writ Petition (Crl.) No.6 of 2021 (Nandita Haksar Vs. State of Manipur & Others), available at: [https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B55FrUiAoD_82TehNu0u2FGizID7PUnFDZGOT0peVr%2FEc1eGvdRA5&caseno=W.P.\(Crl.\)/6/2021&cCode=1&appFlag](https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B55FrUiAoD_82TehNu0u2FGizID7PUnFDZGOT0peVr%2FEc1eGvdRA5&caseno=W.P.(Crl.)/6/2021&cCode=1&appFlag)
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21. How India and the UNHCR failed to provide healthcare and vaccination for Chin refugees, Caravanmagazine, 7 June 2021; available at: <https://caravanmagazine.in/health/how-india-and-the-unhcr-failed-to-provide-healthcare-and-vaccination-for-chin-refugees>



²². For Covid-19 vaccine Aadhaar is mandatory even if registration on CoWin done with other ID. Sort of, India Today, 21 May 2021, <https://www.indiatoday.in/technology/news/story/for-covid-19-vaccine-aadhaar-is-mandatory-even-if-registration-on-cowin-done-with-other-id-sort-of-1805290-2021-05-21>

²³. Afghanistan: What does Taliban rule mean for Sikhs and Hindus?, Deutsche Welle, 8 September 2021, <https://www.dw.com/en/afghanistan-what-does-taliban-rule-mean-for-sikhs-and-hindus/a-59122249>

²⁴. https://www.mha.gov.in/sites/default/files/AnnexVIIongTermvisas_20082020.pdf

2. No law or consistent policy on refugees in India

India treats all foreigners whether illegal immigrants, refugees/asylum seekers or those overstaying visa permits under – the Foreigners Act of 1946, the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act of 1939, and the Citizenship Act, 1955. Under Section 3 of the Foreigners Act of 1946, the Central government is empowered to detect, detain and deport illegal foreign nationals and while Section 5 of the Passport (Entry into India) Act of 1920 authorises to remove an illegal foreigner by force under Article 258(1) of the Constitution of India. Further, under Article 239(1) of the Constitution of India, Administrators of all Union Territories have also been directed to discharge the functions of the Central Government relating to the aforesaid powers.²⁵

The Citizenship (Amendment) Act of 2019 was enacted to facilitate grant of citizenship to migrants belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities from Afghanistan, Pakistan and Bangladesh who have taken shelter in India due to persecution in their home countries on grounds of religion or fear of such persecution in their countries on or before 31.12.2014. They have also been exempted from the penal provisions of the Foreigners Act of 1946 and the Passport (Entry into India) Act of 1920 and the Rules/orders made thereunder by amending the Passport (Entry into India) Rules of 1950 and the Foreigners Order of 1948 vide notifications dated 07.09.2015 and 18.07.2016 respectively.²⁶

2.1. India's SOP on refugees

As stated there is no national law on refugees in India. India issued a Standard Operating Procedure (SOP) to be followed by all concerned agencies while dealing with foreign nationals who claim to be refugees vide letter dated 29.12.2011 as per the following²⁷:-

- (i) The version of the foreign national making such claim will be carefully examined. Details of the reasons for leaving the originating country and the manner in which he/ she has entered India would be elicited from the foreigner. In case, it is found that prima facie the claim is justified, (on the grounds of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion), grant of LTV to the foreign national will be considered.
- (ii) In such cases, LTV will be granted initially for a period of one year from the date of issue. The LTV for such foreigners will be renewed

every year, for a maximum of five years at the level of Foreigners Regional Registration Office (FRRO)/Foreigner Registration Office (FRO) concerned. If renewal is justified for the sixth year, the FRRO/ FRO concerned will furnish a proposal to MHA for a decision.

- (iii) During such period of stay in India, a foreigner to whom LTV is permitted by Ministry of Home Affairs (MHA) will be allowed to take up any employment in the private sector or undertake studies in any academic institution.
- (iv) Economic immigrants i.e. foreigners who have arrived in India in search of economic opportunities, without any fear of persecution, WILL NOT be eligible for LTV.”

The SOP is highly inadequate. It does not recognise the right to seek refuge. It provides no information on examining the “grounds of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion”. It only provides visa which remains a sovereign domain of any State, thereby excluding judicial interventions. Further, visas are renewed every year, for a maximum of five years at the level of Foreigners Regional Registration Office (FRRO)/Foreigner Registration Office (FRO) and for the extension of visa is for the sixth year, the FRRO/ FRO concerned will furnish a proposal to MHA for a decision.

The SOP assumes that all problems of refugees in their country of origin will be resolved within six years. Further, the SOP provides no opportunities for naturalisation in the country which, under the CAA, has been extended only to migrants belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities from Afghanistan, Pakistan and Bangladesh who have taken shelter in India due to persecution on grounds of religion or fear of such persecution in their countries on or before 31.12.2014. Therefore, it violates the cardinal principle of equality and non-discrimination.

2.2. India’s obligations under international law

India is not a signatory to the 1951 Convention relating to the Status of Refugees²⁸ and 1967 Protocol relating to the Status of Refugees.²⁹ However, India is bound by the Universal Declaration of Human Rights (UDHR) which under Article 14 declares that everyone has a right to seek and to enjoy in other countries asylum from persecution.³⁰

India also ratified the International Covenant on Civil and Political Rights (ICCPR) which under Article 13 states that *“an alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”*³¹ Article 3 of the UN Convention Against Torture signed by India also prohibits expulsion of an alien except by due process of law.³²

India also ratified the UN Convention on the Rights of the Child (CRC) in 1992.³³ Article 2A of the CRC provides that the State party must ensure the rights of “each child within its jurisdiction without discrimination of any kind” while Article 3 states that *“In all actions concerning children the best interest of the child shall be a primary consideration”*.³⁴

In 1995, India became a member of the Executive Committee of the High Commissioner’s Programme (ExCOM) which approves and supervises the material assistance programme of UNHCR. Membership of the ExCOM indicates particular interest and greater commitment to refugee matters.³⁵

Subject to a few reservations, India accepted the 1966 Bangkok Principles on status and treatment of refugees as adopted on 24 June 2001 by the Asian-African Legal Consultative Organisation at its 40th Session in New Delhi. The Bangkok Principles, inter alia, Article II declares the right to seek and to enjoy asylum from persecution while Article III provided for the principle of ‘non-refoulement’ of asylum seekers shall not be subjected to rejection at the frontier, return or expulsion which would result in his life or freedom being threatened on account of his race, religion, nationality, ethnic origin, membership of a particular social group or political opinion in home country. These Principles also contain provisions relating to repatriation, right to compensation, granting asylum and the minimum standard of treatment in the state of asylum.³⁶

India was one amongst the 193 member countries of the UN General Assembly that endorsed the ‘Global Compact on Refugees’, as recently as on 17.12.2018. This Compact formulates a framework for more predictable and equitable responsibility-sharing and provides a blueprint for Governments, International Organizations and other stakeholders to ensure that host communities get the support they need so that refugees can lead productive lives. Its key-objectives are: to ease the pressure on

host countries; enhance refugee self-reliance; expand access to third-country solutions; and support conditions in the countries of origin for return in safety and dignity.³⁷

2.3. Jurisprudence on the rights of the refugees

Many provisions of the Constitution of India including Article 14 relating to equality before law, Article 20 relating to protection in respect of conviction for offences, Article 21 relating to protection of life and personal liberty, Article 21A relating to the right to education, Article 22 relating to protection against arrest and detention in certain cases, Article 23 relating to prohibition of traffic in human beings and forced labour, Article 24 relating to prohibition of employment of children in factories, etc and Article 25 relating to Freedom of conscience and free profession, practice and propagation of religion are available to all persons including foreigners/refugees.³⁸

In *Louis De Raedt Vs. Union of India and others* [(1991) 3 SCC 554]³⁹ and *State of Arunachal Pradesh vs. Khudiram Chakma* [1994 Supp. (1) SCC 615]⁴⁰, the Supreme Court ruled that even a 'foreigner' is entitled to protection of life and personal liberty under Article 21. In *National Human Rights Commission vs. State of Arunachal Pradesh & another* [(1996) 1 SCC 742], the Supreme Court observed thus:

'We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to the procedure established by law. Thus, the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise.....'

The constitutional courts of India i.e. the Supreme Court and the High Courts have, in numerous judgments, stayed deportation of refugees. For instance, in *Maiwand's Trust of Afghan Human Freedom vs. State of Punjab*⁴¹ and *N.D. Pancholi vs. State of Punjab & Others*⁴² the apex court restrained the authorities from deporting the refugees. In *Malavika Karlekar vs. Union of India*, the apex court directed 21 Burmese nationals, who were likely to be deported from Andaman Islands to Burma, not to be deported till the question of their status was determined as their applications for refugee status were pending and as they posed no danger or threat to the security of our country.⁴³

Recognising the internationally accepted principles of ‘non-refoulement’ of refugees to their country of origin, where they face persecution, various High Courts in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the UNHCR playing an important role in the protection of refugees.

The High Court of Gauhati in various judgements, recognised the right against refoulement and permitted refugees to approach the UNHCR for determination of their refugee status while staying the deportation orders issued by the district court or the administration. In *Zothansangpuui v. State of Manipur and Another (Civil Rule No. 981 of 1989)*, the Imphal bench of the Gauhati High Court stayed the deportation of the petitioner, a Burmese citizen and allowed her to go to New Delhi to seek protection from the UNHCR. She was convicted and sentenced to imprisonment under the Foreigners Act and under the Rules for entering and staying in India illegally.⁴⁴ In *Khy-Htoon and Others v. the State of Manipur (Civil Rule No. 515 of 1990)*, the Gauhati High Court directed the respondents to release eight refugees of Burmese origin on interim bail to enable them to go to Delhi for the purpose of obtaining refugee status from the UNHCR.⁴⁵ In *U. Myat Kyaw and Nayzin v. State of Manipur and the Superintendent of Jail, Manipur Central Jail*, (Civil Rule No. 516 of 1991), the Imphal Bench of the Gauhati High Court directed to release the petitioners, refugees of Burmese origin, on interim bail to enable them to go to Delhi for seeking protection as refugees from the UNHCR.⁴⁶

In *A.C. Mohd. Siddique Vs. Government of India and Others [1998(47)DRJ(DB)p.74]*, the Madras High Court held that the Sri Lankan refugees shall not be forced to returned to Sri Lanka against their will.⁴⁷

In yet another very proactive decision, the Calcutta High Court issued an order of injunction on 24 December 2019 directing the State of West Bengal not to deport Abdur Sukur @Adi Sukur & his wife Anowara Begum who are Rohingya refugees during the pendency of their writ petition. The court further directed the respondents to ensure that the petitioners are provided with the basic amenities, compatible with a life worthy of respect and allow them access to their counsels (advocate).⁴⁸

In issuing the order of injunction, the court observed: “.....in view of the imminent plight of the petitioners, who, despite having basic human rights in consonance with the Fundamental Rights provided by the Constitution of India as well as the U.N. Charter and the norms of any civilized society, a minimum protection ought to be given to the petitioners till the writ petition is decided, in order to uphold the spirit of humanity, if not the Fundamental Rights enshrined in the Constitution of India, which is the grundnorm of all Indian statutes.”⁴⁹

The couple was earlier arrested, tried and sentenced to imprisonment under the Foreigners Act, and after completion of the jail term the West Bengal authorities were taking measures to deport them to Myanmar.⁵⁰

The Manipur High Court in its order dated 3 May 2021 directed the Foreigner Regional Registration Office (FRRO) at Imphal airport to immediately provide the seven Myanmar nationals i.e. Mr. Pau Khan Thawn, Ms. Cing San Lun and Mr. Si Thu Aung working with Yangon-based Mizzima News, Ms. Niang Go Man (wife of Mr. Pau Khan Thawn) and their three minor children, Nang Sian Mung (10 years), Nang Khan Hau (9 years) and Dim Sian Huai Nuam (5 years), with temporary identification cards to enable them to travel to New Delhi by air. The court also directed the State and Central Governments to facilitate their travel to New Delhi and not to cause any obstruction. The court found it *“just and proper to extend protection under Article 21 of the Constitution to these seven Myanmar persons and grant them safe passage to New Delhi to enable them to avail suitable protection from the UNHCR.”*⁵¹ In the same matter, on 20 April 2021, the court directed the Union of India and State of Manipur to bring the seven Myanmar nationals under escort from border town of Moreh to Imphal and station them at the residence of Ms. Nandita Haksar, the petitioner/party-in-person under adequate security and guard till the next date of hearing. The court warned the respondents that pending further orders, no coercive steps or adverse action shall be taken in relation to the seven Myanmar nationals, be it by the State or by the Central Government authorities.⁵²

However, on 8 April 2021 the Supreme Court in an apparent departure declined to issue direction to the Union of India and Jammu & Kashmir (J&K) administration to release the 168 Rohingya refugees detained at sub-jail in Jammu. It merely directed not to deport any of them to Myanmar without the procedure prescribed for such deportation.⁵³

²⁵. RAJYA SABHA UNSTARRED QUESTION NO. 350 TO BE ANSWERED ON THE 05TH FEBRUARY, 2020, <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2020-pdfs/rs-05022020/350.pdf>

²⁶. RAJYA SABHA UNSTARRED QUESTION NO. 350 TO BE ANSWERED ON THE 05TH FEBRUARY, 2020, <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2020-pdfs/rs-05022020/350.pdf>

²⁷. Long Term Visas, Ministry of Home Affairs, Government of India, 13.08.2020, https://www.mha.gov.in/sites/default/files/AnnexVILongTermvisas_20082020.pdf

²⁸. See Convention relating to the Status of Refugees at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

²⁹. See Protocol relating to the Status of Refugees at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx>

³⁰. See text of the UDHR, available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³¹. Judgment and order passed by the Manipur High Court on 3 May 2021 in Writ Petition (Crl.) No.6 of 2021 (Nandita Haksar Vs. State of Manipur & Others), available at: [https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoD82TchNu0u2FGizID7PUnFDZGOT0peVr%2FEc1cGvdRA5&caseno=W.P.\(Crl.\)/6/2021&cCode=1&appFlag=](https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoD82TchNu0u2FGizID7PUnFDZGOT0peVr%2FEc1cGvdRA5&caseno=W.P.(Crl.)/6/2021&cCode=1&appFlag=)

³². Article 3 of the UNCAT (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>) provides that:

“1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”.

³³. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=5&Lang=EN

³⁴. See the UN Convention on the Rights of the Child, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³⁵. Executive Committee of the High Commissioner’s Programme, 1958, available at: <https://www.unhcr.org/40112e984.pdf>

³⁶. Asian-African Legal Consultative Organisation, “Final text of the AALCO’s 1966 Bangkok Principles on Status and treatment of refugees” as adopted on 24 June 2001 at the AALCO’s 40th Session, New Delhi, available at: <https://www.refworld.org/pdfid/3de5f2d52.pdf>

³⁷. Judgment and order passed by the Manipur High Court on 3 May 2021 in Writ Petition (Crl.) No.6 of 2021 (Nandita Haksar Vs. State of Manipur & Others), available at: [https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoD82TchNu0u2FGizID7PUnFDZGOT0peVr%2FEc1cGvdRA5&caseno=W.P.\(Crl.\)/6/2021&cCode=1&appFlag=](https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoD82TchNu0u2FGizID7PUnFDZGOT0peVr%2FEc1cGvdRA5&caseno=W.P.(Crl.)/6/2021&cCode=1&appFlag=)

³⁸. The Constitution of India can be accessed at <https://legislative.gov.in/sites/default/files/COI.pdf>

³⁹. The judgment is available at <https://indiankanoon.org/doc/488726/>

⁴⁰. The judgment is available at <https://indiankanoon.org/doc/473806/>

⁴¹. Order passed by the Supreme Court in *The Mailwand’s Trust of Afghan Human Freedom v. State of Punjab and Others*, Writ Petition (Crl.) No.125 and 126 of 1986 on 28 February 1986, available at: https://www.refworld.org/cases,IND_SC,3f4b8cfd4.html

⁴². Order passed by the Supreme Court on 9 June 1988 in *N.D. Pancholi v. State of Punjab and Others*, -Writ Petition (Crl.) No.243 of 1988 (for Prel. Hearing), India: Supreme Court, available at: https://www.refworld.org/cases,IND_SC,3f4b8e224.html

⁴³. Order passed by the Supreme Court in *Malavika Karlekar v. Union of India and Another*, Writ Petition (Criminal No) 583 of 1992 on 25 September 1992, available at: https://www.refworld.org/cases,IND_SC,3f4b8d334.html

⁴⁴. Order dated 20.09.1989 passed by the Imphal bench of the Gauhati High Court in *Zothansangpuui v. State of Manipur and Another*, Civil Rule No. 981 of 1989, available at: https://www.refworld.org/cases,IND_HC,3f4b91187.html

- ⁴⁵. Order passed by the Gauhati High Court on 15 September 1990 in *Khy-Htoon and Others v. the State of Manipur* (Civil Rule No. 515 of 1990), available at: https://www.refworld.org/cases,IND_HC,3ae6b6f31c.html
- ⁴⁶. Order passed the Imphal Bench of the Gauhati High Court on in *U. Myat Kyaw and Nayzin v. State of Manipur and the Superintendent of Jail, Manipur Central Jail, Imphal*, Civil Rule No. 516 of 1991 on 26 November 1991, available at: https://www.refworld.org/cases,IND_HC,3f4b8db67.html
- ⁴⁷. Available at: <https://lawtimesjournal.in/who-is-a-refugee-what-are-the-laws-that-govern-refugees-in-india/>
- ⁴⁸. Order passed by the Calcutta High Court on 24 December 2019 in W.P. No. 23644 (W) of 2019 (*AbdurSukur @ Adi Sukur&Anr. Vs. The State of West Bengal &Ors.*), available at: <https://www.lawyerservices.in/Abdur-Sukur—Adi-Sukur-and-Another-Versus-The-State-of-West-Bengal-and-Others-2019-12-24>
- ⁴⁹. Order passed by the Calcutta High Court on 24 December 2019 in W.P. No. 23644 (W) of 2019 (*AbdurSukur @ Adi Sukur&Anr. Vs. The State of West Bengal &Ors.*), available at: <https://www.lawyerservices.in/Abdur-Sukur—Adi-Sukur-and-Another-Versus-The-State-of-West-Bengal-and-Others-2019-12-24>
- ⁵⁰. Order passed by the Calcutta High Court on 24 December 2019 in W.P. No. 23644 (W) of 2019 (*AbdurSukur @ Adi Sukur&Anr. Vs. The State of West Bengal &Ors.*), available at: <https://www.lawyerservices.in/Abdur-Sukur—Adi-Sukur-and-Another-Versus-The-State-of-West-Bengal-and-Others-2019-12-24>
- ⁵¹. Judgment and order passed by the Manipur High Court on 3 May 2021 in Writ Petition (Crl.) No.6 of 2021 (*Nandita Haksar Vs. State of Manipur & Others*), available at: [https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoD82TehNu0u2FGizID7PUnFDZ_GOT0peVr%2FEc1eGvdRA5&caseno=W.P.\(Crl.\)/6/2021&cCode=1&appFlag=](https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoD82TehNu0u2FGizID7PUnFDZ_GOT0peVr%2FEc1eGvdRA5&caseno=W.P.(Crl.)/6/2021&cCode=1&appFlag=)
- ⁵². Order issued by the Manipur High Court on 20 April 2021 in Writ Petition (Crl.) No.6 of 2021 (*Nandita Haksar Vs. State of Manipur & Others*), available at: [https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoD_82TehNu0u2FGizID7PUnEP1vJdWV7m%2BrQTyEWrsY4V&caseno=W.P.\(Crl.\)/6/2021&cCode=1&appFlag=](https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoD_82TehNu0u2FGizID7PUnEP1vJdWV7m%2BrQTyEWrsY4V&caseno=W.P.(Crl.)/6/2021&cCode=1&appFlag=)
- ⁵³. The order passed by a Supreme Court bench headed by Chief Justice S.A. Bobde on 8 April 2021 in *Mohammad Salimullah and Another vs. Union of India and Others* [Writ Petition (C) No. 793 of 2017], available at: https://main.sci.gov.in/supremecourt/2017/27338/27338_2017_31_1502_27493_Judgement_08-Apr-2021.pdf

3. The status of refugees present prior to 2021

India has at least 417,000 refugees at present. These include (i) about 20,000 refugees who entered in 2021; (ii) about 4,557 Afghan refugees living on the LTVs as on December 2021;⁵⁴ (iii) about 238,222 recognised and documented refugees i.e. 95,829 Sri Lankan refugees, 73,404 Tibetan refugees, 41,315 refugees recognized by the UNHCR [22,459 Myanmarese refugees, 15,217 Afghan refugees and 3,639 other refugees]⁵⁵; (iv) about 31,313 refugees belonging to minority communities from neighbouring countries who have been given LTV on the basis of their claims of religious persecution and want Indian citizenship,⁵⁶ and (v) about 123,000 unregistered refugees i.e. about 100,000 Chin refugees from Myanmar residing in Mizoram since 1990s⁵⁷; about 23,000 Rohingya refugees not registered with UNHCR.⁵⁸

3.1. Government of India recognised refugees

Among all refugees from different nations, the GoI recognises only the Tibetans and Sri Lankan Tamil refugees and assist them with relief and assistance as under:

3.1.1. Tibetan refugees

The Tibetan minority Buddhists face institutionalized and State sanctioned persecution on the grounds of their religious and political belief in atheist China which identifies His Holiness the Dalai Lama, a living apostle of peace and the spiritual and temporal head of the Tibetan Buddhists as “Splitist” and worshipping the Dalai Lama is a punishable offense in China.

His Holiness the 14th Dalai Lama had fled to India on 31 March 1959 and given asylum by the Government of India.⁵⁹ Tibetan refugees began pouring into India in the wake of the flight of the Dalai Lama from Tibet. The Government of India gave them asylum⁶⁰ and consistently provided support including to run the Tibetan Government in Exile.

As per the latest census 2019 conducted by His Holiness The Dalai Lama’s Central Tibetan Relief Committee (CTRC), the population of Tibetan refugees in India as on 25.09.2019 was 73,404. Majority of these refugees have settled themselves, either through self employment or with Government’s assistance under agricultural and handicrafts’ schemes in different States of the country. Major concentration of the Tibetan refugees is in Karnataka (21,922), Himachal Pradesh (16,146), Arunachal Pradesh (4,708), Uttarakhand (4,654), West Bengal (3,006), and Jammu & Kashmir (7,041).⁶¹

In order to extend various facilities by the Government of India and State Governments to the Tibetan refugees settled in different parts of the country, the MHA issued the Tibetan Rehabilitation Policy of 2014. India sanctioned a scheme of providing grant-in-aid of Rs 40 crore to the CTRC over a period of five years commencing from 2015-16 to 2019-20 to meet the administrative and social welfare activities expenses of 36 Tibetan Settlement offices located in different States of the country.⁶²

Thousands of descendants of the Tibetan refugees who were born in India before 1 January 1987 are citizens of India by birth and have been exercising the right to vote as citizens of India⁶³ pursuant to the judgements including in *Namgyal Dolkar v. Ministry of External Affairs*⁶⁴ and *Tenzin Choeppag Ling Rinpoche v. Union of India*.⁶⁵

India has been discouraging Indian citizenship for the Tibetan refugees and put four conditions for them to get Indian citizenship i.e. registration/refugee certificate (RC) and identity certificate should be cancelled, the applicant should not be staying in designated Tibetan refugee settlements, an undertaking that he/she no longer enjoys Central Tibetan Administration (CTA) benefits, and a declaration that he/she no longer enjoys any privileges, including subsidies by being an RC holder.⁶⁶

Since the enactment of the Citizenship Act of 2003 which defined illegal immigrants, the Tibetan refugees entering into India are treated as “illegal immigrants” and are liable to be deported to China. Then Minister of State in the Ministry of Home Affairs Shri Ajay Maken while replying to Unstarred Question No.1076 answered on 04.08.2010 in the Rajya Sabha had stated, *“Tibetan refugees who entered after 30.5.2003 without valid documents from points other than authorized check posts, are treated as illegal immigrants and such people are liable to be deported by following the provisions of the Foreigners Act”*.⁶⁷

The influx of the Tibetan refugees continues as on date. It was reported that “the average number was around 3000 of Tibetans coming to India before 2008” and the number has been reducing since then.⁶⁸ All the Tibetan refugees who entered India after 30.5.2003 are illegal immigrants liable to be deported to China and do not get the rights provided under the CAA.

The repatriation of the Tibetan refugees has never figured in the discussions between China and India in the last six decades since 1959. Majority of the Tibetan refugees are destined to permanently settle in India and have been living in India without the right to citizenship, notwithstanding various administrative obstacles created to prevent naturalisation and

integration of the Tibetan refugees in India. Considering the repression on them, the Tibetans are not in a position to return to the Tibet Autonomous Region under China.

3.1.2. Sri Lankan Tamil refugees

Thousands of Sri Lankan Tamils fled to India since 1983 to escape war between the government of Sri Lanka and the Tamil armed opposition groups including the Liberation Tigers of the Tamil Eelam (LTTE) and ethnic violence between the majority Sinhalese and the minority Tamils.

According to the MHA, about 3,04,269 Sri Lankan refugees had entered India in various phases between July 1983 and August 2012 due to ethnic violence and disturbed conditions in Sri Lanka. While 99,469 refugees were repatriated to Sri Lanka upto March 1995, there has been no organized repatriation thereafter. However, some refugees have gone back to Sri Lanka or left for other countries on their own.⁶⁹

As on 31 December 2019, there are 59,506 Sri Lankan refugees who were staying in 107 refugees' camps in Tamil Nadu and one camp in Odisha. Besides, as per details submitted by the Tamil Nadu Government around 35,000 refugees are staying outside the camps, after getting themselves registered at the nearest police station.⁷⁰

There is neither any plan of the GoI to repatriate the Tamil refugees to Sri Lanka nor is there any willingness of the Tamil refugees to return to Sri Lanka after seeking refuge in India over 38 years ago in 1983 and 12 years after the end of the war between the Government of Sri Lanka and the LTTE in May 2009.⁷¹ The children of the Sri Lankan Tamil refugees who were born in India prior to 1 July 1987 are citizens of India by birth even though the Government of India never initiated the process to grant citizenship to those who are born in India before 1 July 1987.

The MHA states that pending repatriation, certain essential relief facilities are being provided to them on humanitarian grounds. These facilities include shelter in camps, cash doles, subsidized ration, clothing, utensils, medical care and educational assistance. The entire expenditure on relief to Sri Lankan refugees is incurred by the State Government and is subsequently reimbursed by the Central Government. An amount of Rs.1021 crore (approximately) had been spent by the Central Government for providing relief and accommodation to the Sri Lankan refugees during the period between July 1983 to and 31 December 2020.⁷²

On 27 August 2021, Tamil Nadu Chief Minister MK Stalin announced welfare measures worth Rs 317.40 crore for Sri Lankan Tamil refugees living in special camps in the state. Out of this package, a total of 7,469 houses which were in dilapidated condition would be reconstructed at a cost of Rs 231.54 crore. Further, each refugee family would be provided with a cooking gas connection and a stove free of cost and a subsidy of Rs 400 per cylinder will be provided for five cylinders a year. The educational costs for the first 50 students selected for engineering courses in Tamil Nadu will be borne by the State government and the education of the first five toppers in the agricultural or agri-engineering courses will be supported by the State. The Tamil Nadu government increased scholarships for around 750 students — polytechnic (from Rs 2500 to Rs 10,000), undergraduate courses in arts and science (from Rs 3,000 to Rs 12,000) and undergraduate vocational courses (from Rs 5,000 to Rs 20,000). The State government formed a committee to ensure sufficient assistance to the refugees.⁷³

3.2. UNHCR recognised refugees

Other than the Sri Lankan Tamil refugees and Tibetan refugees who are recognised and assisted by the GoI, there were about 41,315 refugees who are not recognised by the government of India but are registered as refugees by the UN High Commissioner for Refugees. These include 15,217 Afghan refugees (37%), 22,459 Myanmarese refugees (54%) and 3,639 refugees categorised by the refugee agency as ‘others’.⁷⁴

3.2.1. Afghan refugees prior to the 2021 Taliban take over

As of 30 April 2021, there were 15,217 Afghan refugees according to the UNHCR.⁷⁵ Out of these refugees from Afghanistan, about 500–700 are ethnic Hazaras who had fled to India after the Taliban declared in 1997 that part of their mission was to persecute Hazaras. The persecution started with the massacre of 3,000 Hazara men, women and children in Mazar-e-Sharif in 1997, and rose to 8,000 by 1998. In July 2016, an ISIS attack claimed the lives of 300 Hazaras during a protest in Kabul.⁷⁶

3.2.2. Chin refugees in Delhi prior to military take over on 1 February 2021

Out of 22,459 Myanmarese refugees registered and recognised by the UNHCR, around 3,200 of them are ethnic Chins from Chin State of Myanmar, who arrived in several waves after the 1989 crackdown by the then military junta. Most of the Chins are Christians and live in Vikaspuri,

Budhela, Hastals, Chanakya Place and Uttam Nagar areas in South West Delhi.⁷⁷

3.3. Unregistered refugees

In addition to the refugees recognised by India and those recognised only by the UNHCR, there are also refugees who are not recognised by either. Such category of refugee population included over 1,00,000 Chin refugees from Myanmar residing in Mizoram⁷⁸ and 23,000 Rohingya refugees (estimated 40,000 – 17,000 registered with UNHCR) living in different states of India.⁷⁹

There is no clear estimate of the number of Chin refugees in India who fled following the military take-over in Myanmar in 1989. The minority Christian Chin refugees from Myanmar told the *Human Rights Watch* that over 100,000 Chins were staying in Mizoram as of 2008. The “Human Rights Watch” in its report, “*The Chin People of Burma: Unsafe in Burma, Unprotected in India*” dated 27 January 2009 quoted the Chin community leaders on the number of Chin refugees in Mizoram:

“According to Chin community leaders and long-time residents of Mizoram, the Chin population in Mizoram is estimated to be as high as 100,000, about 20 percent of the total Chin population in Chin State. In addition to proximity, the people of Chin State and Mizoram also share a common history and ethnic ancestry, making Mizoram a particularly attractive place for Chin to seek refuge”.⁸⁰

In 2017, about 1,800 more Chin refugees reportedly reached India after fleeing fighting between the Burmese army and separatist groups. According to James R Fanai, the president of the Chin Refugee Committee in India, he did not have an estimate of the number of Chin refugees in the country.⁸¹

⁵⁴. Rajya Sabha Unstarred Question No.380 answered on 1 December 2021, <https://pqars.nic.in/annex/255/Au380.pdf>

⁵⁵. UNHCR INDIA FACT SHEET, 31 MARCH 2021, available at: <https://reporting.unhcr.org/sites/default/files/India%20fact%20sheet%20April%202021.pdf>

⁵⁶. Lok Sabha, Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016 (Sixteenth Lok Sabha)

⁵⁷. Press Release: CAA Impact – About 6,00,000 Refugees Made Forever Stateless, India Urged To Using Stop Refugees As Pawns As Stated In The Counter-Affidavit To The Supreme Court, 18 March 2020, available at: <http://www.uncat.org/press-release/press-release-cao-impact-about-600000-refugees-made-forever-stateless-india-urged-to-using-stop-refugees-as-pawns-as-stated-in-the-counter-affidavit-to-the-supreme-court/>

- ⁵⁸. Minister of State in the Ministry of Home Affairs (Shri Kiren Rijiju) in his reply to the parliament stated that more than 40,000 illegal Rohingya immigrants were staying in India. As UNHCR registered about 23,000 Rohingya refugees, it implies that about 23,000 refugees remained unregistered. The written reply to Unstarred Question No.534 on 20.12.2017 in the Rajya Sabha by Rijiju is available at: <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2017-pdfs/rs-20122017/534.pdf>
- ⁵⁹. 1959: The Year the Dalai Lama and Thousands of Tibetan Refugees Fled to Arunachal, Wire, 8 April 2017, available at: <https://thewire.in/culture/1959-the-year-the-dalai-lama-and-thousands-of-tibetan-refugees-fled-to-arunachal>
- ⁶⁰. Ministry of Home Affairs, Government of India Annual Report 2019-20, available at: https://www.mha.gov.in/sites/default/files/AnnualReport_19_20.pdf
- ⁶¹. Ministry of Home Affairs, Government of India Annual Report 2019-20, available at: https://www.mha.gov.in/sites/default/files/AnnualReport_19_20.pdf
- ⁶². Ministry of Home Affairs, Government of India Annual Report 2019-20, available at: https://www.mha.gov.in/sites/default/files/AnnualReport_19_20.pdf
- ⁶³. Tibetans exercise their right to vote in Indian general elections, The Tibet Sun, 19 May 2019 available at <https://www.tibetsun.com/news/2019/05/19/tibetans-exercise-their-right-to-vote-in-indian-general-elections>
- ⁶⁴. W.P. (C) 12179/2009 (High Court of Delhi) (India) of 22 December 2010
- ⁶⁵. W.P. (C) 15437/2013 (High Court of Karnataka) of August 7, 2013
- ⁶⁶. Govt sets conditions for Tibetans to get passports, says move out of settlements, forgo benefits, The Hindustan Times, 26 June 2017
- ⁶⁷. Copy of the reply of the Minister of State in the MHA to Unstarred Question No.1076 on 04.08.2010 in the Rajya Sabha
- ⁶⁸. Copy of the report, '97% drop in Tibetan refugees arrival to India from Tibet' published in The Times of India on 17 January 2019
- ⁶⁹. Ministry of Home Affairs, Government of India Annual Report 2019-20, available at: https://www.mha.gov.in/sites/default/files/AnnualReport_19_20.pdf
- ⁷⁰. Ministry of Home Affairs, Government of India Annual Report 2019-20, available at: https://www.mha.gov.in/sites/default/files/AnnualReport_19_20.pdf
- ⁷¹. Prabhakaran was with 18 men when he was killed: Karuna. The Hindustan Times, 20 May 2009, <https://www.hindustantimes.com/world/prabhakaran-was-with-18-men-when-he-was-killed-karuna/story-UfaVjat36kCwDhBclajfL.html>
- ⁷². Ministry of Home Affairs, Government of India Annual Report 2019-20, available at: https://www.mha.gov.in/sites/default/files/AnnualReport_19_20.pdf
- ⁷³. CM Stalin announces Rs 317-crore welfare package for Sri Lankan Tamil refugees, India Today, 27 August 2021, <https://www.indiatoday.in/cities/chennai/story/mk-stalin-announces-rs-317-crore-welfare-package-for-sri-lankan-tamil-refugees-1846136-2021-08-27>
- ⁷⁴. UNHCR FACT SHEET-INDIA, 30APRIL 2021, available at: <https://reporting.unhcr.org/sites/default/files/India%20fact%20sheet%20April%202021.pdf>
- ⁷⁵. UNHCR FACT SHEET-INDIA, 30APRIL 2021, available at: <https://reporting.unhcr.org/sites/default/files/India%20fact%20sheet%20April%202021.pdf>
- ⁷⁶. 'Refugees in Delhi Serve Up Memories on a Plate', 'Refugees Deeply' on 13 January 2017 available at <https://www.newsdeeply.com/refugees/articles/2017/01/13/refugees-in-delhi-serve-up-memories-on-a-plate>
- ⁷⁷. Myanmar refugees in Delhi fear for their kin back home, Times of India, 4 February 2021, <https://timesofindia.indiatimes.com/city/delhi/myanmar-refugees-fear-for-their-kin-back-home/articleshow/80676232.cms>

⁷⁸. Press Release: CAA Impact – About 6,00,000 Refugees Made Forever Stateless, India Urged To Using Stop Refugees As Pawns As Stated In The Counter-Affidavit To The Supreme Court, 18 March 2020, available at: <http://www.uncat.org/press-release/press-release-cao-impact-about-600000-refugees-made-forever-stateless-india-urged-to-using-stop-refugees-as-pawns-as-stated-in-the-counter-affidavit-to-the-supreme-court/>

⁷⁹. After Jammu, 71 Rohingyas Detained in Delhi for Protesting at UNHCR Office, Wire, 16 March 2017, available at: <https://thewire.in/rights/rohingyas-detained-delhi-unhcr-protest>

⁸⁰. “The Chin People of Burma: Unsafe in Burma, Unprotected in India”, Human Rights Watch, 27 January 2009 available at <https://www.hrw.org/report/2009/01/27/we-are-forgotten-people/chin-people-burma-unsafe-burma-unprotected-india>

⁸¹. How India and the UNHCR failed to provide healthcare and vaccination for Chin refugees, Caravanmagazine, 7 June 2021; available at: <https://caravanmagazine.in/health/how-india-and-the-unhcr-failed-to-provide-healthcare-and-vaccination-for-chin-refugees>

4. The status of refugees who entered India during 2021

4.1. The influx of the ethnic refugees from Myanmar

Following the military takeover on 1 February 2021 in Myanmar, refugees from the country fled to Mizoram, Manipur, Nagaland and Arunachal Pradesh states of North East India. The new refugees included at least 23 lawmakers including Chief Minister of Myanmar's Chin state Salai Lian Luai.⁸²

In May 2021, it was reported that about 15,500 Myanmar Chin refugees had entered Mizoram.⁸³ Following a fresh wave of violence after an attack on military camp in a Myanmar village, close to Thingsai, the nearest border village in Mizoram's Hnahthial district, in the wee hours of 11 September 2021 led to a renewed influx of 1,546 more Chin refugees⁸⁴ and therefore, the number of Chin refugees reached about 17,000 in Mizoram. Though the number of refugees who sought refuge in Nagaland is not known as they integrated with the local populations⁸⁵, about 1,000 had sought refuge in Manipur.⁸⁶ Therefore, at least 18,000 Myanmar Chin refugees entered India during 2021.

4.1.1. Policy of the Government of India: From threats of deportation to extension of humanitarian assistance

In 2021, Mizoram received the refugees from Myanmar first. As the number of refugees grew, on 27 February 2017, the Mizoram government issued a Standard Operating Procedure (SOP) for the *“facilitation of refugees and migrants from Myanmar in connection with the political developments”* in Myanmar. The SOP stated that *“only those persons (and their family members), whose life is in immediate and imminent threat due to political/organisational affiliations in connection with the political development shall be facilitated and treated as refugees”*.⁸⁷

India quickly moved to prevent any influx of refugees from Myanmar. On 10 March 2021, North East Division of the Ministry of Home Affairs wrote to chief secretaries of Mizoram, Nagaland, Arunachal Pradesh and Manipur to take appropriate action as per law and to maintain vigil at the borders to check illegal influx from Myanmar into India. In an oblique reference to the SOP issued by Mizoram government on 27 February 2021 for the *“facilitation of refugees and migrants from Myanmar in connection with the political developments”* in Myanmar, the MHA reiterated that State governments have no powers to grant “refugee status to any

foreigner” and India is not a signatory to the United Nations Refugee Convention of 1951 and its 1967 Protocol.⁸⁸

The MHA letter recalled the guidelines it addressed to all States on 8 August 2017 *“wherein instructions were issued to sensitize all law enforcement and intelligence agencies for taking prompt steps in identifying the-illegal migrants and initiate the deportation processes expeditiously and without delay”*. It also mentioned another set of guidelines to States sent on 28 February 2018 *“advising them to sensitize the law enforcement and intelligence agencies for taking appropriate prompt steps for identifying illegal migrants, their restrictions to specific locations as per provisions of law, capturing their biographic and biometric particulars, cancellation of fake Indian documents and legal proceedings including initiation of deportation proceedings as per provisions of law”*.⁸⁹

The Assam Rifles, which guards the 510-km India-Myanmar Border in Mizoram, wrote to the Central Government in early March 2021 requesting the MHA to pass *“necessary directions...so that the state government does not facilitate any such movement of Myanmar nationals seeking refuge in Indian territory”* as the State government is “supporting the movement” of refugees and has “promulgated an SOP to manage” them.⁹⁰

4.1.2. Policy of the State Government of Mizoram: Firm support for the refugees

Myanmar’s Chin state shares a 404 km border with Mizoram with six Mizoram districts such as Champhai, Siaha, Lawngtlai, Serchhip, Hnahthial and Saitual.⁹¹ Chins regularly sought refuge in Mizoram.

As stated, in the wake of the influx of the Chin refugees, on 27 February 2021, the Mizoram government issued a Standard Operating Procedure (SOP) for the *“facilitation of refugees and migrants from Myanmar in connection with the political developments”* in Myanmar.⁹²

The civil society groups in the State also extended support.

On 12 March 2021, the Zo Reunification Organisation (ZORO), a Mizoram based Chin-Kuki-Mizo-Zomi group representing the Zo indigenous peoples, wrote separately to Indian President Ram Nath Kovind and Prime Minister Narendra Modi, urging them to impose sanctions on the military-led Myanmar government.⁹³

On 16 March 2021, lone Rajya Sabha member from Mizoram K Vanlalvena urged the Central government to look into the plight of anti-coup protesters in Myanmar and review the country’s policy towards

Myanmar nationals who fled their country to take refuge in Indian territory. Raising the issue of Myanmar nationals in Mizoram during zero hour in the budget session of the Parliament, K Vanlalvena stated that the state government and non-governmental organisations have provided immediate relief and shelter to the Myanmar nationals on humanitarian ground. He told the house: *“It will not go down well with people of Mizoram if the Centre insists on deporting the refugees who belong to the Mizo ethnic tribe, and it is not possible to deport them until normalcy returns in the neighbouring country”*.⁹⁴

On 19 March 2021, a delegation from Mizoram comprising Lok Sabha member C. Lalrosanga, Rajya Sabha member K. Vanlalvena, ruling Mizo National Front leader and state planning board vice chairman H. Rammawi and party adviser Rosangzuala met Union Minister of State for Home Affairs Nityanand Rai and urged the Central government not to send back Myanmar nationals who have taken refuge in Mizoram in the wake of civil uprising following the military coup in the neighbouring country. They emphasised on the pressing need to extend necessary help and support to Myanmar nationals, who have become victims of atrocities and highhandedness since the military junta had taken power in Myanmar.⁹⁵

On 20 March 2021, Mizoram Chief Minister Zoramthanga urged the Centre to review its 10 March order directing the four northeastern states, which share borders with Myanmar, and border guarding forces to prevent the illegal influx of people from Myanmar and to deport them expeditiously. He also requested the Bharatiya Janata Party-led National Democratic Alliance government to provide asylum and relief to the Myanmar nationals who crossed the international border and have taken refuge in India due to the humanitarian crisis. The Mizo National Front (MNF) headed by Zoramthanga is part of the BJP-led North East Democratic Alliance.⁹⁶

On 22 March 2021, Zoramthanga said it was the duty of his government to provide food and shelter to the Myanmarese, who fled their country to take refuge in the state on humanitarian grounds. He, however, said that the state government has no say in the international Affairs and cannot deal with the refugees on its own and the matter rests with the GoI.⁹⁷

On 22 March 2021, the ZORO stated that the Central government's order to prevent Myanmar nationals from entering India was discriminatory. Protesting against the 10 March order issued by the Centre, members of ZORO burnt copies of the MHA order in state capital Aizawl.⁹⁸

On 25 March 2021, former Mizoram chief minister and Congress president Lal Thanhawla issued a statement saying that the 10 March order issued by the Centre directing the four Northeastern states and Assam Rifles to check illegal influx from Myanmar and deport them, was not acceptable at any cost.⁹⁹

In a circular dated 31 August 2021 sent to all District Education Officers and Sub Divisional Educational Officers, the Directorate of School Education, Mizoram Government requested the officials to arrange for “admission to migrant/refugee children” in their respective jurisdictions so that the children of migrant or refugees from Myanmar can “continue their schooling.” The circular, signed by James Lalrinchhana, Director, Directorate of School Education, cited Chapter 2(4) of the Right of Children to Free and Compulsory Education Act, 2009 as the reason for the decision. The letter stated that as per the Act, *“children aged between 6 to 14 years belonging to disadvantaged communities have the right to be admitted to school in a class appropriate to his or her age for completing elementary education”*.¹⁰⁰

In December 2021, Prime Minister Narendra Modi assured Mizoram Chief Minister Zoramthanga to assist the State government to continue providing humanitarian assistance to the Myanmarese refugees.¹⁰¹

4.1.3. Policy of the State Government of Manipur: Centre decides its policy

About 1,000 people fled from Myanmar and took refuge in Manipur.¹⁰²

On 9 March 2021, Manipur Chief Minister N Biren Singh said that he welcomes any civilian who may cross over from Myanmar due to military atrocities. He said his government was ready to give shelter, serve them, and protect the Myanmar nationals who cross over to Manipur seeking refuge.¹⁰³

However, in an U-turn pursuant to the order issued by the North East Division, MHA on 10 March 2021 urging the chief secretaries of Mizoram, Manipur, Nagaland and Arunachal Pradesh and the Assam Rifles to take appropriate actions as per law and to maintain vigil at the borders to check illegal influx from Myanmar into India, Manipur government instructed district officials to not allow anyone from the neighbouring country to cross over to the state. In a letter on 26 March 2021 addressed to deputy commissioners of Chandel, Tengnoupal, Kamjong, Ukhrul, Churachandpur which share border with Myanmar, H Gyan Prakash, Special Secretary Home, Manipur instructed that anyone (Myanmar

nationals) trying to enter should be turned away politely. The letter had the following five instructions:

1. District administration should not open any camps to provide food and shelter.
2. The civil society organisations also should not be allowed to open any camps to provide shelter/food.
3. In case of grievous injuries, medical attention may be provided on humanitarian grounds.
4. People trying to enter/seek refuge should be politely turned away.
5. Aadhar enrolment should be stopped immediately and Aadhaar enrolment kits taken into safe custody.¹⁰⁴

The directions dated 26 March 2021 sparked massive outrage. In a letter dated 29 March 2021, the State government withdrew the letter.¹⁰⁵

Nonetheless, the Myanmarese refugees faced arrest and detention in Manipur.

In July 2021, about 29 Myanmar refugees were arrested in Churachandpur, two later died in custody after catching Covid-19.¹⁰⁶

Seven asylum seekers including three journalists identified as Mr. Pau Khan Thawn, Ms. Cing San Lun and Mr. Si Thu Aung working with Yangon-based Mizzima News, Ms. Niang Go Man (wife of Mr. Pau Khan Thawn) and their three minor children, Nang Sian Mung (10 years), Nang Khan Hau (9 years) and Dim Sian Huai Nuam (5 years);¹⁰⁷ three Myanmar nationals who sustained serious bullet wounds in firing by the Myanmar security forces on 26 March 2021 at border town of Tamu were allowed by the Manipur High Court to seek refugee status with the UNHCR in New Delhi.¹⁰⁸

4.1.4. Policy of the State Government of Assam

Assam does not share its borders with Myanmar. However, it is gateway to New Delhi where the UNHCR is situated and refugees are required to approach it for seeking asylum given UNHCR has no branch office in any of the north eastern states.

Assam government continued to arrest the refugees crossing through the State.

On 12 September 2021, Assam Police arrested 26 suspected Myanmar nationals, including 10 women, for reportedly carrying fake Indian documents. They were arrested from a guesthouse in the Rehabari area of Guwahati after arriving in two SUVs from Mizoram capital Aizawl in Guwahati. According to the Assam police, all the 26 Myanmar nationals had identity cards issued by the Faith Theological College and Mission in Aizawl, which said they were residents of the State. Interrogations revealed that the apprehended people are citizens of Chin state of Myanmar and they were on their way to Delhi to study Bible (theology). The police recovered forged Indian documents, such as Aadhaar card, Electoral Photo Identity Cards made in Mizoram from their possession.¹⁰⁹

A case was registered against them at the Paltan Bazar police station under relevant Sections of the Indian Penal Code (IPC), the Foreigners' Act of 1946, the Passport (Entry into India) Act of 1920 and the Passport (Entry into India) rules of 1950.¹¹⁰

On 22 October 2021, Assam Police arrested five Myanmar nationals belonging to Chin State of Myanmar at Lailapur in Cachar district. According to the police, they were travelling without any valid documents, had entered India through Mizoram and were attempting to move towards Delhi to seek refuge. They were identified as Thang Khawm Pau (21), Khen Khan Kham (19), Pau Hawmliam Mung (23), Cin Aih Mang (23) and Pau Biak Muang (19).¹¹¹

4.2. The influx of refugees following 2021 Taliban takeover and the failure of the CAA

In December 2019, the Indian Parliament brought the Citizenship (Amendment) Act 2019 that provides *“that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act”*.¹¹² The CAA further provides for special provisions in Section 6B for grant of citizenship on person covered by proviso to clause (b) of sub-section (1) of section 2.¹¹³ By virtue of clause (b) of sub-section (1) of Section 2 read with Section 6B, Hindus and Sikhs from Afghanistan who have entered into India on or before the 31st day of December, 2014 are legally entitled to protections under the CAA.

The CAA excludes persecuted people from other countries including Sri Lanka and Myanmar and persecuted Muslims from the neighbouring countries to seek citizenship in India.

4.2.1. No protection for the religious minorities of Afghanistan

The Taliban take-over of Afghanistan once again exposed the inadequacy of the CAA to even protect the religious minorities of Afghanistan. Before the last United States aircraft took off from Kabul airport, India had evacuated nearly 600 people from the Afghan capital. This included 67 Afghan Sikhs and Hindus, including lawmakers Anarkali Kaur Honaryar and Narender Singh Khalsa.¹¹⁴ These minorities from Afghanistan are without any protection under the CAA because they have entered into India after 31 December 2014, the deadline set under the CAA.

4.2.2 No protection for political refugees from Afghanistan

The Afghan political refugees being persecuted by the Taliban also have no protection in India. According to Rizwanullah Ahmadzai, senior advisor to former Afghan President in Public Health Affairs who arrived in Delhi on 15 August 2021, around 200 Afghan nationals had come to Delhi in recent weeks before the Taliban took over Kabul.¹¹⁵ These also included some political figures including Mr Wahidullah Kaleemzai, Member of Parliament (MP) from Wardak; Mr Abdul Aziz Hakimi, MP from Parwan; MP Mr Abdul Qadir Zazai; Senator Mr Malem Lala Gul; Mr Jamil Karzai, former MP and second cousin to former Afghan President Hamid Karzai; Mr Shukria Esakhail, MP from Baghlan; Mr Mohamamd Khan, Senator; Mr Abdul Hadi Arghandiwal, former Finance Minister; Mr Mohammad Sharif Sharifi, brother of former Vice-President Younus Qanooni; Ms Mariam Solaimankhail, MP and Mr Qais Mowafaq, Senior Advisor to Afghanistan's Upper House.¹¹⁶

Taking cognizance of the very volatile situation in Afghanistan, on 17 August 2021 Government of India introduced a new category of electronic visa called "e-Emergency X -Misc Visa" with an aim to fast-track visa applications from Afghans for entry into India.¹¹⁷

On 6 September 2021, the Ministry of Home Affairs further took control of "exit order" decisions of the Foreigners' Regional Registration Office (FRRO) in case of Afghan nationals residing in India. The order stated that if any Afghan national wants to live in India and he or she is not able to submit his or her document fulfilling the criteria to stay here before

FRRO, the decision shall be decided by the MHA in case the FRRO issues them 'Leave India Notice'.¹¹⁸

The MHA issued the said order/guideline following the embarrassment in view of deportation of Ms. Rangina Kargar, member of the Wolesi Jirga, House of the People, from Indira Gandhi International (IGI) Airport on 20 August 2021. Ms. Kargar, a member of the House of the People from the Faryab province, said she arrived at the IGI Airport early August 20 from Istanbul on a Fly Dubai flight on a diplomatic/official passport which facilitates visa-free travel under a reciprocal arrangement with India. But she was denied a visa and was sent back by the same airline to Istanbul via Dubai.¹¹⁹ Later, the Government of India apologised to her.¹²⁰

About 4,557 Afghans were staying on Long Term Visas in India as of December 2021.¹²¹ The government reportedly granted only 200 e-visas against 60,000 Afghan citizens applying for the same.¹²²

4.3. Arrest and detention of refugees during 2021

During 2021, at least 414 refugees, exclusively from Myanmar were arrested in India. These include 60 Chin and other ethnic refugees and 354 Rohingya refugees. The highest number of arrest was reported from Jammu and Kashmir with 174, followed by Delhi (95), Assam (55), Manipur (30), Uttar Pradesh and Haryana (19 each), West Bengal (13), Telangana (6) and Tripura (3).

Jammu & Kashmir	174
Delhi	95
Assam	55
Manipur	30
Uttar Pradesh	19
Haryana	19
West Bengal	13
Telangana	6
Tripura	3
Total	414

The 60 Chins and other ethnic Myanmar nationals arrested by police include 29 arrested in Churachandpur, Manipur on 31 March 2021,¹²³ 26 Myanmar nationals including, including 10 women in Assam on 12 September 2021,¹²⁴ and five Myanmar nationals identified as Thang

Khawm Pau (21), Khen Khan Kham (19), Pau Hawmliam Mung (23), Cin Aih Mang (23) and Pau Biak Muang (19) arrested by police in Cachar district, Assam on 22 October 2021.¹²⁵

In 2021, at least 354 Rohingyas were arrested/detained/rescued by police from various states in the country. These included 174 Rohingyas in Jammu and Kashmir including 168 on 6 March 2021,¹²⁶ four Rohingyas identified as Mohadad Salam, Omar Faruk, Hassina Begum and Mustkima arrested by police at Lakhanpur border in Jammu & Kashmir for illegally entering India on 9 September 2021¹²⁷ and two Rohingyas on 17 October 2021,¹²⁸ 95 Rohingyas were arrested/detained in Delhi, which included six Rohingyas on 11 January 2021,¹²⁹ two Rohingyas - Hamid Hussain and Nabi Hussain on 15 January 2021¹³⁰, 71 Rohingyas on 11 March 2021¹³¹, 12 Rohingyas on 24 March 2021¹³² and a Rohingya family of four on 31 March 2021,¹³³ 24 Rohingyas, including seven children and six women in Assam in July 2021;¹³⁴ 19 Rohingyas in Uttar Pradesh in 2021, including four Rohingyas on 6 January 2021,¹³⁵ three Rohingyas identified as Hasan Ahmed, his brother Mohd Shahid, and his son-in-law Mohd Zubai on 1 March 2021,¹³⁶ two Rohingyas, Noor Alam and Amir Husain on 9 June 2021,¹³⁷ two Rohingyas identified as Mohammad Rafiq and Mohammad Aameen on 17 June 2021,¹³⁸ four Rohingyas identified as Hafiz Shafiq @ Shabiullah, Azizur Rahman @ Aziz, Mufizur Rahman @ Mufiz and Mohammad Ismail on 18 June 2021,¹³⁹ and two Rohingyas identified as Rehmatullah and Shabi-ur-Rehman @ Shabiullah arrested by ATS and two Rohingya women rescued from trafficking on 27 July 2021;¹⁴⁰ 19 in Haryana including at least 13 members from five Rohingya families including five women living at Chandeni village camp and nearby Nangli camp who were manhandled and detained by police in Nuh district,¹⁴¹ a Rohingya identified as Mohammad Shafiq arrested by police in Nuh district for illegally staying in the country on 6 July 2021¹⁴² and five Rohingyas including a woman and her two-year-old son, arrested in Nuh for illegal stay in the country on 4 August 2021;¹⁴³ 13 Rohingyas in West Bengal including 10 Rohingyas on 13 January 2021,¹⁴⁴ a Rohingya man identified as Mohammed Idris on 20 February 2021,¹⁴⁵ and two Rohingyas identified as Mohammad Jameel @ Harishullah (40) and Noor Ameen (25) on 21 November 2021;¹⁴⁶ six in Telangana including two Rohingyas – Abdul Munna @ Ayan Ansari and Hafiz Ahmed on 5 July 2021;¹⁴⁷ and four Rohingyas including a woman arrested for allegedly illegally procuring Aadhaar and Voter identity cards by making false representation of being Indian nationals in Hyderabad on 14 August 2021,¹⁴⁸ three Rohingyas in Tripura which included two Rohingya youth identified as Nazimulla and Minara on 15 January 2021,¹⁴⁹ and one Rohingya identified Sona Mia on 16 March

2021,¹⁵⁰ and a Rohingya woman identified as Janna Tara (18) arrested by police for trying to enter Imphal, Manipur with fake Aadhaar card on 5 December 2021.¹⁵¹

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5. Rohingyas: The most persecuted refugees in India

There is no accurate data on the total population of refugees living in India. Similarly the exact population of the Rohingyas from Myanmar is not known. Then Minister of State in the Ministry of Home Affairs Kiren Rijiju in a written reply to a question in the Rajya Sabha on 9 August 2017 stated that as per available estimate there were around 40,000 Rohingya illegal immigrants in India.¹⁵² The current Minister of State in the Ministry of Home Affairs, Nityananda Rai in a written reply to an Unstarred question in the Rajya Sabha on 3 February 2021 stated that as per reports illegal Rohingya immigrants are presently staying mostly in Jammu & Kashmir, Telangana, Punjab, Haryana, Uttar Pradesh, Delhi, Rajasthan, Tamil Nadu, West Bengal, Assam, Karnataka and Kerala. With regard to their exact population, he stated that since illegal immigrants enter into the country without valid travel documents in clandestine and surreptitious manner, there is no accurate data regarding their numbers.¹⁵³ As of 16 March 2021, about 17,000 Rohingya were registered with the UNHCR in India.¹⁵⁴

Rohingya refugees have been facing the most vociferous opposition from the current government of India because of their religious belief. A private member's resolution for the deportation of the Rohingya refugees from Jammu in the erstwhile Jammu and Kashmir Legislative Council (LC) was moved by the ruling Bharatiya Janata Party (BJP) LC Member Vibod Gupta in January 2017. Though the resolution was rejected¹⁵⁵, its effects resonated in a wider manner initially in Jammu and Kashmir, and later on across the country.

In February 2021, the Jammu and Kashmir National Panthers Party leaders (Panthers Party) put up hoardings in and around Jammu city, asking Rohingya and Bangladeshi Muslims to leave the area, while urging local residents to unite so as to "save history, culture and identity of Dogras". The hoardings stating "Wake up Jammu" carried photographs of the party leaders, including its chairman Harsh Dev Singh and state president Balwant Singh Mankotia. Harsh Dev reasoned the hoardings stating that it is the question of the very survival of Dogras who have already lost their identity due to the settlement of people from other parts of the state on the outskirts of Jammu city.¹⁵⁶

In April 2017, Advocate Hunar Gupta, a member of the BJP's legal cell and standing counsel of the central government, filed a Public Interest Litigation (PIL) in the Jammu and Kashmir High Court seeking directions

for identification and deportation of Rohingyas and Bangladeshis from Jammu. The PIL, *inter alia*, pleaded for direction for shifting all the illegal immigrants of Myanmar and Bangladesh from Jammu and Kashmir to any other place and withdrawal of all benefits given to the illegal immigrants from the State exchequer and from the scheme and benefits meant for the residents of J&K.¹⁵⁷

On 3 April 2017, then Union Home Secretary Rajiv Mehrishi held a high-level review meeting in Delhi with J&K Director General of Police SP Vaid and Chief Secretary BR Sharma on the Rohingya issue. Local newspapers reported that the Government of India was exploring the possibility of deporting the Rohingya back to Myanmar.¹⁵⁸

On 8 August 2017, the Ministry of Home Affairs had issued advisories to State Governments/ Union Territory (UT) Administrations to identify the Rohingya refugees for deportation. It stated that *“The rise of terrorism in last few decades has become a serious concern for most nations. Illegal migrants are more vulnerable for getting recruited by terrorist organizations. Infiltration from Rakhine State of Myanmar into Indian Territory specially in the recent years besides being burden on the limited resources of the country also aggravates the security challenges posed to the country”*. It further stated, *“Detection and deportation of such illegal immigrants from Rakhine State, also known as Rohingyas is a continuous process. Therefore, it is essential to identify such illegal migrants/persons and also keep a watch on their activities for preventing any untoward incident that can take place. All States/UT Administrations are, therefore, advised to sensitize all the law enforcement and intelligence agencies for taking prompt steps in identifying the illegal migrants and initiate the deportation processes expeditiously and without delay”*.¹⁵⁹

The issue of deportation of the Rohingyas was consistently raised in both houses of the parliament. In the Rajya Sabha (upper house of the Parliament), at least 25 questions were put to the Ministry of Home Affairs between 9 August 2017 and 3 February 2021.

Fearing their deportation, two Rohingyas Mohammad Salimullah and Mohammad Shaqir filed a petition on 30 August 2017¹⁶⁰ before the Supreme Court against the proposed decision of the government to deport the Rohingyas. Various other petitions filed including those by former Rashtriya Swayamsevak Sangh (RSS) ideologue and Rashtriya Swabhimani Andolan leader K N Govindacharya, the Communist Party of India (Marxist) youth wing Democratic Youth Federation of India (DYFI), the West Bengal child rights body and BJP leader Ashwini Kumar Upadhyay, are currently pending in the Supreme Court. During the hearing on 13 October 2019, the Supreme Court said the Rohingya refugee

problem was of a “great magnitude” and the state would have to play a “big role” while dealing with the contentious issue. It had earlier decided to give a detailed and holistic hearing on the government’s decision to deport Rohingyas to Myanmar, observing that a balance has to be struck between national interest and human rights as the issue involved national security, economic interests and humanity.¹⁶¹

In a new precedent, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance Ms E Tendayi Achiume moved an application to the petition filed by Mohammad Salimullah and Mohammad Shaqir before the Supreme Court of India to be appointed as amicus curie of the Court on the issue of prevention of racial discrimination. In her petition, the Special Rapporteur raised the issue of India’s obligations for upholding racial equality for all and elimination of discrimination based on race as per Article 1(1) of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), in addition to Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Articles 2(2) and 3 of the International Covenant on Economic and Social Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on Rights of the Child (CRC).¹⁶²

5.1. State wise population and cases of arrest

At least 1,178 Rohingya immigrants were arrested/detained or rescued from trafficking by police in different states during 2017 – 2021. These arrests included 386 in West Bengal; 187 in Jammu and Kashmir; 141 in Telangana; 124 in Tripura; arrest/detention of 98 Rohingyas in Delhi; 98 in Assam; 53 in Manipur; 35 in Mizoram; 19 arrested/rescued in Uttar Pradesh; 19 were detained in Haryana; 7 in Karnataka; 8 in Kerala; and 3 in Rajasthan.

Assam

The exact population of Rohingyas in Assam is also not known. However, there were regular reports of them being arrested, detained and deported from the State.

At least 98 Rohingyas were arrested in the State from 2017 to 2021. The cases included: six Rohingyas arrested by police from Churaibari area in Karimganj district on 19 August 2017;¹⁶³ 30 Rohingyas, including 12 children arrested from a Guwahati-bound private bus at Churaibari on the inter-state border on 21 January 2019;¹⁶⁴ six Rohingyas, including four minor girls, detained in Cachar district on 11 February 2019;¹⁶⁵

three Rohingya identified as Samshu Alam (51 years), Shamsu Alam (32 years) and Shabir Ahmed (64 years) arrested from Lumding railway junction in Hojai district on 17 February 2019;¹⁶⁶ five Rohingyas aged 19 to 22 years arrested by Railway Protection Force at Guwahati Railway Station on 14 May 2019;¹⁶⁷ two Rohingyas, including one girl, arrested from the house of one Habibur Rahman, resident of Dhalchara village under Lala police station in Hailakandi district on 20 May 2019;¹⁶⁸ a suspected Rohingya arrested from Bagadhar part IV near Silchar in Cachar district on 19 July 2019 following tip-off about his suspicious movements;¹⁶⁹ eight Rohingya people, five of them minors, arrested from the house of one Md. Yusuf Ali Mazumdar in Mazarpur village under the Algapur police station in Hailakandi district on 28 November 2020;¹⁷⁰ 13 Rohingya - four men, three women and six children - arrested from Karimganj district on 22 December 2020;¹⁷¹ and 24 Rohingya refugees, including seven children and six women arrested by the Railway Police in Karimganj district and Guwahati on 23 July and 25 July 2021 respectively.¹⁷²

Delhi

Delhi is one of the main settlement areas for the Rohingya refugees who were living in unofficial camps located in Jasola, Kalindi Kunj, Shaheen Bagh, etc.¹⁷³ Their exact population in Delhi is not known. As per media reports, about 135 families comprising 650 persons were living in two camps in Kalindi Kunj and Shaheen Bagh. These included 80 families comprising about 400 persons at Shaheen Bagh¹⁷⁴ and about 55 families comprising 250 persons at Kalindi Kunj.¹⁷⁵ These refugee families were living in miserable conditions with poor sanitation and healthcare, and no education facilities.¹⁷⁶ In September 2019, the Delhi Police asked the Rohingyas to submit nationality verification form with their personal details including information on any criminal cases in line with the policy of the GoI to identify and deport them.¹⁷⁷

Between 2017 and 2021, at least 98 Rohingyas were arrested in Delhi. The cases included: one Rohingya man, who was allegedly trying to fly to the Middle East on fake passports, arrested by Special Cell of Delhi police in March 2017;¹⁷⁸ one Rohingya man, wanted in connection with a dacoity case in Kerala, arrested by Delhi police on 9 January 2018;¹⁷⁹ a Rohingya youth identified as Mohammed Faisal arrested from Indira Gandhi International Airport for allegedly procuring a fake Indian passport and an Aadhaar card to travel to Indonesia on 15 May 2019;¹⁸⁰ six suspected Rohingyas arrested from Anand Vihar railway station in east Delhi on 11 January 2021;¹⁸¹ two Rohingya refugees identified as Hamid

Hussain (23 years) and Nabi Hussain (22 years) from Uttam Nagar area of west Delhi on 15 January 2021¹⁸²; 71 Rohingya refugees including women and children, from Jammu detained by the FRRO in West Delhi's Inderpuri on 11 March 2021¹⁸³; 12 Rohingyas from Madanpur Khader and Shram Vihar camps in southeast Delhi on 24 March 2021¹⁸⁴; and a Rohingya family of four from the Kalindi Kunj camps on 31 March 2021.¹⁸⁵

Haryana

As per state government of Haryana, there were 430 Rohingya families comprising 1,600 persons who were settled mostly in Nuh (Mewat) district. Following complaints of denial of basic rights and amenities to the Rohingyas living in camps in the district, a Committee was appointed by the Supreme Court to look into the complaints in 2018. The Committee informed the Court that Rohingyas were not being discriminated and provided with basic facilities such as water, sanitation, health care and education. However, there were reports of state government planning to implement National Register of Citizens on the lines of Assam government so that alleged illegal immigrants including Rohingyas can be identified.¹⁸⁶ On 23 March 2021, Vishwa Hindu Parishad National Secretary Dr Surinder Jain claimed that nearly 2,000 Rohingyas are currently residing in slum/ rural localities in small groups in Mewat region while several families shifted to other towns such as Faridabad, Gurugram and Yamunanagar districts. According to a state government spokesperson, it is very difficult to identify Rohingya families since most of them have forged identity documents like Aadhar card, Ration card and voter card.¹⁸⁷

There were also reports of arrest in Haryana. At least 19 Rohingyas were arrested/detained in the State in 2021. On 20 January 2021, at least 13 members from five Rohingya families living at Chandeni village camp and nearby Nangli camp were manhandled and detained by local police in Nuh district. The 13 detained Rohingya included five women and one senior member. Nine of the detained were from Chandeni village camp and another four from the nearby Nangli camp.¹⁸⁸

On 6 July 2021, a Rohingya identified as Mohammad Shafiq was arrested by police in Nuh district for illegally staying in the country.¹⁸⁹

On 4 August 2021, five Rohingyas including a woman and her two-year-old son, were arrested in Nuh for illegal stay in the country.¹⁹⁰

Jammu & Kashmir

According to official documents from the office of deputy commissioner of Jammu, there are 6,523 Rohingya Muslims in Jammu, as part of 1,517

families as on 7 March 2021¹⁹¹. The J&K government estimates put the number of Rohingya refugees at 5,700 while the UNHCR estimated the figure at 7,000 in 2017.¹⁹² They were living in extremely poor hygienic conditions in the refugee camps doing menial jobs.¹⁹³

At least 187 Rohingyas were arrested/detained in Jammu and Kashmir since 2017. On 10 September 2017, 12 Rohingyas were arrested and detained at Channi Himmat police station in Jammu for duration ranging from four to 11 days. They were accused of killing a cow. Some of them were allegedly beaten.¹⁹⁴

In February 2018, a Rohingya identified as Noor was arrested by police for trafficking of girls in Jammu.¹⁹⁵

In 2021, at least 174 Rohingyas were in detention in Jammu and Kashmir. On 6 March 2021, the Jammu and Kashmir Administration conducted a drive to collect biometric and other details of Rohingya staying in Samba district of Jammu and Kashmir.¹⁹⁶ During the process, at least 168 Rohingyas were sent to a holding centre, under section 3(2)e of the Foreigners Act and later shifted to a sub-jail in Kathua district after they were found living in Jammu city without valid documents.¹⁹⁷ Police said the immigrants were not holding valid travel documents required under section (3) of the Passports Act. Inspector general of police (Jammu zone) Mukesh Singh said that illegal immigrant Rohingyas staying in J&K were sent to the holding centre established vide home department notification dated 5 March 2021.¹⁹⁸

On 9 September 2021, four Rohingyas identified as Mohadad Salam, Omar Faruk, Hassina Begum and Mustkima were arrested by police at Lakhanpur border in Kathua district for illegally entering into India.¹⁹⁹

On 17 October 2021, two Rohingyas identified as Abdul Amin and Abdul Salim having UNHCR identity cards were apprehended by the Indian Army at Kaluchak in Jammu for suspicious movement. Both of them were living at Jamaat Ali Plot, Narwal in Jammu. The two persons possessed mobiles that allegedly had contacts from Pakistan and Myanmar. Later, they were handed over to the police for investigation.²⁰⁰

Karnataka

In Karnataka, the Rohingya refugees have been living in a small refugee camp near Dasarahalli in north Bengaluru. They settled in Bengaluru in 2013 with assistance from the United Nations High Commissioner for Refugees.²⁰¹ As of December 2020, their total population in Bengaluru was 145 persons.²⁰² Most of them work as rag pickers, face harassment

and exploited at work. Some pay *hafta* (protection money) to local goons in return for being allowed to do the rag-picking activity. Others working for various garbage contractors are paid less than half of what *pourakarmikas* (female garbage cleaner in Bengaluru) are paid.²⁰³

On 14 February 2019, following a tip-off by central intelligence agencies, Karnataka police arrested seven Rohingyas, including two women, from the Kempegowda International Airport, Bengaluru while they were trying to fly to Malaysia on fake Indian passports. The arrested were identified as Aska Begam, Mohamed Tahir, Onkar Farook, Mohammed Halek, Rehana, Mohammed Mustafa, all residents of Malla Reddy Palli in Rangareddy district in Hyderabad, and Rajath Mandal from Kolkata. Police also arrested Abdul Aleem and two other travel agents who helped them to get Indian passports.²⁰⁴

Kerala

The population of Rohingya refugees living in the southernmost state of Kerala is not available. However, given the intelligence inputs by the Railway Protection Force (RPF) about the travel of Rohingyas in large number in Kerala bound trains originating from Assam and West Bengal and arrest of many of the refugees suggests that a considerable number of them are residing in Kerala. The Principal chief security commissioner, RPF, Chennai in an alert issued on 26 September 2018 to the Divisional Commissioners in Chennai, Trivandrum, Salem and other zones in Tamil Nadu and Kerala ordered RPF officials to be vigilant of Rohingyas travelling in the trains bound for the south and hand them over to local police when found. The letter identified 14 trains that ply between Silchar, Guwahati, Dibrugarh, Howrah, Santragachi, Kanniyakumari, Trivandrum Central, and Chennai.²⁰⁵

In January 2018, three Rohingyas were arrested by police on charges of committing robbery in Ernakulam district of the state.²⁰⁶

On 2 October 2018, Kerala police apprehended a five-member Rohingya family in Vizhinjam in Thiruvananthapuram district of Kerala. The group comprising a man, his wife, their six-month-old child and two more adults had reached the city from Hyderabad in Sabari Express the previous night. Police said the group had refugee cards issued by UNHCR and hence no legal action was taken against them.²⁰⁷

Manipur

Though there are no estimates of Rohingya refugees living in Manipur, at least 53 Rohingyas were arrested in the state since 2017. On 22 December

2017, Manipur Chief Minister N Biren Singh stated in the State Assembly that one Rohingya Muslim was arrested by police during a routine check at Moreh border town.²⁰⁸ On 27 February 2019, the Chief Minister stated in the State Assembly that 36 Rohingyas were arrested, most of them along the Indo-Myanmar border in Tengenpoual district, in 2018.²⁰⁹

On 27-28 May 2019, nine Rohingyas including two women were arrested by police from Moreh town near the Indo-Myanmar border in Tengenpoual district. Police recovered fake Aadhaar cards from their possession.²¹⁰

On 10 August 2019, Manipur Police arrested six Rohingya immigrants trying to enter into India with fake documents at the Imphal airport. The immigrants were detained after they were deboarded from an indigo flight from Delhi. The police found that the Aadhaar cards presented by them were fake.²¹¹

On 5 December 2021, a Rohingya woman identified as Janna Tara (18) was arrested by police for trying to enter Imphal with fake Aadhaar card. She was later sent to judicial custody.²¹²

Mizoram

Mizoram is being used by both the Rohingya refugees and the traffickers as a transit. There were reports of the arrest and rescue of Rohingyas in the State.

At least 35 Rohingyas were arrested/rescued in Mizoram from April 2019 to December 2020. The cases included: eight young Rohingya women arrested at the Vairengte police checkpoint on the Mizoram-Assam on 26 April 2019;²¹³ 12 Rohingyas - eight women and four boys from Bangladesh – arrested from a house under Bawngkawn police station in Aizawl district limits on 5 May 2019;²¹⁴ eight Rohingya girls, aged around 15-16 years, rescued from Dungle village in Champhai district on the Mizoram-Myanmar border on 17 June 2019²¹⁵; four Rohingya refugees, including two minors rescued on 4 July 2019;²¹⁶ and three Rohingya women arrested on 7 December 2020.²¹⁷

Punjab

According to the Punjab Police, there were around 250 Rohingya immigrants comprising around 60-70 families residing in Dera Bassi and Lalru villages in Mohali district of Punjab²¹⁸. In April 2020, Punjab police put as many as 222 Rohingyas under home quarantine in Dera Bassi after

a few of them tested positive for Covid-19 following their participation at the congregation of the Tabilighi Jamaat in south Delhi.²¹⁹

No cases of arrest of Rohingya reported from Punjab.

Rajasthan

As of September 2017, there were 120 Rohingya families living in Hasanpura, Hathroi and Rajeev Nagar areas of Rajasthan's capital city Jaipur.²²⁰

Following the Government of India's directions to the State governments to set up a Task Force for identification of Rohingyas and take steps for their deportation in August 2017, Rajasthan police directed the 120 Rohingya families to leave the state by the end of August that year. The cases of arrest included: a Rohingya man Mohammad Woli (45 years) and his wife from Undercoat area under Dargah Police Station in Ajmer Sharif on 11 November 2017²²¹ and another Rohingya from Myanmar who was illegally residing in dargah region in Ajmer on 10 November 2017.²²²

Tamil Nadu

As of September 2019, a total of 19 Rohingya families comprising 94 persons, including 52 minors, were living at a designated camp in Kancheepuram district in southern state of Tamil Nadu. All of them have been registered with the Chennai office of the UN High Commissioner for Refugees. Initially in 2012, a group of five families, 32 in all, arrived in Chennai from Kolkata by train and since then, the numbers went up and down as some refugees living in Jammu joined them while some others left for adjacent state of Kerala.²²³ All of them were registered with the Foreigners Registration Office (Police Superintendent), in Kancheepuram and have a Residential Permit issued by the authorities. Subsequently the State government authorities shifted all of them to a cyclone shelter building at Kelambakkam in Thiruporur Taluk of Chengalpattu district. The Rohingya refugees in Tamil Nadu have received help and support from the state and the locals from the date of their arrival. A government official stated that from day one of their arrival, the government has ensured that they have a proper place to stay and don't go hungry. Refugees have been given all essential commodities and their premises are inspected periodically to redress grievances. On their part, some well-to-do Muslims even gifted motors (engines) to the refugees and they now have motorised tricycles which makes their work easy.²²⁴

There were no reports of arrest of Rohingya in Tamil Nadu.

Telangana

According to Hyderabad police, the total Rohingya population in the city was 4,835 persons as on 28 November 2020. The Rachakonda police station under whose jurisdiction all Rohingya population live in Hyderabad said it had the biometric details of 4,561 Rohingyas while those of 274 Rohingyas were pending.²²⁵

At least 141 Rohingyas were arrested in Telangana.

According to police, a total 135 Rohingyas were arrested in 65 cases registered against them as of November 2020. Most of the Rohingyas are arrested in the city for illegal documents. Of the 65 cases, 24 cases related to fake Aadhar cards, 15 related to voter identity cards, four related to driving licenses, 10 related to PAN cards, nine cases related to passports, and two related to bank accounts. The police had seized 97 fake documents from several Rohingyas, of which 42 are Aadhar cards, 24 voter identity cards, four driving licenses, 14 PAN cards, 11 passports, and two bank passbooks.²²⁶

On 5 July 2021, two Rohingyas identified as Abdul Munnafe @ Ayan Ansari (31) and Hafiz Ahmed (34) were arrested by police from Rajendranagar, Hyderabad. They were living in the country after obtaining cards and other identity proofs illegally.²²⁷

On 14 August 2021, four Rohingyas including a woman were arrested for allegedly illegally procuring Aadhaar and Voter identity cards by making false representation of being Indian nationals in Hyderabad.²²⁸

Tripura

The exact population of the Rohingyas who have been living in Tripura was not known. Tripura, which shares 856 km-long international border with Bangladesh, is used by the Rohingya refugees as a transit from Bangladesh to rest of India and vice versa.

In Tripura, at least 124 Rohingyas were arrested from 2017 to 2021. The cases of arrest were: eight Rohingyas including four minors arrested by police in Agartala on 29 November 2017;²²⁹ seven Rohingyas arrested from a railway station in the State and later jailed in June 2017;²³⁰ 62 Rohingyas arrested in 2018 by the Border Security Forces after they entered into Tripura illegally;²³¹ six Rohingya girls and a boy detained at the Dharmanagar Railway Station in north Tripura district on 2 February 2019;²³² 31 Rohingyas including 16 children arrested from the Indo-Bangla border on 29 January 2019;²³³ four Rohingyas including a woman

and three children arrested by police from Yeazikhoura village in Unakoti district on 27 April 2019;²³⁴ two Rohingya men identified as Md. Salim (21 years) and Jahangir Alam (20 years) arrested from Rajnagar area near Agartala in West Tripura district on 15 July 2019;²³⁵ two Rohingya youth identified as Nazimulla (19) and Minara (18) arrested from Manaipathar area of Sonamura in Sepahijala district on 15 January 2021;²³⁶ and one Rohingya identified as Sona Mia arrested from Bishalgarh in Sepahijala district while he was on his way to Agartala to board a flight to Delhi on 16 March 2021.²³⁷

Uttar Pradesh

In November 2017, a confidential note prepared by the Uttar Pradesh police and sent to the state government stated that 304 Rohingya people were scattered in five western districts - Aligarh, Mathura, Saharanpur, Muzaffarnagar and Meerut.²³⁸

According to Prashant Kumar, Additional Director General of Police (Law and Order), Uttar Pradesh there are about 1,600 Rohingyas living in the state illegally posing as Indians as of February 2021.²³⁹

At least 19 Rohingyas were arrested/rescued in Uttar Pradesh in 2021. The cases of arrest in the State included: four Rohingyas including a junior engineer identified as Azizul Haq @ Azzuallah arrested by the Anti-Terrorist Squad (ATS) on 6 January 2021 from Bhakhira Chamarson in Sant Kabir Nagar on accusations of making fake passports and involvement in terror funding;²⁴⁰ three Rohingyas identified as Hasan Ahmed, his brother Mohd Shahid, and his son-in-law Mohd Zubai arrested on 1 March 2021 by the ATS on allegations of facilitating Rohingya from Bangladesh and Myanmar to acquire Indian identity documents and settle down in India;²⁴¹ two Rohingyas, Noor Alam and Amir Husain arrested by ATS from Ghaziabad for illegal stay and involved in a racket which help Rohingyas sneak into India through different channels on 9 June 2021;²⁴² two Rohingyas identified as Mohammad Rafiq and Mohammad Aameen arrested by police from Aligarh for living in the country illegally by forging documents on 17 June 2021;²⁴³ four Rohingyas identified as Hafiz Shafiq @ Shabiullah, Azizur Rahman @ Aziz, Mufizur Rahman @ Mufiz and Mohammad Ismail arrested by ATS from Meerut, Aligarh and Bulandshahr districts on accusations of involved in trafficking and illegal stay on 18 June 2021;²⁴⁴ and two Rohingyas identified as Rehmatullah and Shabi-ur-Rehman @ Shabiullah arrested by ATS and two Rohingya women rescued after being trafficked by the arrested persons from Ghaziabad on 27 July 2021.²⁴⁵

West Bengal

The exact population of the Rohingyas living in West Bengal is not known. In January 2018, media reported that 29 Rohingyas were residing in 16 makeshift rooms raised on a private plot of land in Harda village in South 24 Parganas district.²⁴⁶ In September 2018, the Border Security Force (BSF) informed at a press conference that an inquiry by the BSF revealed 70 Rohingya families, who were living in different parts of India, came to West Bengal.²⁴⁷ However, the Bharatiya Janata Party (BJP) has consistently raked up the infiltration and settlement of Rohingyas in the state and getting enrolled in the voters list. On 21 January 2021, West Bengal BJP president Dilip Ghosh urged the Election Commission to facilitate a scrutiny of the voters' list in West Bengal as names of Rohingya Muslims have been included in it. He said that three to four lakh names of infiltrators figure in the electoral list, including a large number of Rohingya Muslims.²⁴⁸

In December 2019, the West Bengal government confirmed two sites – New Town, Kolkata and Bongaon in North 24 Parganas district to set up detention centres for convicted foreign nationals awaiting deportation.²⁴⁹

At least 386 Rohingyas were arrested by the Border Security Force (BSF) and police in West Bengal from 2017 to 2021 (till November). These include arrest of 123 Rohingyas in 2017 and 230 Rohingyas in 2018 along the Indo-Bangladesh border in West Bengal by the Border Security Forces²⁵⁰ and arrest of at least 33 other Rohingyas from 2019 to 2021 by the State Police.

The cases of arrest included: two Rohingya women, Rafika Khatoon (22 years) and Noor Kaida (20 years) arrested at Netaji Subash Chandra Bose international airport, Kolkata on 17 March 2019;²⁵¹ four Rohingyas identified as Mohammad Rafiq, his wife Anowara Begum, their relative Dilbar Begum and a 16-year-old girl arrested at the Jalpaiguri railway station on 29 July 2019;²⁵² 14 suspected Rohingyas arrested from Agartala-New Delhi Special Rajdhani Express at New Jalpaiguri station on 24 November 2020;²⁵³ 10 Rohingyas, including five children and two women, deboarded and arrested from New Delhi-bound Agartala-Delhi Rajdhani Special train at New Jalpaiguri station on 13 January 2021;²⁵⁴ a Rohingya man identified as Mohammed Idris, a resident of Myanmar's Buthidaung town in Rakhine state in Myanmar, arrested from Ghutiari Sharif in South 24 Parganas district on 20 February 2021;²⁵⁵ and two Rohingyas identified as Mohammad Jameel @ Harishullah (40) and Noor

Ameen (25) arrested by ATS of Uttar Pradesh Police in West Bengal on 21 November 2021.²⁵⁶

5.2. Deportation to Myanmar

India continues to make efforts for deportation of Rohingyas despite Myanmar refusing to accept them.

Since 2018, as many as 39 Rohingya nationals were deported from Assam while nearly 50 Rohingyas are currently lodged in different detention camps in the State including Tezpur, Silchar and Goalpara as of 31 March 2021.²⁵⁷ On 6 March 2021, the Jammu and Kashmir (J&K) administration detained and shifted 168 Rohingyas to a sub-jail in Kathua district after they were found living in Jammu city without valid documents. Inspector general of police (Jammu zone) Mukesh Singh said that illegal immigrant Rohingyas staying in J&K were sent to the holding centre for nationality verification and eventual deportation.²⁵⁸ In the first week of March 2021, the J&K administration conducted a drive to collect biometric and other details of Rohingya staying in Samba district of Jammu and Kashmir.²⁵⁹ However, their impending deportation stopped after the Supreme Court directed that the Rohingya detained in Jammu “*shall not be deported unless the procedure prescribed for such deportation is followed.*”²⁶⁰

On 27 February 2019, Manipur Chief Minister N Biren Singh stated in the State Assembly that 52 Rohingyas who completed their jail terms in the State were deported to Myanmar since 2011.²⁶¹

Some of the cases of deportation including aborted ones are given below:

Case 1: Seven deported from a detention centre in Silchar, Assam

On 4 October 2018, seven Rohingya men were deported to Myanmar by Assam police authorities via the Manipur border.²⁶² The seven deportees identified as Mohammad Inus, Mohammad Sabir Ahmed, Mohammad Jamal, Salam, Mohammad Muknul Khan, Mohammad Rohimuddin and Mohammad Jamal Hussain were handed over to the Myanmar authorities after the Supreme Court refused to stop their deportation. The seven Rohingya men had been held at a detention camp Silchar Central Jail in Assam since July 2012, after they were arrested for violations of the Foreigners Act.²⁶³

Case 2: A family of five deported from Tezpur detention centre

On 3 January 2019, a Rohingya Muslim family of five was deported to Myanmar along the International Border in Manipur. The husband, wife and three children had been arrested for violating the Foreigners Act and jailed in 2014 for entering India without valid documents. They were lodged at a Detention Centre in Tezpur, Assam after completion of their jail terms.²⁶⁴

Case 3: A man and his two children deported from Tezpur detention centre

On 29 March 2019, three Rohingyas, a father and his children, were deported to Myanmar via Moreh in Manipur. They had been detained in Assam in 2013 and had since been held in a prison in Tezpur in Assam for illegally entering India.²⁶⁵

Case 4: Four deported from Sajiwa Central jail, Manipur

On 10 September 2019, Manipur Police deported four Rohingyas to Myanmar. They were arrested in 2013 for illegally entering the State and convicted under the Foreigners Act. They had been lodged in Sajiwa Central Jail, Manipur.²⁶⁶

However, the Myanmar authorities refused to accept some Rohingya refugees. At least two cases of refusal were reported:

Case 5: Refusal to accept Mohammad F Ahmed

On 23 October 2019, Mohammad F Ahmed, a Rohingya Muslim, was brought back to India after Myanmar authorities refused to take charge of him as he did not possess any documents to prove that he was a resident of Myanmar. After serving seven years and six months in prison in Rajasthan, Ahmed was taken to Manipur to deport him to Myanmar.²⁶⁷

Case 6: Refusal to accept 14-year-old Rohingya girl

On 1 April 2021, Myanmar refused to accept a 14-year-old Rohingya girl when she was taken to the international check-gate at Moreh in Manipur by a team of the Assam Police for deportation after clearance from the Government of India. However, immigration officials of Myanmar refused to accept her stating that the check-gate has been shut for the last one year due to the COVID-19 pandemic. Further, the Myanmar officials told the Indian authorities that the situation in their country is also not appropriate for any kind of deportation. Failed at the deportation bid, the police team returned to Silchar with the girl, and

handed her back to the shelter home where she has been living. She was found at a house in the Rongpur area of Silchar in Assam's Cachar district two years back in an unconscious state under mysterious circumstances. It was later found that her parents were in a refugee camp at Cox Bazar in Bangladesh.²⁶⁸ The Indian authorities went ahead with the foiled deportation of the 14-year-old Rohingya girl to Myanmar despite her request that she be sent to Cox's Bazar in Bangladesh, where her parents are reportedly living in a refugee camp.²⁶⁹

5.3. Rohingya refugee rights in a suspended limbo

Notwithstanding jurisprudence against non-refoulement of refugees, in a apparent departure, on 8 April 2021, a Supreme Court bench headed by Chief Justice S.A. Bobde declined to issue direction to the Union of India and J & K administration to release the 168 Rohingya refugees detained at sub-jail in Jammu; and not to deport any of them to Myanmar, where they face imminent danger of being persecuted on return. The bench only directed that the Rohingyas in Jammu shall not be deported unless the procedure prescribed for such deportation is followed.²⁷⁰

The decision of the Supreme Court was based on the two serious allegations of (i) the threat to internal security of the country; and (ii) the agents and touts providing a safe passage into India for illegal immigrants, made by the Union of India in its reply to the interlocutory application. It held that the right not to be deported, is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1)(e) of the constitution which is not available to non-citizens although the rights guaranteed under Articles 14 and 21 are available to all persons irrespective of nationality.²⁷¹

The court justified its decision of refusing the relief sought by the petitioners noting that the directive principles enshrined in Article 51(c) of the Constitution²⁷² cannot be pressed into service as India is not a signatory to the United Nations Convention on the Status of Refugees 1951. The apex court also declined to consider the imminent danger of persecution the Rohingya refugees face in case of their deportation to Myanmar, where the democratically elected government was overthrown by the military.²⁷³

However, the allegations of the Union of India i.e. (i) the threat to internal security of the country from the Rohingyas and (ii) the agents and touts providing a safe passage into India for illegal immigrants as submitted by the Union of India, based on which the Supreme Court declined the relief sought in the interlocutory application were not based on facts.

Though the Rohingyas have been living in Jammu region for more than a decade there have not been any report of them being involved in militancy related activities across the country. This was vouched none other than by former Jammu and Kashmir Chief Minister Mehbooba Mufti. In a written reply to BJP MLA Sat Sharma in the legislative assembly 20 January 2017 the former Chief Minister said that *“no Rohingyas have been found involved in militancy related incidents. However, 17 FIRs have been registered against 38 Rohingyas for various offences including those related to illegal border crossing.”* She also stated that there was no instance of radicalisation among the Rohingyas has been reported so far.²⁷⁴

Further on 22 November 2021, State Government of Kerala stated in the Supreme Court that no Rohingya refugees residing in the State have been found to have any association with the ISIS.²⁷⁵

It is pertinent to mention that “Standard Operating Procedure of the Ministry of Home Affairs w.e.f. 29-12-2011 for dealing with foreign nationals who claim to be refugees” for grant of the Long Term Visa (LTV)” calls for examination as to whether “prima facie the claim (of refugee) is justified, (on the grounds of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion)”. It also calls for “the general perceived condition in the home country of the people belonging to the community of the foreigner making the claim.” That the Rohingyas faced crime of genocide and the country has been taken over by the military have been established beyond any reasonable doubt. In fact, any repatriation shall be contrary to the SOP issued by the MHA for foreign nationals who claim to be refugees.

However, the Manipur High Court in *Nandita Haksar Vs. State of Manipur & Others* in its order and judgment of 3 May 2021 held that though India may not be a signatory to the Refugee Convention of 1951, its obligations under other international declarations/covenants, read with Article 21 of our Constitution, enjoins it to respect the right of an asylum seeker to seek protection from persecution and life or liberty-threatening danger elsewhere. It observed: *“The far-reaching and myriad protections afforded by Article 21 of our Constitution, as interpreted and adumbrated by our Supreme Court time and again, would indubitably encompass the right of non-refoulement”* The Court (at Page 4 & 5) observed thus:

“[7] India is not a signatory to the Geneva Refugee Convention, 1951, and the New York Protocol of 1967. It is however a party to the Universal Declaration of Human Rights, 1948. Article 14 thereof declares that everyone has a right to seek and to enjoy in other countries asylum from

persecution. India is also party to the International Covenant on Civil and Political Rights, 1966. This Covenant was entered into in recognition of the fact that certain inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world; and that these rights derive from the inherent dignity of the human person. Notably, India was one amongst the 193 member countries of the UN General Assembly that endorsed the 'Global Compact on Refugees', as recently as on 17.12.2018. This Compact formulates a framework for more predictable and equitable responsibility-sharing and provides a blueprint for Governments, International Organizations and other stakeholders to ensure that host communities get the support they need so that refugees can lead productive lives. Its key-objectives are: to ease the pressure on host countries; enhance refugee self-reliance; expand access to third-country solutions; and support conditions in the countries of origin for return in safety and dignity. In this milieu, it would be relevant to note that Article 51 of our Constitution casts a non-enforceable duty upon the 'State' to promote international peace and security, apart from fostering respect for international law and treaty-obligations in the dealings of organized peoples with one another.

.....The far-reaching and myriad protections afforded by Article 21 of our Constitution, as interpreted and adumbrated by our Supreme Court time and again, would indubitably encompass the right of non-refoulement, albeit subject to the condition that the presence of such asylum seeker or refugee is not prejudicial or adverse to the security of this country. Therefore, though India may not be a signatory to the Refugee Convention of 1951, its obligations under other international declarations/covenants, read with Article 21 of our Constitution, enjoins it to respect the right of an asylum seeker to seek protection from persecution and life or liberty-threatening danger elsewhere.”²⁷⁶

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6. Plight of the refugees during COVID-19 pandemic

UNHCR provides 'Cash Based Assistance' (CBA) to a small number of recognized refugees based on an assessment of their exceptionally compelling protection, health, disability and age related concerns. The CBA is limited in amount and duration.²⁷⁷

UNHCR and its partners encourage refugees to make sustained efforts to achieve self-reliance and UNHCR partners offer programs related to education, vocational and language training and self-reliance.²⁷⁸ However, as alien, they are not legally entitled to work permit and due to lack of the requisite documentations, they cannot get employment in the organised or formal sectors.

Most of the Chin refugees work in unregistered factories in west Delhi while others are employed as helpers in restaurants, houses, as domestic staff or sell vegetables in and around colonies where they live. Language is the biggest barrier for the Chins as hardly 10% of those who came from Myanmar can speak either English or Hindi although the kids born in Delhi are fluent in Hindi. Their inability to speak and understand Hindi often leads to exploitation by the factory owners.²⁷⁹

In the absence of social benefits and poor healthcare facilities, the refugees particularly suffered during COVID-19 lockdown. Because of the lack of citizenship entitlements and government issued identity proofs, they simply could not access subsidised food, healthcare and other such benefits. Refugees across the spectrum faced the loss of employment due to the COVID-19 lockdowns.

Many of the Rohingya refugees in Hyderabad were reported to have starved as they were left without a source of income since the lockdown. The Rohingya refugees in Delhi, on the other hand, are not eligible for the livelihood assistance schemes of the Delhi government owing to the lack of official recognition. The same is the condition of the Afghan refugees, whose livelihood has been severely affected by the lockdown.²⁸⁰ According to a survey conducted by the Rohingya Human Rights Initiative (RHRI) in August 2021, nearly 56% Rohingya refugees living across India lost employment due to the pandemic. Nearly 120 Rohingya refugees, including 65 women, from 40 locations in New Delhi, Haryana, Hyderabad and Jammu & Kashmir were surveyed by the RHRI for the report on Covid-19 emergency statelessness fund.²⁸¹

Apart from losing income avenues due to the nationwide lockdown, in the absence of listed government issued identity proofs, the refugees are neither eligible for free food ration nor free Covid-19 tests nor Covid-19 vaccination in India. As many as six Chin refugees succumbed to Covid-19 infection during the second wave of the pandemic, often without any medical care in government hospitals because they lacked the documentation or money required for private hospitalisation.²⁸²

For vaccination of COVID-19, registration with CoWin platform using any of the government-approved identity card such as an Aadhar card, passport, PAN card or voter identity card is mandatory.²⁸³ The refugees especially the unrecognised and undocumented ones are not eligible for these documents. Further, private healthcare services are inaccessible due to high costs. Indeed, offices of the UNHCR and its partners, the only support system for the refugees, had been closed since 21 March 2020 following the COVID-19 outbreak and they functioned remotely,²⁸⁴ leaving the refugees extremely vulnerable.

²⁷⁷. Available at: <https://help.unhcr.org/india/protection-assistance/>

²⁷⁸. Available at: <https://help.unhcr.org/india/protection-assistance/>

²⁷⁹. Myanmar refugees in Delhi fear for their kin back home, Times of India, 4 February 2021, <https://timesofindia.indiatimes.com/city/delhi/myanmar-refugees-fear-for-their-kin-back-home/articleshow/80676232.cms>

²⁸⁰. Observer Research Foundation, “The plight of refugees in India during COVID19,” 7 July 2020 by Dharika Athray, <https://www.orfonline.org/expert-speak/the-plight-of-refugees-in-india-during-covid19-69287/>

²⁸¹. ‘56% Rohingya refugees lost jobs during pandemic’, Times of India, 21 August 2021, <https://timesofindia.indiatimes.com/city/delhi/56-rohingya-refugees-lost-jobs-during-pandemic/articleshow/85499019.cms>

²⁸². How India and the UNHCR failed to provide healthcare and vaccination for Chin refugees, Caravanmagazine, 7 June 2021; available at: <https://caravanmagazine.in/health/how-india-and-the-unhcr-failed-to-provide-healthcare-and-vaccination-for-chin-refugees>

²⁸³. For Covid-19 vaccine Aadhaar is mandatory even if registration on CoWin done with other ID. Sort of, India Today, 21 May 2021, <https://www.indiatoday.in/technology/news/story/for-covid-19-vaccine-aadhaar-is-mandatory-even-if-registration-on-cowin-done-with-other-id-sort-of-1805290-2021-05-21>

²⁸⁴. COVID-19: Services, information and other resources, 05 August 2021; <https://help.unhcr.org/india/urgent-message-from-unhcr-india-to-asylum-seekers-and-refugees/>



Annex-1: Long Term Visas, Ministry of Home Affairs, 20 August 2020

Date: 13/08/2020

No. 25022/62/2020-F-I
Government of India
Ministry of Home Affairs
Foreigners Division

LONG TERM VISAS

1. Long Term Visa (LTV) to Pakistan, Bangladesh and Afghanistan nationals coming to India on valid travel documents i.e. valid passport and valid visa and seeking permanent settlement in India with a view to acquire Indian citizenship

(A) Categories of persons eligible for LTV

Following categories of Pakistan/ Bangladesh/ Afghanistan nationals shall be eligible for grant of LTV:-

- (i) Members of minority communities in Pakistan/Bangladesh/Afghanistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians.
- (ii) Pakistan / Bangladesh women married to Indian nationals and staying in India and Afghanistan nationals married to Indian nationals in India & staying in India.
- (iii) Indian origin women holding Pakistan/ Bangladesh/ Afghanistan nationality married to Pakistan/ Bangladesh/ Afghanistan nationals and returning to India due to widowhood/divorce and having no male members to support them in Pakistan/ Bangladesh/ Afghanistan.
- (iv) Cases involving extreme compassion.

(B) Procedure for grant of LTV

- (a) Pakistan/ Bangladesh/ Afghanistan nationals coming to India on short term visa (on any category of visa applicable to such Pakistan/ Bangladesh/ Afghanistan nationals) and applying for LTV under the above mentioned eligible categories may be granted extension on their short term visas up to a period of six months by the FRRO/ FRO concerned.

Note: Afghanistan nationals under eligible categories already staying in India on Stay Visa/ Residential Permit may also apply for grant of Long Term Visa (LTV).

- (b) Pakistan/ Bangladesh/ Afghanistan nationals eligible for grant of LTV shall apply for LTV online in the C-FRO module by logging in the URL indianfrro.gov.in/frro. The applicants are required to upload the photograph and the mandatory documents as specified below for each category and submit the application online to the concerned FRRO/ DCP/ FRO along with the prescribed fee.

Documents to be uploaded by the applicant with the LTV application

- (i) Copy of Passport

- (ii) Copy of Visa and Residential Permit
- (iii) Photograph
- (iv) Indemnity Bond from the Indian guarantor
- (v) Identification proof of the Indian national giving the Indemnity Bond (Indian passport/ Election Identity Card/ Ration card with the photograph of the guarantor) (Aadhaar card alone will not be accepted as it is not a proof of Indian nationality of the holder)
- (vi) In the case of minors, written consent of the parents for grant of LTV
- (vii) In the case of category (ii) mentioned in sub- para (A) above i.e. Pakistan / Bangladesh women married to Indian nationals and staying in India and Afghanistan nationals married to Indian nationals in India & staying in India –

“Copy of the domicile certificate or Indian passport of the Indian husband and Hindi/ English version of the marriage certificate/ Nikahnama.”
- (viii) In the case of category (iii) mentioned in sub-para (A) above i.e. Indian origin women holding Pakistan/ Bangladesh/ Afghanistan nationality married to Pakistan/ Bangladesh/ Afghanistan nationals and returning to India due to widowhood/divorce and having no male members to support them in Pakistan/ Bangladesh/ Afghanistan –

“Death/ Divorce certificate”

Fee

A fee of Rs.100/- per application will be payable for grant of LTV by Pakistani nationals. The fee is to be paid online. **In the case of such Bangladesh and Afghanistan nationals, no fee will be payable.**

- (c) After submission of the application along with requisite documents and prescribed fee online, the applicants will be allotted a date for bringing the original documents for verification by the FRRO/ DCP/ FRO concerned. On the allotted day, the applicants shall bring the originals of the supporting documents to the FRRO/ DCP/ FRO concerned for verification. After verification of the documents, the original documents will be returned to the applicant. FRRO/ DCP/ FRO concerned will acknowledge the application online.
- (d) Thereafter, the application will be processed online and final decision of the Ministry of Home Affairs will be uploaded online. Based on the decision of Ministry of Home Affairs, FRRO/ DCP/ FRO concerned will make suitable endorsement on the Passport/Residential Permit of the Pakistan/ Bangladesh/ Afghanistan national.

(C) Period for which LTV will be granted

LTV for five years at a time may be granted to persons covered under categories (i) to (iii) mentioned in sub-para (A) above. In respect of category (iv), initial LTV will be granted only for one year.

(D) Other conditions

- (i) Grant of LTV will be subject to Police Reporting every year at the place where the Pakistan/ Bangladesh/ Afghanistan national is allowed to stay on LTV.
- (ii) Phone numbers of such Pakistan/ Bangladesh/ Afghanistan nationals on LTV should be reported to the FRRO/DCP/ FRO concerned and any change should be informed to the FRRO/ DCP/ FRO concerned without delay.

(E) Extension of LTV

Applications for subsequent extension of LTV beyond five years / one year *[in the case of category (iv) mentioned in sub-para (A) above]* will be submitted online by the applicant to the FRRO/ DCP/ FRO concerned in C-FRO module online.

Extension of LTV will be granted on two-year basis.

(F) Grant of Re-entry facility (Return Visa)

FRRO/ DCP/ FRO concerned may grant re-entry facility (Return Visa) for a maximum period of 90 days to Pakistan/ Bangladesh/ Afghanistan nationals living in India on LTV or whose request for LTV is under consideration, as follows:-

- (a) Once in a calendar year to go to their home country i.e. Pakistan/ Bangladesh/ Afghanistan, as the case may be.
- (b) Once in a calendar year to go to a third country (other than Pakistan).

In deserving cases on extreme compassionate grounds, FRRO/ DCP/ FRO concerned may grant 'Return Visa' endorsement more than once in a year on merits.

(G) Other facilities available to such persons who are granted LTV

- (a) FRRO/ FRO concerned is empowered to grant permission to Bangladesh/ Afghanistan nationals staying in India on LTV to engage themselves in employment of purely private nature i.e. excluding Government/semi-Government, local bodies, cooperative jobs etc. In the case of Pakistan nationals staying in India on LTV, such permission will be granted by the State Government/ UT Administration concerned. .
- (b) Children of Pakistan/ Bangladesh/ Afghanistan nationals staying in India on LTV are allowed to take admission in schools, colleges, universities, technical/ professional institutions etc. subject to usual conditions prescribed for foreigners in this regard. No specific permission would be required for this purpose. However, an intimation in this regard shall be sent to the FRRO/ FRO concerned.
- (c) In the case of Pakistani nationals belonging to categories (ii), (iii) and (iv) mentioned in sub-para (A) above, living in India on LTV or whose case for grant of LTV is under consideration, the State Government/ UT Administration

concerned may grant additional places limited to a maximum of 2 places at any given point of time in addition to the place of stay after satisfying themselves with the genuineness of the request. This would be further subject to Police Reporting at the additional place granted within 24 hours of arrival. The Pakistani national should also take exit from the DCP/ FRO/ FRRO concerned before leaving that place. *[Persons belonging to category (i) in sub-para (A) above will be governed by the provisions given in sub-para (H) below]*

- (d) Pakistani nationals living in India on LTV approved by the Ministry of Home Affairs or whose LTV proposal is under consideration of the State Government / UT Administration/ Ministry of Home Affairs, may be granted permission for change in mode of travel and port of exit by the State Government/ UT Administration concerned. However, they will be allowed only the designated check posts for Pakistani nationals as Port of Exit.
- (e) Pakistan/ Bangladesh/ Afghanistan Doctors living in India on LTV can do private practice at their designated place after obtaining prior No Objection from the Medical Council of India and the Ministry of Home Affairs.

(H) Additional benefits extended to persons belonging to minority communities in Pakistan, Bangladesh and Afghanistan i.e. Hindus, Sikhs, Buddhists, Jains, Parsis and Christians [Persons covered under category (i) mentioned in sub-para (A) above]

(a) Permission to take up self-employment or for doing business

Such persons are permitted to take up self-employment or to do business viz. selling of grocery items, household goods, fruits/ vegetables or any other business activity except in protected, restricted and cantonment areas. However, they will not be permitted to undertake self employment/ business in any contractual labour work related to defence establishment, scientific establishment, sensitive organization, Railways, Ministries, etc. Further, they will not be allowed to engage in businesses related to telecommunication viz. mobile handsets, SIM cards, Laptop, etc. and security system business relating to computers, information technology, cyber space, Kabari/scrap business with defence units, etc. They will not be allowed to take up any other business activity also considered sensitive from security point of view.

(b) Allowing free movement within the State/ UT (excluding Protected/ Restricted/ Cantonment areas)

- (i) Such persons living in India on approved LTV are allowed free movement within the State/ UT, except in Protected/ Restricted/ Cantonment areas, without prior approval of the DCP/ FRO/ FRRO concerned. In the case of those staying on LTV in the NCR (National Capital Region), they are allowed free movement within NCR, excluding Protected/ Restricted/ Cantonment areas, without the prior approval of the DCP/ FRO/ FRRO concerned.
- (ii) In case such Pakistan, Bangladesh and Afghanistan national has to visit a place in any other State/ UT, he/she will be allowed such a visit, except to Protected/ Restricted/ Cantonment areas, for a short period of maximum 15 days after such Pakistan, Bangladesh and Afghanistan national has informed the DCP/ FRO/ FRRO concerned. For this purpose, such Pakistan, Bangladesh and Afghanistan nationals will be

required to submit the prescribed form online to the DCP/ FRO/ FRRO concerned.

- (iii) In case the period of stay in the other State/ UT is likely to exceed 15 days on account of medical treatment in hospitals etc., such Pakistan, Bangladesh and Afghanistan national will have to get a certificate from the hospital concerned or furnish documentary proof justifying the prolonged stay and upload the same along with the form to be submitted online to the DCP/ FRO/ FRRO concerned.
- (iv) The requirement of personal reporting before the DCP/ FRO/ FRRO concerned every year by such persons belonging to the minority communities in Pakistan, Bangladesh and Afghanistan will continue.
- (c) **Permission for transfer of LTV papers from one State/ UT to another State/ UT**

In respect of such persons, the DCP/ FRO/ FRRO concerned at the place of residence of the Pakistan, Bangladesh and Afghanistan nationals are authorized to transfer the LTV papers from one State/ UT to another State/UT after getting no objection from the other DCP/ FRO/ FRRO concerned at the place where such Pakistan, Bangladesh and Afghanistan nationals propose to relocate, except the Protected/ Restricted or Cantonment areas.

- (d) **Reduction of penalty on non-extension of short term visa/ LTV on time**

The penalty on non-extension of short term visa/ LTV on time by such persons is revised as follows:-

S.No.	Period of overstay	Existing penalty	Revised penalty
1	Upto 90 days	US\$ 30 (or equivalent amount in Indian rupees) (Approx. Rs. 1950 at 1 US\$= Rs.65)	Rs.100
2	Between 91 days and up to 2 years	US\$ 130 (or equivalent amount in Indian rupees) (Approx. Rs. 8450 at 1 US\$ = Rs.65)	Rs.200
3	More than 2 years	US\$ 230 (or equivalent amount in Indian rupees) (Approx. Rs.14,950 at 1 US\$ = Rs.65)	Rs.500

- (e) **Permission to apply for LTV at the place of present residence in cases where the applicants have moved to the present place of residence without prior permission**

In cases where persons, who after reaching India on short term visas with specified places, have moved to another place (not allowed in terms of the visa granted) without obtaining prior permission of the Ministry of Home Affairs and are submitting applications for LTV at the present place of residence, the State Governments/ UT Administrations concerned are authorized to regularize their stay at the present place of

residence and to grant permission for applying for LTV at the present place of residence, not being within the Protected/ Restricted or Cantonment areas.

(f) **Opening of Bank Accounts**

Such persons applying for LTV are permitted to open NRO (Non Resident Ordinary) Rupee account without prior approval of the Reserve Bank of India subject to the following conditions:-

- (1) Such persons who have applied for grant of Long Term Visa (LTV) will be allowed to open a NRO bank account and the account may be opened initially for only six months, which may be renewed at six monthly intervals when the application for Long Term Visa (LTV) is under consideration of the Government. [The individual must be holding a valid visa and valid residential permit issued by the Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and should have submitted the application for grant of LTV to the FRO/ FRRO concerned. Documents in this regard will have to be submitted to the Bank concerned]

Once LTV is granted with the approval of the Ministry of Home Affairs, the accounts will be made perpetual.

- (2) Such persons who have already been granted LTV with the approval of the Ministry of Home Affairs will be allowed to open NRO bank account on perpetual basis. [Such persons will have to submit a copy of the valid LTV duly approved by the Ministry of Home Affairs to the Bank concerned]
- (3) The accounts may be converted into resident accounts when such persons are granted Indian citizenship.

(g) **Permission to purchase a small dwelling unit for self occupation and suitable accommodation for carrying out self-employment without prior approval of the Reserve Bank of India**

Such persons are permitted to purchase a small dwelling unit sufficient to serve the needs of the individual/ family for self use and suitable accommodation for carrying out self- employment without prior approval of the Reserve Bank of India subject to the following conditions:-

- (1) They will not be allowed to purchase immovable property in and around restricted/protected areas including cantonment areas.
- (2) They must submit a declaration that they are residing in India on LTV.
- (3) The registration documents of the property should mention the nationality and the fact that such persons are on LTV.
- (4) They should declare source of funds for the purchase which may include assets brought by them while entering India, soft loans from relations, donations etc.

- (5) The Revenue authorities in the District where he/she resides (not below the rank of Tahsildar) should certify the fulfillment of the conditions mentioned above before permitting registration of the property.
- (6) They can sell the property only after acquiring Indian citizenship. However, in case such person wants to dispose the property before acquiring Indian citizenship, it can be done only with the prior approval of DCP/ FRO/ FRRO concerned.

(h) **Issuance of Driving License**

Such persons living in India on LTV are eligible for issue of Driving License. For this purpose, the address given in the LTV document will be considered as valid proof of address.

(i) **Issuance of PAN card and Aadhaar number**

- (i) Such persons living in India on LTV are eligible for issue of PAN Card. For this purpose, the address given in the LTV document will be considered as valid proof of address.
- (ii) Such persons living in India on LTV are eligible for issuance of Aadhaar number. For this purpose, the address given in the LTV document will be considered as valid proof of address. Further, Aadhaar number shall be made mandatory and all other benefits extended to such persons will be linked to the Aadhaar number.

2. **Extension of LTV of Pakistan nationals who could not renew the Pakistani passport because of non-possession of Computerized National Identity Card issued by the Government of Pakistan**

Following class of persons have been exempted from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950 by Notification S.O. No.1115 (E) dated 15.5.2010 issued by the Central Government:-

“Persons being citizen of Pakistan who has originally entered India on a valid passport issued by the Government of Pakistan with the intention of acquiring Indian citizenship and to reside permanently in India and – (i) such person has not been able to renew the passport issued by the Government of Pakistan because of non-possession of Computerized Nationality Identity Card issued by that Government; (ii) such person must have come to India on or before the 31st day of December, 2009.”

State Governments / UT Administrations may consider cases for extension of the LTV of such persons covered under the Notification S.O. no. 1115(E) dated 15.5.2010 under their delegated powers without insisting on validity of passports.

3. **Grant of LTV to male Muslim Community members from Kerala**

Following class of persons have been exempted from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950 by Notification S.O. No.1115 (E) dated 15.5.2010 issued by the Central Government:-

“Male Muslim community member being originally Indian citizen went to Pakistan after partition leaving behind family in India and returned back to India and settled in the State of Kerala on a valid passport issued by the Government of Pakistan which has either been expired or lost and –

(i) such person has gone to Pakistan between the period of 15th August 1947 and 31st December 1965; (ii) such person should not have married while in Pakistan; (iii) such person should not have acquired any immovable property in Pakistan; (iv) such person, while going to Pakistan, should have left behind family members who are Indian citizens; (v) such person should have no intention whatsoever of returning to Pakistan; (vi) such person should have any adverse report from the police and security agencies.

State Governments / UT Administrations may consider cases for extension of the LTV of such persons covered under the Notification S.O. no. 1115(E) dated 15.5.2010 under their delegated powers without insisting on validity of passports.

4. Grant of LTV to persons belonging to minority communities in Afghanistan, Bangladesh and Pakistan who have entered into India on or before 31st December, 2014, either without any valid document including passport/ other travel document or with valid documents but the validity of any of such documents has expired

(a) With a view to regularizing the entry and stay of persons belonging to minority communities in Bangladesh and Pakistan such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, who have entered into India on or before 31st December, 2014, either without any valid document including passport/ other travel document or with valid documents but the validity of any of such documents has expired, the Ministry of Home Affairs have issued the following two notifications on 7th September, 2015, which were published in the Gazette of India (Extraordinary) on 8.9.2015:-

- (i) The Passport (Entry into India) Amendment Rules, 2015 exempting such Bangladeshi and Pakistani nationals from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950.
- (ii) The Foreigners (Amendment) Order, 2015 exempting such Bangladeshi and Pakistani nationals from the application of the provisions of the Foreigners Act, 1946 and the orders made thereunder in respect of their stay in India without such documents or after the expiry of those documents, as the case may be.

(b) Subsequently, two notifications were issued on 18.7.2016 amending the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 covering such persons belonging to minority communities (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) from Afghanistan within the ambit of the notifications dated 7.9.2015.

(c) All such persons from Afghanistan, Bangladesh and Pakistan who are covered by the provisions of the notifications mentioned above will have to submit applications for grant of Long Term Visa (LTV) online (<https://indianfro.gov.in>) along with following supporting documents:-

- (A) Documents to prove that the applicant is an Afghanistan/ Bangladesh/ Pakistan national
 - (a) Copy of the old Passport issued by the Governments of Afghanistan/ Bangladesh / Pakistan
 - (b) Any other document issued by the Government authorities or other Government agencies in Afghanistan/ Bangladesh/ Pakistan such as Birth Certificate, Educational Certificate issued by the Board/ University, Certificate of enrolment and study in schools, Government issued

license/ certificate, Land & tenancy records and such other documents to establish that the applicant is an Afghanistan/ Bangladesh/ Pakistan national.

- (B) Documents to prove that the applicant is from a minority community in Afghanistan/ Bangladesh/ Pakistan i.e. Hindus, Sikhs, Buddhists, Jains, Parsis and Christians

Any document issued by the Governments of Afghanistan/ Bangladesh/ Pakistan or from any other Government authorities/ agencies clearly showing the religion of the applicant like school certificate etc. to establish that the applicant is from a minority community in Afghanistan/ Bangladesh/ Pakistan.

- (C) Documents to prove the date of entry of the applicant in to India/ date from which residing in India

- (a) Slip issued by the Census Enumerators in India to such persons while conducting survey for preparation of National Population Register prior to 31.12.2014
- (b) Insurance policies issued by the Insurance companies in India
- (c) Bank/ Post Office Account in India
- (d) Court/ Tribunal Records/ Processes in India
- (e) Government issued licence/ certificate in India
- (f) Land and tenancy records in India
- (g) Permanent Residential Certificate, if any, issued in India
- (h) Refugee Registration Certificate issued in India
- (i) Document showing service/ employment under any employer in India
- (j) Any other document issued by the Government authority in India - Gram Panchayat Secretary Certificate countersigned by the Circle Officer, Driving licence, Aadhaar Card , etc. to prove the date of entry into India or the date from which residing in India.

- (D) An Affidavit as in the format at **Appendix-I** sworn before/ attested by Judicial Magistrate/ Executive Magistrate/ Oath Commissioner/ Notary Public specifically mentioning that he/ she was compelled to enter in India due to religious persecution or fear of religious persecution(**This is to be submitted by all applicants along with the online application**).

Note : The documents listed at (A), (B) and (C) above are only illustrative. Copy of the documents uploaded with the application shall be verified with the originals at the time of field verification. Hence all applicants are required to produce the originals for inspection at the time of field verification.

(d) The applicant has to upload the relevant self attested copies of the documents and the duly notarized Affidavit on the online system along with the application.

(e) The applicant will have to pay a fee of Rs.100/- along with the application.

(f) In all cases which are covered by the notifications dated 7.9.2015/ 18.7.2016 of the Ministry of Home Affairs, LTV will be granted initially for a period of two years from the date of submission of the application online. LTV may be renewed thereafter on yearly basis by the FRRO/ FRO concerned.

(g) During the period of stay in India, such persons from Afghanistan/ Bangladesh/ Pakistan granted LTV will be permitted to engage themselves in employment of purely private nature i.e. excluding Government/ Semi-Government, local bodies, cooperative jobs etc. with permission from the State Government/ UT Administration concerned. Children of such Afghanistan/ Bangladesh / Pakistan nationals can take admission in schools, colleges, universities, technical/ professional institutions etc. subject to usual conditions prescribed for foreigners in this regard. No specific permission will be required for this purpose. However, an intimation in this regard shall be sent to the FRRO/ FRO/ DCP concerned.

5. Grant of LTV to foreign nationals who claim to be refugees

India is not a signatory to the 1951 United Nations Convention on the Status of Refugees and the 1967 Protocol thereof. There is no national law dealing with matters connected with refugees. Government had issued a Standard Operating Procedure to be followed by all concerned agencies while dealing with foreign nationals who claim to be refugees vide letter dated 29.12.2011.

The Standard Operating Procedure to be followed whenever an FRRO/ FRO comes across foreign nationals who claim to be refugees will be as follows:-

- (i) The version of the foreign national making such claim will be carefully examined. Details of the reasons for leaving the originating country and the manner in which he/ she has entered India would be elicited from the foreigner. In case, it is found that prima facie the claim is justified, (on the grounds of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion), grant of LTV to the foreign national will be considered.
- (ii) In such cases, LTV will be granted initially for a period of one year from the date of issue. The LTV for such foreigners will be renewed every year, for a maximum of five years at the level of FRRO/ FRO concerned. If renewal is justified for the sixth year, the FRRO/ FRO concerned will furnish a proposal to MHA for a decision.
- (iii) During such period of stay in India, a foreigner to whom LTV is permitted by MHA will be allowed to take up any employment in the private sector or undertake studies in any academic institution.
- (iv) Economic immigrants i.e. foreigners who have arrived in India in search of economic opportunities, without any fear of persecution, **WILL NOT** be eligible for LTV.

Appendix-I

AFFIDAVIT

(Specimen of the Affidavit to be submitted along with the online application)
(To be executed on non-judicial stamp paper of minimum value)

- I, son/daughter/wife of resident of do hereby solemnly declare and affirm as follows:-
- (i) That I am an Afghanistan/ Bangladesh / Pakistan national belonging to the minority community in those countries i.e. Hindus/ Sikhs/ Buddhists/ Jains/ Parsis/ Christians. (*Delete whichever is not applicable*)
 - (ii) That I was compelled to seek shelter in India due to religious persecution/ fear of religious persecution in my native country (*Delete whichever is not applicable*).
 - (iii) That I entered into India on (Date, month and year to be given as available) through (place through which entered into India may be given)
 - (iv) That I did not have any valid documents including passport or other travel documents at the time of entry into India

or

That I entered into India with valid documents including passport or other travel document bearing no. issued by the Government of Bangladesh/ Pakistan (*delete whichever is not applicable*) and with valid visa no. issued by the Embassy/ High Commission of India in and the validity of any of these documents has expired.

(*Delete whichever is not applicable*)

DEPONENT

VERIFICATION

Verified at (Place), this day of (month & year) that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therein.

DEPONENT

Attestation with Stamp

Note : The Affidavit is to be sworn before/ attested by Judicial Magistrate/ Executive Magistrate/ Oath Commissioner/ Notary Public.



(Pratap Singh Rawat)
Under Secretary to the Government of India



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