

Blueprints beyond borders, for solace and shelter

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Today, the world has over 43.4 million refugees, and with conflicts raging in different parts of the world, this number is only increasing. But as it rises, we also run the risk of treating these people as figures in a statistical compilation, and not human beings with needs, fears, hopes and wants. Yet this, precisely, is what they are. And World Refugee Day (June 20) is a sombre occasion to think of all those human beings — a ceaseless succession of families with dreams and desires, laughter and joy — whose lives have been uprooted, all those homes that have been destroyed, and all those futures that have been jeopardised. But this is also an occasion to think of safe havens granted, asylum ensured, refugees protected, and solutions found.

India is well-poised to commemorate this poignant day. History, after all, is on our side. Our record of granting asylum goes back millennia, from the Jews who fled to India centuries before Christ after the demolition of their Jerusalem Temple by the Babylonians and then the Romans, to the Zoroastrians fleeing Islamic persecution in Persia, to the East Bengalis — for the cause of whose nationhood we waged war with Pakistan in 1971, liberating what became Bangladesh — Tibetans and Sri Lankan Tamils in more recent years, alongside streams of Nepalis, Afghans and Rohingyas. As a nation that attained independence against the backdrop of one of the most horrific refugee crises in history, when 13 million to 15 million people crossed the freshly created borders between India and Pakistan, we are all too aware of the perils that befall refugees, and of the consequent need to help them rebuild their lives.

The pitch for suitable legislation

Despite our glorious history of affording solace and shelter to refugees from the world over, it is ironic that India is neither a signatory to the UN Refugee Convention (which outlines the rights of asylum seekers and refugees, alongside the obligations of host states) nor to its 1967 Protocol. Nor does our country have a domestic asylum framework. Whereas, with our history, we ought to lead the global march on the question of refugee rights, our present actions and lack of a legal framework does our heritage no credit, shames us in the eyes of the world, and fails to match up to our stellar past track record.

It was to address these gaping lacunae that I introduced, in February 2022, a Private Member's Bill in the Lok Sabha, seeking the enactment of a Refugee and Asylum law. My Bill laid down comprehensive criteria for recognising asylum seekers and refugees, and prescribed specific rights and duties accruing from such status. This legislation was proposed because of our government's failure to honour the international legal principle of non-refoulement — the cornerstone of refugee law, which states that no country should send a person to a place where they may suffer persecution — and even more, its betrayal of India's impeccable tradition of granting asylum to strangers.

Titled the Asylum Bill, 2021, it followed close on the heels of our government expelling to Myanmar two batches of Rohingya refugees despite the grave risk of persecution in the country they had fled. In conducting this act of “refoulement” in violation of international law, our government revealed both religious bigotry (the refugees were Muslim) and intolerance. In fact, in 2017, the Ministry of Home Affairs issued a circular classifying Rohingyas as “illegal migrants”, leading to their being callously flung into detention centres across India, where they languish in deplorable conditions — unable to communicate with their families and without any access to medical facilities, food, sanitation and water supply — until they are deported. As of August 2023, over 700 Rohingyas were in detention throughout India.

The government has also been inhospitable to the Chakmas in Arunachal Pradesh and Myanmarese in Mizoram. My Bill sought to put an end to such arbitrary conduct by the authorities. It afforded to all foreigners — regardless of their nationality, race, or religion — the right to seek asylum in India. It also called for the creation of a National Commission for Asylum to review and decide all such applications. Having staunchly affirmed, with no exceptions, the principle of non-refoulement, I specified reasons for exclusion, expulsion and revocation of refugee status, thus respecting the government’s sovereign authority while limiting its discretion.

In a state of suspense

In the absence of a consistent and comprehensive law to deal with asylum seekers, we lack a clear perspective on refugee management. We have a flurry of such laws as the Foreigners Act, 1946, the Registration of Foreigners Act, 1939, the Passports Act (1967), the Extradition Act, 1962, the Citizenship Act, 1955 (including its ominous 2019 amendment) and the Foreigners Order, 1948, all of which club all foreign individuals together as “aliens”. Because India has neither subscribed to international conventions on the topic nor set up a domestic legislative framework to deal with refugees, their problems are dealt with in an ad hoc manner, and like other foreigners, they always face the possibility of being deported. While speaking of refugee protection, we must not limit ourselves just to providing asylum. We need a rigorous mechanism to ensure that refugees can access basic public services — chief among them medical facilities and educational institutions — and legally seek jobs to get back on their feet.

We can, and must, do better. India should enact a National Asylum Law, such as the one I have presented to Parliament. We currently host more than two lakh refugees, but the Bharatiya Janata Party government’s churlish attitude to the Rohingya and other “inconvenient” refugees risks putting us in the global doghouse. Had it been enacted, my Bill would have placed India at the forefront of asylum management in the world. It would have vindicated our steadfast and immemorial commitment to humanitarian and democratic values while dealing with refugees.

Taking up the judiciary’s baton:

In 1996, the Supreme Court of India held that not just Indians but everybody living in India, irrespective of nationality, enjoys the inviolable rights guaranteed by Articles 14, 20 and 21 of the Constitution of India. On these grounds, the apex court, in the landmark case of National Human Rights Commission vs State Of Arunachal Pradesh & Anr., stopped the forcible eviction of Chakma refugees who had entered Arunachal Pradesh in 1995. The Court held that an application for asylum must be properly processed, and till a decision is made whether to grant or refuse asylum, the state cannot forcibly evict an asylum seeker. Our judiciary, therefore, has already pointed us towards the golden path: now we must scrupulously tread it. Yet, at times, different judges have taken radically different approaches, which we saw aplenty in the Rohingya case. The enactment and enumeration of refugee rights will reduce our reliance on judge-centric approaches — or, even worse, the whims of Home Ministry bureaucrats, police officers and politicians.

The problems of refugees worldwide are problems that demand international cooperation. India, as a pillar of the world community and as a significant pole in the emerging multipolar

