

Right to shelter and housing of refugees in India: A study

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Abstract:

India had been a refuge for people fleeing repression since early times from the last half century due to the partition of India. Although India is not a party to the Refugee Convention of 1951 nor does it have refugee protection framework but still continues to provide asylums to the refugees of the neighbouring countries. However, the right to housing and shelter being one of the basic amenities to lead a life is a matter of concern as it is the most neglected aspect in the legal framework of India. Due to this there is a significant rise of slums in the cities of India which is in close proximity to border line. The Union Government along with the help of UNHCR could create a recreational home in each district to provide shelter to the homeless. After a detailed analysis, it is observed that the refugees are not only lacking housing and shelter but also jobs, education and food etc. Thus, this neglected mass of people are compelled to live in a squalid conditions in slums of cities like Delhi, Hyderabad, Jammu and in the cities of North East India too. India's support for different refugee group has been uneven too. Many times it was observed that refoulement of this asylum seekers have grown louder over the years due to the absence of any refugee law. It is the high time for India to enact a domestic refugee law which will ensure that those fleeing violence and seeking asylum in India are not victims of the whims and prejudices of the parties and politicians. Granting refugee status to asylum seekers should be based on clear principles detailed in refugee law. Refugees should be able to access housing and shelter along with food, education and security as a matter of right rather than as a result of charity just like other countries of the world.

Keywords: Asylum, Refugees, Housing, Shelter, India , legal framework.

INTRODUCTION:

Homelessness is a global problem which is faced by developed to undeveloped countries. It is so miserable that in the era of globalization and democracy, people are still failed to get housing and shelter being the most basic amenity of life. The present study focuses on the right of refugees for adequate housing and shelter in India. In common parlance, a refugee is someone who has been compelled to escape their own nation because of fear of violence, persecution, war, or other types of strife.

It has been acknowledged that having proper home and shelter is a crucial part of having a decent standard of living. The right to suitable housing has since gained widespread acceptance as a fundamental human right

granted to all people by a number of international agreements. Based on the UDHR's provisions, the ICESR developed and reaffirmed the right to appropriate housing in 1996.

Adequate shelter connotes to more than just a roof over one's head. Affordably priced basic infrastructure, including water supply, sewage, and waste management facilities, suitable environmental conditions and health-related factors.

In a Republic like India where people from different region, language, caste, culture, religion are welcomed, it is envisioned that the refugees who had fled from their home country due to persecution must be given proper protection and shelter as a basic human right. Thus, Refugees though belongs to different countries who had fled due to violence but are human beings and should be given adequate shelter and housing by every countries to meet the minimum living standard.

Thus, the Union Government is under a duty to provide a bare minimum shelter to the refugees as it being one of the basic amenities to lead a life which is a matter of concern as it is the most neglected aspect in the legal framework of India.

II.HISTORY OF INDIAN REFUGEES:

India has harboured a manifold of refugees from its neighboring countries in the past few years since it became an independent nation. This mass migration of people in human history can be traced back to the Indian Partition itself, where people were forced to flee through the newly demarcated territories of India and Pakistan. Refugee camps were spread throughout India, especially in North India, where thousands of people were housed who had fled from Pakistan and all were uncertain of what their future will be in this fledgling nation .

At this juncture in history, the Refugee Convention of 1951 was the only international legislation pertaining to refugee protection. Both India and Pakistan presented significant interest at the international level to bring internally displaced people or socially displaced people under the Convention, only to have their claims denied. The Indian government's subsequent unwillingness to ratify either the 1967 Optional Protocol or the Refugee Convention was the result of this. India's next significant interaction with refugees occurred in 1951, much to the dismay of the Chinese government, when the Dalai Lama and more than 100,000 other refugees fled from Tibet in search of political asylum in India. The Dalai Lama, the political and spiritual head of Tibet, has since built his residence in Dharamshala, Himachal Pradesh.

The enormous departure of roughly 10 million refugees from the former province of East Pakistan, now the Republic of Bangladesh, in 1971 severely worsened the local population of refugee ratio. Millions were left homeless as a result of the military crackdown and subsequent severe bloodshed, and those who managed to

escape were running for their lives. India, a recently formed nation, had the resources necessary to support its existing population and, overwhelmed by this rapid development, turned to the UNHCR for assistance.

Concurrently, a large number of Sri Lankan Tamil refugees have made their way to India, having fled their homeland during the civil conflict that broke out in Sri Lanka in 1983 and the Black July Riots. A sizeable number of Afghan refugees also calls India home; they fled the Soviet invasion of their country in 1979 and sought safety here. India extended citizenship status to the Afghan, Hindu, and Sikh populations who had sought refuge in the country until the early 1900s. In accordance with the 2015 Supreme Court ruling, Indian citizenship has also been granted to Chakma and Hajong ethnic groups who are native to the Chittagong highlands of southeast Bangladesh. Unlike their Tibetan counterparts, refugees from Bangladesh and Sri Lanka are regarded as a security danger in India. Similarly, although Afghan Sikhs and Hindus are accepted in India, Afghan Muslims are not given the same treatment.¹

However, India's most significant and difficult project involving a refugee community has emerged from its interactions with the Rohingya refugees of Myanmar. There are about 18,000 Rohingya refugees and asylum seekers registered with the UNHCR in India. The states of Jammu, Hyderabad, New Delhi, Mizoram, Meghalaya, and West Bengal are among those where they are distributed.

Although the nation is renowned for its kind treatment of refugees, its policies against the Rohingya are incredibly harsh, particularly under the N.D.A.-led government. There are two possible explanations for this: first, the immigrants' Muslim identification; second, their ethnic backgrounds before arriving in Bangladesh. The government has frequently judged that the Rohingya pose a security threat by comparing them to their counterparts in Bangladesh.

III. PROBLEMS. FACED BY REFUGEES IN INDIA:

To safeguard their refugees, a number of countries passed laws pertaining to refugees that are founded on universally recognized principles. The nations that have ratified the agreement have established a procedure for identifying refugees and attending to their security-related issues. Since there is no standard code for determining refugee status in India, there is no central authority in that deals with refugees.

India has not accepted the convention, yet it nonetheless offers protection to refugees. Still, there is a lack of consistency in the way migrants are evaluated. Whereas, regarding the matter of the Rohingya refugees, it is typically observed that the nation's choice to deport a number of men in 2017 caused a global uproar. In society,

¹ Refugee-problems-in-north-east-india,(Sep 23. 2023,10.03 PM), <https://www.northeasttoday.in.refugee-problems-in-north-east-india/>

refugees are not accorded much attention. They experience poor treatment from the locals, which makes them feel afraid and insecure.

Because they are not citizens of the same country, the locals frequently take advantage of them physically and psychologically. Obtaining basic requirements like food, shelter, and work is an issue for them. They are compelled to labour for little pay and receive no benefits or elevated position.

Recently, a refugee card is issued by the UN High Commissioner for Refugees via the lengthy and potentially 20-month examination for refugee status determination. If someone is apprehended by the police within that time frame, they will be taken into custody, arrested, and deported without even having access to the UNHCR. Many people from neighbouring countries have illegally entered India during the past few decades, misidentifying themselves as immigrants, not because of persecution by the state but rather to take advantage of greater economic prospects.²

IV.STATUS OF REFUGEE WORLDWIDE:

The twin Global Compacts on Migration and Refugees, which were signed last year, represent a global step in this direction. Despite not being legally binding, India was a major contributor to their drafting. The strategy outlined in the Compacts is one of thorough, all-encompassing, and sustained mobility monitoring so that both the host and the origin nations can reap the benefits of migration and recover from the painful events that usually lead to forced migration. In spite of its recent economic problems and war-torn history, Uganda stands out for having a thorough and hospitable refugee policy.

Uganda, which borders South Sudan and experiences intense political strife, has seen a surge in the number of refugees from that nation. Uganda in particular has consistently demonstrated concern in protecting its refugees, as seen by its signature on the 1951 Convention and its 1967 Protocol. The nation has revised and rewritten its refugee policy multiple times in lastss 20 years in order to accommodate the needs of the migrant community. The Self-Reliance Strategy (SRS), which aimed to change the perception of refugees from being a "burden" to an essential component of the economy through self-sufficiency, stands out in particular in Uganda's history of refugee policy.³ Aside from this, the Ugandan government has made a significant effort to support refugee children's education through collaboration with civil society organizations.

² Dristiias , <https://www.dristiias.com/daily-updates/daily-news-editorials/refugee-crisis-in-india>(Mar 17, 2023)

³ Anoushka and Simran,India Migration Now ,(last visited Mar 19, 2023), <https://medium.com/@indiamigration/how-does-indias-refugee-policy-compare-internationally-d1aad9fc4194>

With a population of 25,000, Bidibidi is the second largest refugee camp in the world. It is currently undergoing a transformation from a transitory settlement to a permanent metropolis.

Similar to India, Jordan has not ratified the 1951 Convention. Yet, an agreement it made in 1998 with the UNHCR establishes a legal framework for the processing and treatment of refugees in Jordan. Within six months of the refugee's arrival in Jordan, the UNHCR is required to attempt to resettle them. For the purpose of handling the claims of non-Palestinian refugees in Jordan, this Memorandum of Understanding serves as the fundamental structure. Not specifically aimed at refugees and asylum seekers, Jordan's domestic policy is broad in nature towards outsiders.

In order to address the Syrian refugee crisis and its effects, the government published the National Resilience Plan (NRP) in 2014. After Turkey and Lebanon, Jordan is home to the greatest number of Syrian refugees. Jordan also takes in and manages various refugees under various legal frameworks, including those who are Palestinian and Iraqi refugees.

V.STATUS OF REFUGEES IN INDIA:

There is no domestic refugee law to defend the rights of refugees, nor is it a signatory to the Refugee Convention. The Government of India did not formally treat a large number of refugees, many of them were Afghan Sikhs and Afghan Hindus, who were forced to deport to Afghanistan due to circumstances that satisfied one or more of the previously listed requirements for being regarded as "refugees."

On the other hand, in 1989, when the government of Myanmar began to repress the country's pro-democracy movement and approximately 3,000 of its citizens fled to India, the Government of India (GOI) declared that, in compliance with internationally recognized standards defining refugee status, no legitimate refugee from Myanmar would be returned, and in fact, they were recognized as refugees by the GOI. Tamil refugees from Sri Lanka who want to enter the southern Indian state of Tamil Nadu face similar challenges. Even though the Sri Lankan refugees lacked travel permits, the Indian government allowed them admission in accordance with its own refugee policy.

There were roughly 41,315 refugees who are registered as refugees by the UN High Commissioner for Refugees but are not recognized by the Indian government, aside from the Tibetan and Tamil refugees from Sri Lanka who are recognized and supported by the GOI. These comprise 22,459 refugees from Myanmar (54%), 15,217 refugees from Afghanistan (37%), and 3,639 refugees who the refugee agency classified as "others."

When the Indian government acknowledges a certain group of refugees' claim to refugee status, the refugees experience little to no disruption. This is true even in the absence of any formal policy announcement about the issuance of refugee status to that particular group. But occasionally, refugees who have been accepted by the Indian government and who have been given official documentation proving their status as refugees face prosecution for entering the country illegally or staying longer than allowed.

Apart from the refugees acknowledged by the UNHCR and India, there exist individuals who are not acknowledged by either organization. Approximately 1,00,000 Chin refugees from Myanmar were living in Mizoram, and 23,000 Rohingya were dispersed throughout other Indian states. The number of Chinese refugees who fled to India in the wake of the military takeover of Myanmar in 1989 is unclear.⁴ Around 1,800 additional Chinese refugees are said to have arrived in India in 2017 after escaping hostilities between separatist rebels and the Burmese army.

The inability of the CAA to even defend Afghanistan's religious minority was made abundantly clear by the Taliban takeover of the country. India had evacuated about 600 people from the Afghan capital before the final US plane left Kabul airport. Among them, there were 67 Sikhs and Hindus from Afghanistan, including two legislators. Since they arrived in India after the CAA's deadline of December 31, 2014, these minorities from Afghanistan are not protected by the law. In addition to the Rohingyas, there are also the Rajvangshi Community and Matuas in northeastern India. India has never treated the Rohingyas in the same way. Twenty thousand of the 40,000 or so Rohingya people in India are officially recognized as refugees with the UN. Many Rohingya have previously been imprisoned by Indian authorities in various regions of the nation.

Thereafter, Union Minister Hardeep Singh Puri presumed that the Indian government plans to relocate the refugees to 250 apartments in Bakkarwala hamlet that fall under the Economically Weaker Sections (EWS) category. However, the Ministry of Home Affairs soon tweeted that the central government has made no such announcement with respect to news reports in certain sections of the media regarding Rohingya illegal foreigners, it is clarified that the Ministry of Home Affairs (MHA) has not given any directions to provide EWS flats to Rohingya illegal migrants at Bakkarwala in New Delhi.⁵ Henceforth this led to crisis in the status of rohingyas.

⁴ "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-areforgotten-people/chin-people-burma-unsafe-burma-unprotected-india>

⁵ Businessstandard, https://www.business-standard.com/article/current-affairs/helter-skelter-shelter-why-are-the-rohingya-refugees-in-the-news-again-122081700782_1.html, (last visited Mar 19 , 2023)

VI. LEGISLATIVE INTENT WITH RESPECT TO HUMANITARIAN ASSISTANCE TO REFUGEES:

After reading over the extensive written records of India's history with refugees, it is safe to say that while political action and humanitarian assistance have made it possible for refugees to be treated humanely in India, the status of refugees in India has very little to do with these two factors. The lack of a national refugee legislation can be ascribed to the unstable political climate in South Asia and the threat posed by terrorism, notwithstanding India's generally liberal orientation to migrants.

The way that different Central Governments treat refugees at any one time is determined by pressing political objectives. In this framework, electoral vote bank techniques and minority politics are extremely important. Politicians have been known to have given in to the temptation of betting on these undocumented immigrants to establish a presence in their home districts during election cycles. The state administrations of West Bengal and Assam in India have frequently faced accusations that they gave Bangladeshi refugees voter identity cards and illegal ration cards, monopolizing their votes to maintain their political dominance.

This was one of the justifications for the Central Government, led by the N.D.A., proposing to provide every Indian citizen with an AADHAR, a 12-digit unique identifying number. However, worries over the Indian Constitution's Article 21 right to privacy have restricted the use of AADHAR and the K.S. Puttaswamy Judgement.⁶, a bench of Justices B.S. Chauhan, J. Chelameswar and M. Y. Eqbal, while assessing the advantages of Aadhaar cards from a national security perspective observed, "As on date, illegal migration to India continues unabated. By collecting personal details for AADHAR cards, at least there can be some basis to identify an illegal immigrant."⁷The Citizenship Amendment Act, which amends the Citizenship Act of 1955, was implemented in 2019 by the Central Government in an effort to better streamline the immigration process for illegal immigrants in the nation. This was done by extending the National Register of Citizens' applicability to the entirety of India.

Before December 2014, the Act cleared the path for a number of illegal immigrants who were members of the religious minority of Hindu, Sikh, Buddhist, Jain, Parsi, and Christian living in Pakistan, Bangladesh, and Afghanistan to become citizens of India. Their Muslim counterparts have been denied the right to citizenship, which is consistent with the government's majoritarian desire to gradually stifle secularism. The world community has strongly condemned this Act for encouraging religious discrimination in national legislation for the first time in India. It was accompanied by a wave of violent protests across the country, which were momentarily put down by the novel coronavirus's global entrenchment.

⁶ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

⁷ The Times New Network, "Aadhaar can be used to identify illegal migrants: SC" *The Times of India*, Feb.5,2014, available at <https://timesofindia.indiatimes.com/india/Aadhaar-can-be-used-to-identify-illegal-migrants-SC/articleshow/29874774.cms> (last visited on Mar 15, 2023).

VII.IMPACT OF CITIZENSHIP AMENDMENT ACT, 2019 ON THE REFUGEE OF INDIA:

About two million people were left off of the list of those eligible for citizenship verification when the Indian government started the project, leaving them at risk of becoming stateless. Furthermore, the government passed the Citizenship (Amendment) Act, 2019 which granted citizenship to non-Muslim migrants from Bangladesh, Afghanistan, and Pakistan. All refugees in northeastern India are now considered "illegal immigrants" by the government, which plans to expel the remaining immigrants while granting citizenship to some based only on their religious beliefs. In addition to being against the principle of non-refoulement, this government policy discriminates on the basis of religion against all refugees, asylum seekers, and illegal immigrants. The Act exposes Muslim refugees to statelessness and expressly excludes them.⁸

These categories comprised those who arrived in India on or before December 31, 2014, from Afghanistan, Bangladesh, and Pakistan who were Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians. This suggests that the government will not deport or imprison these groups of people due to a lack of proper documentation. Before CAA, there were a few additional breakthroughs. The Supreme Court ordered the Center to award citizenship to the Hajong and Chakma people in 2015.

The CAA was approved in December 2019. According to the Ministry of Home Affairs, foreign nationals of six minority groups from three different nations may petition for citizenship under the CAA if they believe they are being persecuted for their religious beliefs. It makes no changes to any of the current laws that allow foreigners to apply for Indian citizenship through naturalization or registration.

Since Muslim minority like the Rohingya in Myanmar are known to legitimately fear persecution in their own nation, it is even more important to shield them from being sent abroad. The Act will assist shield all non-Muslim migrants from the prospect of deportation out of the 2 million individuals who are not listed on the National Register of Citizens. Such favourable treatment on the basis of religion violates the fundamental right to be free from discrimination and is extremely discriminatory. However, these refugees who entered India illegally or who are overstaying are considered unlawful migrants and are therefore ineligible for Indian citizenship per section 2(1)(b) of the Citizenship Act, 1955. The CAA has created an opportunity for six minority populations from three different nations to petition for citizenship on the grounds that they are being persecuted for their religious beliefs.

VIII.CONCLUSION AND SUGGESTIONS:

Since India's independence, the issue of its refugee status has arisen. As of right now, India has neither ratified the 1951 Refugee Convention or the 1967 Refugee Protocol, which deal with asylum seekers. Despite being a

⁸ *ibid*

member of the UNHCR's executive committee, it collaborates with the organization to support refugees in India. The UNHCR assisted many of the refugees in settling in India, and many of them have already returned home, but the problem of providing shelter for Rohingya refugees remains unresolved. The Indian government has frequently stated that the Rohingya refugees pose a security risk to the country, which is why it decided to send them back to their homeland even though the situation of Myanmar is not solved yet.

Article 51 of the Constitution, which mandates adherence to foreign treaty obligations, would also be broken by such a violation. I must say that, The Indian government is going against THE POLICY OF NON REFOULEMENT which is set forth by the UN Convention. Though India is not a signatory to the Convention but it is indirectly bound by the policy being an executive committee member of UNHCR. Moreover India cannot be so humanitarian to deport the refugees by knowing the fact whether the next they would be alive or not. The denial of asylum to refugees in need is not a solution to the huge influx caused over the years and cannot be the reason to endanger their life or freedom.

It has been noted that India is unable to provide refugees with adequate accommodation and shelter in order to uphold their rights in the absence of a dedicated statute. To guarantee a consistent and equitable process when handling refugees, the Indian government must pass a special non-discriminatory law for them. It is imperative that the nation grant legal status to these refugees and refrain from classifying them as "foreigners" or "illegal immigrants."

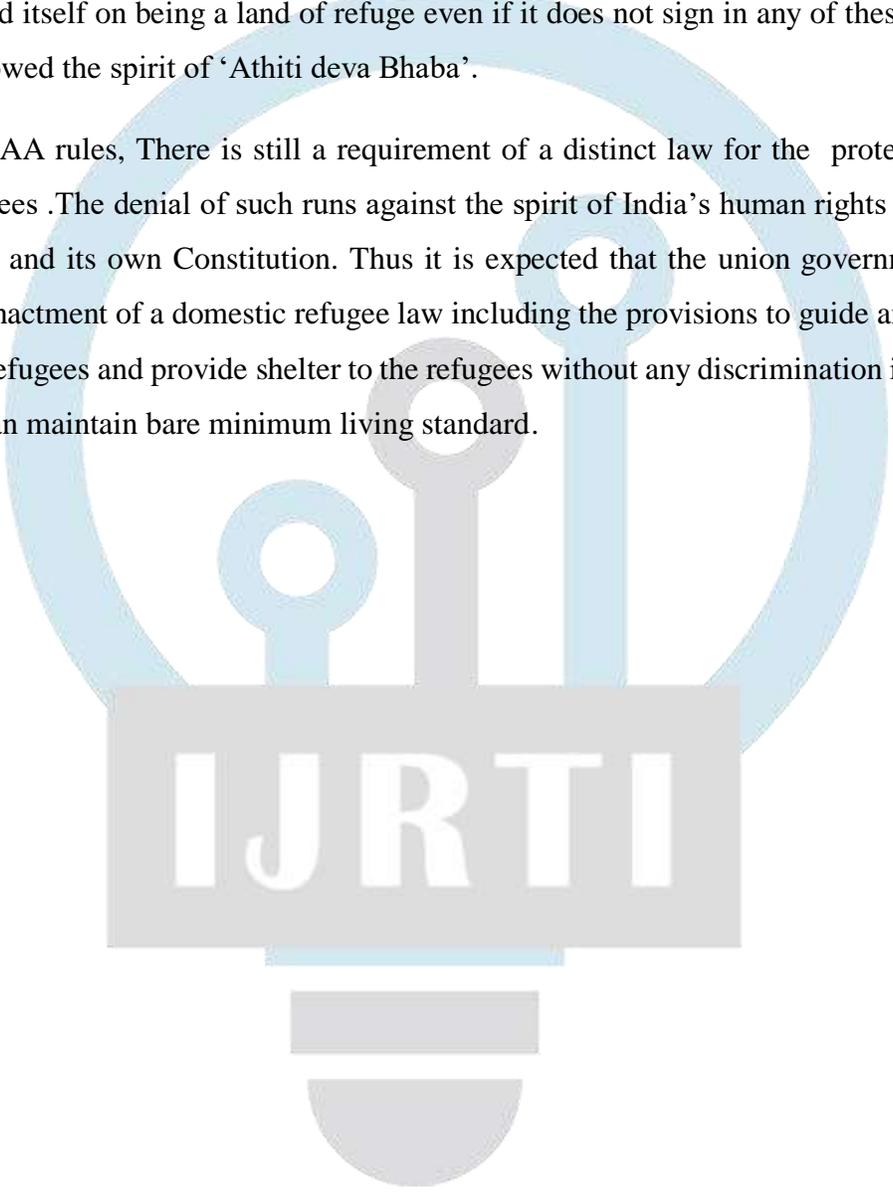
The conversation above makes it very evident that refugees are only partially and erroneously protected by Indian law and custom. Even worse, Indian law treats refugees equally with other foreigners, failing to recognize them as a separate class of people. As a result, it ignores the unique circumstances that force a refugee to flee their home country and the ensuing discrepancy in how the general Foreigners Act regime enforces the standards for lawful travel. The vast majority of refugees have been denied basic protection as a result of the lack of a separate law on their rights, protection, and entitlements.

This refusal violates both India's Constitution and the spirit of the country's commitment to upholding human rights under international law. Therefore, it is anticipated that the union government will give the adoption of a domestic refugee law careful thought in order to protect and uphold the refugees' fundamental human rights and to give them a safe haven free from discrimination in place of detention camps, allowing them to maintain a minimal standard of living.

Though in March 2024, it is to be known from the notification that the government will provide for an online application portal through **Form VIII A** where the application process for citizenship under CAA has been

made under Section 6B of the Citizenship Act, 1955. The Applicants who are trying to get citizenship are required to prove their country of origin, religion, date of entry into India, and knowledge of an Indian language to qualify for Indian citizenship for the migrated refugees. It is a enormous victory for the long persecuted refugees where the long wait is about to over. The Citizenship Amendment Act was enacted in 2019 and was highly criticized and operationalized this week by virtue of the new rules notified by the Ministry of Home Affairs on 11 March 2024. Thus, the implementation of the rules will further confirm the secured status of refugees which will further contributes to assured housing and shelter. According to Indian Government, India has historically prided itself on being a land of refuge even if it does not sign in any of these policies on paper but had actually followed the spirit of 'Athiti deva Bhaba'.

Inspite of the new CAA rules, There is still a requirement of a distinct law for the protection of rights and entitlements of refugees .The denial of such runs against the spirit of India's human rights commitment under the international law and its own Constitution. Thus it is expected that the union government should take a serious note on the enactment of a domestic refugee law including the provisions to guide and protect the basic human rights to the refugees and provide shelter to the refugees without any discrimination instead of detention camps so that they can maintain bare minimum living standard.

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