

# SOUTH ASIA STATE OF MINORITIES REPORT 2019

Migrants, Refugees and the Stateless



THE SOUTH ASIA COLLECTIVE



SOUTH ASIA  
STATE OF MINORITIES  
REPORT 2019



# SOUTH ASIA STATE OF MINORITIES REPORT 2019

Migrants, Refugees and the Stateless

THE SOUTH ASIA COLLECTIVE

The  
South Asia  
Collective



**South Asia State of Minorities Report 2019**  
*Migrants, Refugees and the Stateless*

Edited by a team at Social Science Baha, Kathmandu, consisting of Deepak Thapa, Sudeshna Thapa and Ritika Singh.

This publication was produced with the financial support of the European Union and the Norwegian Agency for Development Cooperation (Norad). Its contents are the sole responsibility of the South Asia Collective and do not necessarily reflect the views of the European Union or Norad.

This work is licensed under a Creative Commons Attribution-NonCommercialShareAlike 4.0 International License. Provided they acknowledge the source, users of this content are allowed to remix, tweak, build upon and share for noncommercial purposes under the same original license terms.

ISBN: 978 9937 0 7248 9  
First Edition: 2020

Cover design: Norbo Lama  
Design and layout of text pages: Chiran Ghimire

# Contents

<i>Foreword</i>	<i>vii</i>
<i>Acknowledgements</i>	<i>xi</i>
<i>Note on the South Asia Collective</i>	<i>xiii</i>
<i>Note on Contributors</i>	<i>xv</i>
<i>Abbreviations and Acronyms</i>	<i>xix</i>
<b>Introduction</b>	<b>xxiii</b>
Chapter 1	
<b>Religious Minorities in Afghanistan: The Victims of Negligence</b>	<b>1</b>
Chapter 2	
<b>The State of Statelessness in Bangladesh: An Overview</b>	<b>15</b>
Chapter 3	
<b>Migrants, Refugees and the Stateless in India: Deploying Citizenship to Redefine the Secular State</b>	<b>32</b>
Chapter 4	
<b>Living in Limbo: Tibetan and Bhutanese Refugees in Nepal</b>	<b>65</b>
Chapter 5	
<b>Pakistan: The Struggle for Equal Citizenship</b>	<b>91</b>
Chapter 6	
<b>Sri Lanka: Discrimination Against Religious Minorities and Its Impact on Inclusion in a Plural Society</b>	<b>110</b>
Chapter 7	
<b>State of Minorities in South Asia, 2019</b>	<b>138</b>



# Foreword

In recent years, the particular challenges concerning the right to nationality for minorities have gained increasing recognition. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), as of 2017, more than 75 per cent of the world's estimated stateless population of over 10 million people belong to national or ethnic, religious, and linguistic minorities. This proportion seems likely to increase significantly, as minorities in the region are targeted by processes and legislation that may result in millions more being excluded because they are unable to prove to the satisfaction of authorities their long-standing presence in a country. Beyond this most extreme manifestation of minorities' exclusion from national communities which may be in breach of the fundamental right to equality without discrimination, are numerous other ways in which minorities belonging to a community of citizens are denied or diminished in a way that affect their enjoyment of a range of human rights. As the current report reveals, South Asia—the most populous region in the world, with vast numbers of diverse minority populations—is no stranger to such issues, with recent and longstanding laws, practices and policies, resulting in the exclusion of national or ethnic, religious, and linguistic minorities, Dalits and indigenous peoples.

In November 2018, hundreds of minority activists from around the world, including countries from across South Asia, congregated in Geneva for the eleventh session of the Forum on Minority Issues to explore the theme 'Statelessness: A Minority Issue'. Drawing on personal experiences, minorities in attendance shared interventions addressing themes related to the root causes of statelessness; the relationship between statelessness and conflict; access to documentation; and the gendered dimensions of statelessness for minorities. The outcomes of this gathering were both insightful and sobering. Critically, the discussions made apparent the scale and dynamics of statelessness as a minority

issue, but also the urgent need for further research and informed, minority-led interventions.

*The South Asia State of Minorities Report 2019* is an important and timely contribution which helps to address this gap. Through detailed primary and secondary research, the report examines numerous issues at the intersections of minority rights and the right to nationality across the region. Through exploring the contemporary dynamics of long-standing challenges—such as those affecting ‘up-country’ Tamils from Sri Lanka both within the country and in India, as well Bangladesh’s Urdu-speaking minority, often referred to as ‘Biharis’—the report makes apparent the impact of ongoing discrimination and the long shadow that statelessness casts over minority communities, even after legal barriers to citizenship are addressed. It also lends critical insight into minority rights issues entangled in emerging developments in South Asia. This includes in the state of Assam in north-eastern India, where following the conclusion of the National Register of Citizens process, criticised for both its discriminatory process and approach, almost 2 million people are at risk of statelessness. The cases addressed in the report help point to the gendered impacts of new documentary requirements, which can be particularly severe for minority women—an area that requires further attention.

The current report also takes a wider look at issues concerning minorities, migration, and citizenship status in South Asia, including the status of refugee populations such as Afghans in Pakistan and Tibetan and Bhutanese refugees in Nepal. This comprehensive approach helps to elucidate how refugee and migratory trends are intimately connected to the overall problem of statelessness in South Asia, as highlighted by the current fate of the Rohingya who have fled from Myanmar to countries across the region, including Bangladesh, India and Sri Lanka in recent years. It also contributes to an understanding that while legal statuses may shift overnight, this tends to be the outcome of longer-term political and social processes. As the report reflects, such issues are exacerbated by the fact that countries across South Asia have not signed onto international conventions which form key elements of the legal and normative framework concerning the right to nationality. None of the South Asian countries are party to

the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. Similarly, only Afghanistan has signed onto the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol.

While the issues covered in the report are diverse and vary across and within countries, the findings of *The South Asia State of Minorities Report 2019* highlight common patterns and, in particular, the central role of discrimination on the basis of religion, ethnicity, language, and other factors in each context. These matters also have important regional and cross-border dynamics in South Asia, animated by a history of colonialism and conflict, as well as more recent inter-state relations. Such a lens is particularly useful as we see an increasing politicization of minority rights protection in South Asia, particularly concerning the movement and protection of refugees suffering religious persecution.

As the experiences of minorities show, in order to achieve the goal to eradicate statelessness which guides the UNHCR's #iBelong campaign, more attention must be directed towards understanding the circumstances which obstruct their right to nationality—and particularly the time has come to recognise that statelessness is mainly, disproportionately a minority issue around the world—if one truly hopes to be able to achieve the eradication of this blight. I believe that this report, led by an initiative of minority rights activists and researchers from across South Asia, is an important step in this direction and a reminder of the critical role that minority-led and focused civil society has in it.

**Fernand de Varennes**  
UN Special Rapporteur on Minority Issues



# Acknowledgements

We would like to extend our sincerest gratitude and appreciation to the following individuals and organisations for their support and encouragement in putting together the Minority Report 2019.

## *Afghanistan*

The Afghanistan chapter was drafted by the Civil Society and Human Rights Network in close consultation with civil society activists in Kabul. Our special thanks are due to the roundtable participants, interviewees and the project team whose contribution, inputs and support were invaluable to the success of the project. We would also like to thank M H Hassrat for reviewing the draft chapter.

## *Bangladesh*

We are grateful to the following organisations for their support and guidance in drafting the Bangladesh chapter: Dalit and Excluded Rights Movement (BDERM), Bangladesh Dalit Women Federation, Council of minorities, Maulavibazar Cha Jonogosthi Adivasi Front, and Jatio Adivasi Parishad (JAP). We would also like to extend a word of thanks to Qazi Zahed Iqal for reviewing the draft chapter.

## *India*

We are grateful to Abdul Batin Khandekar in Guwahati, Shahjahan Ali Ahmad in Barpeta, and the many affected families and community mobilisers we spoke with in Assam's Barpeta, Moregaon and Guwahati districts, for our research. We are also grateful to Chayanika Saxena, Khodadad Bisharat, Sabber Kyaw Min, Anam Ajmal and Ashutosh Joshi for helping us reach out to Afghan, Rohingya and Pakistani Hindu refugees in Delhi. We also owe a word of thanks to Ghazala Jamil for reviewing the draft chapter.

### ***Nepal***

We extend our sincerest gratitude to Dr Mark Turin and Saroj K Nepal for providing thoroughly detailed and insightful reviews of the draft chapter for Nepal. We are also thankful to all members of the Advisory Committee (Mohna Ansari, Yam Bahadur Kisan, Youba Raj Luitel and Sashi Adhikari) for their encouragement and support. We are also immensely grateful to the all the refugees and individuals interviewed at the Bhutanese and Tibetan refugee camps for welcoming us into the camps so graciously and for sharing their stories with us.

### ***Pakistan***

We owe a word of thanks to Sahar Ahmad and Haider Imtiaz for reviewing the draft chapter. We are also grateful to Javaid William and Sana Salman for their support and guidance in drafting and refining the Pakistan chapter.

### ***Sri Lanka***

We are grateful to the following organisations for their support and guidance in drafting the Sri Lanka chapter: National Christian Evangelical Alliance of Sri Lanka Amnesty International, INFORM, National Peace Council, Law and Society Trust. We would also like to extend a word of thanks to the individuals interviewed, for their time and input: Rabia Mehmood (Amnesty), Ruki Fernando (Inform) and Aamina Nizar. We are also thankful to reviewers, Jehan Perera, (National Peace Council) and Jayadeva Uyangoda, for their invaluable input and guidance in refining the Sri Lanka chapter.

Finally, we would like to thank Fernand de Varennes, the UN Special Rapporteur on Minority Issues, for writing the foreword to this report. Thanks are also due to Minority Rights Group International (MRG), London, and Shikha Dilawri and Ifra Asad for their support throughout the production of the report.

The South Asia Collective  
February 2020

# Note on the South Asia Collective

A group of human rights activists and organisations that dream of a just, caring and peaceful South Asia, came together in December 2015 to document the condition of the region's minorities—religious, linguistic, ethnic, caste and gender, among others—hoping this would help in bettering outcomes for South Asia's many marginalised groups. We call ourselves The South Asia Collective. We have since been able to rally other like-minded groups and platforms to our cause. Building on this initial success, we have also begun experimenting with small-scale practical support to minority groups across borders, to nurture their capacity for better outcomes for minority communities, working at local and regional levels. This coming together of like-minded groups is particularly gratifying given the otherwise fraught political environment in the region, which militates against any serious regional effort by state parties on minority and human rights. It is then left to civil society initiatives to try to pave the way in the hope for more formal efforts, going forward. Eventually we want to see the establishment of a South Asia charter of minority and human rights, and regional and national mechanisms to enforce those.

The members of The South Asia Collective are:

## *Institutional*

- Minority Rights Group International, London
- Misaal Foundation, New Delhi
- Social Science Baha, Kathmandu
- Civil Society & Human Rights Network (CSHRN), Kabul
- Formation, Awareness & Community Empowerment Society (FACES) Pakistan, Lahore
- Law & Society Trust (LST), Colombo
- Nagorik Uddyog, Dhaka
- Bandhu Social Welfare Society, Dhaka

*South Asia State of Minorities Report 2019*

- Women in Struggle for Empowerment (WISE), Lahore
- National Commission for Justice and Peace (NCJP), Lahore
- Books for Change (BfC), Bengaluru
- Development and Justice Initiative (DAJI), New Delhi
- Self-Help Association for Rural People through Education & Entrepreneurship (SHAREE), Dhaka

*Individual*

- Sahar Ahmed, Dublin
- Dinushika Dissanayake, Colombo
- Saroj K. Nepal, Thimpu
- Omar Sadr, Kabul
- John Dayal, New Delhi
- Mohammed Haider Imtiaz, Islamabad

## Note on Contributors

**Elaine Alam** is a development and human rights practitioner in Pakistan, working in the sector since 2007. She is also the founder member and Secretary General of Formation, Awareness and Community Empowerment Society (FACES) Pakistan. She has extensive experience in poverty reduction programmes and community development in both policy and practice and specialises in Development Management. She is also currently one of the key actors providing technical support to the human rights policy and implementation authorities in Punjab province.

**Tehani Ariyaratne** is a researcher, currently based in Sri Lanka. She holds a Masters degree in Human Rights and Democratisation, and has a decade of experience working in the development and human rights sectors in South Asia. Her research areas include women's labour and migration, environmental justice and women's access to justice.

**Jeevan Baniya** has an MA from GSIS Ajou University, South Korea, and a PhD in Political Science from the University of Oslo, Norway. He is the Assistant Director of Social Science Baha, Kathmandu where he is involved in proposal writing, planning and implementing research projects, writing articles and reports, coordinating research projects, supervising researchers, and liaising with partners and stakeholders, among others. He has also been serving as a faculty member at Tribhuvan University (TU), where he teaches Masters and PhD degree courses and supervises students in dissertation work. He has published books, book chapters, articles, and research papers on labour and migration, democracy, peace and conflict, gender and social inclusion, disasters, etc.

**S M Masum Billah** is Associate Professor of Law at Jagannath University Dhaka. He holds a PhD from the School of Law, Victoria University, Wellington. His area of interests includes law and language, human rights, land law and poverty, legal history and constitutionalism of South Asia. He has published papers on issues of empowerment, property law, human rights and constitutionalism in referred journals. Dr Billah was a visiting fellow at the South African Chair in Property Law, Stellenbosch University, Capetown (2019). He is the author of *Ainer Vab o Ovab* (The Art and Inert of Law). His forthcoming book is *The Politics of Land Law: The Case of Bangladesh*.

**Hassan Ali Faiz** has wide experience and numerous accomplishments in the areas of human rights, rule of law and gender in Afghanistan. He has been active in the field of human rights for 15 years. His major research focus is on human rights and women's rights. He currently works as the Research Director at the Civil Society and Human Rights Network, which is an umbrella organisation comprised of 160 members. From 2010 to 2013, he worked as the head of Human Rights Support Unit in the Ministry of Justice, supported by the United Nations Development Program (UNDP). He was the director of Daikundi Office of the Afghanistan Independent Human Rights Commission (AIHRC) from 2008 to 2010; and from 2004 to 2007, he worked as a Child Rights Protection and Promotion officer with AIHRC. He was a minority fellow with the Office of High Commissioner for Human Rights (OHCHR) in 2017.

**Yangchen Dolker Gurung** was till recently Senior Research Associate at Social Science Baha. She has a Master's degree in Public Policy from the School of International and Public Affairs (SIPA), Columbia University, New York. During her time at Social Science Baha, she worked on projects related to social inclusion and minority rights, including the research project titled 'State Delivering for Poor People: Improving Outcomes through Stronger Evidence' in collaboration with Effective States and Inclusive Development (ESID) Research Centre at the University of

Manchester. Her research interests include social inclusion, gender and minority rights, migration and refugee rights.

**Sajjad Hassan** is the Founder and Director of Misaal Foundation, India, and currently the Convenor of The South Asia Collective. He holds a PhD in Development Studies from the London School of Economics, UK, and has a number of years of development sector experience in India and the South Asia region, with grassroots networks, development agencies and governments.

**Zakir Hossain** heads the Nagorik Uddyog (Citizens' Initiative), a human rights organisation working to promote human rights, access to justice and good governance in Bangladesh. Mr. Hossain has been an active, vocal and well known human rights and environmental activist in Bangladesh for the past 20 years. He contributes mainly by engaging in the struggle for realizing human rights and empowering marginalised communities, including the indigenous, socially excluded and Dalits. His focus is also on ensuring access to justice, realizing informal sector labour rights, promoting composite heritage, promoting peoples' right to food and right to information through mobilisation, organising and researching.

**Abhimanyu Suresh** is a researcher with Misaal Foundation, India, where he leads the South Asia Collective initiative, in addition to working on issues relating to hate crimes and police atrocities against minorities, and state accountability. He holds a Bachelor's degree in Financial & Investment Analysis from the University of Delhi, and a Master's degree in Development Studies from the Tata Institute of Social Sciences, Mumbai.

**Sudeshna Thapa** is a lawyer based in Kathmandu. She holds an LLM in International Human Rights Law from Lund University, Sweden. She has previously worked as a Research Assistant to the UN Special Rapporteur on Human Rights and Toxics. During her tenure, she was involved, among others, in research related to the human rights implications of exposure to toxic and hazardous

substances on minority groups including indigenous communities and workers. She is currently a Senior Research Associate at the Centre for the Study of Labour and Mobility, Social Science Baha, where she is primarily involved in research and writing on issues pertaining to Nepali migrant workers. Her research interests include labour rights, international migration and minority rights. She writes regularly on a range of socio-legal issues including minority rights and social inclusion.

# Abbreviations and Acronyms

ADF	Alliance for Defending Freedom
AIHRC	Afghanistan Independent Human Rights Commission
AMDA	Association of Medical Doctors of Asia
BBS	Bodu Bala Sena
BDERM	Bangladesh Dalit and Excluded Rights Movement
BDHR	Bangladesh Dalit Human Rights
BHBCOP	Bangladesh Hindu Buddhist Christian Unity Council
BJP	Bharatiya Janata Party
BRAD	Bhutanese Refugees Association of the Disabled
BRCF	Bhutanese Refugee Children's Forum
BRWF	Bhutanese Refugee Women's Forum
CAA	Constitutional Amendment Act
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBO	Community-Based Organisations
CCTV	Closed Circuit Television
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHT	Chittagong Hill Tracts
CID	Criminal Investigations Department
CJP	Citizens for Justice and Peace
CMC	Camp Management Committee
CNIC	Computerised National Identity Card
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSHRN	Civil Society and Human Rights Network
CTA	Central Tibetan Authority
FIR	First Information Report
FoRB	Freedom of Religion or Belief
FT	Foreigners Tribunals
HRCP	Human Rights Commission of Pakistan

ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IHC	Islamabad High Court
IMDT	Illegal Migrants (Determination by Tribunal)
INGO	International Non-Governmental Organisation
INHURED	International Institute for Human Rights, Environment and Development
ISIS	Islamic State of Iraq and Syria
IS-KP	Islamic State in Khorasan Province
J&K	Jammu and Kashmir
JHU	Jathika Hela Urumaya
JMI	Jamathei Millathu Ibrahim
JUI-F	Jamiat Ulema-e-Islam-Fazl
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
LTTE	Liberation Tigers of Tamil Eelam
LWF	Lutheran World Federation
MMDA	Muslim Marriage and Divorce Act
NADRA	National Data Registration Authority
NCDHR	National Campaign on Dalit Human Rights
NCEASL	National Christian Evangelical Alliance Sri Lanka
NCRB	National Crime Records Bureau
NDF	New Democratic Front
NEFA	North-East Frontier Agency
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NIC	National Identity Card
NPP	National People's Power Movement
NRC	National Register of Citizens
NRIC	National Register of Indian Citizens
NTJ	National Tawheed Jamaat
NVC	National Verification Card

OHCHR	Office of the United Nations High Commissioner for Human Rights
OXFAM	Oxford Committee for Famine Relief
PAN	Permanent Account Numbers
PIP	Prevention of Immigration Scheme
PoR	Proof of Registration
PSN	Persons with Special Need
PTA	Prevention of Terrorism Act
RC	Refugee Card
RSD	Refugee Status Determination
RSS	Rastriya Swayamsewak Sangh
RTI	Right to Information
RTYC	Regional Tibetan Youth Congress
RV	Refugee Village
SC	Supreme Court
SDC	Swiss Agency for Development and Cooperation
SLF	Snow Lion Foundation
SLPP	Sri Lanka Podujana Peramuna
TN	Tamil Nadu
TRC	Temporary Resident Card
UAPA	Unlawful Activities (Prevention) Amendment
UMN	Undocumented Myanmar Nationals
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UPDF	United People's Democratic Front
USAID	United States Agency for International Development
WFP	World Food Programme



# Introduction

Rising majoritarian nationalisms have accompanied severe challenges to freedom of religion or belief (FoRB) in most of South Asia. Religious minorities are at particularly high risk of violent attacks, hate speech, and intimidation, and these violations are frequently met with lack of accountability. This occurs against a backdrop of long-standing social, economic and cultural marginalisation and exclusion, particularly for those who face intersectional discrimination, such as women from religious minorities, indigenous peoples adhering to minority religions, and those facing caste-based discrimination.

In India, there has been a rise in vigilante violence since the election of the Bharatiya Janata Party (BJP) in 2014, particularly targeting the Muslim (14.2 per cent) and Christian (2.3 per cent) populations. Divisive rhetoric on the part of the ruling party coupled with discriminatory legislation, including anti-cow slaughter and anti-conversion laws, have emboldened vigilante groups, fostering hostility towards religious minorities who have been targeted by these laws and also face vigilante mob violence. With the return of the BJP to power following the 2019 election, its anti-Muslim rhetoric has escalated and rapidly transformed into action through measures such as the implementation of the National Register of Citizens (NRC)<sup>1</sup> in the state of Assam and the federally mandated Citizenship Amendment Act (CAA), which appears driven by the sole objective of discriminating against Muslims by granting citizenship to those belonging to almost all other major religious groups other than Muslims.<sup>2</sup>

---

1 The NRC was prepared after the 1951 Census of India as a registry containing information on the citizens of India. The update was conducted in Assam following a 2013 Supreme Court order and was conducted in the backdrop of decades-long anti-foreigner sentiments in the state.

2 The CAA states 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’ will receive

Political instability and the entrenchment of an increasingly narrow understanding of national identity has, similarly, undermined FoRB in other countries of South Asia. Religious minorities (including atheists), and in particular Hindus, are frequently victim to reprisals and attacks in Bangladesh, particularly during election cycles, with the highest levels of such violence recorded during national level elections in 2014. In Pakistan, religious and sectarian minorities such as Christians, Hindus, Ahmadiyas, and Shias have suffered alarming attacks by militant groups, as well as individual targeted attacks and vigilante violence. This violence is often linked to discriminatory provisions and legislation, such as blasphemy laws and Ordinance XX, which provide a cloak of legality to such actions. Violations of religious minority rights and discrimination have inhibited Sri Lanka's transition to peace. Christians (7.6 per cent) and Muslims (9.7 per cent) face FoRB violations including hate speech, discriminatory practices, destruction of property, threats and intimidation, and physical violence perpetrated by both state actors and Buddhist nationalist groups such as the? Bodu Bala Sena, as highlighted by anti-Muslim violence in late February/early March 2018 in Eastern and Central provinces, sparking a state of emergency. The situation for Muslims has worsened since the Easter bombings of April 2019, which targeted Christian places of worship by radical Islamists, with the general Muslim population viewed with suspicion by their compatriots. The failure to prevent such attacks was partly responsible for the election of the Sinhala nationalist leader, Gotabaya Rajapaksa, who despite having taken pains to assure that he will serve as the leader of everyone, decided to scrap the singing of the national anthem in the Tamil language in the first independence celebrations since his coming to power.<sup>3</sup>

In Afghanistan, the Constitution does not uphold individuals' rights to FoRB, and minorities including Hazara Shi'a are often

---

'a certificate of registration or certificate of naturalization' from the central government.

<sup>3</sup> Krishan Francis, 'Sri Lanka scraps Tamil national anthem at Independence Day,' *The Washington Post*, February 4, 2020, [https://www.washingtonpost.com/world/asia\\_pacific/sri-lanka-scraps-tamil-national-anthem-at-independence-day/2020/02/04/084f5caa-4728-11ea-91ab-ce439aa5c7c1\\_story.html](https://www.washingtonpost.com/world/asia_pacific/sri-lanka-scraps-tamil-national-anthem-at-independence-day/2020/02/04/084f5caa-4728-11ea-91ab-ce439aa5c7c1_story.html).

victims of violence, primarily by non-state actors, and the remaining small numbers of Christians, Sikhs, and Baha'i populations often live covertly. Aspects of Nepal's new Constitution (2015) have a discriminatory impact on the country's religious minorities, in particular Muslims (4.4 per cent) and Christians (1.4 per cent) who have reported fear of rising hostility in recent years. For example, despite being declared a secular state in 2006, Article 26(3) of the 2015 constitution has carried over provisions from previous constitutions criminalising all forms of proselytization while the Criminal Code, adopted in 2017, banning religious conversion has contributed to a reported increase in police harassment of Christians accused of conversion activities.<sup>4</sup> In Bhutan and the Maldives, efforts to homogenise society have severely curtailed FoRB, and even the ability of non-Buddhists and non-Muslims, respectively, to acquire citizenship.

One of the historically time-honoured ways of dealing with discrimination, particularly religious discrimination, is to seek refuge in a third country, and South Asia is no stranger to this phenomenon. With the exception of Bhutan and the Maldives, all South Asian countries are home to voluntary and involuntary migrants, most of whom not only do not enjoy the same rights as the citizens of the country where they have sought refuge, but are also generally looked upon with suspicion by the host communities. Apart from Afghanistan, none of the other South Asian countries are party to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, thereby absolving themselves of any responsibilities towards them.

All South Asian countries have also contrived to render stateless various groups of people, whether it be based on religion, ethnicity, gender, or otherwise. No country from South Asia is party to either the 1954 Convention on Stateless Persons or the 1961 Convention on the Reduction of Statelessness. The countries of South Asia, thus, contribute to the global and regional refugee population and, at the same time, are also home to a large number of refugees (Table 1). Although Bhutan and the Maldives do not serve as destinations for

---

<sup>4</sup> See, for instance, 'Foreign Christians arrested on charges of "converting" in Nepal', *The Pathway*, August 8, 2019, <https://mbcpathway.com/2019/08/08/foreign-christians-arrested-on-charges-of-converting-in-nepal>.

refugees, these are countries that have seen people leave in search of a more secure life.

## **Migrants, Refugees, and the Stateless: Definitions and Numbers**

The International Organisation for Migration (IOM) defines a migrant as:

a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.<sup>5</sup>

According to the UN Convention Relating to the Status of Refugees, a refugee is:

...someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.<sup>6</sup>

There are overlaps between the two definitions but with the crucial distinction, as in the words of the former Director General of IOM, William L. Swing: ‘All refugees are migrants, but not every migrant is a refugee’.<sup>7</sup> International movements of people occur in ‘search of new economic opportunities and horizons’, ‘to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses’, and still others ‘in response to the adverse effects of climate change, natural disasters, or other environmental factors’.<sup>8</sup> In most cases, a combination of these reasons apply.

---

<sup>5</sup> ‘Key Migration Terms,’ Migration, International Organisation for Migration, accessed February 20, 2020, <https://www.iom.int/key-migration-terms>.

<sup>6</sup> United Nations High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, (Geneva: United Nations High Commissioner for Refugees, 1951) <https://www.unhcr.org/3b66c2aa10>.

<sup>7</sup> ‘What is the meaning of “migrants”?’ Meaning of Migrants, accessed February 20, 2020, <https://meaningofmigrants.org>.

<sup>8</sup> United Nations General Assembly, *New York Declaration for Refugees and Migrants: Draft resolution referred to the high-level plenary meeting on addressing large movements of refugees and migrants by the General Assembly at its seventieth*

The numbers involved are staggering. According to the latest estimates available, the number of migrants globally was over 244 million in 2015. In the same year, there were roughly 65 million forcibly displaced people, a figure that included over 21 million refugees, 3 million asylum seekers, and more than 40 million internally displaced persons.<sup>9</sup>

By 2018, the number of refugees worldwide had increased to 25.9 million, with half of them under the age of 18. Four fifths of all the refugees live in countries neighbouring their own, and this phenomenon is true for South Asia as well. South Asia is home to 2.6 million migrants—10 per cent of the world's total. Of these 2.6 million, Pakistan hosts 54 per cent and Bangladesh 35 per cent.<sup>10</sup>

Perhaps the most vulnerable are people who are known as the stateless. As defined by the UN, a stateless person is one 'who is not considered as a national by any State under the operation of its law'.<sup>11</sup> She may be a refugee having fled persecution in one state, but not recognised by the host country; denied citizenship in her country of birth, because the state does not recognise her;<sup>12</sup> or simply an undocumented person, without formal recognition in her own country. Common to these pathways is the active denial of nationality to specific groups, since the right to nationality is essential to facilitating the actualisation of all other fundamental human rights. While international law provides that all persons have the right to a nationality, states still retain the right to determine how nationality is acquired.<sup>13</sup>

*session*, (New York: United Nations General Assembly, 2016) <https://reliefweb.int/report/world/new-york-declaration-refugees-and-migrants-draft-resolution-referred-high-level-plenary>.

<sup>9</sup> Ibid.

<sup>10</sup> 'About Us: Figures at a Glance,' United Nations High Commissioner for Refugees, accessed February 11, 2020, <https://www.unhcr.org/en-us/figures-at-a-glance.html>.

<sup>11</sup> United Nations High Commissioner for Refugees, *Convention Relating to the Status of Stateless Persons*, (Geneva: United Nations High Commissioner for Refugees, 1954) <https://www.unhcr.org/en-lk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>.

<sup>12</sup> This includes the refusal to recognise the offspring of female citizens and their foreign spouses as citizens, a category in which lies Nepal, the only such South Asian country.

<sup>13</sup> Asha Bangar, 'Statelessness in India: Statelessness Working Paper Series' (Institute on Statelessness and Inclusion, 2017), accessed February 25, 2020, [http://www.institutesi.org/WP2017\\_02.pdf](http://www.institutesi.org/WP2017_02.pdf).

**Table 1: Refugees in South Asia**

Year	Afghanistan		Bangladesh		Bhutan		India		Maldives		Nepal		Pakistan		Sri Lanka	
	In	From	In	From	In	From	In	From	In	From	In	From	In	From	In	From
<b>1990</b>	50	<b>6,339,095</b>	145	477	-	-	212,743	198	1	-	17,800	-	<b>3,255,975</b>	486	-	208,271
<b>1995</b>	19,605	2,679,133	51,118	56,956	-	104,750	227,480	5,011	-	-	124,754	27	1,202,493	5,277	16	107,589
<b>2000</b>	-	3,587,336	21,627	5,401	-	108,945	170,941	11,399	-	4	129,237	235	2,001,466	10,133	16	124,160
<b>2005</b>	32	2,166,149	21,098	7,304	-	106,537	139,283	16,285	-	13	126,436	2,065	1,084,694	29,913	106	108,139
<b>2010</b>	6,434	3,054,709	229,253	10,049	-	75,070	184,821	17,769	-	19	89,808	5,889	1,900,621	39,982	223	141,074
<b>2015</b>	257,554	2,666,305	231,958	12,173	-	17,720	201,381	9,881	-	42	32,667	9,063	1,561,162	297,899	784	121,443
<b>2016</b>	59,771	2,501,445	276,207	13,850	-	11,757	197,851	7,291	-	57	25,249	8,377	1,352,560	105,428	604	117,479
<b>2017</b>	75,927	2,624,225	<b>932,209</b>	16,755	-	7,929	197,122	7,891	-	54	21,467	8,399	1,393,132	128,886	820	115,612
<b>2018</b>	72,231	<b>2,681,269</b>	<b>906,645</b>	21,036	-	7,104	195,891	9,602	-	73	20,808	8,594	<b>1,404,019</b>	132,259	800	113,963

Source: 'Refugee population by country or territory of asylum (1990-2018)'. The World Bank, accessed on 17 February 2020, <https://data.worldbank.org/indicator/SM.POP.REFG>;

'Refugee population by country or territory of origin (1990-2018)'. The World Bank, accessed on 17 February 2020, <https://data.worldbank.org/indicator/SM.POP.PREFG>.

OR.

### **Relevant International Standards**

The 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto are the foundation of the international refugee protection regime. The Convention, originally put in place to protect post-World War refugees in Europe, provides an internationally accepted definition of who qualifies as a refugee and who does not (for example, war criminals). It specifies certain rights that accrue to all those who qualify as refugees, some of which are: the rights to access employment, housing, education, public relief and assistance, freedom of religion, access to courts, movement, identification and travel documents. The Convention also restricts contracting States from certain actions, such as: discrimination, imposition of taxes different to those of nationals, and imposition of penalties on refugees who have entered illegally if they present themselves to authorities without delay. The cornerstone of the Convention is the principle of non-refoulement, now considered international law applicable even to non-contracting States, which prohibits forcible return of the refugees to the country from which they have fled. The 1967 Protocol removes all geographic limitations from the original Convention.

The 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness, along with UN's Campaign to end Statelessness provide the foundation for the international regime to end statelessness. The 1954 Convention, signed against the backdrop of the 1948 Universal Human Rights Declaration which stated that everyone has the right to a nationality, provides the legal definition of who qualifies as a stateless person, and who does not (for example, war criminals). It also specifies certain minimum rights that accrue to all those who qualify as stateless persons, including but not limited to: the rights to education, employment, housing and public relief, all on par with nationals. They are also entitled to identification and travel documents, and administrative assistance, and to generally be accorded the same treatment as is given to other aliens generally. The 1954 Convention also specifies that stateless persons are not to be expelled, except on grounds of national security or public order. The 1964 Convention furthers the provisions of the 1954 Convention and specifies certain measures to reduce the incidence of global statelessness. States are to grant nationality to all persons, otherwise stateless, who are born in their territory, and are also prohibited from depriving people of their nationality rendering them stateless.

Denied a nationality, stateless persons are among the most excluded of peoples, vulnerable to discrimination, violence and persecution. According to the latest (2017) figures from the United Nations High Commissioner for Refugees (UNHCR), there are 3.9 million people who belong to the category of ‘stateless’.<sup>14</sup> But the UN agency admits that this figure is a gross underestimate and the actual figure could be as high as 12 million.<sup>15</sup> The discrepancy in figures is mainly due to the fact that,

Fewer than half the countries in the world possess government data on stateless populations. The most populous countries with suspected stateless populations do not report on statelessness, among them China, India, Indonesia and Nigeria (together accounting for 42 per cent of the entire world population).<sup>16</sup>

Significantly, according to the UNHCR’s 2017 figures, more than 75 per cent of the estimated global stateless population belong to national or ethnic, religious, and linguistic minorities. This has contributed to the conclusion from the current Special Rapporteur on Minority Issues, Fernand de Varennes, that statelessness is a disproportionately minority issue. The key role of discrimination in contributing to statelessness has also been recognised by the UNHCR’s #IBelong Campaign, which seeks to eradicate statelessness by 2024.<sup>17</sup>

The officially recognised population of the stateless in South Asia is close to 1 million, with all of them being Rohingyas who have fled to Bangladesh from Myanmar, which itself is likely to be a gross underestimate.<sup>18</sup> Apart from this group, there is no recognised group

---

14 Lily Chen, Petra Nahmias and Sebastian Steinmueller, ‘UNHCR Statistical Reporting on Statelessness’, *UNHCR Statistics Technical Series*, no.1 (October 2019), accessed February 25, 2020, <https://www.unhcr.org/5d9e182e7.pdf>.

15 United Nations News, ‘12 million stateless people globally, warns UNHCR chief in call to States for decisive action’, *United Nations News*, November 12, 2018, <https://news.un.org/en/story/2018/11/1025561>.

16 Lily Chen, Petra Nahmias and Sebastian Steinmueller, ‘UNHCR Statistical Reporting on Statelessness’, *UNHCR Statistics Technical Series*, no.1 (October 2019), <https://www.unhcr.org/5d9e182e7.pdf>.

17 ‘Four years into its #IBelong Campaign to end statelessness, UNHCR calls for more resolute action by states’, UNHCR, November 13, 2018, accessed February 25, 2020, <https://www.unhcr.org/news/press/2018/11/5be95d7c4/four-years-its-ibelong-campaign-end-statelessness-unhcr-calls-resolute.html>.

18 Institute on Statelessness and Inclusion, ‘Statelessness in Numbers: 2018

of the stateless in the region.<sup>19</sup> Yet, conditions leading to statelessness are apparent in all countries with instances of ‘statelessness or virtual statelessness’ continuing in the case of Indian Tamils of Sri Lanka, Indians in Myanmar, Urdu-speaking minorities (often referred to as ‘Biharis’) of Bangladesh, and Chakmas of Arunachal Pradesh.<sup>20</sup> There also exists a large group of people in Nepal without citizenship papers,<sup>21</sup> which does not render them stateless per se but given the paramount importance of the citizenship certificate to establish one’s identity and access almost any and every public service, it makes them virtually stateless. Recent developments in India are more troubling. With the NRC complete in Assam,<sup>22</sup> the central government is now planning a country-wide exercise to be followed by the application of the CAA. With plans already afoot to set up mammoth detention centres in Assam to house those who did not make it to the NRC, and the intention behind the NRC extension to the entire country being a thinly veiled attempt to declare all Muslims without the required papers as foreigners,<sup>23</sup> the possibility

---

An Overview and Analysis of Global Statistics’, 2018, [https://files.institutesi.org/ISI\\_statistics\\_analysis\\_2018.pdf](https://files.institutesi.org/ISI_statistics_analysis_2018.pdf).

19 United Nations High Commissioner for Refugees, *UNHCR: Statistical Yearbook 2016* (Geneva: United Nations High Commissioner for Refugees, 2017), accessed February 25, 2020, <https://www.unhcr.org/en-lk/statistics/country/5a8ee0387/unhcr-statistical-yearbook-2016-16th-edition.html>

20 Partha S. Ghosh, *Migrants, Refugees, and the Stateless in South Asia* (New Delhi: SAGE, 2016). Ghosh also includes the enclave people in Indian and Bangladeshi enclaves but this issue has been resolved since his book was published.

21 A 2013 study put that number to be 4.6 million, or 23 per cent of the total national population. Sabin Shrestha and Subin Mulmi, *Acquisition of Citizenship Certificate in Nepal: Estimation and Projection* (Kathmandu: Forum for Women, Law and Development, 2015).

22 The NRC, however, did not turn out the way the BJP wanted it to in terms of identifying Bangladeshi Muslims as non-citizens. Of the 1.9 million Assam residents left out, half were Hindus and many others belonging to tribal groups indigenous to the state. See Kaushik Deka, ‘Why the nationwide NRC proposed by Amit Shah is being criticised,’ *India Today*, November 22, 2019, <https://www.indiatoday.in/india-today-insight/story/why-the-nationwide-nrc-proposed-by-amit-shah-is-being-criticised-1621483-2019-11-22>.

23 Home Minister Amit Shah is on record stating: ‘All the Hindu, Sikh, Buddhist, Christians...will get citizenship...We want to walk up to them and give them citizenship. They wouldn’t be asked for any documents.’ See Rohan Venkataramakrishnan, ‘Who is linking Citizenship Act to NRC? Here are five times Amit Shah did so,’ *Scroll.in*, December 20, 2019, <https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so>.

of millions being suddenly stateless is very real.<sup>24</sup>

The regional impact of such an exercise cannot be overstated. The two countries likely to be immediately affected by the Assam NRC are Bangladesh and Nepal. The intent behind the CAA is, clearly, to target Muslims who cannot prove residence in India. But since it does not cover migrants of Nepali origin within its ambit and even though the presence of Nepalis in India is governed by a bilateral treaty, given the overall sentiment against outsiders in India's northeast, there is a clear and present danger that both Bengali- and Nepali-speakers are likely to find themselves tarred as foreigners. While the immediate fallout on such an eventuality could be the targeting of Hindus by radical Islamists in Bangladesh, a country where this religious minority has always lived in constant fear, the larger consequence of rendering potentially an immensely large number of people suddenly stateless could have huge implications on the region's stability, both political and demographic.

The Indian example is but the most visible at the moment since it is only emblematic of a process that has been ongoing in different South Asian countries over decades, with the delegitimation of the claims over equal citizenship by various groups of people. This is partly a result of historical processes that have both political and social roots. But, it is also, to a large extent, due to political developments that have seen the nationalist-majoritarian agenda that have been successfully framed by political leaders in most of the countries, to the detriment of all kinds of in-country minorities.

## **The Report**

The *South Asia State of Minorities Report 2019* deals with the theme of migrants, refugees and the stateless. The particular focus of the report is on religious persecution or discrimination on the basis of religion contributing to those conditions for significant sections of the population in six of the eight countries in South Asia: Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka. Bhutan and the Maldives do not feature in this publication since as

---

<sup>24</sup> For a discussion on the links between the NRC and the CAA, see Rohan Venkataramakrishnan, 'Who is linking Citizenship Act to NRC? Here are five times Amit Shah did so,' *Scroll.in*, December 20, 2019, <https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so>.

seen in Table 1, neither country hosts any refugees within its border even though both countries have contributed to the global refugee population in some small measure. As much is evident in the case of Bhutan, which is detailed in the country chapter on Nepal that also deals with Bhutanese refugees. Depending on context, the country chapters deal either with refugee populations that have left the country or are in the country, or with conditions that have left their minority populations in a state of (virtual) statelessness. Further, while the primary focus of the publication is on religious minorities, the contributions adopt an intersectional approach to deal with other minorities—national, ethnic and linguistic—and attempt to examine the particular conditions facing those most marginalised.

The selection of the 2019 theme was done through a consultative process involving the South Asia Collective (SAC). After initial discussions held remotely, members of the SAC came together in Kathmandu for the Regional Network Meeting in February 2019. Besides the launch of the *South Asia State of Minorities Report 2018*, the meet also provided an opportunity for SAC members to discuss the future plan of action as well as agree on a common theme that would have resonance in all the countries in the region. Accordingly, ‘migrants, refugees and the stateless’ was chosen as the subject for the 2019 report.

It was agreed that the country chapters would be drafted based primarily on secondary sources. Where required, either due to lack of information or to capture new developments, primary research consisting mainly of interviews was to be conducted to provide a more updated perspective on the situation. Some of the writing teams faced difficulties due to the absence of recent data, most tellingly in the case of Afghanistan, or lack of access to key groups, as in Bangladesh with regard to the Rohingya.

Although intended to highlight the scale and kinds of issues faced by migrants, refugees and the stateless, given the paucity of available information, the country chapters were not able to deal with all the groups in equal measure and do justice to them. Every attempt, however, has been made at the very least to either identify all the groups that fall in these categories or include them in the discussions otherwise.

The country chapters are followed by an annual update on the situation of minorities in South Asia. These updates highlight the major developments that took place in each country that had a direct impact on the minorities either through acts of commission or omission.

## **Migrants, Refugees, and the Stateless<sup>25</sup>**

### ***Afghanistan***

Afghanistan has no majority ethnic group but in terms of religion, Muslims form an absolute majority. Sunnis form the majority with 80-90 per cent of the population while Shias are at 10-20 per cent. Specific data on the composition of ethnicities is unavailable as no national census has been conducted in Afghanistan since a partial count in 1979, and years of war and population dislocation have made an accurate ethnic count impossible. The chapter on Afghanistan reviews the situation of three minorities in the country—the Hazaras, Ismaili Shias and Hindu-Sikhs. Due to the absence of comparability at present, the chapter does not dwell on the issue of the more than 72,000 people from Pakistan’s North Waziristan who have sought refuge in Afghanistan since 2014.

Minority rights in Afghanistan were historically curtailed; improved during the communist regime (1978 -1992); worsened after the Taliban takeover and their rule (1996-2001); has improved comparatively since the collapse of the Taliban regime in 2001 (specifically due to an international presence); and is again in jeopardy as the Islamic State (IS) gains control over parts of the country. The Afghan constitution has several contradictory provisions since it prohibits discrimination and commits to protection of the rights of all Afghans irrespective of their ethnicity, religion and language, yet puts the tenets of Islam above the law and limits the presidency of the country only to Muslims.

The three specific groups that the Afghanistan chapter deals with are the Shia Hazara, the Ismaili Shias, and the Hindus and Sikhs. The suppression of ethnic Hazaras in Afghanistan can be traced back to the 1880s. Branded ‘infidels’ by the majority

---

<sup>25</sup> All the sources cited have been retained in the individual country chapters and removed from the introduction in order to avoid duplication.

Sunnis, Hazaras were barred in practice from holding office, enrolling in universities and joining the armed force even until the 1970s. Their social, economic and political situation improved during communist rule, but after the civil war began in 1992 and subsequent takeover by the Taliban in 1998, it worsened—with massacres, forced conversions and eviction. The post-Taliban years had been a respite, but with the IS on the rise in the region, Hazaras are again being persecuted as ‘infidels’.

The Ismailis are a small minority within the Shias and as such are among the most oppressed religious minorities in Afghanistan. One branch of the Shias, the Imami, consider the Ismailis to be ‘unclean’ while a majority of Sunnis consider Shias to be ‘unreal’ Muslims. Ismailis are still excluded and barred from positions of political authority.

Historically, the attitude toward Hindus-Sikhs in Afghanistan has been tolerant, though they have had to pay a non-Muslim tax to the state. The civil war in 1992 upended that status and they became prime targets for kidnappings, extortion and banditry. Their temples were destroyed and they were harassed to an extent that it led to a mass exodus by them to India and other places. Their situation worsened after the Taliban took control in 1996 with Hindus-Sikhs even being forced to wear yellow badges to distinguish them from Muslims. After the Taliban fell, many Hindus-Sikhs returned to Afghanistan but with the emergence of IS, their security has deteriorated. They have been constantly targeted by violent Islamist groups, prompting many to move to India.

Afghanistan is also home to refugees from Pakistan’s North Waziristan. But, due to a boundary dispute between the two countries, Afghanistan has not recognised this group as refugees, preferring instead to call them internally displaced people but without providing them with the required identification necessary to access government services. (It should be noted that a discussion of the larger Afghan refugee population takes place in the Pakistan and India chapters.)

### ***Bangladesh***

Bangladesh has no specific law on statelessness, and a stateless person is regarded as a foreigner. This chapter identifies the

vulnerabilities and challenges faced by several groups such as the Urdu-speaking minorities ('Biharis'), Dalits and Rohingyas in the country. The chapter looks at the available literature and examines the existing legislative and administrative measures with regard to these three groups.

Biharis are a linguistic minority of Urdu-speaking persons and their descendants who emigrated from India during and after the partition of the subcontinent in 1947 to what was then known as East Pakistan (now Bangladesh), and who are citizens of Bangladesh in accordance with the relevant national laws. The Supreme Court and the High Court of Bangladesh have affirmed that all members of the Urdu-speaking community were nationals of Bangladesh in accordance with its laws. However, due to the provisions in the Citizenship Bill of 2016, which envisage the revocation of citizenship as a result of the actions or identities of someone's parents, if adopted, many Biharis could see their citizenship rights being repealed.

There has been a lack of political will to recognise the existence of Dalits in Bangladesh as seen by the fact that the caste was not included in the 2011 Census. A majority of Dalits lack access to education, health care and other basic amenities, employment, the right to own property or land and are excluded from political power or influence. They are also denied access to hotels and restaurants, hairdressers, temples, public places, vehicles, trading, etc. The Constitution of Bangladesh does not have an anti-discrimination act, and despite attempts from human rights groups, the government has shown no inclination to introduce such acts. Furthermore, Dalit settlements are subjected to ad hoc evictions and resettlements, as cities continue to expand.

Only those Rohingya refugees living in the official UNHCR camps have secured official recognition through photo ID cards issued to all refugees above the age of five. Though these cards do not grant immunity from arrest or provide the right to freedom of movement, refugees in possession of a card stand a better chance of being released and/or granted bail once arrested. There are between 200,000 and 500,000 unregistered Rohingyas in Bangladesh who do not have any legal status and are categorised as 'illegal foreigners'. For the unregistered stateless Rohingya, there is no

official permission or prohibition on their freedom of movement. However, for those in makeshift camps, stepping outside of the camp places them at risk of arrest and detention under the Foreigners Act, which is an issue as lack of income generation within camps compels them to venture outside with these significant risks.

In addition to arrest and detention by the police, Rohingya are at risk of being bullied, harassed and beaten by the local population. The 'Rohingya Resistance Committees' in different areas of Cox's Bazaar lead hate campaigns against the Rohingya. More recently, the Bangladeshi government's stance toward the Rohingya has hardened following the failure of the latest repatriation attempt. Bangladesh has imposed a ban on the activities of scores of non-governmental organisations in Rohingya camps, limited mobile phone services to Rohingya, and is even planning to set up barbed wire around the camps to prevent their movement.

### ***India***

Refugees in India include, though are not limited to, Tibetans, Tamils from Sri Lanka, and Chakma and Hajongs from the Chittagong Hill Tracts of Bangladesh, all of whom receive full protection by the Indian government; Afghans and Rohingya, whose presence is acknowledged by the UNHCR; Chins, Rakhines and Nagas from Myanmar, who are not officially recognised as refugees as they have assimilated into the local communities; and ethnic Nepalis from Bhutan and religious minority refugees from neighbouring countries who live in unofficial camps in India. Among and beyond these, several groups are threatened by statelessness. There is also a marked contrast in the stated government policy towards persecuted non-Muslims, who are viewed favourably, and Muslims, who are viewed negatively. Yet, the living conditions reported by all of them are broadly similar and depressing: poor security, lack of basic amenities, poor healthcare and education facilities, and limited employment and livelihood opportunities.

Chakma and Hajongs can legally receive citizenship due to a 1996 order from the Indian Supreme Court. Yet, resistance from local student groups in the Indian northeast and politicians have resulted in these groups living in limbo, unable to access services and jobs. Kashmiri ex-militants and their families, too, remain in

a state of uncertainty. The Jammu and Kashmir State government had announced a rehabilitation policy for the group, along with their families, promising rehabilitation, citizenship and essential documents, besides education, employment and financial assistance in 2010—which is yet to materialise until now. Sri Lankan Tamil refugees have been granted citizenship and the receptive Tamil Nadu government has been providing ration cards and free access to government hospitals as well as some monetary aid. However, problems persist as the aid is inadequate and they are unable to find gainful employment.

Pakistani Hindus and Bangladeshi Hindus in India live in squalid camps with no sanitation facilities or reliable electricity. Local NGOs and social workers have had to step in in the absence of tangible action by the state or national governments. One non-Muslim group that has received local pushback in India has been Hindus from Bangladesh, whose presence is resisted in the state of Assam, where influential student organisations have spearheaded a campaign since 1978 against the ‘invasion’ of Assam by ‘land-hungry Bengali immigrants’.

Afghan refugees do not live in camps and there are a few significant government measures for Afghan nationals in India. Those registered with UNHCR are able to live and find work in the informal economy, and also access government healthcare and education system. A notable government initiative has been the announcement of scholarships for 1,000 Afghan students to study in Indian universities.

Rohingyas are among the most harshly treated groups in India. Most Rohingyas live in camps with squalid conditions and report exploitation at the hands of locals. Yet, Rohingyas have also been the target of state ire as they have been forced by Indian authorities to return to Myanmar, even without any guarantee of improved situation for them in that country. While in the past, Indian courts have upheld the principle of non-refoulement, the Supreme Court did not intervene in one case involving the deportation of Rohingya. Furthermore, the recent rise in anti-Muslim rhetoric across the country since the assumption of power by the BJP, has resulted in increased hostility among the local population about the presence of the Rohingya in India.

Of all the groups, only the Tibetans seem to have relatively good access to rights and services. The Tibetan government-in-exile is based in Dharamshala and the Indian government has been friendly to the cause of Tibet. Hence, the needs of the community in healthcare, education, culture, and religion have been met. The Indian Government's recently formalised Tibetan Rehabilitation Policy has promised to allow the Tibetans to undertake any economic activity and pursue jobs in any field in which they are proficient, yet it has failed to result in any tangible change so far.

Since India has neither signed the 1951 UN Convention on Refugees nor devised its own domestic refugee law, refugees and forced migrants are treated on par with other foreigners, governed by the outdated Foreigners Act 1946. Some fundamental rights guaranteed by the Indian Constitution that are denied to foreigners are also denied to refugees and asylum-seekers. Likewise, India has also not ratified the 1954 and 1961 Conventions on Statelessness, meaning there is no legal recognition of statelessness persons—a prerequisite to access many rights. However, there have been cases where the judiciary has recognised the rights of refugees and protected refugees to a certain extent.

The BJP government has slowly turned this humanitarian issue into a religious one. In 2015, the BJP government decreed through executive order on 'humanitarian considerations', to allow Afghan, Bangladeshi and Pakistani nationals belonging to non-Muslim minority communities (specifically Hindu, Sikh, Jain, Buddhist, Parsi and Christian) to stay on in India even without proper documentation, though this meant difficulties in getting jobs and so on. This consideration was not extended to persecuted Muslim communities.

Furthermore, India has also been disenfranchising some of its own citizens arbitrarily, making them foreigners in their own land, incarcerating them in detention centres, and putting them at risk of statelessness. The National Register of Citizens (NRC) drawn up in Assam, which the current regime now wants to scale up nationally, with 'illegal immigrants', a dog-whistle term in public discourse used in India for Muslims, as the stated target. Its implementation, however, has cut across religious, ethnic and linguistic divisions, affecting the poor and the vulnerable most,

who cannot afford effective legal representation. Taken together with the passage of the Citizenship (Amendment) Act 2019, this arbitrariness and discrimination, mostly directed at Muslim groups, is being institutionalised under the current Hindu-majoritarian dispensation, with citizenship laws effectively being used for political ends, significantly amplifying the mass production of statelessness.

### ***Nepal***

While Tibetan and Bhutanese refugees account for almost all of Nepal's refugee population (64 per cent and 31 per cent respectively), more than 500 refugees and asylum-seekers from other countries have been living in Nepal since the early 1990s. Nepal has also been hosting a small community of Rohingya refugees who have made their way into Nepal since 2012.

Both Tibetan and Bhutanese refugees in Nepal had been subject to religious persecution and human rights violations prior to their exodus from their home countries. Currently, there are over 13,000 Tibetan refugees, spread in 14 different settlements across Nepal. At present, the Nepal government recognises only those Tibetans who crossed the border before 1989 as refugees; anyone coming in after that year is considered an illegal immigrant. After 1994, Nepal stopped issuing refugee cards (RCs) to children who turned 16 even if they were born to parents holding RCs, leaving many stateless. Fewer than 25 per cent of the Tibetans in refugee settlements hold RCs, which provide the holder with the right to reside and travel in Nepal. Without RCs, refugees live in constant fear of deportation and are subject to exploitation by authorities.

Of the over 108,000 Bhutanese refugees initially housed in seven camps in Nepal, only an estimated 6,500 remain in Nepal. The rest have now left for third-country resettlement to eight countries around the world. Many of the refugees remaining in Nepal are those who were unable to apply for third-country resettlement owing to lack of valid RCs. For others, the reasons for staying back are varied. Many of the Bhutanese refugees in Nepal await one of three solutions: repatriation to Bhutan, resumption of the third-country resettlement programme or assimilation in Nepal as Nepali citizens.

Assistance from international donor agencies and organisations in the Bhutanese refugee camps has been extensive ever since the arrival of the refugees in early 1990s. However, as the refugee population began to shrink with the launch of the third-country resettlement programme, most donors have now withdrawn their services from the camps. Funding for the Tibetan settlements comes from the Central Tibetan Administration based in India along with several international donor agencies.

As a result of their refugee status, both groups of refugees report being cut off from economic opportunities in Nepal. Relations with local communities are cordial but unlike in the case of the Bhutanese, Tibetan refugees report facing restrictions in voicing their political opinions, increasingly so over the years. Even peaceful protests are met with police interventions. In addition, there is also some reportage of deportation of Tibetan refugees by Nepali authorities. There have been instances in the past when the refugees have been barred from celebrating the birthday of their spiritual leader, the Dalai Lama. They also claim that they are also under high police surveillance around 10 March every year, the national uprising day in Tibet. Most recently, the Tibetan refugees report to have been under strict surveillance and monitoring during the Chinese president's visit to Kathmandu in October 2019.

### ***Pakistan***

Pakistan is a highly diverse country, specifically in terms of religious beliefs. According to available statistics, as recorded by the National Identity Card (NIC) registrations, the Hindu community is the largest religious group after Muslims, with 1.4 million adherents. Second is the Christian community with 1.3 million followed by Ahmadiyas, declared to be non-Muslims in the 1970s, of whom there are 125,681. Over 33,000 Pakistanis are followers of the Baha'i faith, 6,146 of Sikhism, and over 4,000 are Zoroastrians, or Parsis. Lastly, around 1,500 Pakistanis have declared themselves Buddhists.

The constitution of Pakistan states that the minorities are subject to the principles of 'democracy, freedom, equality, tolerance and social justice as enunciated by Islam'. This has an effect of alienating those belonging to other faiths, since such a clause, at best, gives

them the status of second-class citizens in comparison to Muslims. Taken together with other laws, the constitution works to sustain the place of Muslims as higher than the others.

Since 1986 when an amendment to the Blasphemy Law made the punishment for insulting the Prophet Muhammad equivalent to 'death or imprisonment for life', 776 Muslims, 505 Ahmadiyahs, 229 Christians and 30 Hindus have been accused of various forms of blasphemy between 1987 and 2018. The law has been criticised by legal experts for being weak and vague, allowing many to take advantage of it to launch false accusations and malign others for the sake of personal vendettas. While there has been a stronger opposition to the blasphemy law and celebrities and renowned members of the civil society have taken a stance against persecution of minorities, the religious lobby remains just as strong, thwarting any meaningful dissent that call for an amendment or abolishing of the law.

Information regarding Afghan refugees is inevitably limited, since official statistics only trace the reported numbers of registered refugees, and there is a large number that remains unregistered. According to the UNHCR, there are 1,416,078 registered Afghan refugees in Pakistan; 68 per cent of them live in urban areas of the country, the remaining 32 per cent in Refugee Villages (RVs) in the rural areas of the country. The general institutional response to the Afghan refugees' plight has been poor. A recent ruling by the Peshawar High Court called for the restriction of activities by the Afghan refugees, including limitation on their ability to conduct businesses. Afghans conducting trade face special disadvantages, with additional checks and procedures levied on their import and export activities. Aside from these restrictive visa regimes, tariff barriers, customs regulations and administrative hindrances, Afghans face a receding space for economic activity and increasingly, unequal access to opportunities. Most issues are discounted by administrative authorities as the government continues to endorse the voluntary repatriation programme for the Afghan refugees. The initial deadline for repatriation (30 June 2019) was recently extended by a year. Current data estimates show that the UNHCR has facilitated the voluntary repatriation of 4,374,208 Afghan refugees from 2002 till December 2018. Around 5,500

more appear to have been repatriated in 2019, with the majority being women and children. Many of those who have opted for repatriation have done so in the absence of a route for seeking asylum in Pakistan, the country where most have lived their entire lives and continue to call home.

### ***Sri Lanka***

Sri Lanka's population of 21 million is dominated by the Sinhala community, which makes up 75 per cent of the population. The next two largest ethnic groups are Sri Lankan Tamils at 11 per cent and Sri Lankan Moors (Muslims) at 9.3 per cent. Buddhism is the predominant religion with 70 per cent of the population while followers of Hinduism and Islam make up 12.6 per cent and 9.6 per cent respectively, and Roman Catholic and other Christian denominations make up 7.6 per cent. Sub-sects and denominations within these predominant religious identities also have smaller communities in the country, such as the Sufi, Ahmadiya, Evangelicals, Methodists and so on.

Indian Tamils, or 'Up-Country Tamils', make up 4 per cent of the population. They became the primary 'stateless' population in post-independence Sri Lanka, after the enactment of the Citizenship Act of 1948, which denied them citizenship rights. Subsequent legislation granted them citizenship rights but this community remains one of the most marginalised in Sri Lanka with many challenges to accessing basic government services and socio-economic rights.

The 30-year civil war between the Sri Lankan state and the Liberation Tigers of Tamil Eelam (LTTE) was predicated on strong ethnic, land and language politics that continue to be a source of tension in the island. The post-war period since 2009 has also been marked by incidents of religious violence, predominantly between majority and minority communities, but also between minority communities. Following the end of the civil war, the occurrence of prolonged and systematic attacks, human rights violations and discrimination against religious minorities was brought into sharper focus. There has been a notable increase in both incidents of violence as well as systematic discrimination and harassment of minority religious communities, often coupled with

State inaction. Following the civil war, the state has pursued an active agenda of promoting Buddhism, and failing to act as right-wing majoritarian forces engaged in hate speech, harassment and violence against religious minority communities. State-sponsored Sinhala colonisation of lands in the North and East, while not a new phenomenon, has been rapidly implemented after the war.

While violence against resident Muslim and Christian minorities by factions of the majority Buddhist community predominates, violence and discrimination has also been inflicted by (majority) Sunni Muslims against Sufi and Ahmadiya Muslim minorities. Sporadic violence between Christian and Hindu communities and Muslim and Hindu communities has also been recorded. In the most recent incident of April 2019 (the Easter Sunday attacks), Islamic extremists, identified as members of local militant groups, attacked sites of Christian worship and luxury hotels in the Western and Eastern province, causing large-scale death and destruction. Following that incident, the situation in Sri Lanka has worsened for religious minorities.

Violence against Muslims is not a new phenomenon. The extent of violence against Muslims was brought to national attention, following the end of the war in 2009. The most recent period of anti-minority violence post-war is characterised by the overt triumphalism and Sinhala Buddhist nationalist discourse of the majority community. Likewise, violence against Christian communities, particularly evangelical and other Christian minority groups, has been a common occurrence in Sri Lanka's recent history. It is commonly believed that violence against Christian minorities arises as a result of the practice of proselytising and from the suspicion of alleged forced conversions of members of other religions.

Over the last decade or so, Sri Lanka has been the destination of asylum-seekers fleeing persecution in countries such as Pakistan, Afghanistan and Myanmar. There are currently approximately 1,600 refugees and asylum-seekers living in Sri Lanka. Most are religious or ethnic minorities in their home countries, such as Ahmadiyahs and Shia Muslims, Pakistani Christians, and Rohingya Muslims. Asylum-seekers in Sri Lanka register themselves with the UNHCR, and are provided with a certificate that provides them

with legal protection and justification to stay in Sri Lanka. They are not allowed to find legal employment, and the state does not provide them with any support or services. In the days immediately following the Easter Sunday attacks, refugees and asylum-seekers from Pakistan, Afghanistan and Iran came under attack and faced intimidation, threats and harassment. Many were evicted from their rented homes. The presidential election campaign in November 2019 as well as the on-going politically sensitive climate regarding Muslims have resulted in the government taking drastic measures towards asylum-seekers, and at least informally, there appears to now be a policy to deport them.

### **State of South Asian Minorities<sup>26</sup>**

This section consists of a summary of the last chapter, ‘State of Minorities in South Asia, 2019’, which provides an update on the status of minorities in countries across South Asia. The update outlines some key events in each country that have a bearing on minorities, including political, policy, and legal developments.

#### ***Afghanistan***

The result of the September presidential election in Afghanistan has finally revealed that the incumbent Ashraf Ghani has been re-elected and the current Chief Executive Abdullah Abdullah has promptly contested the result. The dispute over the election results marked the deep ethnic polarisation and has raised fears of instability with dire implications on minorities. The government of the current president has been accused of fuelling ethnic tensions and of favouring his own ethnic group over other ethnicities, causing widespread resentment among other ethnic groups.

Another important development in 2019 was the peace talks with Taliban insurgents. However, as the talks continue between the US and the group, there are speculations that intra-Afghan peace talks would also begin, following an initial agreement between the parties to the current peace negotiations. The Taliban have continued to haggle over power-sharing and might win a big share of power

---

<sup>26</sup> All the sources cited have been retained in the chapter dealing with the state of South Asia’s minorities and removed from the introduction in order to avoid duplication.

should an agreement be reached. The process has raised concerns among women and minority groups given the Taliban's well-known maltreatment of women and minorities. Both representatives of women and members of minority groups have asked the governments of Afghanistan and the US to ensure that the process is inclusive, that their concerns are addressed, and that the post-Taliban gains in terms of human rights and democracy are consolidated.

### ***Bangladesh***

Several incidents of violence against minority communities took place all over the country. There has been a similar pattern to many such episodes—hacking the Facebook ID of a minority person and posting images or messages hurting religious sentiments, the post going viral, the resultant outrage on social media and streets, which finally ends in attacks on minority communities. One such instance in October 2019 took place in Bhola District of Southern Bangladesh, leaving four killed. The clash between the police and religious bigots in Bhola, following social media propaganda, could be seen as a consequence of the administration and police's failure in previous incidents.

The Ahmadiya community also experienced scattered violence in different places of the country. In February 2019, Ahmadiyas in Panchgarh District came under attack when they were arranging a Jalsha (the annual conference of the Ahmadiya Muslim Jamat) when supporters of three Islamist organisations urged the government to prohibit the conference as well as declare Ahmadiyas as non-Muslim.

Tensions over the National Register of Citizens (NRC) in neighbouring Indian state of Assam could also be felt in Bangladesh, but apart from some demonstrations by Islamist organisations, no major incident was reported. However, after the adoption of the Citizenship (Amendment) Act 2019 in India, the border areas saw increased activity with hundreds arrested on charges of cross-border trespassing. Although the arrestees claimed to be Bangladeshis, they had no documentary evidence to back their claim. It is feared that this ingress into Bangladesh by people claiming persecution in India can have a detrimental effect on Bangladesh's religious minorities, especially Hindus.

The implementation of the Chittagong Hill Tracts Accord has been proceeding at a slow pace and the indigenous hill people of Chittagong have been forced to live a life of uncertainty and insecurity. Communal attacks on indigenous people, illegal grabbing of their lands and their eviction, rape of indigenous women, killing, abduction and other violent incidents have increased at the country's different regions. This included the disappearance in April 2019 of Michael Chakma, a top leader of United People's Democratic Front (UPDF), a Chittagong Hill Tracts-based organisation.

### ***India***

The year 2019 was a tumultuous one for India's religious minorities, particularly its Muslims, with the country's liberal-secular polity coming under fresh and renewed attack following the re-election of the Hindu nationalist Bharatiya Janata Party (BJP) government led by Narendra Modi. In the first parliamentary session after its resumption of power, the BJP government unveiled a slew of legislations that have the potential to further embolden the targeting of the country's religious minorities, including the Unlawful Activities (Prevention) Amendment (UAPA) Act, the Muslim Women (Protection of Rights on Marriage) Act, and the revocation of Article 370 of the Indian constitution—a clause that had granted limited autonomy to Jammu & Kashmir, India's only Muslim-majority state.

The government response to opposition to the revocation of Article 370 has been strong with thousands of local Kashmiri Muslims detained, and night-time raids and torture being employed by Indian security forces. Communications had initially been blocked and the internet services remained suspended at the time of writing. Earlier, Kashmiri Muslims across India faced harassment and targeted violence following a terrorist attack in the erstwhile state that had left 40 security personnel dead.

In the state of Assam, the publication of the final National Register of Citizens (NRC) in August left out 1.9 million people, bringing them one step closer to being stripped of their citizenship. The Indian government has announced its intentions to extend the NRC exercise to the rest of the country, and has already begun

the construction of massive detention centres in anticipation. Related to the NRC exercise was the passage of the Citizenship (Amendment) Act (CAA) in December 2019, which eases the path to Indian citizenship for all non-Muslims fleeing religious persecution in Afghanistan, Bangladesh and Pakistan. The passing of the CAA sparked protests in India's north-eastern states, where the BJP is accused of communalising an ethno-linguistic issue, and in Muslim universities and elsewhere across the country, with the police response being violent, particularly in Muslim dominated institutions and localities. The CAA has been challenged in India's Supreme Court (SC) on its constitutionality. But, recent SC judgements on minority rights raises serious questions about its willingness to defend India's founding principle of secularism.

Elsewhere in India, the violent targeting of minorities, religious or otherwise, has continued. The victims are usually Dalits or Muslims, often the poorest and most vulnerable among them. While there are some figures available, the real number of atrocities is believed to be much higher. The perpetrators are usually radical Hindus, and with the BJP in power, they operate with impunity. The official response from the state has been denial, with the National Crime Records Bureau's 2017 report released in October 2019 refusing to divulge any data about mob lynching.

## ***Nepal***

There are 6,470 Bhutanese and 12,540 Tibetan refugees in Nepal recorded by the United Nations High Commissioner for Refugees. While more than 100,000 Bhutanese refugees have been resettled in third countries, those remaining in Nepal are in limbo with humanitarian agencies ending their decades-long support at the end of 2019.

Tibetan refugees reported harassment from the police before the visit by Chinese President Xi Jinping in October 2019, with the arrest of a number of Free-Tibet campaigners and human rights activists from Kathmandu. The celebrations of the 84th birthday of the Dalai Lama was banned for Tibetans living in Nepal, in a reversal from the previous years.

The Constitution of Nepal 2015 defines the country as secular. Yet, there are inherent contradictions as laws that disadvantage certain

communities over others still exist such as the criminalisation of the slaughter of cows. In 2018/19, 34 such cases have been registered in the Supreme Court. Acts of religious conversion are prohibited by the Constitution and reports of arrests on charges of conversion continued.

Some pro-Dalit policies were also introduced such as the government providing land to landless Dalits, and the government of Province 2 drafting a bill proposing full scholarship to all Dalit students in higher and technical education as well as ration cards and health benefits. Dalits, however, report facing both structural and physical violence in their communities as seen by Dalits, including lawmakers being denied accommodation in the capital, being barred from shops and being confined to specific areas during festivals and celebrations.

Nepal has been hailed as a leader in South Asia vis-à-vis the rights of sexual minorities, with 1500 individuals receiving their citizenship as per their desired gender category as 'others' till 2019. Yet, sexual minorities reported facing discrimination, even at home. The 2017 Civil and Criminal Codes continue to define marriage as a union between a man and a woman despite a recommendation in 2015 by the Supreme Court that same-sex marriage be legalised.

### ***Pakistan***

In Pakistan, Christians, Hindus, Ahmadiyas, Balochs and Pashtuns are under attack, by both state and non-state actors. But, the lack of data prevents a thorough analysis of the situation and also works against planning for action against discrimination toward minorities. The country's vaguely formulated blasphemy law, in which a conviction is followed by a mandatory death sentence, targets religious minorities disproportionately and is in many instances used to settle personal scores.

The year 2019 saw increasing instances of attacks against religious minorities. There were reports of private buildings displaying signs saying 'Selling or renting any apartment in this building to non-Muslims is prohibited'; and shopkeepers have forbidden services to Ahmadiyas and Shias. A ranking government official was even forced by a horde of students to apologise for calling for equal rights and harmony with the Ahmadiya community.

The phenomenon of women who are religious minorities being married fraudulently to Chinese men and forced into prostitution or slavery has been on the rise, which the government brushes it off as ‘rumours and fabricated facts’. Persecution of Christians is similarly denied and described as driven by ‘Western interests’. Authorities have reached out to social media platforms such as Facebook and Twitter for help in tracking blasphemy.

Discrimination comes from both citizen vigilantism as well as government action. The country’s poor resolve to address minority concerns does not hold a promising future. Emblematic was the rejection by the National Assembly of a bill allowing non-Muslims to serve as president and prime minister. Six months after the approval of legislation against forced conversions by both houses of Parliament, the parliamentary committee tasked to work on it was finally notified. The committee remains further bogged down by administrative delays.

### ***Sri Lanka***

Several factors impacting minority communities in Sri Lanka in the year 2019 can be linked to two key events: the terrorist bombings on Easter Sunday in April, and secondly, the election of Gotabaya Rajapaksa as president in November. Political, policy and legal developments as well as hate speech, incidents of violence and incarceration that took place can be drawn from these two events. However, it is important to note that attacks on minorities existed before and outside of these events as well.

Islamist terrorists were identified as the perpetrators behind the six bombings that took place on Easter Sunday in April 2019. That was followed by increased scrutiny of Muslims by security and law enforcement personnel. A number of Muslims were arrested for the possession of the *Quran* and Islamic writings in their homes, or for the contents of their social media accounts. Among the emergency regulations put in place was the ban on wearing the *burqa* or *niqab*. The immediate aftermath of the bombings saw a rise in hate speech and false news towards and about Muslims. There were also calls orchestrated by the media to boycott Muslim businesses. In May, there were mob attacks against Muslim-owned businesses and mosques in the North-Western province.

Several politicians and Buddhist religious leaders questioned the need for Muslims to have ‘different laws’ in Sri Lanka, in reference to the Muslim Marriage and Divorce Act. The Cabinet hastily passed a draft bill and its contents were not made public till much later. The Act has been criticised for not being adequate in protecting Muslim women in marriage.

Gotabaya Rajapaksa’s candidacy for president in the aftermath of the Easter attacks was fraught with fear for Muslims. His continued patronage of the Bodu Bala Sena (BBS), an extremist group that has spread violent speech and coordinated violence against their community, was a cause for concern. Stoking fears against the Muslim community constituted a large part of the Rajapaksa campaign, either through social media posts or politicians and MPs who supported him.

When results were announced, electoral maps indicated that support for Rajapaksa was lowest in the Northern and Eastern provinces. Sinhala citizens and commentators on social media used this voting pattern to claim that Tamils and Muslims in these areas still wished for ‘Eelam’, referring to the LTTE. The assertion that Rajapaksa won ‘without the support of the minorities’ has been used to reinforce the status of Sinhala-Buddhists in Sri Lanka.

For the first time in Sri Lankan history, a presidential candidate spoken on behalf of the LGBTIQ+ community and promised them equal rights before the law. Anura Kumara Disanayake, candidate for the National People’s Power Movement, declared that if he was elected, sections of the law that discriminate against the community would be repealed, and discrimination faced by them would be addressed. The silence of Rajapaksa on this community’s needs, indicates it is unlikely there will be an improvement in their status over the next five years.

## **Conclusion and Recommendations**

Even discounting the case of the Rohingya where the countries they have sought refuge in have almost all made them feel quite unwelcome, barring a few anomalies, the vast majority of refugees in South Asia have been denied the right to a dignified life in the host countries. Besides their uncertain status, there are few opportunities available to refugees and asylum-seekers

for economic advancement, and they have been made to rely on handouts from government and international agencies that are in almost all cases woefully inadequate.

Rising majoritarianism in many countries have also fuelled the negative sentiments against refugees and asylum-seekers, particularly if they belong to a religion that has been demonised domestically or if they belong to sects that are viewed by the majority as deviant in one way or another. These have often resulted in violence against minority religious groups. Unfortunately, minority sects also face discrimination and violence from fellow adherents of the same faith but of a different sect even as the latter face persecution from extremists belonging to the majority religions.

Conditions have also been created in all South Asian countries for large populations of these groups to be rendered stateless in countries they have lived in all their lives. While geopolitics also plays a part in the systematic denial of any kind of official recognition to some of these groups, in most cases, it is largely this fear and even hatred of religious and other minorities that serve as drivers of this inhumane policies.

As non-citizens in a region where all countries barring one has signed the Refugee Convention, and none of the South Asian states have signed up to the Conventions on Stateless People, refugees and asylum-seekers along with the stateless form the most vulnerable population group as evidenced in this report through incidents of violence and denial of even the most basic services. It is the onus of all South Asian governments therefore to bring positive change to the lives of these groups of people, and it is for this reason that the recommendations are aimed towards them.

*All the governments in South Asia are urged to:*

- Sign the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol<sup>27</sup> in order to provide protection and services to all the refugees in the region.
- Concurrently, introduce domestic legislation to cover refugees and asylum-seekers to grant them the opportunity lead a dignified life.

---

<sup>27</sup> Afghanistan is the only South Asian country to have signed both.

- Ensure that the universal principle of non-refoulement of asylum-seekers is not transgressed.
- Initiate steps to facilitate the repatriation of refugee groups to their home countries under conditions that guarantees their safety.
- Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in order to prevent population groups being rendered stateless arbitrarily.
- Design and implement procedures to effectively determine statelessness, and take steps to introduce measures to protect stateless persons or those at risk of statelessness from arbitrary detention.
- Recognise de facto and de jure statelessness as disproportionately a minority issue, and adopt measures to more effectively address the root causes of statelessness.
- Take steps to incorporate the provisions of international agreements into domestic legislation to protect the rights of all minority groups, including refugees and the stateless. Make sure that these measures are attuned to the particular challenges facing those most marginalised.
- Collect and publish disaggregated data detailing the number of all the vulnerable groups and their living conditions, while ensuring appropriate data protection.
- Ensure there is no discrimination based on religion, ethnicity or otherwise against all refugee groups. Where not yet done, enact laws against discrimination and strictly implement the same, or repeal existing legislation that promotes discrimination.

*Civil society across South Asia is encouraged to:*

- Continue to build and advance dialogue and initiatives across the region to better understand and address the regional dynamics of the issues facing minorities, including migrants, refugees, and those experiencing or at risk of statelessness.
- Work collectively to advocate for a South Asia regional mechanism to effectively promote and protect universally guaranteed human rights, as well as minority rights and those of migrants, refugees, and stateless populations.



# Afghan Religious Minorities

## Victims of Negligence

Hassan Ali Faiz

---

### **An Introduction to Afghanistan's Minorities**

Afghanistan is a mosaic of ethnic groups with diverse cultures, languages, and religions. The 2004 Constitution of Afghanistan lists 14 ethnic groups in the country: Pashtun, Tajik, Hazara, Uzbek, Baloch, Turkmen, Nuristani, Pamiri, Arab, Gujar, Brahui, Qizilbash, Aimaq and Pashai. Other ethnic groups are socially categorised as being part of other ethnicities. These groups not listed in the Constitution have protested 'being annexed' to other ethnic groups<sup>1</sup> and have urged the government to designate them independently. Some minorities not listed are Moghols, Kyrgyzs, Sadats etc. while the Hindu-Sikh is a religious minority also not recognised in the Constitution even though Article 2 grants them freedom to exercise their faith and perform religious rites within the limits of the provision of law.

Afghans<sup>2</sup> have historically been associated with and identified by their ethnicity. Ethnic identity has played an important role in

---

1 "‘Sadat’ ba aqwan Afghanistan ezafa me shawad' ('Sadat' is to be added to the [list] of Afghan ethnic groups), *BBC*, March 13, 2019, accessed November 11, 2019, <https://www.bbc.com/persian/afghanistan-47551657>.

2 The word 'Afghan' is still controversial. The ethnonym has been widely used in the past to refer to Pashtuns and is still used to refer to ethnic Pashtuns in some places. The word Afghanistan, in that sense, means 'the land of the Pashtuns'. The use of the word 'Afghan' in the new electronic identity card in 2018, stirred heated debate and generated ethnic-based vitriol between Pashtuns and non-Pashtun ethnic groups. As Pashtuns insisted on the use of the word 'Afghan' in the ID card to designate 'Afghan' as the nationality for all Afghan citizens, the members of other ethnic groups protested against it. See: Hamid Shalizi, 'Who is an Afghan? Row over ID cards fuels ethnic tension', *Reuters*, February 8, 2018, accessed Feb 22, 2020, <https://www.reuters.com/article/us-afghanistan-politics/who-is-an-afghan-row-over-id-cards-fuels-ethnic-tension-idUSKBN1FS1Y0>.

shaping their social and political life. The members of the dominant ethnic groups have benefited from this, while it has adversely affected the lives of the marginalised groups. Throughout the volatile political history of the country, the minorities have been stripped of their rights. They have been oppressed, forced out of their homelands and even massacred.<sup>3</sup>

At present too, ethnicity and religious belief remain contentious in Afghanistan. Many civil society organisations are reluctant to work on, or even discuss ethnic issues. In a group discussion organised by us, a participant warned us to be careful while using the terms ‘majority’ and ‘minority’, as they have become politicised. Furthermore, specific data on the population of ethnicities in Afghanistan continues to be disputed. No national census has been conducted in Afghanistan since a partial count in 1979, and years of war and population dislocation have made an accurate count of the population impossible. Hence, current estimates are just rough approximations.

According to the US Department of State Country Report of 2010, the largest ethnic group in Afghanistan is the Pashtuns, comprising 42 per cent of the Afghans. The Tajiks are the second largest, at 27%, followed by the Hazaras (9%), Uzbeks (9%), Aimaq (4%), Turkmen (3%), Baluch (2%) and other groups that make up the remaining 4%.<sup>4</sup> Linguistically, Persian (Dari/Farsi)<sup>5</sup> is widely spoken. It is estimated that 50-55 per cent of Afghans speak Dari, followed by Pashto at 35 per cent. Turkish is spoken by 11 per cent of the population and the remaining 4 per cent speak other languages.<sup>6</sup>

Islam is the official religion of Afghanistan and approximately 99.7 per cent of Afghanistan’s population is Muslim.<sup>7</sup> Sect-wise,

---

3 Shahrani, Nazif, ‘Conflict and peace in Afghanistan: A northern, non-Pashtun perspectives’, *Accord* 27, (June 2018).

4 US State Department, Country Reports on Human Rights Practices in 2010, <https://www.refworld.org/docid/4da56defa3.html>.

5 ‘Persian’ is the English term for Farsi or Dari or Tajiki. In Iran, the language is called Farsi and in Afghanistan and Tajikistan, Dari and Tajiki, respectively.

6 ‘South Asia: Afghanistan’, *The World Factbook*, Central Intelligence Agency, accessed February 19, 2020, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>.

7 US State Department, Country Reports on Human Rights Practices 2011,

too, the Sunnis are the majority at around 80-85 per cent of the population compared to Shias who are considered to be between 15-19 per cent.<sup>8</sup> However, these numbers are merely estimates and are disputed. Shia leaders estimate the Shia population of the country at around 20-25 per cent while Sunni leaders claim that the Shias constitute only 10 per cent.<sup>9</sup> The majority of the Shia population are ethnic Hazaras.<sup>10</sup> However, several other ethnic groups are also Shia by religion. There is no statistical information on the number of Christians and Jews in Afghanistan, and the Hindu-Sikh community is generally believed to be less than 0.3 per cent of the entire population.

In Afghanistan, ethnic boundaries are so strong that it has overshadowed the perception of majority and minority in terms of religion and language. In practice, the issue of discrimination against some ethnic minority groups—whose members are also religious minorities—is plethoric. Some ethnic groups are under constant and systematic discrimination and repression such as the Uzbeks, Hazaras, Ismailis, Pamiris, Shughnans, and Baluchis. There is no protection measure in place to safeguard the minorities and their rights.<sup>11</sup>

This chapter delves into the issue of religious and ethnic minorities in Afghanistan. Although the theme of this year's report is 'refugees, migrants and stateless', including minorities among them, in Afghanistan, there is no data available on the number of refugees, migrants and stateless.

The chapter is based primarily on a review of the literature, supplemented by some group discussions and interviews. Finding data is a challenge in Afghanistan given the absence of any

---

accessed November 11, 2019, <https://2009-2017.state.gov/j/drl/rls/hrrpt/2011/sca/186457.htm>.

<sup>8</sup> 'Country Profile: Afghanistan, August 2008' *Library of Congress-Federal Research Division*, accessed February 22, 2020, <https://www.loc.gov/rr/frd/cs/profiles/Afghanistan.pdf>.

<sup>9</sup> US State Department, *Country Reports on Human Rights Practices 2011*, accessed November 11, 2019, <https://2009-2017.state.gov/j/drl/rls/hrrpt/2011/sca/186457.htm>.

<sup>10</sup> 'Hazara | Definition, Culture, History, & Facts,' *Encyclopedia Britannica*, accessed November 11, 2019, <https://www.britannica.com/topic/Hazara>.

<sup>11</sup> Focus Group Discussion. Civil Society and Human Rights Network., October 22 2019.

comprehensive source on the status of minorities in Afghanistan, with data and statistics disaggregated in terms of ethnic and religious groups.

### **Legal Provisions on Minorities in Afghanistan**

The 2004 Afghan Constitution is believed to be a rather progressive document since it protects the rights of all Afghans irrespective of their ethnicity, religion, and language. According to Article 6 of the Constitution, '[T]he state shall be obligated to create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realisation of democracy, attainment of national unity as well as equality between all peoples and tribes and balanced development of all areas of the country.' Likewise, Article 7 states: 'The state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights.'

At the same time, however, other provisions in the Constitution violate these guarantees. For instance, Article 1 states that Afghanistan 'will be an Islamic state'; Article 2 states that 'the religion of the state will be Islam'; and Article 3 stipulates that 'no law shall contravene the tenets of Islam.' Article 62 limits the position of the president to an adherent of Islam, stating that 'the president of Afghanistan shall be Muslim'. The contradictions in the Constitution are further evidence by the fact that while Article 22 prohibits discrimination, neither the Constitution nor other law defines 'discrimination'. The Constitution further declares that in case the law is unclear, the Hanafi jurisprudence, one of the four schools of thought of religious jurisprudence within Sunni Islam, shall apply.

In terms of its international commitments, the government of Afghanistan lags far behind in implementing the treaties to which it is a state party even though it is party to seven out of the nine core human rights conventions. This includes the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Elimination of Racial Discrimination (ICERD). Afghanistan has failed to report under

### **Refugees from Waziristan**

In 2014, thousands of civilians fled North Waziristan District of northwest Pakistan to Afghanistan to escape Pakistani military operations in the area. While many of these have since returned to Pakistan, around 72,000 refugees are estimated to be living in Afghanistan, with the majority in Gulistan Refugee Camp.

These refugees are in a limbo as humanitarian international organisations, including UNHCR and WFP, have begun to withdraw or scale down their interventions. The refugees are in no position to return, due to rumours that many families have been detained upon return, and their settlements, too, have been destroyed. They also face difficulties to remain as they have no identification documents and while UNHCR provided the group with prima facie refugee status in 2014, it was never formalised.

This situation is further exacerbated by the fact that due to the border dispute between Pakistan and Afghanistan, the Afghan government prefers to treat the Waziris as internally displaced people although refusing them any identification. Because of this, these refugees find themselves unable to be part of any government programmes or even enrol their children into schools.

---

Source: 'Left Behind: Waziristan Refugees in Afghanistan risk being forgotten as humanitarian assistance decreases' (Norway: NRC, 2019), accessed February 13, 2020, <https://www.nrc.no/globalassets/pdf/briefing-notes/left-behind-waziristan-refugees-in-afghanistan/left-behind---situation-for-waziristan-refugees.pdf>.

ICERD for the past 36 years. As a result, this important document on minority rights remains unimplemented, which is all the more glaring since the Constitution does not even recognise any ethnic, religious and linguistic group as a minority.

### **Ethnic and Religious Minorities in Afghanistan**

In Afghanistan, the Sunni dominant rulers have historically discriminated against minority Shias. Even among the Shia, the Hazaras have been the most persecuted minority group in the country.<sup>12</sup> From 1890 to 1893, it is estimated that around 60 per cent of the entire Hazara population was massacred by King Abdul Rahman, a Pashtun, in an act of ethnic cleansing.<sup>13</sup> The persecution

---

<sup>12</sup> 'Hazaras, the single most persecuted ethnic minority in Islamic Pakistan', *New Delhi Times*, July 15, 2019, accessed February 22, 2020, <https://www.newdelhitimes.com/hazaras-the-single-most-persecuted-ethnic-minority-in-islamic-pakistan>.

<sup>13</sup> Melissa Kerr Chioventa, 'Afghanistan: Still Searching for Inter-Ethnic

against Hazaras continues to date. Ismaili Shias have also faced discrimination throughout their history. In particular, they were massacred and forced into exile during the reign of King Abdul Rahman and even later under the Taliban regime.<sup>14</sup>

Unlike other religious minorities, the Hindu-Sikhs have been able to live rather harmoniously with other groups. Even during the reign of King Abdul Rahman, which was marked by despotism and repression of minorities, Hindu-Sikhs remained safe. However, discrimination persisted as they were subjected to an annual Jizya, a separate tax for non-Muslims living under Muslim authority. With the takeover of power by the Mujaheddin and the orthodox Taliban, the Hindu-Sikhs joined the rank of persecuted religious minorities in Afghanistan.

### **Shia Hazara<sup>15</sup>**

The persecution of Shia Hazara can be traced back to the 1890s, during the reign of King Abdul Rahman, whose crackdown of non-Pashtuns, in particular the Hazaras, is emblematic. The persecution of Hazaras took the form of mass killings, enslavement, and displacement of thousands. As one source puts it: '[T]housands of Hazara men, women, and children were sold as slaves in the markets of Kabul and Kandahar, while numerous towers of human heads were made from the defeated rebels as a warning to others who might challenge the rule of the Amir.'<sup>16</sup>

Religion was an important contributing factor toward the crackdown of the Hazaras. The king had ordered the religious leaders of the country to issue a *fatwa*<sup>17</sup> against Hazaras and pronounce them *kafir*.<sup>18</sup> He then ordered that the Hazaras be

Equilibrium', *euroasianet*, October 12, 2012, accessed February 22, 2020, <https://eurasianet.org/afghanistan-still-searching-for-inter-ethnic-equilibrium>.

14 'Afghanistan: The Massacre in Mazar-i Sharif', *Human Rights Watch*, November 01, 1998, accessed February 22, 2020, <https://www.hrw.org/report/1998/11/01/afghanistan-massacre-mazar-i-sharif>.

15 Majority of Hazara ethnic group are Shia (both Imami and Ismaili) Muslim while a large number of Hazaras are Sunni Muslim. However, some of those Sunni Hazaras call themselves Tajik.

16 Sayed Askar Mousavi, *The Hazaras of Afghanistan: A Historical, Cultural, Economic and Political Study* (London: Palgrave Macmillan, 1997), 126.

17 Islamic religious order.

18 Infidels (non-believers).

massacred. Having been able to get religious sanction to declared Hazaras to be ‘infidels’, ‘the army and tribal levies were free to act as they pleased with regard to the Hazaras and their property when their land was occupied.’<sup>19</sup> The king stirred non-Shias, including people from the then British India, to suppress the Hazaras by invoking it as a religious duty.<sup>20</sup> While it is unclear if the king did consider Hazaras to be infidels, he was able to ‘manipulate the situation using religion as a means to pursue his desires.’<sup>21</sup> The successors of King Abdul Rahman used the same grounds for continuing the persecution of the Shias until much later.<sup>22</sup> King Mohammad Nader Shah (1929-1933) brutally suppressed several Hazara rebellions, including the Koh Daman revolt in November 1930.<sup>23</sup> However, his reign did not last long as he was assassinated by an ethnic Hazara.

There is a belief that Nader Khan might have been assassinated in retaliation of his treatment of Hazaras, including heavy taxes on them.<sup>24</sup> Following the assassination, Hazaras were barred from holding office, enrolling in universities and joining the armed forces.<sup>25</sup> The ban remained effective until the 1970s.<sup>26</sup>

The social, economic and political situation of the Hazaras improved at the time of the communist regime from 1978 to 1992. At the time, Hazaras occupied senior governmental positions and were treated relatively on par to other Afghans.<sup>27</sup> However,

---

19 Jennifer Creasy, ‘The Religious Identity of the Hazaras of Afghanistan and Modern Day Pakistan’ (Mth thesis, University of Glasgow, 2009), 35.

20 Ibid.

21 Ibid.

22 Anonymous Interview: Civil Society and Human Rights Network (CSHRN), October 02 2019, Kabul, Afghanistan.

23 Vladimir Boyko, ‘Kohdaman Uprising of 1930’, Afghanistan Center at Kabul University, accessed February 22, 2020, [http://www.afghandata.org:8080/xmlui/bitstream/handle/azu/3166/azu\\_acku\\_pamphlet\\_ds361\\_b69\\_2001\\_w.pdf?sequence=1&isAllowed=y](http://www.afghandata.org:8080/xmlui/bitstream/handle/azu/3166/azu_acku_pamphlet_ds361_b69_2001_w.pdf?sequence=1&isAllowed=y).

24 Round Table Discussion: Civil Society and Human Rights Network (CSHRN), October 2, 2019, Kabul, Afghanistan.

25 ‘Coming up from the Bottom—Afghanistan’s Hazaras,’ *The Economist*, accessed November 11, 2019, <https://www.economist.com/asia/2007/02/15/coming-up-from-the-bottom>; Sarah Hucal, ‘Afghanistan: Who are the Hazaras?’ *Aljazeera News*, accessed February 24, 2020, <https://www.aljazeera.com/indepth/features/2016/06/afghanistan-hazaras-160623093601127.html>.

26 Interview with human rights activist, Kabul, November 2019.

27 Interview with human rights activist, Kabul, November 2019.

after the collapse of the communist regime in 1992, their situation deteriorated again.

When the extreme Sunni militants,<sup>28</sup> the Taliban, overtook the control of Kabul in 1996, it was their first encounter with non-Pashtuns on such a scale. Their treatment of other non-Pashtun ethnic groups was marked by suspicion. As they began pushing militarily towards the north, the Taliban faced fierce resistance from non-Pashtun ethnic groups. In 1997, in an attempt to seize control of Mazar-e-Sharif, the capital of the northern region, Abdul Malik, an Uzbek warlord—who had changed allegiance from the Taliban to Hizb-e Wahdat (the Hazara-led party) killed thousands of the Taliban soldiers in street battles.<sup>29</sup> When the Taliban gained control of Mazar-e-Sharif in 1998, they massacred Hazaras, apparently due to their religious differences and old blood feuds.<sup>30</sup> It is estimated that two to five thousand Hazara civilians were summarily executed at the time.<sup>31</sup> Hazaras, who escaped the barrage, were forced to either convert to Sunni Islam or leave the country. They were also forced to pay Jizya or face death.<sup>32</sup> There have been numerous other instances of widespread killing of the Hazaras, such as the massacre at Yakaolang in January 2001,<sup>33</sup> at Robatak Pass in May 2000,<sup>34</sup> at Bamiyan in 1999,<sup>35</sup> and at Mazar-e-Sharif in September 1997.<sup>36</sup> In 2001, human rights groups unearthed and documented bodies of hundreds of Hazara men, women and

---

28 Rashid Ahmed, *Taliban: militant Islam, oil and fundamentalism in Central Asia* (New Haven, CT: Yale University Press, 2010).

29 'Taliban Massacre based on Ethnicity,' *The Washington Post*, accessed November 11, 2019, <https://www.washingtonpost.com/archive/politics/1998/11/28/taliban-massacre-based-on-ethnicity/efe15f81-abad-4e57-96f1-046cc59d1d48>.

30 Human Rights Watch, 'Afghanistan: The Massacre in Mazar-e Sharif', November 1998, <https://www.hrw.org/legacy/reports98/afghan/Afrepor0.htm#TopOfPage>.

31 Ibid.

32 Ibid.

33 Human Rights Watch, 'Massacre in Yakaolang', January 2001, accessed November 11, 2019, <https://www.hrw.org/reports/2001/afghanistan/afghan101-03.htm>.

34 Human Rights Watch, 'Summary', accessed November 11, 2019, <https://www.hrw.org/reports/2001/afghanistan/afghan101.htm>.

35 Ibid.

36 Ibid.

children<sup>37</sup> who had been killed and dumped in the Shahjoi district of Zabul Province in southern Afghanistan.<sup>38</sup>

### **Post-Taliban Era**

Following the collapse of the Taliban regime in 2001, and until the recent emergence of the ISIS, ethnic Hazaras could breathe a sigh of relief. However, they were still occasionally persecuted by the remnants of the Taliban and never enjoyed the same status as the ruling ethnic group. Taliban militants were also responsible for increasing attacks, ambushes and kidnappings on the road from Kabul to Bamyan, which is the homeland of Hazaras.<sup>39</sup>

When ISIS was at its peak in Iraq and Syria, the militant group spread out to other countries, including Afghanistan, where the Islamic State in Khorasan Province (IS-KP) faction carried out several attacks on religious minorities, in particular the Shia Hazara community. Suicide bombings targeting public events and places of worship of Hazaras saw an increase. For instance, in 2016, a suicide bomber targeted a peaceful protest conducted by the Hazara community over a development project, killing 80.<sup>40</sup> It was the deadliest attack on Hazara civilians since the Taliban collapse in 2001. In 2017 and later in 2018, bombings killed and injured close to 300 civilians.<sup>41</sup> In August 2019, IS-KP claimed responsibility of a

---

37 Niamatullah Ibrahim, *The Hazaras and the Afghan State: Rebellion, Exclusion and the Struggle for Recognition* (London: Hurst & Company, 2017), 204.

38 The Afghanistan Independent Human Rights Commission (AIHRC) has also documented the occurrence. I have witnessed a part of their work when I was working with the organisation.

39 “Dara-e Marg”, Chera Jalriz aman na me shawad? (‘The Death Road’ Why Jalriz is not secured?), *Etilaatroz Daily*, accessed November 11, 2019, <https://www.etalatroz.com/83966/death-valley-why-not-secure-jalrez>.

40 The protest was over the re-routing of a power-line which would cut the Hazara community out of a multi-million dollars’ power transmission line project. It is anticipated that the targeting killed some of the most educated members of the community. ‘Afghanistan mourns protest blast victims,’ *Aljazeera News*, July 23, 2016, accessed November 11, 2019, <https://www.aljazeera.com/news/2016/07/deadly-blast-kills-10-kabul-protest-160723105351090.html>.

41 Tamim Hamid, ‘Afghan Shias Targeted In Deadly Attacks in Recent Years: Report’, *Tolo News*, May 30, 2018, <https://tolonews.com/afghanistan/afghan-shias-targeted-deadly-attacks-recent-years-report>; Fabrizio Foschini, ‘Hitting Gardez: A vicious attack on Paktia’s Shias’, *Afghan Analyst Network*, August 18, 2018, <https://www.afghanistan-analysts.org/hitting-gardez-a-vicious-attack-on-paktias-shias>.

bloody suicide attack at a wedding hall in Kabul,<sup>42</sup> stating that the reason for the attack was that Shias are ‘infidels’.<sup>43</sup>

### ***Ismaili Shia***<sup>44</sup>

Shias are divided into two main branches, the Imami and the Ismaili. The majority of Shias are Imamis. In Afghanistan, too, the Imami Shias are a majority. Ethnically, the Ismaili Shias are mainly Hazaras but there are Ismailis among Tajiks and Sadats.

Ismailis are among the most oppressed religious minorities in Afghanistan who have been suppressed by the dominant ethnic groups within the state bureaucracy throughout modern Afghan history. They are generally treated with suspicion by other ethnic groups, even by Imami Shias. They have endured the same level of persecution as Hazaras, but also face a higher degree of religious persecution as they were suppressed by the Sunnis and ignored by the Imami Shias. Even at present, Ismailis are excluded on the basis of their religion and barred from holding positions of political authority.<sup>45</sup>

The emergence of the Taliban resulted in the position of Ismailis becoming even more precarious. The Taliban massacred Ismailis in 2000 and 2001. In May 2000, 31 noncombatant Ismailis were summarily executed near the Robatak Pass in Baghlan after being held captive for four months.<sup>46</sup> One of the worst periods for Ismailis was in 1998, when the Taliban forces overpowered their frontline resistance militias, entered their settlement and began indiscriminate killing, pillage, and destruction. A local elder claimed that ‘around 400 people in the valley were killed, including refugees who had fled

---

42 ‘Afghanistan: Bomb Kills 63 at Wedding in Kabul’, *BBC*, August 18, 2019, accessed November 11, 2019, <https://www.bbc.com/news/world-asia-49383803>.

43 Ami Kazmin, ‘ISIS Claims Responsibility for Suicide Bombing at Kabul Wedding,’ *Financial Times*, accessed November 11, 2019, <https://www.ft.com/content/8294328e-c1b7-11e9-a8e9-296ca66511c9>.

44 Most Ismailis are ethnic Hazara who live in central and northern areas of Afghanistan. Ismailis of Tajik ethnicity live in north-eastern province of Badakhshan.

45 ‘Official Reports | U.S. Embassy in Afghanistan,’ accessed November 11, 2019, <https://af.usembassy.gov/our-relationship/official-reports/?ga=2.230763423.1827258046.1573476024-1261957251.1573476024>.

46 Human Rights Watch, ‘Afghanistan: Massacres of Hazaras—Background,’ accessed November 11, 2019, <https://www.hrw.org/reports/2001/afghanistan/afghan101-02.htm>.

from other parts, all their weapons and grain and some 1,500 vehicles were taken, and only 60 of the 160 houses were left standing'.<sup>47</sup> The Taliban also set ablaze a library in Pul-e-Khomri, which belonged to Ismailis. It is believed that the library contained 50,000 books.<sup>48</sup>

### **Post-Taliban**

In the post-Taliban era, things have not changed much in favour of the Ismailis. However, like other minorities, they have benefited from the general environment of security owing to the presence of the international community. Their economic situation also improved along with this security as institutions such as the Aga Khan Foundation, the non-profit development agency founded by the hereditary Imam of Shia Ismailis, could operate in areas inhabited by Ismailis.

Systematic discrimination against the Ismailis still prevails and their access to facilities and essential services is very limited. They are barred, in practice, from holding government positions. For instance, in Doshi district of Baghlan province, where majority of the inhabitants are Ismailis, the district governor is the only Ismaili holding a senior position in the province; almost all other government staff are non-Ismailis.<sup>49</sup>

The Ismaili Shias also face severe societal discrimination from other Muslims, both Shia and Sunni. They have little communal interactions and intermarriages occur rarely. Ismailis are considered 'unclean' by ordinary Imami Shias.<sup>50</sup>

### **Hindu-Sikh**

The Hindu-Sikh form a very small percentage of the Afghan population. Though there is no precise data on their population, a report by Reuters details that there are fewer than 300 Hindu-Sikh families in the country at present, while as many as 250,000 Sikhs

<sup>47</sup> 'Afghanistan: Troubled Ismaili Homecoming—Afghanistan', *ReliefWeb*, accessed November 11, 2019, <https://reliefweb.int/report/afghanistan/afghanistan-troubled-ismaili-homecoming>.

<sup>48</sup> 'Ketab Suzan-e Digar' (The Other Book Burners), accessed November 11, 2019, <http://www.khorasanzameen.net/php/read.php?id=1274>.

<sup>49</sup> Round Table Discussion: Civil Society and Human Rights Network (CSHRN), 02 October 2019, Kabul, Afghanistan.

<sup>50</sup> Focus Group Discussion. Civil Society and Human Rights Network, 22 October 2019.

and Hindus were living in Afghanistan before the civil war of the 1990s.<sup>51</sup> Most Hindu- Sikhs primarily dwell in major cities, with the largest numbers living in Jalalabad, Ghazni, Kabul, and to a smaller extent in Kandahar.<sup>52</sup>

The attitude towards non-Muslims in Afghanistan has been one of tolerance throughout its history. Even at the time of King Abdul Rahman, the Hindu-Sikhs escaped the rough handling of the state apparatus though they had to pay the discriminatory Jizya.<sup>53</sup> The Hindu-Sikhs had been living in prosperity and harmony until the civil war of 1992. With the breakout of the civil war, they became prime targets for kidnappings, extortion, and banditry.<sup>54</sup> They were harassed, their lands were taken by force, and many were even killed for expressing their faith, even in insignificant ways.<sup>55</sup> Their properties were looted and their houses were occupied by the Mujaheddin during the civil war of 1992-1996. Specifically, with the destruction of the Babri Masjid in India in 1992, the Mujaheddin came down hard on the Hindu-Sikh community. They destroyed their temples and harassed the members of the community.<sup>56</sup> The situation led to their *en masse* exodus to India and other places.

With the emergence of the Taliban, Hindu-Sikhs had to endure further repression and persecution. As the Taliban took control of Kabul in 1996, they took a more repressive approach towards non-Muslims, even ordering Hindu-Sikhs to wear yellow badges

---

51 'We Cannot Live Here: Afghanistan's Sikhs Weigh Future after Suicide Bombing', *Reuters*, accessed November 11, 2019, <https://www.reuters.com/article/us-afghanistan-sikhs/we-cannot-live-here-afghanistans-sikhs-weigh-future-after-suicide-bombing-idUSKBN1JS0VZ>.

52 Ibid.

53 Fabrizio Foschini, 'The Other Fold of the Turban: Afghanistan's Hindus and Sikhs' *Afghanistan Analyst Network*, accessed November 19, 2019, <https://www.afghanistan-analysts.org/the-other-fold-of-the-turban-afghanistans-hindus-and-sikhs>.

54 Ruchi Kumar, 'We Belong to Afghanistan', *Foreign Policy*, July 6, 2018, accessed November 11, 2019, <https://foreignpolicy.com/2018/07/06/we-belong-to-afghanistan-said-slain-sikh-leader>.

55 Ruchi Kumar, 'The Decline of Afghanistan's Hindu and Sikh Communities | Afghanistan', *Al Jazeera*, January 01, 2017, accessed November 11, 2019, <https://www.aljazeera.com/indepth/features/2016/12/decline-afghanistan-hindu-sikh-communities-161225082540860.html>.

56 Hafizullah Emadi, 'Repression and endurance anathematized Hindu and Sikh women of Afghanistan', *Nationalities Papers: The Journal of Nationalism and Ethnicity*, 44, no. 4 (July 2016).

so that they could be distinguished from Muslims.<sup>57</sup>

### **Post-Taliban**

A number of Hindu-Sikhs returned to Afghanistan following the collapse of the Taliban regime and took active part in rebuilding the country.<sup>58</sup> But in recent years, with deteriorating security and the revitalising tempo of Islamic fundamentalism, the prospect of normalcy looks bleak. In July 2018, a suicide bombing in Jalalabad killed at least 19 people, most of them members of the Hindu-Sikh community. The IS-KP claimed responsibility.<sup>59</sup>

The Hindu-Sikhs still face issues in observing their religious rites, such as the cremation of their dead.<sup>60</sup> They are disenchanted with the government—in particular at the local level—for not protecting their basic rights. Hindu-Sikh children cannot even go to public schools because of pervasive abuse by fellow students on religious grounds.<sup>61</sup> Continued repression has caused them to plead to the UN office in Kabul to facilitate their mass emigration from Afghanistan.

Efforts were even taken to strip them of their right to a seat in the Parliament by removing an article at the electoral law which designates a seat for the Hindu-Sikh religious minority.<sup>62</sup> Despite the guarantee of equal rights in the Constitution and a reserved seat in the parliament, the Hindu-Sikhs constantly face discrimination, prejudice, and harassment. They have been the constant target

---

57 Library of Congress, 'H. Rept. 107-798—Report on the activity of the committee on financial services for the 107<sup>th</sup> Congress, 107–798', accessed November 11, 2019, <https://www.congress.gov/congressional-report/107th-congress/house-report/798/1>.

58 Hafizullah Emadi, 'Repression and endurance anathematized Hindu and Sikh women of Afghanistan', *Nationalities Papers: The Journal of Nationalism and Ethnicity*, 44, no. 4 (July 2016).

59 'Afghanistan Blast: Sikhs among 19 Dead in Jalalabad Suicide Attack' *BBC*, July 01, 2018, accessed November 11, 2019, <https://www.bbc.com/news/world-asia-44677823>.

60 Institute for War and Peace Reporting, *Tough Times for Afghan Hindus and Sikhs*, 11 July 2013, ARR Issue 459.

61 Hejratullah Ekhtiyar, 'Afghan Sikhs and Hindus Face Discrimination at School,' July 28, 2011, accessed November 11, 2019, <https://www.refworld.org/docid/4e37c9eb2.html>.

62 Fabrizio Foschini, 'Afghanistan's Incomplete New Electoral Law: Changes and controversies', *Afghan Analyst Network*, December 16, 2013, accessed February 22, 2020, <https://www.afghanistan-analysts.org/a-lost-occasion-hindus-and-sikhs-do-not-get-a-reserved-seat-in-parliament>.

of violent Islamist groups, prompting many to migrate to India.<sup>63</sup>

## Conclusion

Minority rights in Afghanistan have improved comparatively since the collapse of the Taliban regime in 2001. But there is a long way to go to achieve an equal status for the members of the minority groups. Minorities, who have been historically stripped of their most basic rights, are still systematically excluded from government positions and provision of services. The 2004 Afghan Constitution which recognises equal rights for all ethnic groups, appears to be limited on paper. In practice, things have not changed much.

With security deteriorating, threats to their life is especially rife now. The militant Islamists still attack religious minorities often, targeting Shia mosques and religious ceremonies in particular. Civilian casualties, resulting from deliberate attacks to religious minorities have increased significantly since 2016.<sup>64</sup> The Shia Hazara population is generally the most common victim of ethno-religious terrorism. Hindu-Sikh communities have also come under attack in recent years with the rise of Islamic militancy.

## Recommendations

In order to protect the rights of minorities living in the country, the government of Afghanistan needs to:

- Develop initiatives to combat discrimination based on ethnicity, language and religion;
- Enact the Anti-Discrimination Law as soon as possible;
- Report on the implementation of the Convention on Elimination of all Forms of Racial Discrimination (CERD); and
- Initiate a process to systematically incorporate the provisions of all the international human rights conventions ratified by Afghanistan into the domestic legal system.

---

<sup>63</sup> 'We Cannot Live Here': Afghanistan's Sikhs Weigh Future after Suicide Bombing', *Reuters*, accessed November 11, 2019, <https://www.reuters.com/article/us-afghanistan-sikhs/we-cannot-live-here-afghanistans-sikhs-weigh-future-after-suicide-bombing-idUSKBN1JS0VZ>.

<sup>64</sup> Mustafa Sarwar, 'Amid IS Attacks, Hazaras Fear Dangerous Sectarian Divide in Afghanistan', *Gandhara*, September 13, 2018, accessed November 11, 2019, <https://gandhara.rferl.org/a/Afghanistan-is-attacks-hazaras-sunni-shia-sectarian-divide/29487602.html>.

# The State of Statelessness in Bangladesh

## An Overview

Zakir Hossain & S.M. Masum Billah

---

### Introduction

Bangladesh emerged as an independent country in 1971. The Constitution endorses democracy, nationalism, secularism and socialism as the basic principles of the country. Based on these principles, Bangladesh pledges to establish an egalitarian society where every citizen can enjoy fundamental human rights and dignity. The Constitution prohibits any discrimination on the basis of race, religion, colour, origin, and other similar considerations. Despite this aspirational ethos, the country still falls short of these ideals, particularly in the treatment of its religious, ethnic and linguistic minority groups.

There are several issues related to the state of 'statelessness'<sup>1</sup> in Bangladesh. Bangladesh has no specific law on statelessness, and a stateless person in Bangladesh is effectively regarded as a foreigner.<sup>2</sup> However, recent developments suggest that there are both *de jure* and *de facto* situations of statelessness in Bangladesh. In this research, we will examine the status of a number of excluded groups from the perspective of statelessness. They include:

---

1 *Statelessness* is a contested, multifaceted and complex issue in international law. The traditional definition categorises a person as stateless if he or she is a non-citizen everywhere. The experience of statelessness may vary enormously. It may refer an abject situation of poverty and exclusion not covered by the traditional definition of stateless. In this work, the term is used in a holistic sense where statelessness is viewed as both as a cause and symptom of marginalisation. For a more comprehensive picture, see Victoria Redclift, *Stateless and Citizenship: Camps and the Creation of Political Space* (Routledge, 2013).

2 M Rafiqul Islam, 'The Nationality Law and Practice of Bangladesh' in Ko Swan Sik (ed.) *Nationality and International Law in Asian Perspective* (Martinus Nijhoff, London, 1990), 23.

- Urdu-speaking Biharis, a sizeable group uprooted since independence: for decades they lacked formal citizenship and continue to suffer various forms of discrimination to this day.
- Dalits, among the most excluded populations in the country: though recognised as nationals of Bangladesh, they in reality are often victims of *de facto* statelessness due to extreme marginalisation and limited access to basic rights.
- Rohingya, the world's largest stateless community: apart from the human rights challenges faced by its own citizens, Bangladesh is now a place of refuge for almost 1 million Rohingya<sup>3</sup> displaced by violence from neighbouring Myanmar.

Enclave communities, situated in contested areas along the Bangladesh-India border, are also at a high risk of statelessness. While the profound difficulties experienced by these groups have lessened to some degree since the 2015 agreement brokered between the two countries, it remains to be seen how their newly attained status as residents of India or Bangladesh will be resolved. Their situation is not covered in detail here though.

This study develops a qualitative profile of statelessness among these three groups, drawing on a range of primary and secondary sources, including official reports, private testimony, published and unpublished research, seminar papers, articles, presentations, digital content on social media, and mainstream media outlets. It aims to identify to what extent each group is in a situation of statelessness, assess the scale of the challenges they face and offer a series of targeted recommendations to address these issues.

## Urdu-Speaking Bangladeshis (Biharis)

### *Background*

The Urdu-speaking community in Bangladesh comprise a linguistic minority, popularly known as 'Bihari', though not all Urdu-speaking individuals belong to this group. This community emigrated from Bihar and other parts of India during and after the partition of the Indian subcontinent in 1947

---

<sup>3</sup> Committee Against Torture, *Initial report submitted by Bangladesh under article 19 of the Convention*, July 23, 2019, p. 16.

and suffered decades of exclusion following independence, due in part to their perceived support of Pakistan in 1971 during the junta's brutal military campaign against the Bengali population. In the aftermath of Bangladeshi independence, they were displaced *en masse* into camps across Bangladesh. Widely referred to as 'stranded Pakistanis', an estimated 163,000 had resettled in Pakistan by 1981.<sup>4</sup> However, Pakistan eventually refused to welcome any further arrivals, leaving a population of approximately 300,000 Urdu-speakers stateless in 116 camps across Bangladesh until a Supreme Court order in 2008 granted citizenship to the Urdu-speaking Biharis who were born after the independence of Bangladesh. However, the legacy of discrimination continues to this day, reflected in their secondary social, economic and political status within the country.<sup>5</sup>

### ***The Struggle for Citizenship***

Since 1990, the post-independence generation of Urdu-speakers have advocated with the government and civil society organisations for their recognition as citizens of Bangladesh. In 2001, before the national election, they attempted to submit a memorandum to the Bangladesh Election Commission to include them in the voters' list but this was rejected. A writ petition was subsequently filed by 10 young Urdu-speakers seeking citizenship,<sup>6</sup> and in May 2003 the Supreme Court delivered a judgment in their favour. Though this applied only to the applicants and not the wider community, the ruling represented a major milestone in their struggle for recognition.

This was followed by another breakthrough in 2008 when the Supreme Court again ruled in favour of a writ petition launched by members of the community. The judgment found that members of the Urdu-speaking community were nationals of Bangladesh, in accordance with its laws, and directed the Election Commission to register them as voters as well as provide the National Identity Card without any further delay.<sup>7</sup>

---

4 'Biharis', World Directory of Minorities and Indigenous Peoples, Minority Rights Group International, <https://minorityrights.org/minorities/biharis>.

5 *Ibid.*

6 *Abid Khan and others v. Government of Bangladesh and others*, Writ Petition No. 3831 of 2001, Bangladesh: Supreme Court, 5 March 2003.

7 *Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner*,

### **The case law that broke the ice**

In 2003, in the landmark writ petition of Abid Khan and Others vs. Government of Bangladesh and Others [20030 55 DLR (HCD) 318], the Supreme Court delivered a ground-breaking judgment for the Urdu-speaking community. Ruling in favour of the petitioners, a group of 10 Urdu-speaking people, eight of whom were born after independence, it ruled that the petitioners were Bangladeshi nationals under the Citizenship Act 1951 and the Bangladesh Citizenship (Temporary Provisions) Order of 1972. Directing the government to register them as voters, the Supreme Court further stated that residents of the camps and settlements had not 'attained any special status so as to be excluded from the operation of the laws of the land', and hence 'mere residence' in the camps could not be deemed as allegiance to another state.

Pursuant to existing domestic legislation, members of the Urdu-speaking community can now apply for a National Identity Card at any time, like any other Bangladeshi citizen. Failure to apply for a National Identity Card does not preclude the application of the Supreme Court ruling, nor entail the loss of citizenship or associated rights.

### ***Continued Legal Barriers: The Citizenship Draft Law***

In light of the May 2008 Supreme Court decision and subsequent implementing measures taken by the Bangladeshi government, the Urdu-speaking community can no longer be viewed as stateless, as they are considered to be nationals of Bangladesh. However, the recent draft Citizenship Bill has again put this community at risk of statelessness through a number of controversial provisions.

In February 2016, the Cabinet of the Government of Bangladesh approved the draft text of the Citizenship Bill 2016, with no public consultations around the content prior to its being placed before the Cabinet. One controversial provision, Section 3, runs as follows: 'Notwithstanding anything contained in any other Act, legal instrument, judgment, decree etc. the provisions of this Act will prevail.' Apart from potentially undermining the supremacy of the Constitution, this section could override the Supreme

---

*Bangladesh Election Commission*, Writ Petition No. 10129 of 2007, Bangladesh: Supreme Court, 18 May 2008.

Court judgment passed in 2008, conferring citizenship to the Urdu-speaking community.

Similarly, Section 28(2)(a) of the Bill states that ‘citizenship of persons who obtained Bangladeshi citizenship under the repealed Acts shall prevail, subject to consistency with the provisions of this Act’. Such a provision, seeking to override or negate a judgment or decree, appears inconsistent with the principles of constitutional democracy, where the Constitution is regarded as sovereign, and the judiciary is empowered to interpret and enforce the Constitution.

As a signatory to the Convention on the Rights of the Child (CRC), the Bangladeshi government is responsible for protecting the rights of every child, including the right to a nationality. The current version of the Bill violates these obligations in a number of its provisions: for example, by arbitrarily stripping individuals of constitutional protection (Section 4[2]b), punitively restricting a child’s right to nationality due to a lack of birth registration or certification (Section 5[2]), and even threatening to restrict the nationality of a child if their parents or grandparents are deemed to be hostile to the state (Section 11).<sup>8</sup>

The draft legislation even envisages the possibility that citizens could lose their right to nationality if one of their parents is an ‘alien enemy’, ‘denies the existence of Bangladesh’ or is ‘engaged in any activity against Bangladesh’—all ambiguous provisions that could be open to a broad margin of interpretation. Section 20 even grants the government the right to strip naturalised Bangladeshi citizens of their nationality if they express ‘lack of allegiance towards the sovereignty of Bangladesh or the Constitution of Bangladesh through any action or behaviour’—an equally vague stipulation that could enable arbitrary removal of citizenship.<sup>9</sup> In a context of discrimination, Urdu-speakers are likely to be especially affected: there have been reports of citizenship applications being stalled due to lack of documentation such as electricity

---

<sup>8</sup> Coalition of Individual Human Rights Defenders Bangladesh, *Bangladesh—Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/BGD/Q/1)*, February 6, 2017, p.17.

<sup>9</sup> *Ibid.*

bills, unavailable to most Bihari households, and internal memos encouraging officials not to issue paperwork to ‘non-Bengalis’.<sup>10</sup>

## **The Dalit Population**

### ***Background***

Caste- and descent-based discrimination in Bangladesh is a complex, multifaceted issue as ‘it results from a variety of often overlapping factors, including caste, religion, place of birth or families/descendants’ place of birth and occupation.’<sup>11</sup> Though the reality of caste discrimination in Bangladesh is concealed by silence, even outright denial, the Dalit community experiences multiple forms of social, political and economic discrimination. Their predicament, enabled by the tacit acceptance of the government, is in violation of Bangladesh’s fundamental human rights obligations. Though they are recognised as citizens of the country, their continued stigmatisation on account of their caste and professional identity can leave them in a situation of *de facto* statelessness.

While relatively little research has been conducted on the community, studies suggest that there are between 5.5 and 6.5 million Dalits and members of similarly excluded groups in Bangladesh, amounting to between 3 and 4 per cent of the population. Unfortunately, while the 2011 Census could have been used to gather much more detailed information on their situation, these categories were not included. The absence of reliable and disaggregated data is a major factor in the continued barriers Dalits face in gaining political representation, accessing public services and securing employment. In many cases, their discrimination is underpinned by the fact that many belong to religious minorities: Dalits and other marginalised groups have been estimated to comprise as much as 70 per cent of the Hindu population in Bangladesh, for instance.<sup>12</sup>

10 Khalid Hussain, ‘Biharis: On becoming citizens of Bangladesh’, *FOCUS*, March 2016, volume 83, Asia-Pacific Human Rights Information Centre.

11 Mazharul Islam and Altaf Parvez, *Dalit Initiatives in Bangladesh*, IDSIN, October 2013, p.12.

12 Ibid.

### ***Untouchability***

The persistence of ‘untouchability’ in Bangladesh affects Dalits in almost every aspect of their private and public lives due to which the majority lack access to education, health care and other basic amenities, as well as decent employment, property, land or political office. They are also often denied access to public places such as hotels, restaurants, hairdressers, temples and markets on account of their identity.

After a long struggle by Dalit and human rights organisations, the Law Commission of Bangladesh drafted the 2015 Anti-Discrimination Bill and submitted it to the Ministry of Law. However, the government has been slow to respond and after three years they returned it to the National Human Rights Commission for revisions in 2018. In April 2019, NHRC resubmitted a revised version to the Ministry but has yet to receive a response.

### ***Land and Housing: Dalits on the Margins***

In 2016, two young Dalit men from a family of tea labourers in Maulavibzar district of Bangladesh were selected for the position of police constables. During verification of their citizenship, however, the investigator reported that because they had no permanent residence they were not eligible for a government job and so were disqualified from the final list. It was a frustrating experience for the duo since they were deprived of the opportunity of public employment, despite being citizens of Bangladesh. Their treatment illustrates how Dalits, while not formally stateless, can still experience many of the same challenges due to discrimination. Tea labourers in Bangladesh mainly live at the mercy of the tea companies that employ them. Everything—their employment, education, health care, housing—is taken care of by the companies and the state plays virtually no role. As the largest community in Bangladesh without land titles, they are especially dependent on their employers and are not able to access services such as bank loans.

Dalits experience similar challenges of invisibility and exclusion in urban areas, where they are frequently responsible for sweeping roads, maintaining drainage and other difficult, poorly paid work regarded as lowly or unclean. Pushed to the margins of the cities,

Dalit settlements have regularly been uprooted by redevelopment programmes and resettled in remote locations elsewhere. Urban Dalits have reported that on average they have been evicted at least twice from their colonies.<sup>13</sup> ‘Sometimes we don’t know if we are human beings. The government drives us away from our homes whenever they feel like it. This sort of thing does not happen even to the Bihari camps or Rohingya. We are citizens of this country but are forced to flee from one colony to another,’ said one Dalit woman, describing her experiences of eviction.<sup>14</sup>

The housing situation of Dalits has become even more precarious due to the loss of their traditional employment with government agencies, municipalities, hospitals and other institutions, typically as cleaners, and accommodation provided by these employers. Increasingly, such employment is being offered to contracted employees and larger numbers of other Bangladeshis have also begun working as cleaners or sweepers, meaning that many colonies are now occupied by a growing share of non-Dalits. In this context, some Dalits have been forced to look for housing outside their colonies, where they have struggled to find rooms due to their limited resources and caste barriers.

Their plight is illustrated by the residents of Ganaktuly City Colony, the biggest Dalit colony of Dhaka, which was demolished for reconstruction in June 2019. Many displaced families struggled to rent houses in slums or settlements nearby, with some families forced to take shelter in the colony’s community centre.<sup>15</sup> Furthermore, those who are not employees of the Dhaka South City Corporation fear that they will not be able to access housing in the newly constructed colony once it is completed. What will happen to them then, is impossible to predict.

---

<sup>13</sup> Interview, Bhempalli David Raju, an activist of Bangladesh Dalit Human Rights (BDHR) organization.

<sup>14</sup> Women of Ganaktuli Colony during a meeting with Dalit women in October 2019.

<sup>15</sup> Interview, Moni Rani Das, President, Bangladesh Dalit and Excluded Rights Movement (BDERM).

## **The Rohingya**

### ***Background***

The Rohingya community, the largest stateless group in the world, has fled from their native country, Myanmar, in the face of systematic persecution and abuse. For more than five decades, they have migrated to neighbouring countries such as Bangladesh, India, Thailand and Malaysia to escape discrimination in every area of their lives. Bangladesh now houses around a million Rohingya,<sup>16</sup> including more than 742,000 forcibly displaced from Myanmar's Rakhine state since August 2017,<sup>17</sup> when the military initiated a new wave of violence against the community. The UN has stated that these crimes amount to genocide and launched genocide proceedings against Myanmar.

### ***The Road to Statelessness***

The term 'Rohingya' was originally derived from 'Rohang', the ancient name of the territory that is now Rakhine state, with their presence dating back to the 8th century. Their numbers expanded further due to labour migration from Bengal before and during the British colonial era. The majority of the Rohingya are Muslim.

The community in Rakhine state was subjected to targeted violence by Rakhine Buddhists in 1942, during World War Two, when Japanese troops invaded Myanmar. Following independence, the government enacted the Residents of Burma Registration Act in 1951, issuing a National Registration Card (NRC) to every resident as a proof of nationality. However, after the military junta came to power in 1962, they ruled that this certificate alone would not be conclusive proof of citizenship. From 1970, the military regime did not issue any further NRC cards to Rohingya, and in 1974 they seized the remaining NRCs from Rohingya without any legal justification.<sup>18</sup> This was the

---

16 Committee Against Torture, *Initial report submitted by Bangladesh under article 19 of the Convention*, July 23, 2019, p. 16.

17 'Rohingya Emergency,' *UNHCR*, accessed October 23, 2019, <https://www.unhcr.org/rohingya-emergency.html>.

18 Equal Rights Trust and The Institute of Human Rights and Peace Studies, *Equal only in name- The Human Rights of Stateless Rohingya in Malaysia* (London, Stroma Ltd., 2014), accessed October 24, 2019, <https://www.equalrightstrust.org>.

beginning of a lengthy state-led process of denationalisation that culminated in mass statelessness.

In 1982, a new citizenship law enacted by the military government classified citizens as ‘full’, ‘associate’ and ‘naturalised’: the first group included some 135 national races, with the Rohingya systematically excluded. In 2014, the government introduced the Citizen Verification (National Verification Card—NVC) in Rakhine State, based on the 1982 Citizenship Law, requiring Rohingya to self-identify as Bengali to apply. Most of the Rohingya people rejected the NVC, knowing that the intention of the government was to quarantine and deport anyone who refused to participate or failed to provide the required documentation. In 2015, the right of Rohingya to vote was taken away by withdrawing their Temporary Resident Card (TRC).

### ***The Legal Status of the Rohingya in Bangladesh***

#### **International Law**

While it is widely accepted that the Rohingya are stateless, the current focus of the national and international response to the crisis has been emergency relief and rehabilitation rather than resolving their citizenship rights. Yet this is likely to have a major bearing on their future wellbeing, particularly for children born in the camps who may find themselves deprived of rights in both Myanmar and Bangladesh.

While Bangladesh has not ratified the 1951 Convention Relating to the Status of Refugees, it is party to a host of major UN treaties, convention and customary international laws. In light of these commitments, Bangladesh has an obligation to provide security and assistance to the Rohingya displaced within its borders. Customary international law implies an obligation to all states to protect all persons in their territory and subject to their jurisdiction, regardless of whether they are citizens, stateless persons, asylum-seekers or refugees.<sup>19</sup> Thus, Bangladesh has to

[ortdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf](http://ortdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf).

<sup>19</sup> ‘Customary International Law,’ Legal Information Institute, Cornell Law School, accessed January 24, 2020, [law.cornell.edu/wex/customary\\_international\\_law](http://law.cornell.edu/wex/customary_international_law).

recognise the status of stateless Rohingya people and ensure their protection, regardless of their legal status. Besides international customary laws, there are some core international human rights obligations which are relevant to the situation and treatment of the Rohingya, giving rise to obligations which apply to Bangladesh.

### **Relevant International Legislation for the Protection of Stateless Rohingya**

The human rights instrument supported by Bangladesh\* with provisions to protect the rights of refugee and stateless persons are:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)
- Convention on the Rights of Persons with Disabilities (CRPD)

\* Bangladesh has placed several reservations and declarations against these instruments. Bangladesh has not ratified the Optional Protocols to the ICCPR, the ICESCR or the CAT. It has, however, ratified the Optional Protocols to the CEDAW, the CRPD and two of the Optional Protocols to the CRC

Along with international customary laws and UN treaties, Bangladesh's constitution, laws and policies also have provisions that may be applicable to supporting the stateless Rohingya population. Article 25 of the Constitution of Bangladesh affirms respect for the principles of international law: "The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter."<sup>20</sup>

<sup>20</sup> Government of the People's Republic of Bangladesh, *The Constitution of the People's Republic of Bangladesh*, 1972, Article 25.

## National Law and Citizenship

Bangladesh has largely followed the *jus sanguinis* principle when determining citizenship, meaning that citizenship is contingent on descent. Based on this, the country's citizenship law has rendered generations of Rohingya living in Bangladesh effectively stateless.

Nationality or citizenship in Bangladesh is mainly regulated by the Citizenship Act of 1951, and the Rules of 1952, the 1972 Citizenship Order and Rules of 1978; Naturalization Act of 1926 and the Rules of 1961. These laws were regularised when Bangladesh was still ruled by Pakistan. Following independence, the Citizenship (Temporary Provisions) Order of 15 December 1972 was passed, granting anyone living in the country at the time of independence *ipso facto* citizenship of Bangladesh. The government is currently in the process of enacting a new citizenship law which would repeal the 1951 Act and 1972 Order. The draft law was approved by the Cabinet in February 2016,<sup>21</sup> and though the government has not yet made the law public, jurists and rights activists are in agreement that the new law would result in increased statelessness, among other negative consequences.<sup>22</sup>

Bangladesh has not ratified the 1951 Refugee Convention or its 1967 Protocol, and there is no specific domestic law or national policy governing the protection of refugees in Bangladesh. In most of the cases, refugees are considered foreigners and governed by the provisions of the Foreigners Act of 1946. Some other similar legislation may also be applicable in this regard, such as the Registration of Foreigners Act 1939, the Passport Act 1920, the Bangladesh Citizenship (Temporary Provision) Order 1972, the Extradition Act 1974 and the Naturalisation Act 1926.<sup>23</sup>

In the absence of any legal or specialised statutory framework for the protection of refugees, Bangladesh relies on these acts to govern the entry, stay and exit of foreigners in Bangladesh. Section

---

<sup>21</sup> Ridwanul Hoque, *Report on Citizenship Law: Bangladesh*, (Italy: European University Institute, 2016).

<sup>22</sup> 'New citizenship bill creates second-class citizens,' *Dhaka Tribune*, February 14, 2017, accessed November 1, 2019, <https://www.dhakatribune.com/bangladesh/law-rights/2017/02/05/new-citizenship-bill-creates-second-class-citizens/>.

<sup>23</sup> Ashrafal Azad, 'Foreigners Act and the freedom of movement of the Rohingyas in Bangladesh,' *Griffith Journal of Law and Human Dignity*, 5, no. 2, (2017): 189.

2(a) of the Foreigner Act defines a foreigner as a person who is not a citizen of Bangladesh, thus covering all refugees within its territory as well. Section 3 of the Foreigner Act 1946 empowers the Government to enact rules regarding the prohibition or control of the entry, stay and departure of foreigners in Bangladesh. Under the Act, the government may also require a foreigner to reside in a particular place, impose restrictions on their movement and prohibit them from engaging in specific activities. The Foreigners Act also authorises a police officer to take such steps and use such force as may in his opinion, be reasonably necessary for securing compliance with the provisions of the Act.

The only Rohingya in Bangladesh who have secured official recognition are those living in the official camps. Registered refugees living in the camps typically prove their legal residency through UNHCR photo-identity cards, though these cards do not guarantee immunity from detention or enable the cardholders to move freely. In addition to those living in the camps, there are large numbers of unregistered Rohingya living in villages and towns across Bangladesh who do not have any legal status. The government typically categorises such persons as ‘illegal foreigners’, ‘illegal Burmese’, ‘undocumented Myanmar nationals (UMN)’, and ‘economic migrants’.<sup>24</sup>

While the government has overlooked the presence of many unregistered Rohingya for their ‘illegal entry’ into Bangladesh, some people have been arrested and sentenced under the Foreigners Act.<sup>25</sup> Moreover, some have not been released after having served the full five-year term, as they are required to be transferred to the authorities of their country of nationality. As Myanmar refuses to acknowledge any Rohingya as its citizens, Rohingya may remain in detention long after the expiry of their sentence. This practice amounts to arbitrary detention. Further, individuals prosecuted under Article 3 of the Foreigners Act are often immediately rearrested after their release or for the same offence.<sup>26</sup>

For Rohingya children born in Bangladesh, the risk of statelessness remains high. Bangladesh, as a signatory of the

---

<sup>24</sup> Ibid, pp.189-190.

<sup>25</sup> Ibid, pp.192-195.

<sup>26</sup> Ibid, p.191.

Convention on the Rights of the Child (CRC), is obliged to register all births—a duty affirmed in the Births and Deaths Registration Act 2004 which is applicable to everyone including ‘any foreigner living in Bangladesh and also any refugee taking shelter in Bangladesh’.<sup>27</sup> While all Rohingya children born in Bangladesh therefore have the legal right to a birth certificate, for the children of unregistered Rohingya living outside the camps, this is still not possible. This is in clear violation of Bangladesh’s responsibilities in international law, including the provisions of the CRC (Article 7) and ICCPR (Article 24). The exclusion of many Rohingya children from formal registration has been in evidence for many years and has played a major role in the crisis of statelessness that Rohingya in Bangladesh face today.<sup>28</sup>

### ***Human Rights and Security***

Unsurprisingly, Bangladesh has struggled to cope with the scale of the crisis that has unfolded since 2017 and the influx of large numbers of Rohingya refugees into the country. Consequently, hundreds of thousands of Rohingya continue to face acute humanitarian and protection needs. Reports of illicit or unauthorised activities within and outside the camps have also resulted in a heavy-handed and at times indiscriminate security response from authorities, with frequent reports of extrajudicial killings by human rights groups.<sup>29</sup>

Registered Rohingya living in recognised camps are also not permitted to move freely. Local authorities have enforced tight restrictions on Rohingya movement in Teknar, Ukhiya and other areas of Cox’s Bazaar, to the extent that even Bangladeshi citizens have to carry national identity cards in these areas. These restrictions impact heavily on economic livelihoods and even, for unregistered refugees, the ability to access relief assistance. Rohingya working illegally face the constant threat of

---

<sup>27</sup> Bangladesh National Government, *The Births and Deaths Registration Act, 2004*, Act No. 29 of 2004, Chapter 2(1n).

<sup>28</sup> Amal de Chickera, ‘Statelessness and identity in the Rohingya refugee crisis’, Humanitarian Practice Network, October 2018.

<sup>29</sup> For example, see Amnesty International, ‘Stop extrajudicial executions of Rohingya refugees and end restrictions to their freedom of movement’, November 4, 2019.

arrest, leaving them vulnerable to exploitation by employers and harassment.<sup>30</sup>

The situation has worsened since the government's failed attempts in August 2019 to repatriate some Rohingya to Myanmar. Authorities responded to protests by Rohingya with a crackdown on NGO activity and the imposition of further restrictions on mobile phone services within the camp,<sup>31</sup> accompanied by plans to create a barbed wire security fence to curb free movement.<sup>32</sup>

## **Conclusion**

This discussion on the situation of statelessness in Bangladesh raises a plethora of questions. First of all, it should be mentioned that, with the exception of a few case studies, no comprehensive study on the situation of the stateless and at-risk populations has been undertaken to date in Bangladesh. This chapter therefore carries some obvious limitations. Nevertheless, the different stories and histories of the country's most marginalised groups suggest that a systematic process of discrimination and legal subordination has led many to the verge of statelessness.

One of the main communities that this work has focused on is the cause of the linguistic minority—the Urdu-speakers of Bangladesh (Biharis). Community members are still confined in camps across the country and remain isolated from mainstream society. The newly proposed citizenship law could set back much of the tentative progress achieved since 2008, when their citizenship was finally recognised. Their situation shows how the acquisition of citizenship may be used as an instrument of exclusion, and the difficulties of drawing a clear line between

---

<sup>30</sup> Tarek Mahmud, 'A number of Rohingyas leave camps, work illegally across Bangladesh,' *Dhaka Tribune*, January 9, 2018, accessed December 1, 2019, <https://www.dhakatribune.com/bangladesh/2018/01/09/number-rohingyas-leave-camps-work-illegally-across-bangladesh>.

<sup>31</sup> 'Bangladesh should end restrictions on movement, internet access of Rohingyas: HRW,' *The Daily Star*, September 07, 2019, <https://www.thedailystar.net/rohingya-crisis/news/bangladesh-should-end-restrictions-rohingyas-hrw-1796878>.

<sup>32</sup> 'Barbed wire fences around Rohingya camps soon,' *The Daily Star*, September 26, 2019, accessed October 25, 2019, <https://www.thedailystar.net/rohingya-crisis/barbed-wire-fences-be-erected-around-rohingya-camps-soon-1805665>.

stateliness and citizenship when the barriers of social segregation are still in place.

For Bangladesh's Dalits, too, while they do not fall within the *de jure* definition of statelessness, many face *de facto* symptoms of statelessness due to the persistence of untouchability. The continued stigma around caste and descent serves to undermine their ability to access many basic rights and needs, such as housing, let alone well-paid employment.

For the large Rohingya population, statelessness is an important but often unacknowledged dimension of their plight. Their situation extends beyond the remit of Bangladesh alone and requires a concerted international response. In the meantime, with a return to Myanmar seemingly inconceivable in the immediate term, every effort must be made to regularise their situation and afford displaced community members the security and dignity of recognition.

## **Recommendations**

### *Regarding Urdu-Speaking Bangladeshis (Biharis):*

- The government should remove all legal and other barriers to allow linguistic minorities to access all services of the state as citizens and based on principle of equity.
- Ensure that the draft Citizenship Bill 2016 will not make the linguistic minorities stateless again by eliminating those articles which might affect their rights as citizens.
- Effective implementation of the Supreme Court's orders with regard to their rights as citizens should be ensured. Remove obstacles in getting official documents like passport, trade licence, birth certificate, national identity card, etc.

### *Regarding Dalits:*

- Dalits should be given recognition as a special community. Disaggregated data of the Dalit population should be collected in the upcoming census of 2021. This will help identify their special needs and provision of necessary support can be ensured.
- The government should pass Anti-Discrimination Bill to address untouchability and discrimination-based work. It

should also take initiatives for effective implementation of the 'Convention on Elimination of All forms of Racial Discrimination'.

- The government should concentrate on housing and land issues of Dalits. The temporary or permanent removal of Dalits from their ancestral land or colonies without the provision of proper rehabilitation should be ended. Land owned by the government should be distributed among Dalits on the basis of priority. Those living as tea plantation workers should be provided with ownership of land where they have lived for generations.

*Regarding Rohingyas:*

- The government should acknowledge the refugee status of the Rohingya by ratifying the 1951 Refugee Convention and sign its 1967 Protocol. It will open up some avenue for the Rohingya to enjoy their rights as refugee and stateless persons.
- The UN and international aid agencies should focus on a political solution to end the Rohingyas' statelessness.
- The government should allow the Rohingya population to avail of the rights as enshrined in international treaties supported by the state as well as national laws and the constitution.
- The government should take steps to ensure that all the Rohingya living in Bangladesh illegally are registered and not detained or prosecuted under the Foreigners Act.
- The government should enable movement of the Rohingya people beyond the camps and withdraw restriction on cell phone communication inside camps.

# Migrants, Refugees and the Stateless in India

## Deploying Citizenship to Redefine the Secular State

Abhimanyu Suresh & Sajjad Hassan

---

### Introduction

South Asia's amalgam of political, ethnic and religious dynamics have caused several streams of cross-border movement of people over the ages. In a region where an oppressed minority community in one country might often be the oppressing majority in another, South Asians of many faiths and ethnicities have often sought shelter in the relatively safer shores of their neighbouring countries, resulting in a bevy of displacements. The template for this was the great Partition of 1947, creating the independent nation-states of India and Pakistan. This was accompanied by a mass (and in Punjab and the rest of the western borders, state-enforced) exchange of populations across the divided borders—Muslim minorities from India to Pakistan, and Hindu and Sikh minorities from Pakistan into India—although this was by no means an exhaustive exchange. Since Partition, in India, Pakistan and now Bangladesh, and across the rest of South Asia, cross-border displacements have continued, with a recent count putting the figure at 50 million refugees in the region.<sup>1</sup>

By virtue of its geographic spread, its promise of economic opportunity, a diverse population and, compared to the rest of the region, an inclusive and stable polity, India has attracted a large number of refugees and migrants from different faiths and backgrounds over the years. But lately, majoritarian advances in India are influencing its stance on letting them in by welcoming

---

<sup>1</sup> Partha S. Ghosh, *Migrants, Refugees and the Stateless in South Asia* (New Delhi: SAGE Publications, 2016), 1-2.

those from the majority faith, while closing its doors to minorities. In parallel, there is a systematic effort to make foreigners of sections of Indian citizens, primarily Muslims, rendering them refugees in their own land. The spectre of mass statelessness in India's Assam, and potentially other parts of India, of an unprecedented magnitude, seems an actual possibility with every passing day.

This chapter deals with refugees, migrants and the stateless in India, to identify who the refugees and migrants are; what the circumstances of their displacement (or disenfranchisement) were; the consequences their displacement has had on their lives—their lived experiences of deprivation and violence—and finally, the nature of state actions, creating the conditions for the victims. Section 2 of this chapter dwells on the scope of the study, its methodology, and the process of data collection. We then report findings, starting with a quick mapping of the various refugees and stateless peoples in India. This is followed, in Section 4, by a deeper exploration of the causes and drivers of displacement to India of groups of our interest, as well as an account of their experiences. Section 5 is an examination of the consequences of displacement on individuals and Section 6 is a review of the Indian state's responses, against the backdrop of international norms and standards. In Section 7, we focus on the National Register of Citizens (NRC) update in Assam, an administrative process that has created 'non-citizens' and 'foreigners', and which the Indian government now wants to scale up across the country. In Section 8, we try to draw some concluding remarks on India's stance on refugee protection and integration and her commitment to relevant international norms, besides issues of citizenship and national identity. Section 9 is a compilation of a set of recommendations for reforms.

### **Scope of the Study, Methodology and Data Collection**

For the purposes of this study, we focus on refugees in India escaping armed conflict, persecution, human rights violations and abuses from within South Asia—the stateless, and specific minority groups in India that have been targeted for disenfranchisement. The bulk of the refugees were religious minorities in their own countries: Hindus and Sikhs from Afghanistan, Pakistan and Bangladesh;

Buddhist Tibetans and Chakmas; Tamil Hindus from Sri Lanka; and Rohingya Muslims from Myanmar. Those being targeted for disenfranchisement in India are also religious minorities, mostly Bengali-speaking Muslims in Assam and elsewhere.

We studied the consequences of migration on the lives of the refugee subjects—by analysing their lived experiences of deprivation and violence, their socio-economic condition, access to basic rights, services and benefits, and their struggles for nationality and a permanent home. In doing so, we have also tried to examine the factors behind their difficulties, focusing on state responses, including the legislative framework, the role of the judiciary, state practices, and institutional mechanism and capacities as well as the role of politics in determining outcomes. The study is exploratory in nature, with the intent to connect accounts of the lived experiences of refugees and the disenfranchised with key factors that resulted in those outcomes, including the causes and drivers of the dispossession and displacement, and accounts of state responses.

The methodology we use is exploratory, based mostly on desk research and supplemented by primary field exploration with select targeted groups. We reviewed the literature available on the refugees and stateless groups in India—to understand both the conditions of refugees as well as the nature of state response. This required understanding the actions of relevant stakeholders, i.e., state actors, relief and research bodies working with specific groups, and those living in refugee camps. To understand the lived experiences of the groups and state response towards them, we needed to speak to the subjects and gather first-hand data through interviews. We conducted interviews with religious minorities from Pakistan in refugee camps in Delhi through September and October 2019, and in Assam to study the deprivation of citizenship. For the latter, we relied on documentation of Misaal Foundation’s ongoing victim support work around the ongoing NRC process, supplemented by field data collection in Barpeta, Guwahati and Morigaon districts in August and October 2019. Secondary literature on refugees and migrants, including scholarly works as well as programme documents and media accounts, were also used. To be able to cover the range of cases, and for practical convenience,

we connected with civil society groups and community-based organisations (CBOs) to access existing accounts and reports.

### **An Overview of the Refugees and Stateless in India**

There are four types of refugees in India: i) refugees who receive full state protection according to standards set by the Indian government, viz, Tibetans, Tamils from Sri Lanka, and Chakma and Hajongs from the Chittagong Hill Tracts of Bangladesh; ii) refugees whose presence in India is acknowledged by the United Nations High Commissioner for Refugees (UNHCR), also known as ‘mandate refugees’, viz, Afghans and the Rohingya; iii) refugees who have entered India and assimilated into the local communities, with their presence officially acknowledged by neither the UNHCR nor the Indian government, viz, Chins, Rakhines and Nagas, all from Myanmar, and ethnic Nepalis from Bhutan; and iv) refugees who are religious minorities in neighbouring countries who live in unofficial camps in India.<sup>2</sup>

Table 1 provides a snapshot of these groups, their locations in India, approximate numbers, and the proximate causes that led them to seek refuge in India.

Table 2 details groups in India who are *de facto* or *de jure* stateless, and those at risk of statelessness, along with their locations, approximate numbers, and the drivers of their statelessness.

### **Causal Factors and Refugee Movements**

It is difficult to divide the various refugee and stateless groups in India into neat categories. Scholars have, however, identified several non-mutually exclusive causal factors for forced cross-border migration in South Asia. These include failure in nation-building, inter-ethnic conflict, open or virtually open borders, war-related qualms, developmental and environmental effects, intra-regional and extra-regional military interventions, and statelessness or virtual statelessness.<sup>3</sup> Using this typology, we identify the following as the three main causal factors relevant to various refugee and stateless groups in India: (i) external military interventions; (ii) failure in nation-building, resulting in persecution of minorities;

---

<sup>2</sup> Ghosh, *Migrants, Refugees and the Stateless in South Asia*, 247-48.

<sup>3</sup> Ghosh, *Migrants, Refugees and the Stateless in South Asia*, 1-2.

**Table 1: Major Refugee Groups in India**

Group	Major location(s)	Approximate numbers	Causes/drivers
Tibetans, from Tibet	Bylakuppe (Karnataka) and Dharamshala area in Himachal Pradesh	85,000*	External military aggression by China
Tamils, from Sri Lanka	Different places in Tamil Nadu	95,230†	State repression in Sri Lanka
Chakma and Hajong from the Chittagong Hill Tracts, Bangladesh	Different places in Arunachal Pradesh	52,000‡	Development-induced displacement and religious persecution
Afghans, from Afghanistan	Delhi	15,559§	External military interventions, by the Soviet Union in 1988 and by the USA in 2001; continuing military conflict with the Taliban
Rohingya, from Myanmar	Jammu, Delhi, Hyderabad, Chennai, Jaipur and Mewat	20,833	State repression in Myanmar
Other UNHCR-mandate refugees	Delhi	1969 (including asylum-seekers)*	Various reasons
Chins and Rakhines, from Myanmar	Mizoram	4000#	State repression in Myanmar; cross-border links in India
Nagas, from Myanmar	Nagaland	Unknown	State repression in Myanmar; cross-border links in India
Ethnic Nepalis (Lhotshampa), from Bhutan	Sikkim, West Bengal (Darjeeling, Jalpaiguri, Karseong districts)	107,923 <sup>4</sup>	Inter-ethnic conflict and state repression in Bhutan
Hindus and Sikhs from Pakistan, Bangladesh and Afghanistan	Across India, mainly in border states and in Delhi	No reliable estimates	Religious persecution

\*According to a 2018 survey by the Tibetan Central Administration. See: Rahul Tripathi, 'Tibetan Refugees down from 1.5 Lakh to 85,000 in 7 Years,' *The Indian Express*, September 10, 2018, <https://indianexpress.com/article/india/tibetan-refugees-down-from-1-5-lakh-to-85000-in-7-years-5349587/>.

†Refugees and asylum seekers registered under the UNHCR's mandate, as of August 2019. See: 'Figures at

a glance,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/en-in/india-factsheets.html>

<sup>4</sup>'Chakma Refugees: That Chakmas Are 1L Is Goebbels-Speak: Suhas Chakma,' *The Times of India*, September 23, 2017, <https://timesofindia.indiatimes.com/india/that-chakmas-are-1l-is-goebbels-speak-suhas-chakma/articleshow/60802048.cms>.

<sup>5</sup>Refugees and asylum seekers registered under the UNHCR's mandate, as of August 2019. See: 'Figures at a glance,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/en-in/india-factsheets.html>.

<sup>6</sup>Ibid.

<sup>7</sup>As of December 2014. Other Mandate Refugees in India include those from Somalia, Democratic Republic of Congo, Eritrea, Iran, Iraq, Somalia and Sudan. See: United Nations High Commissioner for Refugees—India, 'Figures at a glance'

<sup>8</sup>The exact number of Chins in India is contested. About 4,000 Chins were registered with the UNHCR in June 2018. In August 2018, the UNHCR decided to lift the Chins' refugee status. See: Sangeeta Barooah Pisharoty,

'UNHCR to Cancel Refugee Status of Chins of Myanmar,' *The Wire*, June 30, 2018, <https://thewire.in/rights/unhcr-to-lift-refugee-status-over-chins-of-myanmar>.

<sup>9</sup>There were about 20,000 Lhotshampa refugees in India by 1995, scattered across north-eastern India. A 2007 census put the figure at 107,923. See: Rosalind Evans, 'The Perils of Being a Borderland People: On the Lhotshampas of Bhutan'. In *Borderland Lives in Northern Asia*, ed. David N. Gellner, (Durham: Duke University Press), 117-40.

and (iii) potential statelessness. In reality, these categories overlap significantly.

### ***External Military Intervention, Triggering Migration***

The military invasion of Tibet in 1949 by the People's Republic of China, and their sustained state repression of Tibetans in subsequent years eventually culminated in an armed uprising against Chinese rule in 1959. The failure of this rebellion, and the ruthless Chinese crackdown that followed, led the Dalai Lama, the Tibetans' spiritual leader, and his followers to flee to India, where they have remained since. Similarly, the invasion and occupation of Afghanistan by the Soviet Union in 1979 and by the United States in 2001, and the decades of resultant violent conflict, have driven millions of Afghans to seek refuge in neighbouring countries. While Pakistan has been the first choice of destination for fleeing Afghans, thousands have sought shelter in India as well.

If we are to set aside the Partition-induced migrants from Pakistan, the Tibetans were the first to seek refuge in India. Following the Chinese invasion of Tibet, a small but steady number had continued to attempt the journey across the Himalayan ranges into the north-eastern state of Arunachal Pradesh, throughout the 1950s. But it was after the failed rebellion of 1959 that India saw a mass influx of Tibetans. The Tibetans, led by the then 25-year-old Dalai Lama, were given a grand reception by the Indian government

**Table 2: The Stateless in India**

Groups	Location	Numbers	Causes / process
Chakma (Buddhist) and Hajong (Hindu) from Bangladesh, settled in Arunachal Pradesh, between 1964 and 1969	Arunachal Pradesh	14,888 settled in AP (1964-69). 6087 alive today. Not obtained citizenship yet. Population: 47,471 (2011 Census). Estimated 45,000 born in India.*	A 1996 Supreme Court order directed issue of citizenship to the groups. 2015 order directs processing citizenship applications. Yet no action, due to local resistance and ongoing court cases.
Bengali-speaking persons profiled as 'illegal migrants'	Assam	Close to 100,000 declared 'foreigner' by Foreigners Tribunals, 1985 to present 1100 incarcerated in 'detention centres'. Including women and children.†	Identified by Assam Border Police as suspected foreigners, using Immigrants (Expulsion from Assam) Act, 1950, and later Foreigners Tribunal Order 1964. Election commission's identifying Doubtful Voters. Foreigner Tribunals declaring 'foreigner', majority in ex parte trials.
Bengali- and Nepali-speaking persons, among others, deemed 'illegal migrants'.	Assam	1,900,000 persons excluded from final NRC. A large cohort being children and women.‡	Deemed non-citizens under the NRC update process, 2015-2019, and risk being made stateless.
Kashmiri 'ex-militants' and their families	Kashmir	At least 400 families.§	Returned to India from Pakistan, in response to 2010 rehabilitation policy for ex-militants. Spouses and children with Pakistani documents, not granted Indian citizenship, nor returned original documents.

\*Singh, Damini. 'The Chakma-Hajong Challenge,' Observer Research Foundation, September 27, 2017, <https://www.orfonline.org/expert-speak/chakma-hajong-challenge/>.

†'Unstarred Question No. 1724,' Supplementary Questions, Parliament of India, last modified July 2, 2019, <http://loksabhaph.nic.in/Questions/QResult15.aspx?qref=1909&lsno=17>.

‡Helen Regan, '1.9 Million Excluded from Indian Citizenship List in Assam,' *Cable News Network*, August 31, 2019, <https://edition.cnn.com/2019/08/30/asia/assam-national-register-india-intl-hnk/index.html>.

§'Pakistani Wives of Ex-Kashmiri Militants Appeal GoI for Travel Documents,' *Rising Kashmir*, May 5, 2019, <http://www.risingkashmir.com/news/pakistani-wives-of-ex-kashmiri-militants-appeal-go-for-travel-documents--349436.html>.

and initially settled in two transit camps—one in Assam and another in West Bengal. Later, the alien climatic conditions in these places led the government to seek alternative settlements, mainly in Bylakuppe in Karnataka state, and in Dharamshala in Himachal Pradesh.

### ***Failure in Nation-building Resulting in Persecution of Minorities***

The bulk of refugees in India, however, are victims of what scholars call failures of nation-building. In South Asia, as in much of the decolonised world, state formation has often preceded nation formation. National borders have been drawn and governments have been put in place, but the inability to peacefully accommodate religious, ethnic and linguistic differences within these borders has resulted in a number of conflicts that have led to the persecution of minorities. Where the situation has become unbearable, and where minorities think they have a chance of a better life elsewhere, they have migrated. Hindus from Pakistan, Hindus and Sikhs from Afghanistan, and Hindus and Buddhists from Bangladesh have largely been the victims of this process. Hindu Tamils from Sri Lanka, fleeing state repression, and the Rohingya from Myanmar, escaping a brutal ethnic cleansing, are other examples of refugees in India who are victims of failure of nation-formation in their countries that has resulted in the persecution of minorities.

Although Pakistan was originally envisioned as a secular state by its founding father, subsequent developments have seen the share of its religious minorities in the total population dwindle from around 23 per cent to approximately 3 per cent today.<sup>4</sup> Large-scale population transfers during the violent Partition, the transition to formally declaring itself an Islamic Republic, a genocide in erstwhile East Pakistan that resulted in the breakup of the country and the birth of Bangladesh, and numerous instances of religious violence throughout its history, have all resulted in many of Pakistan's minorities seeking refuge elsewhere. Similarly,

---

<sup>4</sup> Farahnaz Ispahani, 'Cleansing Pakistan of Minorities,' Hudson Institute, July 31, 2013, <https://www.hudson.org/research/9781-cleansing-pakistan-of-minorities>.

in Bangladesh, even after its birth as an independent state in 1971 and its adoption of a Constitution that had secularism as one of its core tenets, discrimination against religious minorities has persisted. In Afghanistan, external intervention in the form of the Soviet invasion triggered dynamics that complicated an already fraught nation-building process, destabilising the region and creating space for extremist ideologies to fill the void. Minorities, particularly religious, have since continued to be targeted by the Islamist Taliban and other forces.

India, with its large Hindu and Sikh populations, reasonable scope for economic opportunity, and a largely stable polity, has been the first choice of destination for many Hindus and Sikhs who have sought to flee religious persecution in these countries. Of late, the Hindu majoritarian party in power, the Bharatiya Janata Party (BJP) has sought to fashion India as the land for persecuted Hindus and related minorities from the Muslim-majority countries in the neighbourhood, accelerating the trend of migrations.

Hindus have been fleeing to India from Pakistan since the two countries became independent in 1947, even after the initial Partition-induced mass migration. Earlier, clandestine migration through the then porous borders of the Indian states of Rajasthan and Gujarat was common, aided by the fact that people living in these areas often had kinship ties across the border. As religious persecution of minorities increased in Pakistan, so did the influx of Hindus into India. Recently, they have been arriving in small groups, carrying temporary pilgrimage visas whose extensions they repeatedly apply for in the hope that they would eventually be eligible for Indian citizenship. Around 5,000 Pakistani Hindus are estimated to arrive in India every year, settling in camps across the country, with major settlements in Rajasthan, Gujarat and Delhi.<sup>5</sup>

Persecuted Hindus from Bangladesh have also been seeking refuge in India for decades, aided previously by porous borders and more recently by using valid or even forged documents. Around 11.3 million Hindus are estimated to have left Bangladesh between

---

<sup>5</sup> Irfan Haider, '5,000 Hindus Migrating to India Every Year, NA Told,' *Dawn*, May 13, 2014, <https://www.dawn.com/news/1105830>.

1964 and 2013.<sup>6</sup> Most of them have sought refuge in India, where they are concentrated in the border states of Assam, Tripura and West Bengal.

Thousands of Buddhist Chakma and Hindu Hajongs also fled Bangladesh, then East Pakistan, to India when their settlements in the Chittagong Hill Tracts were submerged due to the commencement of a major hydroelectric project in the region. This movement can be attributed to a combination of religious discrimination and development-induced displacement. The Chakma and Hajong began arriving in India's North-East Frontier Agency (NEFA), present-day Arunachal Pradesh, in 1964. Between 1964 and 1969, around 15,000 of these refugees were settled across camps in the NEFA, partly motivated by the Indian state's need to beef up security in its sparsely populated border areas following defeat in the 1962 war against China.

Forced migration of Sikhs and Hindus from Afghanistan to India has taken place mainly in three phases: following the Soviet invasion in 1979, the establishment of Taliban rule in 1996, and, more recently, the ongoing civil unrest. In India, New Delhi is the preferred destination for the new wave of forced Afghan migrants, due to access to the UNHCR.

There are other sources of refugees in India. The brutal 25-years-long civil war till 2009 in Sri Lanka was characterised by large-scale human rights violations by both separatist Tamil militants and the Sri Lankan state, leading to over 80,000 deaths.<sup>7</sup> For the ethnic Hindu Tamils, who sought to flee this large-scale violence, the southern Indian state of Tamil Nadu was the destination of choice by virtue of its geographic proximity, its shared religion, language and culture, and a sympathetic state structure. The Tamil exodus into India began following the anti-Tamil riots in Colombo in July 1983. As the ethno-political situation in Sri Lanka deteriorated in the years following the riots, the flow of Tamils into India continued with varying degrees of intensity for almost three

---

6 Mohammad Kamrul Hasan, 'No Hindus Will Be Left after 30 Years,' *Dhaka Tribune*, November 21, 2016, <https://www.dhakatribune.com/bangladesh/2016/11/20/abul-barkat-632-hindus-left-country-day/>.

7 'Sri Lanka Starts Count of Civil War Dead,' *Al Jazeera America*, November 28, 2013, <http://america.aljazeera.com/articles/2013/11/28/sri-lanka-startscountingthecivilwardead.html>.

decades. More than 250,000 people are estimated to have arrived in Tamil Nadu from Sri Lanka between 1983 and 1991.<sup>8</sup>

In Myanmar, Rohingya Muslims have been subject to various forms of state repression, including the stripping of their citizenship rights, since the erstwhile Burma's Independence in 1948. More recently, a brutal military crackdown in their native Rakhine province has resulted in hundreds of thousands of Rohingya fleeing to neighbouring countries, particularly to Bangladesh. However, despite a massive humanitarian effort by the Bangladeshi government, the harsh conditions there have led many to make their way into India, in the hope of finding better and safer living conditions, increased economic opportunities, and a tolerant, if not accepting environment.<sup>9</sup> The Rohingya in India are concentrated mostly in camps scattered across Jammu, Delhi, Hyderabad, Chennai, Jaipur and Mewat.

### ***Statelessness: De Jure and De Facto***

A case of *de facto*, if not *de jure*, statelessness in India is that of the Chakma and Hajongs. Of the 14,888 settled by the government of India, an estimated 6,087 are alive today and still await citizenship.<sup>10</sup> According to the 2011 Census, the Chakma population is now 47,471, with the overwhelming majority born in India. In 1996, the Indian Supreme Court directed the government to grant them Indian citizenship.<sup>11</sup> But the process has faced hurdles from local student groups and politicians, with the Arunachal Pradesh state assembly even adopting a resolution against granting citizenship to the group. The opposition is built along the lines of disruption of local rights and culture. A challenge to the order was defeated by the Supreme Court in 2015, which directed for

---

8 Ghosh, *Migrants, Refugees and the Stateless in South Asia*, 29.

9 Yermi Brenner, 'Rohingya Migration to India: Patterns, Drivers and Experiences,' Mixed Migration Centre, April 1, 2019, <http://www.mixedmigration.org/resource/rohingya-migration-to-india/>.

10 Damini Singh, 'The Chakma-Hajong Challenge,' Observer Research Foundation, September 27, 2017. <https://www.orfonline.org/expert-speak/chakma-hajong-challenge/>.

11 Jarpum Gamlin, 'Why an SC Judgment Has Riled Up Arunachal's Frontier People,' *Daily O*, October 15, 2015, <https://www.dailyo.in/politics/arunachal-pradesh-chakma-and-hajong-refugees-supreme-court-bengal-eastern-frontier-regulation-1873/story/1/6813.html>.

citizenship applications to be processed on priority.<sup>12</sup> But these have remained stalled, with the citizenship status of Chakma and Hajongs continuing to be in limbo.

Another group that remains in legal limbo are in Kashmir. In the 1990s, when pro-freedom insurgency was at its peak, some 35,000 **Kashmiris** fled Jammu & Kashmir (J&K) state to settle in Pakistan. However, despite the passage of several years, Pakistan has not granted citizenship to up to 40 per cent of these migrants.<sup>13</sup> The Pakistan government continues to insist that the 1948 United Nations Security Council (UNSC) Resolution calling for self-determination for the people of Jammu and Kashmir is the only acceptable mechanism through which to solve the Kashmir dispute with India. The Pakistan authorities maintain that granting the Kashmiris citizenship would mean negating their right to self-determination. This has resulted in many migrants remaining stateless, without any documents, and receiving only paltry government support. The UNHCR does not include them in their list of refugees.<sup>14</sup> On the Indian side, in 2010, the J&K state government announced a rehabilitation policy for 'ex-militants' who had crossed over to Pakistan along with their families, promising rehabilitation, citizenship and essential documents, besides education, employment and financial assistance. In response, nearly 400 families returned to India between 2012 and 2015, mostly taking the Nepal route.<sup>15</sup> Many were Pakistani wives of ex-militants, who had their travel documents taken from them upon entering India but have not been granted Indian citizenship in return. Now they are protesting their stateless status, demanding grant of Indian citizenship, 'or deportation to Pakistan'.<sup>16</sup>

---

12 'Grant Citizenship to Chakma, Hajong Tribals in 3 Months: Supreme Court,' *The Economic Times*, September 20, 2015, <https://economictimes.indiatimes.com/news/politics-and-nation/grant-citizenship-to-chakma-hajong-tribals-in-3-months-supreme-court/articleshow/49031353.cms>.

13 Issam Ahmed, 'Thousands Fled India-Controlled Kashmir. Are They Better off in Pakistan?', *The Christian Science Monitor*, October 13, 2010, <https://www.csmonitor.com/World/Asia-South-Central/2010/1013/Thousands-fled-India-controlled-Kashmir.-Are-they-better-off-in-Pakistan>.

14 *Ibid*.

15 Sameer Yasir, 'Kashmir: 377 Ex-Militants Returned from Pakistan Via Nepal, Bangladesh Since 2010,' *Firstpost*, January 12, 2017, <https://www.firstpost.com/india/kashmir-377-ex-militants-returned-from-pakistan-via-nepal-bangladesh-since-2010-3201294.html>.

16 'Pakistani Wives of Ex-Kashmiri Militants Appeal GoI for Travel

A group that had long remained stateless in India but have recently had nationality granted are the inhabitants of the India-Bangladesh enclaves. The enclaves, a result of the Partition of India in 1947, have hosted thousands of people who were neither nationals of India nor Bangladesh due to convoluted boundary demarcation. It was only in 1974, after Bangladesh's independence, that an agreement was signed by the two countries on boundary demarcation. It would take another 36 years for a protocol to the agreement to be agreed upon by the two parties, in 2011. In 2015, the enclave swap was ratified by the Indian Parliament. This was followed by a survey of families, resulting in 15,852 inhabitants opting for India, who were all granted citizenship. The rest opted to stay in Bangladesh.<sup>17</sup>

### **The Consequences of Migration**

The UN Global Compact on Refugees, though not a legally binding document, represents the political will and ambition of the international community for strengthened cooperation and solidarity with refugees and affected host countries.<sup>18</sup> It acts as a helpful yardstick for assessing how refugees are treated and services provided. The Global Compact lays out the range of duties of host states, namely, i) reception and admission arrangements, including safety and security, and notably, registration and documentation; ii) meeting the needs of the refugees, including education, jobs and livelihoods, health, accommodation, and food security, with priority to children, girls and women; and finally; and iii) providing solutions, including local integration, resettlement or voluntary repatriation. India has not signed the 1951 Refugee Convention, and its 1967 Protocol. Thus, adherence to the Global Compact is still a work in progress.

Even without referencing the Global Compact, it is clear that the

---

Documents,' *Rising Kashmir*, May 5, 2019, <http://www.risingkashmir.com/news/pakistani-wives-of-ex-kashmiri-militants-appeal-goi-for-travel-documents--349436.html>.

<sup>17</sup> Ibid.

<sup>18</sup> Other instruments include the 1951 Refugee Convention. See: 'The 1951 Refugee Convention,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/1951-refugee-convention.html>.

situation of refugees in India, their living conditions, and especially their access to 'rights' and basic services is very poor. The lack of a uniform national refugee law also means that different groups are treated differently and arbitrarily, with refugee protection being delivered in an ad hoc manner. The response received by refugees from the local population has also been varied, with some groups being treated with suspicion, while others are more positively received. While there is a marked contrast in the stated government policy towards persecuted non-Muslims and Muslims,<sup>19</sup> the living conditions reported by all of them are broadly similar: poor security, lack of basic amenities, including sanitation, poor healthcare and education facilities, and limited employment and livelihood opportunities. Access to education and healthcare are abysmal, particularly for those living in camps. Private schools and hospitals are uniformly preferred, but few can afford them. With some exceptions, employment is limited to petty, informal, daily-wage labour across groups. In almost every case, in the absence of tangible action at different levels of government, civil society has been forced to step in and try to provide the little service it can.

There are no official figures for the number of Pakistani Hindus in India, but there are over 400 settlements for them in the state of Rajasthan alone.<sup>20</sup> Education and healthcare facilities are generally poor, with civil society organisations having to step in.<sup>21</sup> Lack of employment opportunities continues to be a challenge despite Hindus from Pakistan, Bangladesh and Afghanistan being viewed favourably by the present national government.

Women have reported facing a different set of problems such as being married off at extremely young ages to protect their 'honour' and being forced to bear multiple children. 'Most deliver babies outside of hospitals, and maternal and infant mortality rates

---

19 The non-Muslims are treated favourably by the state while the Muslims, mainly, Rohingya Muslims from Myanmar and Muslims from Bangladesh, are viewed with suspicion and treated with hostility.

20 Shweta Desai, 'Pakistani Hindus 'Unwelcome' in India,' *Al Jazeera*, February 18, 2014, <https://www.aljazeera.com/indepth/features/2014/02/pakistani-hindus-unwelcome-india-201421063012210386.html>.

21 Anam Ajmal, 'For Pak Hindus, Home Is Where the Mind Is without Fear,' *The Times of India*, March 29, 2019, <https://timesofindia.indiatimes.com/city/delhi/for-pak-hindus-home-is-where-the-mind-is-without-fear/articleshow/68621792.cms>.

### **Pakistani Hindu Camp, Adarsh Nagar, Delhi: A profile**

The residents of the makeshift settlement for Pakistani Hindu refugees in New Delhi's Adarsh Nagar area harbour a lot of hope in the Indian government. Prime Minister Narendra Modi, during his spirited national election campaign in 2014, had made a concerted effort to paint India as the natural homeland for persecuted Hindus from across the world. 'If there are atrocities on Hindus in Fiji, where will they go? Should they not come to India? If Hindus are persecuted in Mauritius, where should they go? Hindustan!' he had declared, emphatically.

That the story of the Pakistani Hindu refugees in India remains one of the unfulfilled promises is, however, apparent the minute one enters their colony in Adarsh Nagar. The colony, built over a low-lying site that was once a burial ground for small children, is located next to a landfill, leading to a pervasive pungency in the air. The buildings in the hutment are made of mud and thatched leaves, leaving the camp's 700-odd residents—including at least 150 children and 250 women, from over 100 families—glaringly exposed to nature's whims. We are immediately greeted by a bevy of children, who are happy but dishevelled. 'Jai Shri Ram,' they say, with broad smiles and folded arms. A lone Indian flag flails about in the background, surrounded by a swarm of mosquitoes.

'This camp was established in 2013, with around a hundred inhabitants. The number of people has increased over the years, but the conditions have not improved much,' says Hari Om Sahoo, our guide for the day, a local social worker who acts as a caretaker for the colony. 'As you can see, sanitation is terrible. Insect bites and snake bites are common. The children fall sick all the time. During the monsoon, the whole area floods and water rises up to here,' he adds, pointing to his knee.

Despite the harrowing conditions, most of the residents who spoke to us justify their decision to seek refuge in India, citing the deplorable situation for Hindus back in Pakistan. The adult males are mostly former bonded labourers and agricultural workers from Pakistan's Sindh province. 'If you are a Hindu bonded labourer in Pakistan, you are doubly vulnerable. You cannot fight back,' says Aakash\*, who arrived from Tando Allahyar district a year ago, with most of his family accompanying him.

Historically easy targets for revenge attacks whenever tensions have flared up between the two countries, or whenever large-scale violence has been perpetrated against Muslims in India, Pakistan's Hindus cite an atmosphere of fear in their home country as their main reason for fleeing to India. A recent spate of abductions and forced conversions has added to their concerns, with South Asia Partnership Pakistan, a local NGO, estimating that around 1,000 girls are abducted and forcibly converted to Islam every year. A draconian blasphemy law that mainstream Pakistani

politicians are wary of speaking out against in public is another source of worry.

'It is not like violence against us is happening in Pakistan every day, but the atmosphere is very insecure. When one incident happens, it has a chilling effect on the rest of our society. We did not feel safe practicing our religion in public there,' says Aakash, who is quick to add that the situation is much better in Pakistan's cities compared to its rural areas.

The launch in 2006 of the Thar Express, a rail service that links Pakistan to India, has led a multitude of Pakistani Hindus to attempt the journey to India. The rise to power of the Hindu nationalist BJP in India has further accelerated this trend. Most of the new arrivals come holding short-term pilgrimage visas, usually limited to 25 days and restricted to Hindu religious centres like Haridwar and Mathura, but many also come with regular visitor visas, claiming kinship ties on the Indian side of the border.

According to many respondents, obtaining a Pakistani passport and then an Indian visa is a long and harrowing process, with corruption, discrimination and nefarious middlemen involved in almost every step. Respondents have also reported a tendency among Indian authorities in Pakistan to break up families who apply for visas in groups. 'Almost all the families in this camp are incomplete. Two of my daughters are still at home in Pakistan. My nine-year-old daughter, Anjali, has just managed to arrive recently with her uncle,' says Aakash.

Once in India, they apply for repeated visa extensions, with the hope that one day they will meet the minimum residency requirement to apply for Indian citizenship. Harassment by Indian authorities during the visa extension process has substantially decreased since the rise of Modi and the BJP, say many residents. However, their status as Pakistani nationals in India, with Pakistani passports often being their only official documentation, has greatly restricted their life in India. 'If you hold a Pakistani passport, the tendency of Indians is to assume you are a terrorist,' says one resident.

The lack of official documentation has made it difficult for the able-bodied men to seek fruitful employment. Most of them are engaged in petty daily-wage labour such as hawking, garbage collection and other odd jobs, mainly in the nearby vegetable market. 'We manage to earn around 150-250 rupees [USD 2-3.5] every day, and we have to support families of five to seven with this amount,' laments one resident.

In the absence of tangible government support, civil society has had to step in to help the residents lead a dignified life. Ashutosh Joshi, a local finance professional, has run a number of crowdfunding initiatives for the colony residents. 'The attempt has been to provide them with some basic

facilities, and to make them somewhat economically stable,' he says. The colony has no formal electricity or water connections. Attempts to draw electricity from nearby poles have, in fact, been repeatedly thwarted by local authorities in the past, causing extreme distress to the residents in the summer heat. Joshi's efforts have resulted in the installation of solar panels and generator sets within the camp.

The lack of official recognition as refugees has also made the residents' access to services difficult. While it is possible to use illegal means to obtain Indian documents like the Aadhaar card, not many are able to afford the exorbitant fees charged by middlemen. Those who do have such documents have managed to send their children to local government schools. However, many of the children, some as old as 12 or 13, are either illiterate or ill-versed in English and Hindi, requiring them to attend foundational classes within the camp before they are ready for formal schooling.

Healthcare also remains a major issue within the colony, particularly during the summer, when the prevalence of diseases flares up. Residents say that the nearest hospital is overcrowded, and that the local clinics are inadequate. Another crowdfunding campaign has resulted in the provision of basic medicines and periodic visits by doctors to the colony. Recently, Joshi's efforts have resulted in an arrangement where the residents' medical bills are taken care of by the fund.

While there is a palpable sense of discontent with government efforts, particularly the local authorities, most of the residents cling to the hope that things will change for the better soon. The Modi government has made a number of receptive moves, such as decentralising the process of granting citizenship to the district-level in certain states, and passing an amendment of the country's citizenship law that will reduce the minimum residency requirement for Pakistani Hindus to claim Indian citizenship.

However, Modi's appeal to the world's Hindus to make India their homeland is yet to translate into a real tangible change in the lives of the residents of the Adarsh Nagar settlement, many of whom will not be eligible for Indian citizenship even after the recent legislative amendments. A few have even sought to return to Pakistan, where they at least formally have the protection of citizenship. Others remain steadfast in their decision to leave Pakistan. 'There is discomfort here, but I am not scared for my family's safety. I am finally able to sleep peacefully at night,' says Aakash, as he greets his daughter who has just finished her classes for the day.

\* Names of all camp inhabitants have been changed to protect their identity.

are high,' reported a voluntary health worker working with the Pakistani Hindu community in Jodhpur.<sup>22</sup> While there have been many positive moves at the policy level, there are complaints that these are yet to translate to any tangible change in the communities' quality of life.

One non-Muslim group that has seen local pushback in India are the Hindus from Bangladesh. Influential student organisations have spearheaded a campaign since 1978 against the 'invasion' of Assam by 'land-hungry Bengali immigrants'.<sup>23</sup> A similar example of local pushback has been the case of Chakma and Hajongs in the state of Arunachal Pradesh, which has resulted in the systematic rolling back of many employment-related and food-related benefits that had been granted to the group. In addition to living in extreme poverty, citizenship, despite several decades of residence and birth of children, remains uncertain for them.

It is estimated that there are 64,208 Sri Lankan Tamil refugees living in over 100 government-run camps in Tamil Nadu (TN), and more than 40,000 elsewhere across the state.<sup>24</sup> While the conditions in these camps are described as woeful, lacking basic facilities in terms of sanitation and security, the Sri Lankan Tamils have benefited from the efforts of a receptive TN state government, which has claimed success in several healthcare and education initiatives. Yet, problems persist, especially with regard to finding gainful employment. The TN government has issued ration cards to the refugees, which enables them to buy essential goods at low prices. They also have free access to government hospitals. The state government also gives them cash assistance of INR 1,000 (c. USD 14) per month, which is woefully inadequate. 'The sum paid to us has not been revised despite the rising cost of living. We cannot live on with these trivial amounts even for a

---

22 Geetanjali Krishna, 'The Nowhere People: Pakistan Hindu Refugees in India Await a Normal Life,' *Business Standard*, September 23, 2018, [https://www.business-standard.com/article/current-affairs/the-nowhere-people-pakistan-hindu-refugees-in-india-await-a-normal-life-118092300002\\_1.html](https://www.business-standard.com/article/current-affairs/the-nowhere-people-pakistan-hindu-refugees-in-india-await-a-normal-life-118092300002_1.html).

23 'How Bangladeshi Muslims Wiped the Assamese Out in Their Own Land,' Assam Portal, accessed February 22, 2019, <https://assam.org/news/how-bangladeshi-muslims-wiped-assamese-out-their-own-land>

24 'Refugee Camps,' Organisation for Eelam Refugees Rehabilitation, Accessed January 26, 2020, <https://oferr.org/tbdonations/refugee-camps/>.

week. That is why we search for jobs,' says one refugee.<sup>25</sup>

While there are no reported camps of Afghans, there are pockets within Delhi where the community has established an extensive presence. As of August 2019, there were 15,559 refugees and asylum-seekers from Afghanistan registered with UNHCR in India.<sup>26</sup> Those registered are able to find work in the informal economy, and also access the government healthcare and education system. Many are engaged in small businesses, running Afghan stores and eateries in partnership with local Indians. While the Indian government does extensive development work in Afghanistan, there are few significant government measures for Afghan nationals in India, apart from the announcement of scholarships for 1,000 Afghan students to study in Indian universities.<sup>27</sup> The Afghan student population forms a vital part of the Afghan community in India, which helps the new arrivals as they attempt to rebuild their lives in the country.

The Rohingya were in the news recently for having been forced by Indian authorities to return to Myanmar, without any guarantee of improved conditions for them there. For Rohingya Muslims who arrived in India from camps in Bangladesh, the conditions are not much better than those they were seeking to leave behind. Some 20,833 Rohingya had been registered with the UNHCR in India as of August 2019.<sup>28</sup> Unofficial estimates put the total number at around 40,000.<sup>29</sup> Inhabitants in refugee camps speak of food

---

25 Piyumi Fonseka, 'Desperate Lives inside Refugee Camps,' *Daily Mirror*, May 2, 2017, <http://www.dailymirror.lk/article/Desperate-lives-inside-refugee-camps-128128.html>.

26 Refugees and asylum seekers registered under the UNHCR's mandate, as of August 2019. See: 'Figures at a glance,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/en-in/india-factsheets.html>.

27 'India Pledges 1000 More Scholarships for the Afghan Students,' *The Khaama Press*, June 11, 2019, <https://www.khaama.com/india-pledges-1000-more-scholarships-for-the-afghan-students-03589/>.

28 Refugees and asylum seekers registered under the UNHCR's mandate, as of August 2019. See: 'Figures at a glance,' About Us, United Nations High Commissioner for Refugees—India, accessed 11 February 2020, <https://www.unhcr.org/en-in/india-factsheets.html>.

29 Vindu Goel and Shaikh Azizur Rahman, 'When Rohingya Refugees Fled to India, Hate on Facebook Followed,' *The New York Times*, June 14, 2019, <https://www.nytimes.com/2019/06/14/technology/facebook-hate-speech-rohingya-india.html>.

scarcity, erratic electricity charged at exploitative prices and poor sanitation facilities.<sup>30</sup> Most Rohingya are also engaged in menial wage labour like other refugee groups in the country and complain of exploitation at the hands of their employers.

Child labour is common, with a majority of Rohingya children being forced to stay out of school and work for a living. Some local NGOs have helped, aiding in the construction of schools, community sheds and toilets for the Rohingya. However, the rise in anti-Muslim rhetoric across the country since the assumption of power by the BJP, has resulted in increased hostility towards them among the local population. In Jammu, where most Rohingya refugees live, the chairman of the local Chamber of Commerce and Industry threatened to launch an 'identify and kill movement' against illegal foreign settlers.<sup>31</sup> According to the UNHCR, a total of 306 Rohingya persons of concern are detained in 10 different states in India as of July 2019, and about a fourth of the Rohingya respondents in a survey reported being harassed by local police and intelligence services.<sup>32</sup>

Of all these groups, only the estimated 85,000 Tibetans<sup>33</sup> seem to have relatively good access to rights and services. The Tibetan community in Karnataka is largely agricultural and lives in close-knit communities with economic interactions with the local Indian population. Those in Himachal Pradesh have more or less integrated with the pre-existing local economy. Dharamshala is now an internationally renowned Tibetan centre, where thousands of monks mingle freely with locals and tourists. The relatively better quality of life for Tibetans can be attributed to the strong community leadership, in the form of the Central Tibetan Authority

---

30 'The Most Unwanted: A Gripping Account of Rohingya Refugees Living in India,' *The Indian Express*, June 26, 2018, <https://indianexpress.com/article/india/the-most-unwanted-a-gripping-account-of-rohingya-refugees-living-in-india-4464103/>.

31 'Jammu Commerce Chamber Says It Will Identify and Kill Rohingya Muslims If State Does Not Deport Them,' *Scroll.in*, March 16, 2018, <https://scroll.in/latest/834067/jammu-commerce-chamber-says-it-will-identify-and-kill-rohingya-muslims-if-state-does-not-deport-them>.

32 'Figures at a glance,' United Nations High Commissioner for Refugees—India; Brenner, 'Rohingya Migration to India,' 8.

33 Rahul Tripathi, 'Tibetan Refugees down from 1.5 Lakh to 85,000 in 7 Years,' *The Indian Express*, September 10, 2018, <https://indianexpress.com/article/india/tibetan-refugees-down-from-1-5-lakh-to-85000-in-7-years-5349587/>.

(CTA), the Tibetan government-in-exile based in Dharamshala, as well as a historically friendly Indian government. The CTA administers a number of schools and health centres, which have ensured the provision of high-quality modern education and primary healthcare, and also the preservation of Tibetan culture. India's recently formalised Tibetan Rehabilitation Policy has promised to allow Tibetans to undertake any economic activity and pursue jobs in any field in which they are proficient, but some Tibetans claim that it has failed to result in any tangible change so far. The relative lack of economic opportunities in India has been flagged as an issue, leading many Tibetans to leave India for better opportunities in the West.<sup>34</sup>

### **Refugees and Foreigners: Recognising Some, Stigmatising Others**

India has neither signed the 1951 UN Convention on Refugees nor devised its own domestic refugee law. As a result, refugees and forced migrants are treated on a par with other foreigners, governed by the outdated Foreigners Act 1946. Some fundamental rights guaranteed by the Indian Constitution but denied to foreigners, and by extension also to refugees and asylum-seekers, include: prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15); equality of opportunity in matters of public employment (Article 16); freedom of speech and expression, freedom of assembly, freedom of movement, freedom to reside and settle anywhere in India, freedom to practice any profession or to carry on any occupation, trade or business (Article 19).<sup>35</sup> This legal vacuum has serious adverse implications for the refugees. For instance, despite cultural and ethnic similarities with the rest of the population in Tamil Nadu, refugees from Sri Lanka report being crippled by the restrictions imposed on them due to their official status as foreigners. 'We have no freedom here. We are treated as outsiders. We are neither

---

<sup>34</sup> Kunal Purohit, 'After 60 Years in India, Why Are Tibetans Leaving?', *Al Jazeera*, March 21, 2019, <https://www.aljazeera.com/indepth/features/60-years-india-tibetans-leaving-190319231424509.html>.

<sup>35</sup> 'Foreigners Not Entitled to All Fundamental Rights', *Zee News*, November 26, 2010, [https://zeenews.india.com/news/nation/foreigners-not-entitled-to-all-fundamental-rights\\_670573.html](https://zeenews.india.com/news/nation/foreigners-not-entitled-to-all-fundamental-rights_670573.html).

here nor there,' says an inhabitant of the Gummidipoondi refugee camp near Chennai.<sup>36</sup>

India has also not ratified the 1954 and 1961 Conventions on Statelessness, meaning there is no legal recognition of stateless persons—a prerequisite to access many rights. These deprive vulnerable groups such as Chakmas and Hajongs, and Kashmiri returnees, from the protection they need. There is also no official commitment to reduce statelessness.

Despite the absence of dedicated refugee laws, there are many instances when courts in India have ruled in favour of asylum-seekers on humanitarian grounds. The Supreme Court (SC) has, in several instances, applied Articles 14 and 21<sup>37</sup> to migrants and refugees living in India as well as conferred basic human rights on them as defined by the UN.<sup>38</sup> But the courts' interventionist stance on refugees and asylum-seekers has been selective. For instance, the Supreme Court refused to intervene against the deportation of Rohingya refugees back to Myanmar in 2018, in violation of the principle of non-refoulement, as will be discussed later.<sup>39</sup>

There also exist many hurdles for these groups to claim citizenship in India. A 1986 amendment to the Citizenship Act, 1955 changed the basis of citizenship from *jus soli* (by virtue of birth) to *jus sanguinis* (by virtue of descent). Hence, citizenship has become conditional on the parents being Indian nationals as birth in India no longer suffices. This weakens safeguards for refugees and against statelessness. Another amendment, in 2003, while reducing the qualifying period for naturalisation from 14 years to nine, made citizenship ineligible

---

36 Piyumi Fonseka. 'Desperate Lives inside Refugee Camps', *Daily Mirror*, May 2, 2017, <http://www.dailymirror.lk/article/Desperate-lives-inside-refugee-camps-128128.html>.

37 Articles 14 and 21 of the Indian Constitution provide for equality before law, and the protection of life and liberty.

38 Some pieces of evidence of High Courts (HCs) upholding the basic human rights of refugees include: *Gurunathan and Others vs GoI and Others* and *A.C. Mohd. Siddique vs GoI and Others*; *Nedumaran vs Government of Tamil Nadu*, both on Sri Lankan refugees. *Syed Ata Mohammadi vs Union of India*, the Bombay HC, on Iranian refugees. See: Ghosh, *Migrants, Refugees and the Stateless in South Asia*, 243.

39 Krishnadas Rajagopal, 'SC Throws out Plea to Restrain Govt from Deporting 7 Rohingya to Myanmar,' *The Hindu*, October 4, 2018, <https://www.thehindu.com/news/national/sc-allows-deportation-of-seven-rohingya-from-assam-to-myanmar/article25119615.ece>.

for even those whose either parent was an ‘illegal migrant’. This and other strict exclusionary provisions such as the requirement for registration of minors to include copies of valid foreign passport, copy of valid residential permit, and proof that each parent was an Indian citizen, create statelessness as a by-product.<sup>40</sup> The lack of safeguards against statelessness at birth is in contravention of UN Child Rights Convention, International Covenant on Civil and Political Rights, Convention on the Rights of Persons with Disabilities and the Convention on Migrant Workers, which assert the right of a child to be registered immediately after birth and the right to acquire a nationality, under which India has not filed any reservations.

Recently, relaxations have been made in the citizenship regime, removing the 2003 proviso and other conditions. In 2015, the BJP government decreed to allow non-Muslim minority communities (specifically, Hindu, Sikh, Jain, Buddhist, Parsi and Christian) from Afghanistan, Bangladesh and Pakistan to stay on in India even without proper documentation on ‘humanitarian considerations’.<sup>41</sup> The following year, the process of granting citizenship to those fleeing persecution in neighbouring countries was decentralised to the districts.<sup>42</sup> And, in December 2019, Indian Parliament passed an amendment to the Citizenship Act, 1955, making it easier for persecuted non-Muslim minorities from the aforementioned countries to become Indian citizens. The Citizenship Amendment Act, 2019 i) makes Hindu, Sikh, Jain, Buddhist, Parsi and Christian illegal migrants from these countries eligible for Indian citizenship, and ii) relaxes the residence requirement for naturalisation for the said groups from 11 years to six years. No condition or tests to prove persecution have been outlined in the statute.

---

40 Asha Bangar, ‘Statelessness in India,’ Institution on Statelessness and Inclusion, June 2017, [https://files.institutesi.org/WP2017\\_02.pdf](https://files.institutesi.org/WP2017_02.pdf).

41 ‘Government to Allow Pakistani Hindus to Buy Property, Open Bank Accounts.’ *Economic Times*, April 17, 2016, <https://economictimes.indiatimes.com/news/politics-and-nation/government-to-allow-pakistani-hindus-to-buy-property-open-bank-accounts/articleshow/51863383.cms>.

42 1595 Pakistanis were granted Indian citizenship in the three years since (till 2018). Since 2018, when religion-wise data began to be made public, 295 Hindus and Sikhs from Afghanistan and Pakistan were granted Indian citizenship (as of February 13, 2019). See: ‘Sikh and Hindu Refugees from Afghanistan and Pakistan.’ Ministry of Home Affairs, Press Information Bureau, February 13, 2019, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1564254> .

The amendment, while seeking to open India's doors to the persecuted groups mentioned above, excludes Muslims from its ambit. For instance, Ahmadiyahs and Shias fleeing persecution in Pakistan, and Hazaras fleeing Afghanistan, have been left out. As have Rohingyas from Myanmar. The Tamils of Sri Lanka have also been excluded. This selective application is in contravention of international law, in particular the right to nationality 'without distinction as to race, colour, or national or ethnic origin' (Article 5, CERD), and against India's Constitution which guarantees equality before the law (Article 14) and does not permit discrimination on any ground (Article 15). The amendment has been challenged in court by 140 parties.

On other occasions too, Muslim refugees have been completely ignored by the national government while making any 'humanitarian considerations'. Home Minister Rajnath Singh declared in September 2018 that all Rohingyas in India were 'illegal immigrants' who were to be deported on account of being a threat to national security. This is a direct violation of non-refoulement, a fundamental principle of international law.<sup>43</sup> A week later, the Indian Supreme Court refused to intervene in a plea by seven Rohingya Muslims to stop their deportation to Myanmar. The subsequent announcement of a systematic biometric data collection exercise at the state level stoked fears among the Rohingya that the government intended to follow through with its threat.<sup>44</sup> A second round of deportations followed in January 2019, and hundreds of Rohingyas have begun returning to Bangladesh on their own. India's treatment of the Rohingya has come under particular criticism by international bodies. Meenakshi Ganguly, the South Asia director at Human Rights Watch, reckons that the Indian government views the Rohingya 'from a single obsessive prism—that they're Muslim.'<sup>45</sup>

<sup>43</sup> 'Obtain Particulars of Rohingya for Deportation, Rajnath Singh Tells States,' *The Indian Express*, September 27, 2018, <https://indianexpress.com/article/india/obtain-particulars-of-rohingya-for-deportation-rajnath-singh-tells-states-5377088/>.

<sup>44</sup> 'Govt Tells States to Collect Biometrics of Rohingyas,' *Hindustan Times*, October 1, 2018, <https://www.hindustantimes.com/india-news/govt-tells-states-to-collect-biometrics-of-rohingyas/story-PyRqA1jw9JbPfQivAMo4rJ.html>

<sup>45</sup> Sadanand Dhume, 'Fear of Islam Leads India to Snub Refugees,' *The Wall*

## **Making Foreigners in Assam and elsewhere**

In addition to introducing exclusionary, unfair and arbitrary policies toward refugees, India has also been disenfranchising some of its own citizens, making them foreigners in their own land, incarcerating them in detention centres, and putting them at risk of statelessness. The recently concluded exercise of drawing up a National Register of Citizens (NRC) in Assam in an effort to ‘detect and deport’ illegal foreigners has created havoc for millions of Indian citizens and has ended up disenfranchising citizens *en masse*.<sup>46</sup> The central government now plans to scale this up nationally to identify ‘illegal immigrants’ everywhere, which many believe refers to Muslims.

The long-winded NRC process in Assam has led to an atmosphere of pervasive fear and panic. In a region marked by chronic poverty, illiteracy, poor record-keeping and constant migrations due to floods that wash away entire settlements, individuals face potential disenfranchisement unless they are able to provide documentary evidence tracing their lineage back by almost five decades. In many cases, a mismatch of a mere letter in names in one of the many required documents has been enough to declare someone as a foreigner. The final NRC, published on 31 August 2019, left 1.9 million residents of Assam off the list. As the NRC is touted to be a list of citizens, fears of arbitrary deprivation of nationality of all those who were left off it is widespread. The legal redress awaiting these individuals is opaque, arbitrary and awash with prejudice among those implementing it.<sup>47</sup>

The exclusion of such a large number of persons is an outcome of procedural failures in the administration of NRC. Populations have been arbitrarily segregated into ‘original’ and ‘non-original’ inhabitants—with Bengali-speaking minorities making up the bulk of the latter, and differential criteria used to verify claims

---

*Street Journal*, May 31, 2018. <https://www.wsj.com/articles/fear-of-islam-leads-india-to-snub-refugees-1527807807>.

46 Helen Regan, ‘1.9 Million Excluded from Indian Citizenship List in Assam,’ *Cable News Network*, August 31, 2019, <https://edition.cnn.com/2019/08/30/asia/assam-national-register-india-intl-hnk/index.html>.

47 Rohini Mohan, ‘Worse Than a Death Sentence’: Inside India’s Sham Trials That Could Strip Millions of Citizenship,’ *VICE News*, July 29, 2019, [https://news.vice.com/en\\_us/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship](https://news.vice.com/en_us/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship).

depending on whether they come from someone deemed 'original' inhabitant or 'non-original'. Furthermore, arbitrariness is written into the law as Section 3(3) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003 mentions 'persons originally inhabitants of the State of Assam', without any definition or the basis for identifying such 'original inhabitants'. This fuzziness has been used by NRC authorities to arbitrarily reject documents provided by minorities in physical verification proceedings, resulting in the disproportionate exclusion from NRC of Bengali-speaking persons.

The state has had a long history of arbitrarily disenfranchising minorities in Assam, particularly Bengali-speaking Muslims. Immediately after Independence, The Immigrants (Expulsion from Assam) Act 1950 was used to identify 'suspected foreigners' and push them over the borders into the then East Pakistan. This was renamed the Prevention of Immigration Scheme (PIP) in the early 1960s, again targeting Bengali-speaking Muslims.<sup>48</sup> Under mounting criticism, the quasi-judicial Foreigners Tribunals (FTs) were established, under the Foreigners (Tribunal) Orders 1964, to provide a semblance of due process, and these have continued to function to this day. Since the tribunals test claims to citizenship using the Foreigners Act, 1946, the outcomes are generally foregone conclusions. The Foreigners Act shifts the burden of proof to the applicant, who is required to satisfy the tribunal of the genuineness of his or her claim. The fact that victims are mostly destitute and poorly educated, and that government record-keeping is neither efficient nor accessible, makes this requirement unfulfillable for many.

In 1983, the Illegal Migrants (Determination by Tribunal) Act (IMDT) corrected the reversal of burden of proof in FT proceedings, to the prosecution. But under an orchestrated campaign by a lobby of Assamese nativists and Hindu nationalists, the IMDT Act was struck down by the Supreme Court in 2005, reviving the arbitrariness of FTs in making foreigners out of long-standing

---

48 Gaurav Das, 'NRC Tsunami Bypasses Assam Island,' *Telegraph India*, July 25, 2018, <https://www.telegraphindia.com/states/north-east/nrc-tsunami-bypasses-assam-island/cid/1455872>.

citizens.<sup>49</sup> And, in 1997, under political pressure, the Election Commission of India launched its own programme to mark out foreigners, identifying ‘doubtful’ voters and removing names from voter lists, again all through the FTs. Since 1985, some 100,000 persons have been declared foreigners, with a steep uptick since 2016, when BJP took power in Assam. Two thirds of these were in *ex parte* proceedings, where the accused never got a chance to make their case before the bench.<sup>50</sup> Individuals declared as foreigners, whose appeals in higher courts have been turned down, end up in detention centres where conditions are grim. In July 2019, India’s Home Ministry revealed in Parliament that Assam’s six functional detention centres housed 1133 such declared foreigners.<sup>51</sup>

While the NRC and associated exercise was designed primarily to drive Bengali-speaking Muslims out of the state, its actual impact has cut across religious, ethnic and linguistic minorities. Even among the minorities, the most affected are the poor and the vulnerable who cannot afford effective legal representation. Particularly at risk are women, many of whom have married young and moved away to their husbands’ villages, with no official documentation to prove their link to their families and to their places of birth. The documents they can manage to produce, usually issued by village-level authorities, are often considered inadequate by the FTs. The uncertainty and resultant panic have contributed to a spate of suicides by people who fear the indignity of disenfranchisement and the horror of detention. By June 2019, Citizens for Justice & Peace (CJP), a human rights organisation, had tracked 51 such cases in the state, with most of them being reported since the publication of the first draft list in January 2018.<sup>52</sup> Many more suicides have been reported since the publication of the final list.<sup>53</sup>

---

49 ‘SC Strikes down IMDT Act as Unconstitutional,’ *The Economic Times*, July 13, 2005, <https://economictimes.indiatimes.com/sc-strikes-down-imdt-act-as-unconstitutional/articleshow/1168803.cms?from=mdr>.

50 ‘Unstarred Question No. 1724,’ Supplementary Questions, Parliament of India, last modified July 2, 2019, <http://loksabhaph.nic.in/Questions/QResult15.aspx?qref=1909&lsno=17>.

51 *Ibid.*

52 *Ibid.*

54 ‘Fear over NRC Grips West Bengal, Two More Commit Suicide,’ *The Times of India*, September 24, 2019, <https://timesofindia.indiatimes.com/india/fear->

Notably, contrary to public expectations, the final NRC list reportedly has more Hindus on it than Muslims.<sup>54</sup> State and central governments—both under the Hindu nationalist BJP— sought a potential workaround for all non-Muslims excluded from the Assam NRC list. As the Indian Home Minister said:

I want to assure all Hindu, Sikh, Jain, Buddhist and Christian refugees that you will not be forced to leave India by the Centre. Don't believe rumours. Before NRC, we will bring the Citizenship Amendment Bill, which will ensure these people get Indian citizenship.<sup>55</sup>

The bill the Home Minister was referring to, and was signed into law on 12 December 2019, has redefined the 'illegal immigrant' category on religious lines, by excluding all Hindu, Sikh, Jain, Buddhist and Christians from Bangladesh, Pakistan and Afghanistan, from its purview. All are thus made eligible for naturalisation. Muslims, however, will continue to be covered under the 'illegal migrant' category.

Over the past months, there has been a clamour by BJP-ruled states across the country to implement NRC-like exercises of their own. The central government's first policy statement after returning to power in May 2019 included a promise to implement the NRC as a priority in other areas in India 'affected by infiltration'.<sup>56</sup> In July 2019, an official notification laid the ground for a two-step process to prepare a National Register of Indian Citizens. Information sourced through Right to Information (RTI) applications reveals

---

[over-nrc-grips-west-bengal-two-more-commit-suicide/articleshow/71281560.cms](https://www.outlookindia.com/magazine/story/india-news-even-hindus-are-illegal-immigrants-in-assams-ambitious-national-register-of-citizens-bjp-on-backfoot/302099)

54 Anupam Bordoloi, 'Even Hindus are "Illegal Immigrants" in Assam's Ambitious National Register of Citizens! BJP on Backfoot?' *Outlook India*, September 2016, 2019, <https://www.outlookindia.com/magazine/story/india-news-even-hindus-are-illegal-immigrants-in-assams-ambitious-national-register-of-citizens-bjp-on-backfoot/302099>.

55 'Will Throw out Intruders: Amit Shah's Big NRC Push in West Bengal.' *India Today*, October 1, 2019, <https://www.indiatoday.in/india/story/ amit-shah-nrc-speech-kolkata-bjp-elections-citizenship-illegal-immigrants-1605194-2019-10-01>.

56 'NRC to Be Implemented on Priority in Areas Affected by Infiltration: President,' *The Hindu Business Line*, June 20, 2019, <https://www.thehindubusinessline.com/news/national/nrc-to-be-implemented-on-priority-in-areas-affected-by-infiltration-president/article28085910.ece>.

that ‘identifying person whose citizenship is doubtful’ is central to this exercise. Furthermore, the national government has asked for detention centres to be established in each state, and Foreigners Tribunals to be set in districts across the country. And some BJP-ruled states, such as Uttar Pradesh<sup>57</sup> in the north and Karnataka<sup>58</sup> in the south are relying on the police to arbitrarily round up ‘suspected foreigners’, all of whom are Muslim. Rights scholars and activists point out that the goals of this exercise are irrational, and the costs far outweigh whatever gains there might be. The methods used to roll out the exercise are also unconstitutional, as they violate the provisions of non-discrimination and ensuring dignity and equality of all in the constitution and international law.<sup>59</sup>

## Conclusion

India has neither signed the 1951 UN Convention on Refugees nor devised its own domestic refugee law. Refugees and forced migrants are therefore treated on a par with other foreigners and not guaranteed basic rights, such as prohibition of discrimination, equality of opportunity, and freedom of speech and movement. The core principle of the UN Convention on Refugees is non-refoulement, which asserts that a refugee should not be forced to return to a country where they face serious threats to their life and freedom. This principle, considered a rule of customary international law, was violated when the Indian Supreme Court refused to intervene to stop the deportation of Rohingya refugees by the central government in October 2018.

India has also not ratified the 1954 Convention Relating to the Status of Stateless Persons, meaning that stateless persons are not recognised as legal entities deserving the minimum standards of treatment due to them, including the right to education,

---

<sup>57</sup> ‘UP Cops to Launch Crackdown on Illegal Bangla Immigrants,’ *The Times of India*, October 2, 2019, <https://timesofindia.indiatimes.com/city/lucknow/up-cops-to-launch-crackdown-on-illegal-bangla-immigrants/articleshow/71402211.cms>.

<sup>58</sup> ‘Karnataka Police Arrests 60 on Suspicion of Being Undocumented Bangladeshi Immigrants,’ *The Wire*, October 27, 2019, <https://thewire.in/rights/karnataka-police-arrests-60-on-suspicion-of-being-undocumented-bangladeshi-immigrants>.

<sup>59</sup> Gautam Bhatia, ‘A Bill That Undercuts Key Constitutional Values,’ *The Hindu*, October 6, 2019, <https://www.thehindu.com/opinion/lead/a-bill-that-undercuts-key-constitutional-values/article29611770.ece>.

employment and housing, as well as the right to identity, travel documents and administrative assistance. India has also not signed the 1961 Convention on Reduction of Statelessness, that seeks to prevent statelessness and reduce it over time. This has enabled Indian citizenship laws to be rife with exclusionary and arbitrary provisions that produce statelessness such as the provision for citizenship which necessitates that parents of even those born in India not be 'illegal migrants'. Groups such as Chakma and Hajong in Arunachal Pradesh and large numbers of Bengali-speaking persons in Assam, face statelessness as a result.

India has been following selective practices with different refugee and displaced groups that do not accord with international norms. Irrespective of the official stand, the living conditions reported by all refugee groups we studied were abysmal with poor security, lack of basic amenities, and limited employment opportunities. Access to education and healthcare were poor, particularly for those living in camps. Across groups, employment was limited to petty, informal, daily-wage labour.

The lack of a national refugee law means rights and services, besides being below par, vary across groups, with different groups treated differently and arbitrarily, and refugee protection delivered in an ad hoc manner. There is a marked contrast between persecuted non-Muslims, who are viewed favourably, and Muslims, mainly Rohingyas from Myanmar and Muslims from Bangladesh, who are viewed with suspicion and treated with hostility.

This arbitrariness and discrimination, mostly directed at Muslim groups, is being institutionalised under the current Hindu-majoritarian dispensation, with citizenship laws effectively being used for political ends. The 1986 amendment to the Citizenship Act, 1955 moved the basis of citizenship from *jus sui* to *jus sanguinis* system, thus making citizenship contingent on descent in place of birth. In 2003, further amendments created the category of 'illegal migrants', completely excluding those deemed such from any route to citizenship, including of their children born in India. The amendment also laid the grounds for preparing National Register of Citizens, first rolled out in Assam. The completion of the NRC updation in Assam, the result of a 10-year-long administrative screening process, involving 52,000 state employees and at a cost

of USD 180 million, has left 1.9 million persons off the list. Further demonstrating the religious agenda of the government is the fact that central government and senior BJP leaders have assured Hindus excluded from NRC (along with Buddhist, Christian, Parsi, Sikh and Jains, if any) against any government moves to deport them.

This use of law and procedures, in claiming NRC as critical to identify and deport Muslim illegal immigrants, while offering the Citizenship Amendment Act 2019 as a refugee protection mechanism for Hindus who will not be deported, is remarkable, coming as it does from the highest authorities in government and the ruling party. Under the new citizenship dispensation, the government also wants to expand its NRC as a 'detect, detain and deport' machinery, to the rest of the country, to create a National Register of Indian Citizens. This does not portend well for the religious minorities in India.

## **Recommendations**

There is a clear need to strengthen India's refugee laws and to democratise and make citizenship laws more inclusive for all kinds of persecuted people, including minorities.<sup>60</sup> Below are some of our recommendations.

### *For the state party:*

#### i. Refugees and asylum-seekers

- Sign the 1951 Refugees Convention, and its 1967 Protocol.
- Provide rights and services per existing international norms equally to all refugees.

#### ii. Statelessness

- Sign the 1954 Convention Relating to the Status of Statelessness Persons.
- Sign the 1961 Convention on the Reduction of Statelessness.
- Correct provisions of the Citizenship Act 1955 that create

---

<sup>60</sup> Mohsin Alam Bhat, 'The Constitutional Case against the Citizenship Amendment Bill,' *Economic & Political Weekly* 54, no. 3 (January 19, 2019). <https://www.epw.in/journal/2019/3/commentary/constitutional-case-against-citizenship.html>.

statelessness, i.e., *sui soli*, parents not ‘illegal migrants’, and residency and language requirement.

iii. Citizenship

- Revoke the Citizenship Amendment Act 1955, introducing a religion test in the determination of citizenship. Abolish ordinances that relax criteria selectively for refugees from specific countries and of specific religious faiths. Replace these with an inclusive, all-embracing law that makes India home to persecuted minorities—religious, ethnic and linguistic.
- Relax provisions for grant of citizenship to refugees and their children, and to prevent statelessness across all groups, and not selectively by religion, or countries.
- Remove arbitrariness in the Citizenship Act 1955, present in the form of complex procedures, language criterion, and denial of OCI<sup>61</sup> to those with any links to Pakistan, Bangladesh, among others.

iv. Assam NRC and appeals against exclusion from NRC

- Provide effective redress to those excluded from NRC in Assam, through provision of legal aid, changes to appeals procedures set out in recent orders (30 May 2019 amendment to Foreigners Tribunal orders), and Foreigners Tribunals acting as effective redress bodies, removing arbitrariness in their proceedings.
- Close down detention centres in Assam and release all detainees. Conduct special audit of those declared foreigners already, including those currently in detention, to identify those who might have been the victims of arbitrary procedures. Initiate discussions with relevant foreign governments for deportation of illegal immigrants. and provide a route to appeals before FTs (part of the NRC process) for the rest.
- Address ‘immigrant’ anxieties of Assamese population by working on a policy of opportunity creation and identity safeguards that are equitable and inclusive for all individuals deemed citizens in Assam.

---

<sup>61</sup> OCI or Overseas Citizen of India, grants life-long visa to persons of Indian origin. ‘India origin’ is defined arbitrarily.

v. Pan-India NRC:

- Abolish plans for all-India National Register of Indian Citizens (NRIC), relying
- rather on the existing biometric national registration system that already documents the entirety of the Indian population. Stop work on National Population Register (NPR), the first steps to NRIC.

*For the international community:*

- Encourage India to enforce its international obligations on refugees and asylum-seekers and citizenship, by codifying these in domestic legislations, case law and programmes.
- Encourage India to revoke the discriminatory CAA 2019, and replace it with an inclusive refugee law, that is founded on India's signing the refugee and statelessness conventions and protocols.
- Support India to resolve the conditions of uncertainty created by NRC in Assam, by providing opportunity for effective appeals for those excluded, and ensuring that no one is left at risk of statelessness.
- Provide technical assistance and training to Indian authorities towards creating an inclusive refugee and asylum framework, and non-discriminatory citizenship regime.
- Hold India to account in international fora on its treatment of refugees, and its role in disenfranchising citizens and creating statelessness.

# Living in Limbo

## Tibetan and Bhutanese Refugees in Nepal

Sudeshna Thapa, Yangchen Dolker Gurung &  
Jeevan Baniya

---

### Introduction to Nepal's Refugee Population

By the end of 2018, Nepal was home to 20,800 refugees, 55 asylum-seekers and 579 'others of concern'.<sup>1</sup> While Tibetan and Bhutanese refugees account for a large majority of Nepal's refugee population (64% and 31%, respectively),<sup>2</sup> more than 500 refugees and asylum-seekers from other countries have been living in Nepal since the early 1990s.<sup>3</sup> Near 108,000 Bhutanese refugees were living in Nepal in the early 2000s, prior to the implementation of the third-country resettlement programme for them in 2007.<sup>4</sup> Nepal has also been hosting a small community of Rohingya refugees who have made their way into Nepal after fleeing violent persecution in Myanmar since 2012.<sup>5</sup>

---

1 These are figures made available by the United Nations High Commissioner for Refugees (UNHCR), actual numbers may vary. See UNHCR, 'UNHCR year-end report: Nepal' (Kathmandu: UNHCR, 2018), accessed November 20, 2019, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GR2018-Nepal-eng.pdf>. For the UNHCR 'persons of concern' are asylum-seekers, refugees, returnees, the internally displaced and stateless people. See UNHCR, 'Handbook for Emergencies' (Geneva: UNHCR, 2007), accessed February 20, 2020, [https://www.ifrc.org/PageFiles/95884/D.01.03.%20Handbook%20for%20Emergencies\\_UNHCR.pdf](https://www.ifrc.org/PageFiles/95884/D.01.03.%20Handbook%20for%20Emergencies_UNHCR.pdf)].

2 Ibid.

3 Refugees from other countries include those from Pakistan, Afghanistan, Sri Lanka, Bangladesh, Somalia, Iran, Iraq and the Democratic Republic of Congo. See US embassy in Nepal, 'Nepal 2018 Human Rights Report' (Kathmandu: US embassy in Nepal, 2018), accessed October 1, 2019, <https://np.usembassy.gov/wp-content/uploads/sites/79/Country-Reports-on-Human-Rights-Practices-for-2018.pdf>.

4 Michael Hutt, 'Editorial', *European Bulletin of Himalayan Research* (EBHR), no.43 (Autumn-Winter 2013).

5 See Lindsey A. Hedges, 'living on the margins', *Nepali Times*, May 25, 2018,

Although home to a large refugee population, Nepal is not a signatory to the 1951 United Nations Refugee Convention<sup>6</sup> or its 1967 Protocol<sup>7</sup> and lacks a comprehensive domestic legal framework for refugee protection and for the determination of individual refugee or asylum claims. However, the Government of Nepal has been cooperating with the United Nations High Commissioner for Refugees (UNHCR) to assist refugees living in Nepali territory. The primary focus of this chapter is to offer a comparative analysis of the present socio-economic situation of the two major refugee groups in Nepal, Tibetans and Bhutanese.

## Methodology

This chapter incorporates information derived from both primary and secondary research. Interviews were conducted with 15 Bhutanese refugees in two Bhutanese refugee camps (Sanischare, Morang district, and Beldangi, Jhapa district) and 15 Tibetan refugees in two Tibetan refugee settlements in and around Pokhara (Chhorepatan and Dulegauda). Interviews were also conducted with officials of the Camp Management Committee (CMC) in the Bhutanese refugee camps and the Tibetan refugee settlements visited along with community-based organisations (CBOs) active in the Bhutanese refugee camps. Officials from international agencies providing services in the Bhutanese refugee camps were also interviewed as were those from the Snow Lion Foundation, a non-profit providing support to Tibetan refugees in all the settlements in Nepal. Alongside, a review of existing literature on both Tibetan and Bhutanese refugees as well as international and domestic legal instruments governing refugees was conducted.

---

<https://www.nepalitimes.com/here-now/living-on-the-margins/>; Rewati Sapkota, 'Nepal, India to jointly monitor movement of Rohingya refugees in border areas', *The Himalayan Times*, October 31, 2018, <https://thehimalayantimes.com/kathmandu/nepal-india-to-jointly-monitor-movement-of-rohingya-refugees-in-border-areas/>; Robic Upadhyay and Ashwin Sharma, 'Anew beginning', *The Record*, November 29, 2018, <https://www.recordnepal.com/wire/videos/a-new-beginning-for-rohingya-refugees-in-nepal/>.

<sup>6</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, accessed November 5, 2019, <https://www.refworld.org/docid/3be01b964.html>.

<sup>7</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, accessed November 7, 2019, <https://www.refworld.org/docid/3ae6b3ae4.html>.

## Persecution and Exodus of Tibetan and Bhutanese Refugees

The arrival of Tibetan refugees into Nepal began during the early 1950s. China had occupied Tibet in 1949 but it was only after the failed uprisings in Lhasa and Kham in March 1959 that the Dalai Lama and 80,000 Tibetans escaped to Nepal, India and Bhutan.<sup>8</sup> Around 20,000 Tibetan refugees had settled in Nepal in 1959.<sup>9</sup> While Tibetans mostly went into exile due to fear of religious persecution, some nomads fled to northern Nepal and Ladakh (India) because they feared their herds would be collectivised while others fled because they had fought against the Chinese army.<sup>10</sup> The Chinese repression of Tibetans is reported to have included destruction of religious buildings and the imprisonment of monks and other community leaders.<sup>11</sup> Many of the elderly refugees presently living in Nepal, who fled from Tibet in their youth in the late 1950s, report having faced violent religious persecution at the hands of Chinese authorities, including physical and sexual abuse, prior to their exodus from the country.<sup>12</sup>

Bhutanese refugees in Nepal are mainly Lhotshampas, or southerners of ethnic Nepali origin, most of whom are descendants of Hindu peasant farmers who first began to migrate to Bhutan after the Anglo-Bhutanese war of 1865.<sup>13</sup> Lhotshampas were forced to leave Bhutan as a result of the nationalist policies in the 1980s, including the Citizenship Acts of 1977 and 1985 that narrowed the terms for acquiring Bhutanese citizenship, the Marriage Act of 1980 that made it more difficult for Bhutanese to marry non-Bhutanese, and the special census of 1988 that required Lhotshampas to

---

8 John F. Avedon, *In Exile from the Land of Snows* (India: Viking by Penguin Books India, 1997), 72.

9 Maura Moynihan, 'Tibetan Refugees in Nepal', in *Exile as Challenge: The Tibetan Diaspora*, ed. Dagmar Bernstorff and Hubertus von Weick (New Delhi: Orient Longman Private Limited, 2004), 312-321.

10 George Woodcock, 'Tibetan Refugees in a Decade of Exile', *Pacific Affairs* 43, no. 3 (1970): 410.

11 See 'The Invasion of Tibet', Official Students for a Free Tibet, accessed November 1, 2019, <http://www.umass.edu/rso/fretibet/education.html>.

12 Interviews with Tibetan refugees in the Tashiling settlement, Chhorepatan and the Jampaling settlement, Dulegauda, 11/22/2019–11/25/2019.

13 Michael Hutt, 'The Bhutanese Refugees: Between Verification, Repatriation and Royal Realpolitik', *Peace and Democracy in South Asia* 1, no.1 (2005): 45.

present tax receipts dated 1958 or earlier in order to be recorded.<sup>14</sup> The census operations became a tool for the identification and eviction of many Lhotshampas categorised by the Bhutanese government as ‘illegal immigrants’. Furthermore, the introduction of the ‘One Nation, One People’ policy in 1989 imposed social and cultural norms of the ruling Buddhist Drukpa on everyone and targeted the Lhotshampas in particular, an overwhelming majority of whom were Hindus.<sup>15</sup> Dissidents, the wealthy, the educated, and various other categories of Lhotshampa citizens were subsequently banished from Bhutan.<sup>16</sup> By the early 2000s, the Bhutanese refugee population in Nepal had soared to an estimated 108,000.<sup>17</sup>

Similar to the Tibetans, many Bhutanese refugees currently living in Nepal’s camps relate accounts of the violent persecution they faced back in their home country.<sup>18</sup> Beginning in November 1989, Lhotshampa activists were arrested, detained and severely tortured; anyone voicing dissent against the Drukpa regime was branded ‘anti-national’ and stood the risk of being sentenced to capital punishment.<sup>19</sup> Those who participated in demonstrations or were suspected of having links to the then ongoing human rights movement were made to sign ‘voluntary migration forms’ at gunpoint.<sup>20</sup> Peaceful protests were also met with bullet and bayonet charges.<sup>21</sup>

Furthermore, the *Driglam Namzha* (the 17th-century cultural code of conduct) enforced through the ‘One Nation, One People’

---

14 Michael Hutt, *Unbecoming Citizens* (New Delhi: Oxford University Press, 2003), 147-152.

15 Vidhyapati Mishra, ‘Bhutan Is No Shangri-La’, *The New York Times*, June 28, 2013, <https://www.nytimes.com/2013/06/29/opinion/bhutan-is-no-shangri-la.html>.

16 Michael Hutt, ‘The Bhutanese Refugees: Between Verification, Repatriation and Royal Realpolitik’, *Peace and Democracy in South Asia* 1, no.1 (2005): 47.

17 Michael Hutt, ‘Editorial’, *European Bulletin of Himalayan Research* (EBHR), no.43 (Autumn-Winter 2013).

18 Interviews with Bhutanese refugees in the refugee camps in Beldangi, Jhapa and Sanischare, Morang, 09/26/2019–09/30/2019.

19 Venkat Pulla, *The Lhotshampa people of Bhutan: Resilience and Survival* (United Kingdom: Palgrave Macmillan, 2016), 17.

20 G.K. Siwakoti, ‘Beyond Border’ (Kathmandu: INHURED International, 2012).

21 INHURED International, ‘Bhutan: An Iron Path to Democracy, A special volume on documentation of human rights violations in the kingdom of Bhutan’ (Kathmandu: INHURED, 1992), 15.

policy prescribed the 'official behaviour and dress code of the kingdom of Bhutan' and issued clear guidelines on how citizens should dress in public and how they should behave in formal settings, in addition to regulating aspects of cultural life such as art and architecture.<sup>22</sup> As such, the language, dress, and culture of the Dzongkha-speaking Drukpa or Ngalong ruling elite was made mandatory and was imposed on all Bhutanese.<sup>23</sup> Many Bhutanese refugees currently living in Nepal report being penalised for wearing the traditional Nepali attire and being instructed to wear Drukpa clothing such as *kira*<sup>24</sup> and *gho*<sup>25</sup>. Women report having been advised to refrain from donning traditional Nepali ornaments like *pote*<sup>26</sup>. Some even report having been instructed to consume beef.<sup>27</sup> The lives of Lhotshampas, in the wake of the enforcement of the nationalist policies, was characterised by 'major deprivations such as denial of the right to nationality; the right to protect, preserve, and practice one's culture; the right to wear one's ethnic dress; and the right to speak, read, and write in one's mother tongue'.<sup>28</sup> While some of the Bhutanese refugees living in Nepal's camps claim to have been forcibly evicted, many report joining the mass exodus from Bhutan amidst trying circumstances, fearing for their lives, dignity and way of life.

### The Current Refugee Population in Nepal

At present, there are over 13,000 long-term Tibetan refugees,<sup>29</sup> in 12 different settlements across Nepal.<sup>30</sup> The initially makeshift

---

22 Venkat Pulla, *The Lhotshampa people of Bhutan: Resilience and Survival* (United Kingdom: Palgrave Macmillan, 2016), 15.

23 Ibid.

24 *Kira* is the Bhutanese national dress for women. It is a rectangular piece of woven fabric, wrapped and folded around the body and pinned at both shoulders.

25 *Gho* is the Bhutanese national dress for men. It is a knee-length robe tied at the waist by a cloth belt known as the *keru*.

26 *Pote* is a necklace made of small colourful glass beads, typically worn by married Nepali Hindu women, especially Bahuns and Chhetris.

27 Hindus are known to refrain from the consumption of beef due to widespread belief that it is sinful.

28 Venkat Pulla, *The Lhotshampa people of Bhutan: Resilience and Survival* (United Kingdom: Palgrave Macmillan, 2016), 16.

29 UNHCR, 'UNHCR year-end report: Nepal' (Nepal: UNHCR, 2018), accessed November 10, 2019, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GR2018-Nepal-eng.pdf>.

30 The settlements are located in Jawalakhel, Boudha, and Swayambhunath

settlements have now evolved into well-built colonies and the Tibetan community has become a visible minority in cities like Kathmandu and Pokhara, where most of this community have settled.<sup>31</sup> Some of the settlements are agriculture-based, some are handicraft-based, and a few are cluster communities involved in varied economic activities.<sup>32</sup> Each settlement has a school and a health clinic, situated either in the premises of the settlements or in its periphery.<sup>33</sup>

The population of Bhutanese refugees currently living in Nepal is much smaller than that of Tibetan refugees. Of the over 108,000 refugees initially housed in seven camps in Jhapa and Morang districts in south-eastern Nepal, only an estimated 6,500 remain in Nepal.<sup>34</sup> Over 90 per cent of the initial Bhutanese refugee population has now left for third-country resettlement to eight different countries around the world—Australia, Canada, Denmark, the Netherlands, New Zealand, Norway, the United Kingdom and the United States of America.<sup>35</sup> While the majority of the refugees have been resettled in a number of locations scattered across the US, smaller numbers are in the seven other countries.<sup>36</sup> After

---

in the vicinity of Kathmandu; in Dhorpatan in Baglung, Chialsa in Solukhumbu, Chairok in Mustang, Syabru in Rasuwa and Walung in Taplejung; and in the Pokhara region. Of the four settlements in the Pokhara region (Tashi Palkhiel, Tashi-Ling, Paljorling and Jampaling), the lesser known Jampaling settlement is situated in Dulegauda, about 23 kilometers southeast of Pokhara on the Prithvi Highway. See 'Tibetan refugee settlements in Nepal', Central Tibetan Administration, accessed November 25, 2019, <http://centraltibetanreliefcommittee.org/doh/settlements/nepal/settlements-in-nepal.html>.

31 'Tibetans in Nepal: History of Tibetans in Nepal', The Tibetan Encounter, accessed November 25, 2019, <https://tibetanencounter.com/pokhara-cultural-tours/about-tibetans-in-nepal/>.

32 'Tibetan refugee settlements in Nepal', Central Tibetan Administration, accessed November 25, 2019, <http://centraltibetanreliefcommittee.org/doh/settlements/nepal/settlements-in-nepal.html>.

33 Ibid.

34 Interview with Champa Singh Rai (Secretary, Sanischare Camp Management Committee), 09/29/2019.

35 United Nations, 'Press Statement : US Ambassador Randy Berry visits Bhutanese Refugee Settlements', *United Nations Nepal Information Platform*, April 26, 2019, <http://un.org.np/headlines/press-statement-us-ambassador-randy-berry-visits-bhutanese-refugee-settlements>.

36 Michael Hutt, 'Editorial', *European Bulletin of Himalayan Research* (EBHR), no.43 (Autumn-Winter 2013).

several rounds of failed bilateral talks for repatriation between the Government of Nepal and the government of Bhutan between 1993 and 2003, the UNHCR and the International Organisation for Migration (IOM) began groundwork for the large-scale resettlement of the refugees in 2007,<sup>37</sup> and the first batch of 100 refugees left for the US in March 2008.<sup>38</sup> Recent figures indicate that more than 113,000 have now been resettled abroad.<sup>39</sup> After the last batch of refugees left the country in December 2017,<sup>40</sup> the resettlement programme drew to a close. The third-country resettlement programme<sup>41</sup> for Bhutanese refugees in Nepal has been lauded as ‘one of the largest and most successful programmes of its kind’ by the UNHCR.<sup>42</sup> Since the global trend is for fewer than 1 per cent of the refugees to be resettled, the figures for Nepal’s Bhutanese refugees—over nine out of every 10 refugees resettled—was deemed ‘exceptional’.<sup>43</sup> Around 5,000 of the remaining 6,500 Bhutanese refugees are living in Beldangi camp, in Jhapa,<sup>44</sup> while the other of the two camps still in operation is in Sanischare, Morang, housing around 1,500. The shelters in the camps are makeshift structures made of bamboo.

---

37 UNHCR, ‘Nepal: Start of resettlement process for Bhutanese refugees’, November 6, 2007, <https://www.unhcr.org/news/briefing/2007/11/473055824/nepal-start-resettlement-process-bhutanese-refugees.html>.

38 ‘Third-country resettlement of Bhutanese refugees to increase’, *The New Humanitarian*, June 30, 2008, <http://www.thenewhumanitarian.org/report/79008/nepal-third-country-resettlement-bhutanese-refugees-increase>.

39 Anil Giri, ‘Nepal to resume talks with Bhutan on refugee repatriation’, *The Kathmandu Post*, February 3, 2019, <https://kathmandupost.com/national/2019/02/03/nepal-decides-to-resume-talks-with-bhutan-on-refugee-repatriation>.

40 United Nations, ‘Press Statement : US Ambassador Randy Berry visits Bhutanese Refugee Settlements’, *United Nations Nepal Information Platform*, April 26, 2019, <http://un.org.np/headlines/press-statement-us-ambassador-randy-berry-visits-bhutanese-refugee-settlements>.

41 See UNHCR, ‘UNHCR resettlement Handbook’ (Geneva: UNHCR, 2011), accessed November 24, 2019, <https://www.unhcr.org/46f7c0ee2.pdf>.

42 Deepesh Das Shrestha, ‘Resettlement of Bhutanese refugees surpasses 100,000 mark’, UNHCR, November 19, 2015, <https://www.unhcr.org/news/latest/2015/11/564dded46/resettlement-bhutanese-refugees-surpasses-100000-mark.html>.

43 Anil Giri, ‘No solution yet for 8,500 Bhutanese refugees in Nepal’ *The Kathmandu Post*, November 19, 2017, <https://kathmandupost.com/national/2017/11/19/no-solution-yet-for-8500-bhutanese-refugees-in-nepal>.

44 Interview with Krishna Bahadur Subba (Secretary, Beldangi Camp Management Committee), 09/27/2019.

### **Identification and refugee status**

Although declining in numbers since 2008, around 2,500 to 3,000 Tibetan refugees cross the border into Nepal annually.<sup>45</sup> However, the Nepali government only recognises those Tibetans who crossed the border before 1989 as refugees; those coming in after that year are considered illegal immigrants.<sup>46</sup> However, a ‘gentlemen’s agreement’, an informal arrangement in place since 1989, obligates Nepal to allow Tibetans crossing the border safe passage through Nepali territory to India.<sup>47</sup> In a related development, after 1994, Nepal stopped issuing refugee cards (RCs) to children who had turned 16, including those born to parents holding valid RCs, leaving many stateless.<sup>48</sup> According to a 2014 report, fewer than 25 per cent of the refugees in the settlements hold RCs,<sup>49</sup> which provide Tibetans the right to reside and travel in Nepal. Without RCs, the refugees live in constant fear of deportation and are subject to exploitation by authorities.<sup>50</sup>

As for Bhutanese refugees, around 1,200-1,300<sup>51</sup> from the Beldangi camp and a little over 200 from the camp in Sanischare<sup>52</sup> do not hold RCs. Their absence from the camps during the census conducted in 2007 when RCs were first issued is the main reason they do not have that document.<sup>53</sup> Many such refugees report

---

45 The International Campaign for Tibet, ‘Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees’ (Washington DC: The International Campaign for Tibet, 2011).

46 Tibet Justice Center, ‘Tibet’s Stateless Nationals: Tibetan Refugees in Nepal’ (California: Tibet Justice Center, 2002).

47 See ‘Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report—Universal Periodic Review: 2nd Cycle, 23rd Session’, accessed November 25, 2019, [https://www.upr-info.org/sites/default/files/document/nepal/session\\_23\\_-\\_november\\_2015/unhcr\\_upr23\\_npl\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/nepal/session_23_-_november_2015/unhcr_upr23_npl_e_main.pdf).

48 Human Rights Watch, ‘Under China’s Shadow: Mistreatment of Tibetans in Nepal’ (USA: Human Rights Watch, 2014).

49 Ibid.

50 ‘Tibetan Settlements: Settlements in Nepal,’ Department of Home, Central Tibetan Administration, accessed April 8, 2019, <https://centraltibetanreliefcommittee.org/doh/settlements/nepal/settlements-in-nepal.html>.

51 Interview with Subba, Krishna Bahadur (Secretary, Beldangi Camp Management Committee), 09/27/2019.

52 Interview with Rai, Champa Singh (Secretary, Sanischare Camp Management Committee), Yangchen Dolker Gurung, 09/29/2019.

53 Nimi Gurung, ‘Refugees from Bhutan get first ID cards in Nepal’s

### Land Encroachment in the Jampaling Tibetan Settlement

The land in Dulegauda in Pokhara, the location of the Jampaling settlement, was provided to the Tibetan refugee community by the Nepal government in 1975. The settlement is spread over a total of 1,285 *ropanis* (65.4 hectares) and was established for the rehabilitation of former Tibetan fighters who had engaged in guerilla warfare against Chinese forces until 1974 out of their base in the border areas of Mustang, Nepal's northern district close to the Tibetan border. Most of the land is forested and only a small portion of it is currently used for housing and agriculture. The refugees claim to have been serving as the protectors of the land entrusted to them, including the forest area, for the past 49 years. More recently, however, the refugees report that 212 *ropanis* of the land (10.8 hectares) in the settlement has been occupied by the Nepal government in order to construct a training ground for the Nepal Police. Reportedly, the Ministry of Home Affairs issued a notice to the Jampaling Settlement Office invoking its authority to reclaim the said portion of the land for its use.

In another incident in May 2019, residents of the Jampaling Settlement said that some locals came into the settlement and bulldozed trees in a portion of the land in an attempt to flatten the ground to construct a football field. The refugees say that although they contested the encroachment, they believe the locals were given permission by local elected officials. Refugees note that Nepal's recent transition to federalism has created new dynamics between the local government and the refugee community. 'Now that local government bodies have also been bestowed with a certain level of autonomy, we feel like the locally elected representatives will seek to cater to the needs of the local residents of their constituents rather than those of the non-voting refugees,' said one.

The Jampaling Settlement Officer reports having filed a complaint with the Nepal government's Forest Department and with the Ministry of Home Affairs regarding the land encroachment but has, as yet, received no response. The refugees state that they hope to solve the issue with the help of the government in order to avoid direct confrontation and conflict with the locals. They claim that the expanse of land covered by Jampaling, although remote when first given to the refugees, is now of value to both locals and the government given its proximity to Pokhara, an ever-expanding city. They state that owing to their lack of legal ownership, they feel powerless in protecting the land they have been calling home for half a century.

living outside the camps in search of better economic opportunities during the census period. Refugees without RCs are currently

---

camps', UNHCR, December 10, 2007, <https://www.unhcr.org/news/latest/2007/12/475d761c2/refugees-bhutan-first-id-cards-nepals-camps.html>.

recorded as ‘census absentees’. While such refugees said they have been photographed earlier in 2019 as part of a census by the Nepal government, whether they will eventually receive RCs remains uncertain.<sup>54</sup>

Among the Bhutanese refugees who remain in Nepal, many were unable to apply for third-country resettlement owing to the lack of valid RCs. For others, the reasons for staying back are varied: some had their applications rejected by the host third country; some chose to stay back with ageing parents and grandparents who did not want to leave Nepal; some hope to assimilate into the local community as bona fide Nepali citizens; and some still hope to return to their home country, Bhutan.<sup>55</sup> According to information made available by the Secretary of the Camp Management Committee (CMC) in Beldangi, over 50 per cent of the Beldangi camp residents are awaiting resumption of the third-country resettlement process.<sup>56</sup> A little over 20 per cent, most of whom are elderly, seek repatriation to Bhutan while another estimated 20 per cent hope to settle permanently in Nepal.<sup>57</sup> Similarly, about 30-35 per cent of the refugee population in Sanischare harbour hopes of returning to Bhutan.<sup>58</sup>

## **Socio-economic conditions**

### ***Aid***

#### **Tibetan Refugees**

Most of the funding for the operation and management of the Tibetan settlements across Nepal comes from the Central Tibetan Administration (CTA), the Tibetan ‘government-in-exile’ based out of India. The non-profit Snow Lion Foundation (SLF), established by the Swiss Agency for Development and Cooperation-Nepal (SDC)

---

54 Interviews with Bhutanese refugees in the refugee camps in Beldangi, Jhapa and Sanischare, Morang, 09/26/2019–09/30/2019.

55 Ibid.

56 Interview with Krishna Bahadur Subba (Secretary, Beldangi Camp Management Committee), 09/27/2019.

57 Ibid.

58 Interview with Champa Singh Rai (Secretary, Sanischare Camp Management Committee), 09/29/2019.

in 1972 and currently funded by the CTA,<sup>59</sup> provides support to Tibetan refugees in all the settlements in Nepal in terms of education, healthcare and social welfare.<sup>60</sup> In addition, several international donor agencies have also been providing financial support to Tibetan refugees in Nepal. Among others, the United States Agency for International Development (USAID) provided financial assistance towards the construction of toilets and in the roofing of shelters in the Tashiling settlement, and offered assistance with the operation of livelihood-related projects.<sup>61</sup> In Jampaling settlement, the USAID has funded agricultural training on banana and papaya farming. Similarly, the Lodrik Welfare Fund, founded by a team of Swiss women in 1988, has also been conducting various projects aimed at supporting children in need, students, the elderly as well as nuns and monks across Tibetan refugee settlements in India and Nepal.<sup>62</sup> The Lodrik Welfare Association has also been providing assistance to the ex-guerrillas and their families.<sup>63</sup> In addition to the financial assistance provided by the CTA and by other donors, the Camp Management Committee staff in the settlements situated in urban areas like Pokhara say they are able to generate additional funds by renting out space to shops and eateries.<sup>64</sup>

### **Bhutanese Refugees**

The impact and involvement of international and national donor agencies and organisations in Bhutanese refugee camps has been extensive ever since the arrival of the refugees in the early 1990s. However, as the refugee population began to shrink due to the third-country resettlement programme, most donors withdrew their services.<sup>65</sup> Compared to a number of organisations contracted

---

59 The CTA), also referred to as the Tibetan Government in Exile, is based in Dharamsala, India and governs Tibetan refugees living in exile all over the world.

60 See 'Sponsor A Child in Exile: Snow Lion Foundation', The Tibet Fund, accessed November 25, 2019, <http://tibetfund.org/snow-lion-foundation/>.

61 Tibetan refugees in the Tashiling settlement, Chhorepatan. Interview with Sudeshna Thapa, Yangchen Dolker Gurung. 11/22/2019.

62 See 'Lodrik Welfare fund Nepal', Tibetfreunde Association, accessed November 25, 2019, <https://tibetfreunde.ch/en/sponsorships/lodrik-welfare-fund-nepal/>.

63 Ibid.

64 Interviews with Tibetan refugees in the Tashiling settlement, Chhorepatan, 11/22/2019.

65 Save the Children, UK had provided basic health care from 1992 to 2002

to distribute food and other basic provisions in the camps earlier, after 2006 the Lutheran World Federation (LWF) has taken over.<sup>66</sup>

In addition to food aid, Bhutanese refugee camp residents also received health and medical aid from various organisations. The Association of Medical Doctors of Asia (AMDA) has been providing primary health care services inside the camps.<sup>67</sup> Legal counselling and legal representation was also made available to victims of serious crimes, including gender-based violence, as well as to alleged perpetrators, by the Nepal Bar Association.<sup>68</sup> In terms of education-related funding, Caritas (Nepal) working with the Jesuit Refugee Service, South Asia, was responsible for secondary and higher secondary education,<sup>69</sup> while OXFAM Nepal organised non-formal adult literacy and pre-school education classes for the first few years beside initiating community-based income generation programmes and rehabilitation programmes for 'persons with special needs' (PSNs).<sup>70</sup>

Much of the aid previously available to Bhutanese refugees has now dried up. While the refugees were previously provided with basic provisions such as food grains, vegetables, cooking oil and the like, food aid is no longer provided. As reported by the refugees, while they had been receiving some monetary support in lieu of food aid since 2018, even that has now been rescinded.<sup>71</sup> The provision of bathing soap was discontinued as early as January 2000 and kerosene, used for cooking and lighting, was suspended at the end of 2005.<sup>72</sup> In addition, the clinics and schools in the

---

while in 1995 and 1996, the Centre for Victims of Torture, Nepal (CVICT) had provided occupational therapy and medical counselling to those traumatised by violence in Bhutan for a couple of years in the 1990s. Interviews with Bhutanese refugees in the refugee camps in Beldangi, Jhapa and Sanischare, Morang, 26-30 September 2019; Anil Giri, 'Bhutanese refugee issue resurfaces after provisions dry up', *The Kathmandu Post*, December 5, 2018, <https://kathmandupost.com/valley/2018/12/05/bhutanese-refugee-issue-resurfaces-after-provisions-dry-up>.

<sup>66</sup> 'Bhutanese Refugees: Life in the camps', accessed November 25, 2019, <http://bhutanese-refugees.com/life-in-the-camps>.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Interviews with Bhutanese refugees in the refugee camps in Beldangi, Jhapa and Sanischare, Morang, 09/26/2019–09/30/2019.

<sup>72</sup> Ibid.

camps have now almost wholly been ‘phased out’ and the UNHCR is set to terminate its services in the camps by the end of 2020, by which time UNHCR plans to have ‘locally integrated’ the refugees in coordination with the local government.<sup>73</sup>

### ***Employment***

Bhutanese refugees in the Beldangi and Sanischare camps report that employment opportunities are limited, particularly for those without valid RCs. Some of the refugees run small tea shops and eateries inside the camps. However, they report that they are able to generate very little profit, if any, from such establishments. While some of the more educated have been working clandestinely as teachers in private schools, manual labour is the only option for many others. Even so, refugees report that being paid lower wages than locals is not uncommon. One of the refugees in the Beldangi camp reported, for instance, that while local labourers are paid up to NPR 700 (c. USD 6) a day, camp residents are paid NPR 300 to 400. In the Sanischare camp, some of the Bhutanese refugees have been provided with ‘micro-business licences’, as part of an effort aimed at local integration to allow them to operate stores at a local plaza currently under construction.

For Tibetan refugees, legal registration of businesses is largely dependent on the personal whim of government officials. A number of families in the Tashiling settlement, situated in a tourist region of Pokhara, operate souvenir shops. However, only a few confirm having acquired Permanent Account Numbers (PANs) for their businesses. Refugees report that acquiring PANs on the basis of an RC is becoming increasingly difficult and that most are having to rely on proxy business registration through Nepali citizens. Apart from operating souvenir shops, refugees in the Tashiling camp also work at hotels and restaurants in and around the camps as waiters, receptionists and cashiers. Some others report that they sell souvenirs on Pokhara’s core tourist streets but are often harassed by the police. In the agriculture-based Jampaling settlement, situated in an area farther away from Pokhara’s tourist hub, most families are engaged in subsistence farming. More recently, some

---

<sup>73</sup> Interviews with Bhutanese refugees in the refugee camps in Beldangi, Jhapa and Sanischare, Morang, 09/26/2019–09/30/2019.

### The Story of Laxmi\*

Laxmi runs a small tea shop inside the premises of the Beldangi refugee camp. She bought the shop, a small make-shift, stall-like structure, from a fellow camp resident about three years ago for NPR 35,000 (c. USD 300). The shop, sparsely stocked with biscuits, instant noodles and popsicles, brings in average daily sales of between NPR 300-400.

Although Laxmi has a valid RC and could have applied for third-country resettlement, she claims that she chose not to do so as she wanted to stay back with her husband who wasn't willing to leave. 'He wanted to live in Nepal and I couldn't have left him,' she said. The older three of her four children, two sons and a daughter, have left Nepal through third-country resettlement and are now living in the United States. Her eldest son, she claims, has been struggling with psychological issues ever since he moved to the United States. Her other son is now bed-ridden after having met with an unfortunate accident in the United States in which he was badly injured. She claims to have lost contact with him as well as with her daughter. Her youngest son goes to high school in Damak, the nearest city from the camp.

At present, Laxmi lives with her husband and nephew, both of whom are incapacitated with sickness and disability. When asked if she wished to move to the United States where her children are, her desperation to be reunited with her children is palpable: 'At this point, I don't care where I live but I want my family to be together.'

Laxmi says that she does not have much hope of repatriation to Bhutan. 'The idea of moving back to Bhutan with my family sounds rosy but who is to say that we will be reinstated respectfully as citizens even if they agree to take us back?'

Laxmi recounts her days back in Bhutan and the trying circumstances under which her family fled from the country. She claims that her family worked as farmers back in Bhutan and had ample property. On the night they decided to flee, their granary was set on fire by the Bhutanese authorities while the family was asleep, she said. 'We feared for our lives and ran off in the clothes we had slept in, leaving everything behind.'

\* Pseudonym used to protect the identity of the individual.

refugees in the Jampaling camp have also established small-scale enterprises, including a feta cheese factory and a noodle factory.

Both Tibetan and Bhutanese refugees have received various kinds of training in the camps. The UNHCR has been providing various vocational trainings to the Bhutanese refugees in both the Sanischare and Beldangi camps through which refugees have received training

on various income-generating activities but most have not been able to convert their skills into income generation. Some refugees in the Beldangi camp reported that it is mostly middle-aged single women who tend to sign up for these trainings since most of the youth are not interested. Similarly, Tibetan refugees in the Tashiling settlement have also been receiving a range of vocational training but finding steady jobs is difficult for them.

For both groups of refugees, the inability to apply for professional licences and the lack of employment opportunities on account of their refugee status is a grave concern. A common complaint among both groups is that most of them are limited to menial jobs despite having higher degrees. In the Sanischare camp, for instance, a refugee couple said that their adolescent son who had plans of pursuing a medical degree was no longer interested in doing so because he was sure that he would not be able to apply for a licence to practise as a doctor after completing his studies. One refugee from the Tashiling settlement shared a similar story: after having completed three-year training in ophthalmology, he was unable to obtain a licence to practice and was left hopping from one odd job to the other, including working as a driver, a recruitment agent, and a waiter. Another refugee from the same place said that his son, who had been working as a successful tourist guide, had been facing immense hardships building a clientele ever since the government crackdown on unlicensed tourist and trekking guides.

Both Tibetan and Bhutanese refugees reported that the situation has given rise to hopelessness and frustration, in particular among youth and children. Many Tibetan refugees note that they have been sending their children to study in India as acquiring Indian RCs is reportedly easier when the children have studied in India from an early age. The refugees report that the chances of landing a good job upon completion of their education is also much higher in India.

### ***Education***

At present, there are 13 schools for Tibetan refugee children in Nepal, including two higher secondary schools in Kathmandu, managed by the Snow Lion Foundation (SLF). Schools are located inside the Tibetan settlements or in the periphery. As reported by

the education officer at the SLF, the number of Tibetan children in the schools, however, is decreasing as parents are increasingly sending their children to schools in India.<sup>74</sup> The school close to the Tashiling settlement, established and operated by SOS Children's Village, for instance, currently has around 30 per cent Tibetan students and 70 per cent local Nepalis.<sup>75</sup> Although the children can choose to continue their education in high schools in Kathmandu and later in private colleges and universities across Nepal, most opt for secondary education and beyond in India. While all the schools for Tibetan refugees are funded by the Department of Education of the CTA, the schools are not permitted to use the CTA curriculum and rather have to adhere to the school curriculum specified by the Nepali government. Owing to scholarships sponsored by the CTA, the students have to pay a minimum fee, which is much less than the fees charged by local private schools.

As for the Bhutanese refugees, the schools in the camp in Beldangi have now been closed and the one in Sanischare is also set to close down soon. Children attending these schools have now been transferred to local government schools as part of the UNHCR's efforts at local integration. Previously, schools were located in each of the seven camps.<sup>76</sup> The schools were free of charge and were run by almost entirely by the refugees themselves with a small number of locally hired staff.<sup>77</sup> The teachers and other school staff were provided with 'incentive salaries' by the UNHCR. The schools offered classes from pre-primary level through secondary level (Grade 10) and the lessons taught also included Dzongkha language classes.<sup>78</sup> For higher education, the students had to apply to local colleges and universities. The number of scholarships available for higher education, however, were limited and most students had to cover the expenses themselves.<sup>79</sup>

At present, the refugees report that they are able to enrol in

---

<sup>74</sup> Interview with Tenzin Rabgyal (Education Officer, Snow Lion Foundation), 10/17/2019.

<sup>75</sup> Ibid.

<sup>76</sup> 'Bhutanese Refugees: Life in the camps', accessed November 25, 2019, <http://bhutanese-refugees.com/life-in-the-camps>.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

local schools, colleges and universities through their RCs. For those without an RC, a 'no-objection letter' issued by the Camp Management Committee, is accepted.<sup>80</sup> However, the refugees report that most children express a lack of interest in attaining higher education owing to the hefty expenses involved and the lack of employment opportunities after completion.

### ***Health and Sanitation***

Previously, Bhutanese refugees had access to health services at clinics situated inside the camps. The clinics, operated by AMDA, were also equipped with emergency services. However, as the clinics have almost wholly been closed down, residents now have to head to local medical institutions outside the camps for all health services. Regular counselling facilities were also available in the camps up until 2017.<sup>81</sup> However, Bhutanese refugees report that they now have to travel to hospitals outside the camps for such services. Similarly, while basic primary healthcare is available in all the Tibetan refugee settlements, the refugees have to go to local hospitals and clinics outside the settlements for more serious health conditions. Both the Tashiling and Jampaling settlements, for instance, have small clinics with full-time nurses and visiting doctors, including those that practise traditional Tibetan medicine.

For Tibetan refugees, the CTA reimburses part of the health expenditure of the refugees on a case-by-case basis. The refugees report that the CMC also helps in raising funds for needy refugees who cannot afford their medical expenses.<sup>82</sup> As for Bhutanese refugees, the refugees in the Beldangi camp report that although those with valid refugee cards have health insurance, it only covers a tiny fraction of their often-hefty medical expenses. The insurance covers medical expenses of up to NPR 110,000 (c. USD 960) for which the refugees are required to pay an annual premium of NPR 3,500.<sup>83</sup> In Sanishcare, refugees report that they have are not

---

80 Interviews with Bhutanese refugees in the refugee camps in Beldangi, Jhapa and Sanishcare, Morang, 9/26/2019–09/30/2019.

81 Ibid.

82 Interviews with Tibetan refugees in the Tashiling settlement, Chhorepatan and the Jampaling settlement, Dulegauda, 10/22/2019–10/25/2019.

83 Interviews with Bhutanese refugees in the refugee camps in Beldangi, Jhapa, 26-27 September 2019.

currently been provided with insurance facilities but are entitled to a discount of up to NPR 4,000 in local hospitals in Biratnagar and Damak.<sup>84</sup>

The Bhutanese refugee camp in Beldangi currently has 560<sup>85</sup> ‘persons with special needs’ (PSNs) and the camp in Sanischare has around 110.<sup>86</sup> PSNs include persons with physical and/or mental disabilities or impairment as well as those suffering from terminal illnesses. Families with PSNs have been receiving ‘cash support’ from the UNHCR, depending on the size of the family. The refugees report that although some monetary support is still being provided to such families, whether they will continue to receive such support is uncertain. One of the refugees in the Beldangi settlement with a PSN family member, for instance, reported that the family had previously been receiving NPR 9,000 every three months, but that they only received NPR 7,000 the last time the ‘cash support’ was given. In addition to the provision of monetary aid, insurance premiums for PSNs are also covered by the UNHCR.

The situation of geriatric care in the Bhutanese refugee camps is dire, especially so in the case of the ailing and infirm elderly separated from their families. In the case of Tibetan refugees, old-age homes have been set up in some of the settlements for elderly refugees with no family members. The Jampaling settlement, for instance, has an old-age home with 26 residents who are taken care of by six full-time staff sponsored by the Lodrik Welfare Fund.<sup>87</sup> In addition, elderly refugees (those who are 65 years of age and above) who are members of the Lodrik Association, have been receiving NPR 3,500 in old age allowance. Other non-Lodrik elderly refugees have been receiving NPR 1,000 through funds supported by the CTA.

In both the Beldangi and the Sanischare camps, latrines have been built just a few metres away from each shelter. Refugees report that access to toilets is not an issue, especially now that

---

<sup>84</sup> Interview with Champa Singh Rai (Sanischare Camp Management Committee), 09/29/2019.

<sup>85</sup> Interview with Krishna Bahadur Subba (Secretary, Beldangi Camp Management Committee), 09/27/2019.

<sup>86</sup> Interview with Champa Singh Rai (Sanischare Camp Management Committee), 09/29/2019.

<sup>87</sup> See ‘Lodrik Welfare Fund Nepal’, Tibetfreunde Association, accessed November 25, 2019, <https://tibetfreunde.ch/en/sponsorships/lodrik-welfare-fund-nepal/>.

the camps have thinned down. Since 2017, attached toilets have been built into some of the shelters for families with PSNs. Water supply comes from multiple communal taps in the camps. Beldangi residents complained that water used to be free earlier but now they have to pay a monthly fee.

In the Tibetan refugee access to sanitation facilities is good. In the Tashiling settlement, while one toilet had been built for every three houses when the settlement was first established, almost every house now has an attached toilet. The Tashiling settlement reported a scarcity of drinking water but that is a problem common to all of Pokhara.

### ***Psychosocial Well-being***

In the Bhutanese refugee camps, refugees report that separation from family members, particularly in the wake of the third-country resettlement programme, has given rise to grave psychosocial issues among many camp residents. The longing for family re-unification and the looming precariousness has pushed many towards depression, anxiety, and even suicide. Alcohol and substance abuse is also, reportedly, rife in the camps. Many refugees also report having to rely completely on the money remitted by relatives abroad to meet their daily expenses. The increasing paucity of resources in the camp, as noted by many refugees, has given rise to criminal activities including theft, burglary and domestic violence in the camps.<sup>88</sup> A 'Community Watch Centre' has been established in both camps to handle minor conflicts and disputes. There is also a mediation system in place for the resolution of such disputes. Criminal cases such as rape and domestic violence, however, are referred to the local police.

In stark contrast to the situation of Bhutanese refugees where mental and psychological afflictions are reportedly common, the Tibetan refugees claim that among them, refugees affected by such conditions are rare exceptions. The refugees attribute the situation to their religious beliefs and practices that encourage and instil 'inner peace and harmony'.<sup>89</sup>

---

<sup>88</sup> Interviews with Bhutanese refugees in the refugee camps in Beldangi, Jhapa, 09/26/2019–09/27/2019.

<sup>89</sup> Interviews with Tibetan refugees in the Tashiling settlement, Chhorepatan

### The Story of Geeta\*

Geeta is a 58-year-old single woman living in the camp in Beldangi. She volunteers at a small store, inside the camp, that showcases decorative handmade artefacts made by members of the Bhutanese Refugees Association of the Disabled (BRAD).

Soon after she came to Nepal with her husband and two young sons, the couple decided to venture out of the refugee camp in search of better living conditions and economic opportunities. They moved to the capital, Kathmandu, where they ran a small eatery for several years. While in Kathmandu, they suffered the tragic death of their younger son from typhoid. Soon after, they also had to close down the eatery they had been running as the Nepali government tightened monitoring of laws requiring proprietors to present registration certificates and tax records.

Stripped of their only source of income, they had no other option but to move back to the camp. However, their absence from the camp when refugee cards (RCs) were being issued meant that the couple lacked any identification despite having moved back. Soon after moving back into the camp, Geeta's husband was afflicted with a condition that affected his kidneys. Unable to meet the expenses for the frequent dialysis he required, he eventually died. Geeta's other son is married to a Nepali girl and lives in Kathmandu. However, owing to Nepali citizenship laws that bar foreign men married to Nepali women from acquiring Nepali citizenship, he, too, is living without any identification documents.

Geeta claims that her only desire now is to be reunited with her brother, who left for the United States in 2007. He was among the first batch of refugees who left the camp for third-country resettlement. She reports that her brother has been remitting money to her every now and then and that the money he sends is her only means of subsistence at present. She hopes to move to the United States and live with her brother but worries that without an RC, her chances are bleak. If she were to get an RC, she believes her brother would be able to sponsor her stay with him.

\* Pseudonym used to protect the identity of the individual.

### ***Freedom of Religion, Expression and Association***

Inside each Tibetan settlement, a *gompa* (Buddhist monastery) and a *chhorten* (stupa)<sup>90</sup> have been constructed. Some of the settlements, including the Tashiling and Jampaling settlements, also have

---

and the Jampaling settlement, Duleganda, 10/22/2019—10/25/2019.

90 'Tibetans in Nepal: History of Tibetans in Nepal', The Tibetan Encounter, accessed November 25, 2019, <https://tibetanencounter.com/pokhara-cultural-tours/about-tibetans-in-nepal/>.

community halls where refugees hold community gatherings and celebrations. The Bhutanese refugees, most of whom are Hindus and share strong religious, cultural and linguistic ties with the majority religious group in Nepal, also report never having faced restrictions in their religious and cultural practices. While some of the Bhutanese refugees are reported to have converted to other religions such as Christianity and Buddhism,<sup>91</sup> the refugees claim that there is religious tolerance and harmony among the refugees of different faiths.

Several community organisations have been established by both the Tibetan and the Bhutanese refugees in their respective settlements. Among others, these bodies hold regular programmes and community events for the refugees. The Bhutanese Refugee Association of the Disabled (BRAD), the Bhutanese Refugee Women's Forum (BRWF) and the Bhutanese Refugee Children's Forum (BRCF) are among those working actively in the Bhutanese refugee camps. These organisations have been funded by the UNHCR but it is uncertain whether and how they will be able to sustain themselves once the UNHCR ends its involvement in the camps since several others have already gone defunct owing to lack of funds.<sup>92</sup> Similarly, the Regional Tibetan Youth Congress (RTYC), headquartered in Dharamshala, India, has a chapter in each Tibetan settlement and is involved in activities such as environmental clean-up campaigns and youth programmes.<sup>93</sup>

With regard to freedom of expression, the Bhutanese refugees report that they have been voicing their demands, under the leadership of the CMC, in various forums such as at conferences and discussion programmes. The CMC Secretary in Sanischare, for instance, underscored having participated in several roundtable discussions and informal conversations about their situation with the newly elected Mayor. More recently, the refugees remaining in the camps have been advocating strongly for repatriation to Bhutan.<sup>94</sup>

---

<sup>91</sup> See Donald A. Ranard, 'Bhutanese Refugees in Nepal', COR Center Refugee Backgrounder No. 4, 2.

<sup>92</sup> Interview with Jhiru Prasad Ghimire (Programme Manager, Bhutanese Refugee Association of the Disabled [BRAD]), 09/27/2019.

<sup>93</sup> Ibid.

<sup>94</sup> See Arjun Rajbanshi, 'Bhutan refugees rally for help to go back home',

In contrast, Tibetan refugees report having faced increasing restrictions in voicing their political opinions over the years.<sup>95</sup> They claim that even peaceful protests are repulsed and met by police intervention.<sup>96</sup> There are reports of the deportation of Tibetan refugees by Nepali authorities,<sup>97</sup> while there have also been instances in the past when they have been barred from celebrating the birthday of their spiritual leader, the Dalai Lama.<sup>98</sup> They also claim to be under high police surveillance during March 10th, the day of national uprising in Tibet, celebrated every year.<sup>99</sup>

Most recently, Tibetan refugees reported being under strict surveillance and monitoring during the visit of the Chinese president, Xi Jinping, to Kathmandu in October 2019. Several campaigners of the 'Free Tibet' movement and human rights activists were detained in Kathmandu in the lead-up to and during Jinping's visit.<sup>100</sup> The Nepal police is reported to have stepped up security around monasteries in Kathmandu to prevent protests.<sup>101</sup> Even Nepali citizens sporting clothes and accessories with Tibetan

---

*The Kathmandu Post*, December 11, 2018, <https://kathmandupost.com/national/2018/12/11/bhutan-refugees-rally-for-help-to-go-back-home>; Anil Giri, 'Nepal decides to resume talks with Bhutan on refugee repatriation', *The Kathmandu post*, February 3, 2019, <https://kathmandupost.com/national/2019/02/03/nepal-decides-to-resume-talks-with-bhutan-on-refugee-repatriation>.

<sup>95</sup> Interviews with Tibetan refugees in the Tashiling settlement, Chhorepatan and the Jampaling settlement, Duleganda, 10/22/2019–10/25/2019.

<sup>96</sup> Ibid.

<sup>97</sup> See Paul Eckert, 'Nepal deports 6 Tibetan asylum seekers to China', *RFA*, September 9, 2019, <https://www.rfa.org/english/news/tibet/nepal-deport-09092019064318.html>; Ungentlemanly Nepal has deported six Tibetan asylum seekers', *Tibetan Review*, September 11, 2019, <http://www.tibetanreview.net/ungentlemanly-nepal-has-deported-six-tibetan-asylum-seekers/>; Gopal Sharma, 'Nepal detains Tibetan refugees in crackdown as China's influence grows', *Reuters*, November 16, 2016, <https://www.reuters.com/article/us-nepal-tibet-refugees-idUSKBN13A2BQ>.

<sup>98</sup> See Marleen Heuer, 'China increases influence over Tibetan refugees in Nepal', *DW*, August 29, 2016, <https://www.dw.com/en/china-increases-influence-over-tibetan-refugees-in-nepal/a-19511365>.

<sup>99</sup> Interviews with Tibetan refugees in the Tashiling settlement, Chhorepatan and the Jampaling settlement, Duleganda, 10/22/2019–10/25/2019.

<sup>100</sup> Himalayan News Service, '11 Tibetan refugees among 22 held', *The Himalayan Times*, October 13, 2019, <https://thehimalayantimes.com/kathmandu/11-tibetan-refugees-among-22-held/>.

<sup>101</sup> Ibid.

### **The Story of Tenzin\***

Tenzin, an 87-year-old resident at the Jampaling settlement, first arrived in Nepal as part of the Tibetan Resistance Army that fought for Tibet's independence against Chinese troops from 1960 through 1974. The army had based themselves in Mustang, close to the Tibetan border. Prior to joining the army in 1958, Tenzin was a Buddhist monk in the Sera Monastery in Tibet. He notes that his sole motivation in joining the army was to fight back against the atrocities faced by the Tibetan community during the Chinese occupation of Tibet. 'We were prohibited from practising our religion freely. Even the monks and nuns suffered abuse at the hands of Chinese authorities,' he recounts.

He expresses grief as he recalls the hopelessness he felt as a monk hearing numerous accounts of bombings in Buddhist monasteries and of Tibetans facing persecution for practising Buddhism and for revering the Dalai Lama. After the armed resistance was called off in 1974 by the Dalai Lama, Tenzin reports that they struggled to sustain a livelihood. Consequently, some of the former guerrilla warriors managed to migrate from Mustang to the southern parts of Nepal to join the larger Tibetan refugee communities. In 1975, the ex-militants were provided with strips of land in the mid-hills, one in Dulegauda and the other in Pokhara, where they were allowed to build settlements and grow crops. Since then, Tenzin has been living in the Jampaling settlement in Dulegauda, where he eventually married and raised five children.

All of his children have migrated to Pokhara and Kathmandu, and India, in search of better economic opportunities. Although suffering from health problems himself, Tenzin also takes care of his ailing bed-ridden wife. Tenzin says that while there is an old-age home in the settlement, he cannot avail of its services as residency in the home is reserved for the elderly without any family members. Those with children, like Tenzin, have to fend for themselves and rely on their children. Tenzin says that his children visit him now and then, mostly during festivals and in case of emergencies, but that it is not practical for them to live in the settlement with the parents as employment opportunities are limited.

Tenzin says that he enjoys living in the settlement as he feels a sense of community. 'I meet my fellow residents every day. We pray together and celebrate our festivals as a community,' he exclaims. He expresses grief, however, on being unable to celebrate the Dalai Lama's birthday like before. Being a freedom fighter in the days of his youth, Tenzin resents not being able to protest peacefully and not being able 'to share the truth about his nation and his people'. Having lived in Nepal for almost six decades, he still hopes to return to Tibet one day.

\* Pseudonym used to protect the identity of the individual.

signage were detained.<sup>102</sup> Refugees in the Jampaling and Tashiling settlements also report having been under strict surveillance and that they were barred from travelling to Kathmandu at the time.<sup>103</sup>

## **Conclusion**

For the remaining Bhutanese refugees still in Nepal, all of UNHCR's 'three durable solutions' for refugee situations—voluntary repatriation, local integration, and resettlement<sup>104</sup>—appear unlikely. While the Government of Nepal is reported to have considered resuming talks with Bhutan on refugee repatriation,<sup>105</sup> no formal steps have been taken so far. Local integration of refugees as Nepali citizens also seems unlikely as the Nepali government has expressed no intention of accepting the refugees as citizens.<sup>106</sup> In addition, the third-country resettlement programme facilitated by the UNHCR and the IOM has also been closed officially and chances of resumption are bleak. For Bhutanese refugees who have had their third-country resettlement applications rejected by the UNHCR, the implications are far-reaching as it limits their access to not just one, but to all third-countries accepting refugees for resettlement.<sup>107</sup>

The gradual tapering off of aid in the Bhutanese refugee camps, particularly in the wake of the third-country resettlement programme, coupled with limited employment opportunities, has led to increased economic strain on the Bhutanese refugees. With

---

102 Bhrikuti Rai, 'Nepali citizens detained during Xi Jinping's visit for Tibetan signage on clothes and accessories', *The Kathmandu Post*, October 17, 2019, <https://tkpo.st/2nXWrk2>.

103 Interviews with Tibetan refugees in the Tashiling settlement, Chhorepatan and the Jampaling settlement, Dulegauda, 10/22/2019–10/25/2019.

104 UNHCR, 'The 10-point Plan: Solutions for refugees', accessed November 1, 2019, <https://www.unhcr.org/50a4c17f9.pdf>.

105 Anil Giri, 'Nepal to resume talks with Bhutan on refugee repatriation', *The Kathmandu Post*, February 3, 2019, <https://reliefweb.int/report/nepal/nepal-resume-talks-bhutan-refugee-repatriation>.

106 Nepal's stance on the issue is evidenced in a recent statement by Nepal's Minister for Foreign Affairs: 'Time and again, we have made clear to the UN refugee agency that we hosted them purely on a humanitarian ground...We have also flatly rejected the local assimilation of the refugees as our priority is our own people, not the refugees.' Ibid.

107 Ilse Griek, 'A Daughter Married, a Daughter Lost? The impact of resettlement on Bhutanese refugee marriages', *European Bulletin of Himalayan Research* (EBHR), no.43 (Autumn-Winter 2013): 26-36.

the UN set to fully terminate its services in the camps from 2020, the refugees await durable solutions to their predicament. That they have been facing increasing difficulties due to their refugee status in securing sustainable livelihoods for themselves and for their future generations is a major concern for the refugees. The need for efforts aimed at facilitating holistic self-reliance for the refugees, both on the part of the government and the UN, cannot be overemphasised.

While the Bhutanese refugees report having experienced no restrictions in exercising their freedom of religious belief and freedom to express political opinion, the Tibetan refugees appear to have been increasingly and negatively impacted by Nepal-China geopolitical relations and Nepal's express commitment to curb pro 'Free Tibet' activism in the country.<sup>108</sup> Recent incidents such as the detention of Tibetan refugees in the country during Xi Jinping's Nepal visit raise the question of how Nepal's increasingly closer ties with China will affect the lives of the Tibetan refugees in the future. The 'Treaty on Mutual Legal Assistance in Criminal Matters' signed between the two countries during Xi's visit and reports of a possible extradition treaty,<sup>109</sup> in particular, raise grave human rights concerns, including violation of the principle of non-refoulement.<sup>110</sup>

Nepal's approach in devising and designing durable solutions, for both Tibetan and Bhutanese refugees living in the country, is especially relevant in the context of growing international concern

---

108 A statement issued by then Deputy Prime Minister and Home Minister Krishna Bahadur Mahara in 2011 evidences Nepal's position on 'Free Tibet' activism: 'Nepal does not have policy to allow any activities against its neighbors. We are aware about Free Tibet activities. We won't let such activities take place in Nepali soil'. See Human Rights Watch, 'Under China's Shadow: Mistreatment of Tibetans in Nepal' (USA: Human Rights Watch, 2014).

109 Bhrikuti Rai, 'Nepali citizens detained during Xi Jinping's visit for Tibetan signage on clothes and accessories', *The Kathmandu Post*, October 17, 2019, <https://tkpo.st/2nXWrk2>.

110 While Nepal is not a party to the *UN Convention Relating to the Status of Refugees*, it has ratified the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which also enshrines the non-refoulement obligation. See United Nations Office of the High Commissioner for Human Rights, 'The principle of non-refoulement under international human rights law', accessed November 25, 2019, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

about the situation of refugees worldwide and the need to work towards a sustainable future for refugees.<sup>111</sup>

## **Recommendations**

The following recommendations are proposed to improve the socio-economic situation of Tibetan and Bhutanese refugees living in Nepal.

- Interventions are required from the Government of Nepal as well as other partner entities aimed at facilitating employment and income generation for both refugee groups through training and awareness campaigns aimed at promoting sustainable livelihood. At the same time, the Government of Nepal should create provisions to allow qualified Bhutanese and Tibetan refugees to enter the Nepali job market as well.
- Likewise, the psychosocial wellbeing of both refugee groups, including easy and affordable access to counselling services, needs to be prioritised, as does care of the growing elderly population among both groups.
- The Government of Nepal should take the initiative to restart the process of granting refugee cards to Bhutanese refugees who were absent during the documentation process so that the possibility of third-country resettlement can be opened to them.
- Instead of rendering them stateless, the Government of Nepal should immediately grant refugee cards to children born to bona fide Tibetan refugees.
- Training and awareness campaigns should be conducted among law enforcement personnel, aimed at enhancing protection, promotion and respect of the human rights of both refugee groups, including the right to freedom of expression, association and assembly.
- In the case of Tibetan refugees, the ‘gentleman’s agreement’ to allow Tibetans crossing the Nepali border safe passage through to India should be honoured by the Government of Nepal.

---

<sup>111</sup> See ‘The Global Compact on Refugees’, UN High Commissioner for Refugees (UNHCR), accessed November 28, 2019, <https://www.unhcr.org/the-global-compact-on-refugees.html>; UN High Commissioner for Refugees (UNHCR), ‘UNHCR and the 2030 Agenda—Sustainable Development Goals, 2017’, accessed November 25, 2019, <https://www.refworld.org/docid/59db4b224.html>.

# Pakistan

## The Struggle for Equal Citizenship

Elaine Alam

---

### Introduction

The right to citizenship is significant in many aspects. It is the 'genuine effective link' between the state and the population it governs.<sup>1</sup> Primarily, it obliges the government to take responsibility for the population under its authority and ensure 'their general welfare and the protection of their individual and collective rights'.<sup>2</sup> It is also recognised by the United Nations as a fundamental human right.<sup>3</sup> By virtue of being citizens of the state, individuals are protected by the law of the land that guarantees them certain inviolable rights and gives them the opportunity to create a secure livelihood for themselves.

Citizenship also has important social and psychological dimensions. It has implications on how individuals experience everyday life, forge communal bonds and whether they get to lead a dignified existence. Yasmeen contends, 'The idea of citizenship includes an emotional and psychological aspect; the sense of belongingness and the feeling that the citizen is not just part of a system but is acknowledged and respected in this system.'<sup>4</sup>

---

1 United Nations High Commissioner for Refugees (UNHCR), *The State of the World's Refugees: A Humanitarian Agenda*, accessed February 2, 2020, <https://www.unhcr.org/3eb7ba7d4.pdf>.

2 Sapana Pradhan-Malla and Phanindra Gautam, *Women's Right to Nationality and Citizenship* (Kuala Lumpur: International Women's Rights Action Watch Asia Pacific, 2006), 2, <https://www.iwraw-ap.org/resources/womens-right-to-nationality-and-citizenship>.

3 See *The Universal Declaration of Human Rights*, art. 15, Paris, 10 December 1948, accessed February 3, 2020, <https://www.un.org/en/universal-declaration-human-rights>.

4 Samina Yasmeen, 'Islamisation and Democratisation in Pakistan: Implications for Women and Religious Minorities,' *South Asia: Journal of South Asian Studies* 22, no. s1 (1999): 184, <https://doi.org/10.1080/00856408708723381>.

Citizenship rights are, therefore, often at the centre of an individual's life in a state with implications on the political, social and economic spheres. However, not all people who find themselves within the territorial boundaries of a state have access to the right to citizenship. The modern state is based on an exclusionary framework. The Westphalian construct of the territorially bounded nation-state is characterised by its limits. As Anwar has remarked, 'Borders are by definition lines of exclusion and inclusion that modern states establish.'<sup>5</sup>

Moreover, international norms of equality of all humans often clash with political imperatives and processes of nation-building. Ideas regarding citizenship have evolved under different political circumstance.<sup>6</sup> The question of who is a citizen and who is not, the 'politics of citizenship', also depends upon the form and character of nationalism prevalent in the country at that particular time.<sup>7</sup> In short, citizenship is not accessible to each and every individual within a state, and, it is also more accessible to some than to others.

The thematic focus of this year's report, 'Migrants, Refugees and the Statelessness,' provided an opportunity to examine the exclusionary citizenship regime in Pakistan. According to the United Nations High Commissioner for Refugees (UNHCR), in 2018, the world's second largest population of 1.4 million refugees was hosted by Pakistan.<sup>8</sup> The International Organization for Migration (IOM) noted that, in 2017, Pakistan housed around 3.4 million immigrants.<sup>9</sup> Refugees and migrants in Pakistan are in states of either *de facto* or *de jure*<sup>10</sup> statelessness. This report explores the

---

5 Nausheen H. Anwar, 'Negotiating New conjunctures of Citizenship: Experiences of 'Illegality' in Burmese-Rohingya and Bangladeshi Migrant Enclaves in Karachi,' *Citizenship Studies*, 17, no. 3-4 (2013): 419, <https://doi.org/10.1080/13621025.2013.793070>.

6 Yasmeen, 'Islamisation and Democratisation,' 184.

7 Anwar, 'Negotiating new conjunctures,' 423.

8 United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2018*, accessed February 3, 2020, <https://www.unhcr.org/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>.

9 International Organization for Migration (IOM), *Pakistan Migration Snapshot*, (Bangkok: International Organization for Migration, Regional Office for Asia and the Pacific, 2019), 7, <https://displacement.iom.int/system/tdf/reports/Pakistan%20Migration%20Snapshot%20Final.pdf?file=1&type=node&id=6535>.

10 *De jure* statelessness implies a 'a person unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not

operation of legal processes and institutional structures that serve to marginalise migrants, refugees and the stateless in the country.<sup>11</sup> It notes that citizenship laws not only discriminate against international immigrants but also create a distinction between ‘first-class citizens’ and ‘second-class citizens’ through unequal application of the law as well as gender bias.

It may seem impossible for Pakistan to initiate a naturalisation process for such a large population of refugees and immigrants given the current state of its economy, political system and security. However, the state not only can still take certain measures to improve their well-being but also should address the problems faced by migrant and refugee communities that have been living in the country for decades but have been pushed to the margins by exclusionary policies and political imperatives. The last section of the report outlines steps that Pakistan can take to address the problems of statelessness and ensure the economic, social and political rights of vulnerable groups.

### **Gaps in the Legal Framework: A Brief Overview**

The right to nationality has been recognised by a number of international human rights agreements to which Pakistan is a party such as the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Covenant on Civil and Political Rights. All of these international conventions recognise the right to nationality as a fundamental human right (Table 1).

### ***Exclusionary Citizenship Laws***

Enacted in April 1951, the Pakistan Citizenship Act, 1951 defines the rules and conditions under which a person can acquire the

---

enjoy national protection.’ The difference between de facto statelessness and de jure statelessness has been a matter of much debate in the legal community. See ‘Citizenship & Nationality,’ International Justice Resource Center, accessed February 3, 2020, <https://ijrcenter.org/thematic-research-guides/nationality-citizenship>.

<sup>11</sup> A stateless person is defined by the 1954 Convention relating to the Status of Stateless Persons as ‘a person who is not considered as a national by any State under the operation of its law.’ See ‘Right to a Nationality and Statelessness,’ United Nations Human Rights Office of the High Commissioner, accessed February 3, 2020, <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.

**Table 1: International Conventions Recognising the Right to Nationality and Protection of Refugees and Stateless Persons vis-à-vis Pakistan**

<b>International Convention</b>	<b>Relevant Article</b>	<b>Ratified/Not ratified</b>
<b>Universal Declaration of Human Rights (1948)</b>	<p>Article 15(1): (1) Everyone has the right to a nationality.</p> <p>Article 16(1): Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.</p>	Ratified
<b>International Covenant on Civil and Political Rights (1966)</b>	Article 24(3): Every child has the right to acquire a nationality.	Ratified
<b>Convention on the Elimination of All Forms of Discrimination against Women (1979)</b>	<p>Article 9(1): States Parties shall grant women equal rights with men to acquire, change or retain their nationality.</p> <p>Article 9(2): States Parties shall grant women equal rights with men with respect to the nationality of their children.</p>	Ratified
<b>Convention on the Rights of the Child (1989)</b>	Article 7(1): The child shall be registered immediately after birth and...the right to acquire a nationality...	Ratified
<b>Convention relating to the Status of Refugees (1951)</b>	<p>Article 3: The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.</p> <p>Article 34: The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.</p>	Not ratified

<b>Convention relating to the Status of Stateless Persons (1954)</b>	Article 32: The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.	Not ratified
--	--	--------------

<b>Convention on the Reduction of Statelessness (1961)</b>	Article 1: A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.  Article 9: A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.	Not ratified
--	---	--------------

citizenship of Pakistan. It provides for citizenship by birth,<sup>12</sup> descent and migration. The provision of citizenship by birth makes Pakistan one of the handful of countries in the world which grant this right. However, children of foreign diplomats and ‘enemy aliens’ born in Pakistan are not considered citizens of Pakistan.<sup>13</sup>

It should also be noted that the Act only covers general cases, and only three categories of persons have been defined by the Act as ‘extraordinary cases’.<sup>14</sup> In other words, no other group of migrants are covered by the national legal regime on citizenship. This exclusionary framework puts refugees and migrants, who have been residing in Pakistan for almost three decades, in a state of continued insecurity, as it restricts their economic, social and political advancement.<sup>15</sup> As will be detailed in the chapter, the

<sup>12</sup> Section 4 of the Pakistan Citizenship Act, 1951 states, ‘Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth.’ See Republic of Pakistan, *Pakistan Citizenship Act, 1951*, (The Government of Pakistan: Pakistan, 1951), section 4, <https://www.refworld.org/docid/3ae6b4ffa.html>.

<sup>13</sup> ‘Immigration,’ Directorate General of Immigration & Passports, Ministry of Interior, Government of Pakistan, accessed February 2, 2020, <http://www.dgip.gov.pk/files/immigration.aspx>.

<sup>14</sup> Mass migrations from India, East Pakistan and Kashmir are included in extraordinary cases. See Sarah Hyder, ‘Steering the Refugee Debate,’ DAWN, accessed February 10, 2020, <https://www.dawn.com/news/1440342>.

<sup>15</sup> Afghans are not integrated into national development planning though they de facto access to certain public services like health facilities. See UN High

limitations in the citizenship law, legal loopholes and political biases have created a discriminatory legal and institutional regime that has a strong impact on those already at the margins of Pakistani society.

### ***Absence of a National Legal Framework for Statelessness***

There is no recognition of the concept of statelessness in Pakistan's political system. The United Nations High Commissioner for Refugees (UNHCR) notes that 'Statelessness has not been properly mapped in Pakistan and there are no procedures in place for determining whether a person is stateless.'<sup>16</sup> Currently, the Foreigners Act, 1947 is the only law governing the presence of non-citizens in the country, but it 'contains no provisions relating to the protection of refugees, asylum-seekers or other persons of concern'.<sup>17</sup>

### ***Non-Ratification of International Conventions on Refugees and the Stateless***

Pakistan has neither signed nor ratified the Convention relating to the Status of Stateless Persons (1954) or the Convention on the Reduction of Statelessness (1961),<sup>18</sup> which states that 'while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided'.<sup>19</sup> Pakistan has also not ratified the 1951 Refugee Convention, including its 1967 Protocol. Pakistan's non-ratification of these international instruments has led to a lack of accountability on how Pakistan treats the stateless and refugees within its territory. Further, due to the absence of a national framework to guide political actors, there is no policy for the

---

Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report—Universal Periodic Review: Pakistan* (Geneva: UN High Commissioner for Refugees, 2012), 3, <https://www.refworld.org/docid/4f9663d12.html>; IOM, *Pakistan Migration Snapshot*, 13.

16 UNHCR, *Submission by the United Nations High Commissioner for Refugees*, 9.

17 *Ibid.*, 5.

18 *Ibid.*, 1.

19 UN General Assembly, *Convention on the Reduction of Statelessness* (Geneva: United Nations, 1961), introductory note, 3, [https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf).

long-term rehabilitation and/or eventual inclusion of the stateless, non-citizens, *de facto* non-citizens, and refugees in Pakistan.

### **Institutional Framework**

The subject of nationality and citizenship rights falls under federal jurisdiction in Pakistan. In the case of international migration, the Ministry of the Interior is responsible for determining the legal status of an individual in Pakistani territory. The registration of international immigrants and the issuance of identity cards is done by the National Data Registration Authority (NADRA) under the Ministry of the Interior. Only 'a Pakistani citizen resident in Pakistan' has the right to a Computerised National Identity Card (CNIC) issued by NADRA, and only citizens are issued a domicile that reserves jobs and quotas for them in the public sector in accordance with their place of domicile.<sup>20</sup> Under the Foreigners (Amendment) Ordinance 2000, registering as an 'alien' allows foreigners the right to apply for a work permit and engage in business activities.<sup>21</sup> International migrants are often reluctant though to register themselves, fearing that claiming the legal status of an alien will block their path towards eventually acquiring citizenship.<sup>22</sup>

There is also a lack of clarity on whether the cancellation of a CNIC by NADRA implies the revocation of citizenship. According to Section 16 of the Pakistan Citizenship Act, 1951, the Federal Government 'may by order deprive any person who is a citizen of Pakistan by naturalisation of his citizenship of Pakistan.'<sup>23</sup> However, NADRA has contended that Section 18 of the NADRA Ordinance 2000 gives it the authority to cancel CNICs.<sup>24</sup> The cancellations by

---

20 Haris Gazdar, *A Review of Migration Issues in Pakistan* (Karachi: Collective for Social Science Research, 2003), 6, [http://www.researchcollective.org/Documents/A\\_Review\\_of\\_Migration\\_Issues\\_in\\_Pakistan.pdf](http://www.researchcollective.org/Documents/A_Review_of_Migration_Issues_in_Pakistan.pdf).

21 Andreas Zimmermann, Jonas Dörschner, and Felix Machts, eds., *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol* (New York: Oxford University Press, 2011), 174, Google Books.

22 Gazdar, *A Review of Migration*, 14.

23 'NADRA Cannot Revoke Citizenship, IHC Told,' *The Express Tribune*, accessed February 10, 2020, <https://tribune.com.pk/story/2105526/1-nadra-says-cancelled-jui-f-leaders-cnics>.

24 'Afghan Family Disputes Cancellation of CNICs,' *The Express Tribune*, accessed February 10, 2020, <https://tribune.com.pk/story/2066161/1-afghan-family-disputes-cancellation-cnics/>; See National Database and Registration

NADRA of identity cards has given rise to legal disputes wherein the cancellation has been challenged by the aggrieved party in the courts. One particular case that caught national attention in 2019 was the cancellation of the identity card of Hafiz Hamdullah, a senator from the Islamist party Jamiat Ulema-e-Islam-Fazl (JUI-F). It was reported that NADRA had received intelligence from security agencies, which found that Hamdullah was in possession of counterfeit documents and that he was an Afghan national.<sup>25</sup> On the basis of the evidence received, NADRA declared Hamdullah an ‘alien’ and ‘not a citizen of Pakistan’.<sup>26</sup> The decision was later suspended by the Islamabad High Court.<sup>27</sup> The institutional framework thus exacerbates the dichotomy that exists at the political, social and legal levels between those who are legitimate citizens and those who are ‘aliens’.

## **Vulnerable Groups in Pakistan: Examining Legal and Political Hindrances towards Citizenship Rights**

### ***Afghan Refugees***

The civil strife that engulfed Afghanistan after the pro-communist coup of April 1978 and the subsequent Soviet invasion in 1979 resulted in a massive influx of Afghan refugees into Pakistani territory. According to the UNHCR, as of January 2020, there are 1,416,078 registered refugees in Pakistan.<sup>28</sup> The total number of Afghan refugees in the country has been estimated to be over 2.5 million though.<sup>29</sup> The Human Rights Commission of Pakistan (HRCP) notes that the majority of the refugee population in

---

Authority (NADRA), NADRA Ordinance 2000 (Islamabad: The Government of Pakistan, 2000), section 18, 194, <https://www.nadra.gov.pk/download/nadra-ordinance-2000>.

<sup>25</sup> ‘NADRA Cannot.’

<sup>26</sup> Ibid.

<sup>27</sup> Ibid. IHC Chief Justice Athar Minallah, upon hearing that Hamdullah’s son was serving in the Pakistan Army, remarked, ‘If a mother is willing to sacrifice her son for this soil, then how is her husband’s citizenship being doubted?’

<sup>28</sup> ‘Operational Portal,’ Country—Pakistan, accessed February 5, 2020, <https://data2.unhcr.org/en/country/pak>.

<sup>29</sup> Human Rights Commission of Pakistan (HRCP), *State of Human Rights in 2017* (Lahore: Human Rights Commission of Pakistan, 2017), 8, <http://hrcp-web.org/publication/book/state-of-human-rights-in-2017>.

Pakistan comprises of Afghans.<sup>30</sup> This is the only group that has been granted refugee status by the UNHCR.<sup>31</sup>

Although Afghan refugees are not considered stateless from a strictly legal standpoint,<sup>32</sup> they face a number of obstacles in gaining rights for themselves and their children. According to the HRCP, 'While technically all refugees born in Pakistan are eligible to obtain citizenship, they are generally discouraged from doing so.'<sup>33</sup> This type of resistance is typified by legal and political roadblocks that prevent refugees from obtaining a CNIC and exercising citizenship rights. The judiciary has argued that the citizenship laws of Pakistan do not extend to Afghan refugees and that their stay is governed by the provisions of the 1988 Geneva Accords.<sup>34</sup> There is little legal ground on which Afghan refugees can claim citizenship in Pakistan. According to a court opinion, the 'long stay of a foreigner in a foreign country would not automatically convert him to be the citizen of that country unless he acquires the nationality by process of law'.<sup>35</sup>

The legal path for acquiring nationality is essentially non-existent for Afghan refugees. There are no laws that explicitly deal with the question of the citizenship of refugees living in Pakistan. This leads to refugees using fake documents to establish their nationality as Pakistani. When these documents are found to be counterfeit, they are cancelled by NADRA.<sup>36</sup> News reports such as

---

30 Human Rights Commission of Pakistan (HRCP), 'Refugees' in *State of Human Rights in 2015* (Lahore: Human Rights Commission of Pakistan, 2015), 3, <http://hrcp-web.org/hrcpweb/hrcp-annual-report-2015>.

31 Bilal Karim Mughal and Saher Baloch, 'The Woes of Bengalis, Burmese and Iranians of Karachi,' *Herald Magazine*, accessed February 10, 2020, <https://herald.dawn.com/news/1153771>.

32 They have been recognized as refugees. See Faryal Nazir, *Report on Citizenship Law: Pakistan* (Badia Fiesolana: European University Institute, 2016), 6, [www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/). They can also become Afghan citizens under the Afghan Law on Citizenship. See Hyder, 'Steering the Refugee Debate.'

33 HRCP, *State of Human Rights in 2017*, 267.

34 One of the agreements under the Geneva Accords includes the Bilateral Agreement between Republic of Afghanistan and Islamic Republic of Pakistan on Voluntary Return of Refugees that calls for the peaceful repatriation of Afghan refugees back to their homeland. See Nazir, *Report on Citizenship*, 9.

35 *Ibid*.

36 Ali Akbar, 'Nat Geo's Famed 'Afghan Girl' Sharbat Bibi Arrested by FIA in Peshawar,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1292383>.

the arrest of Sharbat Bibi, an Afghan refugee known as ‘The Afghan Girl’ for gracing the cover of the June 1985 *National Geographic*, who allegedly forged a CNIC,<sup>37</sup> illustrates the precarious condition of Afghan refugees in Pakistan.

Documented refugees only receive a Proof of Registration (PoR) card by NADRA, which ‘provides temporary legal stay and freedom of movement’.<sup>38</sup> The temporary nature of the POR makes it an inadequate safeguard and it falls short of a protective function. Unregistered refugees are even more at risk, as they are labelled illegal immigrants in keeping with the Foreigners Act 1946.<sup>39</sup>

The uncertain legal status of Afghan parents also affects their children. Afghan refugees fall under the category of aliens under the citizenship regime due to which the children of these refugees, despite being born in Pakistan, are not accorded citizenship.<sup>40</sup> This implies that Afghan children can be denied CNICs after turning 18 years old, since their parents are considered aliens according to the citizenship law. They do not have the right to citizenship even if their mothers are Pakistani citizens.<sup>41</sup> Citizenship by birth is recognised in Section 4 of the Pakistan Citizenship Act, 1951. However, it is not extended to members of the Afghan community whose claims are, according to one report, ‘denied both at administrative and judicial levels’.<sup>42</sup> In one case, the child of an Afghan refugee was denied a national identity card upon turning 18, and the matter was taken to the High Court.<sup>43</sup> The court rejected the petition on the grounds that the relevant legislation governing the stay of Afghan refugees is the Foreigners Act, 1946 under which they would be considered as foreigners.<sup>44</sup> In other words, their stay does not entitle them to citizenship.

The current political climate and security environment makes amending the law difficult. The bilateral relationship between Afghanistan and Pakistan has been characterised by enmity due to

---

37 Ibid.

38 IOM, *Pakistan Migration*, 13.

39 HRCP, *State of Human Rights in 2017*, 265.

40 Nazir, *Report on Citizenship*, 8.

41 Iftikhar A. Khan, ‘Afghan Refugees’ Children Can’t Get CNICs: Nisar,’ *DAWN.COM*, accessed February 10, 2020, <https://www.dawn.com/news/1276821>.

42 Nazir, *Report on Citizenship*, 5.

43 Nazir, *Report on Citizenship*, 5.

44 Ibid., 6.

a number of issues between the two countries. In Pakistan, these include past Afghan governments' support for Pashtun demands in Pakistan for a separate state,<sup>45</sup> Afghanistan's non-recognition of the Durand Line,<sup>46</sup> Indian involvement in Afghan reconstruction<sup>47</sup> and alleged terrorist safe havens in Afghanistan.<sup>48</sup> The wider public, too, perceives Afghan refugees as threats to the social fabric and national security of the country. They are often blamed for 'cross border drug trafficking, human trafficking, smuggling and the arms race across Pakistan's western border' though provincial data from 2014 shows that only a small number of Afghans were responsible for crimes in Khyber Pakhtunkhwa.<sup>49</sup>

The general institutional response to the Afghan refugees' plight has been poor. This is exemplified by the recent ruling from the Peshawar High Court calling for the restriction of activities of Afghan refugees, including limiting their ability to conduct businesses, and the requirement of specific permission before they can start a venture.<sup>50</sup> Afghans, currently conducting trade, face disadvantages, with additional checks and procedures levied on their import and export activities. Aside from these restrictive regimes, tariff barriers, customs regulations and administrative hindrances, Afghans face a narrowing space for economic activity

---

45 Faridullah Bezhani, 'The Pashtunistan Issue and Politics in Afghanistan, 1947-1952,' *Middle East Journal* 68, no. 2 (2014): 198, <https://doi.org/10.3751/68.2.11>; Amin Saikal, 'Afghanistan and Pakistan: The Question of Pashtun Nationalism?,' *Journal of Muslim Minority Affairs* 30, no. 1 (2010): 8, <http://dx.doi.org/10.1080/13602001003650572>.

46 Vinay Kaura, 'The Durand Line: A British Legacy Plaguing Afghan-Pakistani Relations,' Middle East Institute, accessed February 12, 2020, <https://www.mei.edu/publications/durand-line-british-legacy-plaguing-afghan-pakistani-relations>.

47 Ruchi Kumar and Hikmat Noori, 'Afghans Are Cheering for an Indian Win,' Foreign Policy, accessed February 12, 2020, <https://foreignpolicy.com/2019/02/28/afghans-are-cheering-for-an-indian-win/>.

48 Associated Press of Pakistan, 'Terrorist safe havens exist in ungoverned areas of Afghanistan, not Pakistan: Maleeha Lodhi,' *DAWN*, accessed February 12, 2020, <https://www.dawn.com/news/1378410>.

49 Sania Sabir Qureshi, 'Diasporic Identity and Rehabilitation: Why the Afghan Refugees in Pakistan are not opting for Voluntary Repatriation,' *Stratagem* 2, no. 1 (2019): 59-60, the Centre for Strategic and Contemporary Research (CSCR).

50 Waseem Ahmad Shah, 'View from the Courtroom: Pakistan's Citizenship Law in the Limelight,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1284651>; Rafia Zakaria, 'A Matter of Foreign Spouses,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1469361>.

and increasingly unequal access to opportunities. The lacuna in the legal framework also enables repressive actions against the Afghan community that include ‘repeated threats, detention, regular demands for bribes and occasional violence by the police’.<sup>51</sup>

Most of these issues are discounted by administrative authorities as the government continues to emphasise the voluntary repatriation of the Afghan refugees. The initial deadline of 30 June 2019 was extended by an additional year in the midst of a political visit by the Afghan President, Ashraf Ghani. Current data estimates that the UNHCR has facilitated the voluntary repatriation of 4,374,208 Afghan refugees from 2002 till 4 December 2018.<sup>52</sup> Moreover, the state’s continuous emphasis on repatriation of the refugees makes clear its intent of not allowing them access to citizenship or naturalisation laws.<sup>53</sup>

### ***Pakistani Women and Foreign Spouses***

Pakistan also serves as an example of how citizenship laws can be discriminatory on the basis of gender and deprive women of their right to equality under Article 25 of the 1973 Constitution of Pakistan.<sup>54</sup> Steps have been taken to make the language in the Pakistan Citizenship Act 1951 gender-neutral and extend to women the right to pass down nationality to their children, which are commendable. The Act, however, discriminates against women who have married foreigners. Section 5 of the Pakistan Citizenship Act 1951 was amended in 2000 to grant nationality to the children of a Pakistani woman who was married to a foreigner.<sup>55</sup> Yet, the

---

<sup>51</sup> ‘What Are You Doing Here?: Police Abuses Against Afghans in Pakistan,’ Human Rights Watch, accessed February 10, 2020, <https://www.hrw.org/report/2015/11/18/what-are-you-doing-here/police-abuses-against-afghans-pakistan>.

<sup>52</sup> ‘Pakistan: Voluntary Repatriation of Afghan Refugees from Pakistan: As 30th of Nov, 2018—Pakistan,’ *ReliefWeb*, accessed February 3, 2020, <https://reliefweb.int/report/pakistan/pakistan-voluntary-repatriation-afghan-refugees-pakistan-30th-nov-2018>.

<sup>53</sup> Hyder, ‘Steering the.’

<sup>54</sup> Article 25(1) states, ‘All citizens are equal before law and are entitled to equal protection of law.’ Moreover, article 25(2) prohibits discrimination on the basis of sex. See Republic of Pakistan, *The Constitution of the Islamic Republic of Pakistan* (Islamabad: The National Assembly of Pakistan, 2012), article 25, [http://www.na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://www.na.gov.pk/uploads/documents/1333523681_951.pdf).

<sup>55</sup> Waseem Ahmad Shah, ‘View from the Courtroom: Pakistan’s Citizenship

same right was not extended to the husband, thereby leaving Section 10 of the Act that deals with the transfer of nationality to men unamended to date.<sup>56</sup> Hence, while the Act does not permit the foreign spouses of Pakistani women to attain nationality it extends that right to the spouses of Pakistani men.

Such inconsistency places Pakistani women, especially those who have married Afghan men, in a vulnerable position, as their spouses are denied protection under the legal regime.<sup>57</sup> In 2016, a petition was filed in the Peshawar High Court by a Pakistani woman, Abida Bibi and her Afghan husband, Asmatullah.<sup>58</sup> Abida Bibi was denied a CNIC by NADRA on the grounds that her husband did not possess one.<sup>59</sup> The court noted that the 1951 citizenship law discriminated against women and issued a notice to the Attorney General of Pakistan to address the concerns raised in Abida Bibi's petition.<sup>60</sup>

In addition to violating a woman's right to equality, the law also places the spouses of Pakistani women in a difficult position. Despite being legally wed to Pakistani women, these men remain non-citizens and therefore unfairly deprived of their rights to equal opportunities. In this manner, the state also violates its constitutional duty under Article 35 to protect the institutions of family and marriage.<sup>61</sup>

The gendered character of the law must be seen through the lens of systemic discrimination of Pakistani women in the public sphere. Women have access to a 'second-class citizenship' in which they are subordinate to men when it comes to 'the rights to acquire, change, transfer or retain nationality'.<sup>62</sup> This subordination

---

Law in the Limelight,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1284651>; Rafia Zakaria, 'A Matter of Foreign Spouses,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1469361>.

56 Zakaria, 'A Matter.'

57 Shah, 'View from'.

58 "Discriminatory' Citizenship Law Challenged in High Court,' *DAWN*, accessed February 12, 2020, <https://www.dawn.com/news/1290892>; 'Woman moves PHC to seek citizenship for husband, kids,' *The News*, accessed February 12, 2020, <https://www.thenews.com.pk/print/158247-Woman-moves-PHC-to-see-citizenship-for-husband-kids>.

59 Ibid.

60 Ibid.

61 Article 35 states, 'The state shall protect the marriage, the family, the mother and the child.' See *The Constitution of the Islamic Republic of Pakistan*.

62 Pradhan-Malla and Gautam, *Women's Right*, 1.

is rooted in structures of patriarchy that relegate women to the private sphere at the cost of their participation in public affairs.<sup>63</sup>

The resistance towards extending citizenship rights to foreign husbands is both securitised and gendered. The exclusion is justified by the state on the basis of national security and the need to prevent illegal immigration. A bill tabled in 2017 to amend the citizenship law was rejected by the governing party because it could 'jeopardise national security by allowing hostile countries to set up espionage networks by simply marrying Pakistani women'.<sup>64</sup> The Ministry of Interior has stated in the past that granting nationality to the foreign husband of a Pakistani woman will not only lead to the law being abused by 'illegal immigrants like Afghan refugees, Bengali, Behari and other South Asian states/countries who do not intend to return to their country' but also 'provide legal ingress to Indian male citizens into Pakistan'.<sup>65</sup>

The citizenship law is thus rooted in gender bias, cultural fears and security imperatives. The law denies women the right to transfer nationality to their husband on the pretext of protecting Pakistani soil against foreign enemies who may come under the guise of male refugees from India and Afghanistan. It demonstrates the link between patriarchal social systems, geopolitical imperatives, a masculine state and the rights of refugees. For this reason, this particular provision in the law can be especially difficult to amend if wider efforts are not taken to sensitise social and political systems towards gender bias and create awareness of Pakistan's international human rights obligations.

### ***Migrants from Bangladesh and Burma/Myanmar***<sup>66</sup>

It has been estimated that around a million Bangladeshis migrated to Pakistan in the 1980s and 1990s in search of economic

---

63 Ibid.

64 Irfan Ghauri, 'Security fears block tweak in citizenship law,' *The Express Tribune*, accessed February 10, 2020, <https://tribune.com.pk/story/1391721/gender-bias-security-fears-block-tweak-citizenship-law/>

65 Nazir, *Report on Citizenship Law*, 9; 'No Citizenship for Foreigners Marrying Pakistani Women,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/233113>.

66 The state collectively refers to Burmese and Bangladeshi migrants as 'Bengali Speakers'. Since the Burmese also choose to identify as Bengali, they have been grouped together in this report. See Anwar, 'Negotiating New' 415.

opportunities.<sup>67</sup> Most of them are settled in Karachi though exact numbers remain uncertain.<sup>68</sup> In contrast to the many Afghan refugees that share ethnic ties with the local pashtuns, this group is at a higher risk of marginalisation and targeting due to their distinct physical appearance.<sup>69</sup> Pakistan also houses around 250,000 Rohingyas who left their homes in response to their expulsion by the Burmese military starting in 2015.<sup>70</sup>

The citizenship status of these migrants is also ambiguous. The Pakistani state's attempts to govern and control the Rohingya and Bangladeshi migrants has manifested itself in the 'imposition of new citizenship norms through the enforcement of strict legal codes, disciplinary interventions (police squads, detention) and administrative rationalities'.<sup>71</sup> This has created a highly visible distinction between legitimate citizens and *de facto* non-citizens. Coercive methods of governance are accompanied by the 'language of illegality' that discursively constructs migrants as security threats.<sup>72</sup> For instance, institutions governing citizenship status such as NADRA refuse to legitimize Bengali-speaking populations as Pakistani citizens despite their residence in the country for several decades and continue to refer to them as 'illegals'.<sup>73</sup>

The citizenship laws discriminate against a certain sub-section of Bengalis who migrated to Pakistan after 1971. According to the Pakistan Citizenship Act 1951, as amended by the Pakistan Citizenship (Amendment) Ordinance, 1978, 'All persons who, at any time **before** [emphasis added] the sixteenth day of December 1971, were citizens of Pakistan domiciled in the territories which... constituted the Province of East Pakistan...shall continue to be citizens of Pakistan'.<sup>74</sup> The rules issued by NADRA stipulate that individuals can be accorded citizenship upon proving that they had been residents of Pakistan before 1978.<sup>75</sup> The latter cut-off

---

67 Ibid., 415.

68 Gazdar, *A Review of Migration*, 13.

69 Ibid., 14.

70 Anwar, 'Negotiating New,' 415.

71 Ibid., 416.

72 Ibid., 421.

73 Ibid., 424.

74 Republic of Pakistan, Pakistan Citizenship Act, 1951, section 16-A

75 Bilal Karim Mughal and Zehra Naqvi, 'Bengalis of Karachi Demand Urgent

date is used to deny citizenship to Bangladeshis who migrated for economic purposes.<sup>76</sup> Moreover, the law puts immense pressure on Bangladeshis to prove that they settled in Pakistan prior to 1971.

Bangladeshi migrants who settled in Pakistan after 1971 are denied citizenship and only receive work permits. This puts such migrants at an increased risk of being rendered stateless due to their status as *de facto* non-citizens in addition to depriving them of protective, economic and political rights and subjecting them to routine state coercion. Bangladeshi residents of Karachi are excluded from electoral rolls, and there have been some instances in which Bangladeshis have been forced to register as aliens after their CINC's were revoked by NADRA for 'failing' to establish proof of citizenship.<sup>77</sup> In one case, Khairuddin, a fisherman, was detained by the police after he failed to produce a CNIC which had been denied to him by NADRA.<sup>78</sup> The policy also affects the children of these migrants since they are unable to gain recognition as Pakistani citizens due to the uncertain legal status of their parents.<sup>79</sup> Some migrants have no choice but to resort to illicit means such as using counterfeit documents to register themselves as pre-1971 immigrants and acquire citizenship.<sup>80</sup> Others reportedly bribe officials at NADRA at varying rates to get their CNICs renewed.<sup>81</sup>

Under the Pakistan Citizenship Act 1951, only people born in the Subcontinent and residing in Pakistan qualify as citizens.<sup>82</sup> But unlike Bangladesh, Myanmar/Burma was not considered to be a part of the Subcontinent under the Government of India Act 1935.<sup>83</sup> This meant that Rohingyas do not qualify for citizenship rights. They are thus not only economically insecure, as they are mostly involved in low-paid employment, but are also socially, legally and politically

---

Resolution to Identity Problem,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1414503>.

76 Ibid.

77 Mughal and Naqvi, 'Bengalis of.'

78 Mughal and Baloch, 'The Woes.'

79 Anwar says, 'this poses a greater challenge for these migrants' children who cannot obtain identification cards unless their parents' status is legalized or they have corroborating identity cards.' For more, see Anwar, 'Negotiating New,' 425.

80 Ibid.; Gazdar, *A Review of Migration*, 13.

81 Mughal and Baloch, 'The Woes.'

82 Ibid.

83 Ibid.

at risk. They are often denied access to healthcare and education. In one instance, a Rohingya woman was denied medical treatment at a hospital for not having a valid CNIC.<sup>84</sup> Their status as non-citizens also makes them victims of arbitrary police detention and harassment, and security agencies take advantage of their precarious state to ask for bribes from the community, an occurrence that is especially prevalent in the ethnicised political spaces of Karachi.<sup>85</sup>

Rohingyas, who migrated to Pakistan due to religious bonds, harbour feelings of betrayal at the harassment and discrimination against their community. The concept of the *muhajir*, or migrant, is a feature of both Islamic and Pakistani history. It evokes the *hijrah* [migration] in Islamic history caused by the religious persecution of Muslims. The term, literally meaning ‘a person who has left home’, was also used to describe Muslim migrants from India after the 1947 Partition, and, by the 1980s, to descendants of Urdu-speaking migrants in parts of Sindh and Punjab.<sup>86</sup> However, Rohingya migrants feel that they are not accepted by the Pakistani state and society despite having escaped persecution. As one Rohingya migrant said: ‘Despite our achievements we have never been accepted as part of this land. We too have performed *hijrah* and are *muhajir* but remain unacknowledged as such.’<sup>87</sup>

### ***Bihari Muslims***

The case of Bihari Muslims<sup>88</sup> is unique in the sense that they mostly reside in Bangladesh as a stateless community of ‘stranded Pakistanis’. They make up an economically deprived group mostly inhabiting neglected urban slums.<sup>89</sup> Their current predicament is the result of their opposition to the creation of Bangladesh in 1971 and their desire to be identified as Pakistanis. Though a reported 170,000 have been repatriated to Pakistan, the Pakistani government has refused to take in the remaining half a million Biharis,

---

84 Ibid.

85 Gazdar, *A Review of Migration*, 13.

86 Ibid., 3.

87 Anwar, ‘Negotiating New,’ 418.

88 Though referred to as *Biharis*, not all of them came from Bihar. See Gazdar, *A Review of Migration*, 13.

89 Katherine Southwick and M. Lynch, *A Progress Report and Global Survey on Statelessness* (Washington D.C: Refugees International, 2009), ii, <https://www.refworld.org/docid/49be193f2.html>.

arguing that they have acquired passports and exercised voting rights in Bangladesh.<sup>90</sup> The Foreign Office has stated that ‘under Section 16-A of Pakistan Citizenship Act 1951, all those persons in the territories, which before December 16, 1971 constituted the province of East Pakistan, and residing there since that day, voluntarily or otherwise, ceased to be citizens of Pakistan.’<sup>91</sup> The Bihari Muslims continue to reside in camps to this day and hope that one day they will be taken in as citizens of Pakistan.<sup>92</sup>

## **Conclusion**

This report examined the plight of refugees, migrants and the stateless in Pakistan. It identified gaps in the institutional and national legal framework that contribute towards the social, political and economic disempowerment as well as exclusion of vulnerable communities of refugees and migrants. Pakistan has not honoured its obligations as a party to international human rights conventions that recognise the right to nationality. Moreover, Pakistan’s non-ratification of the Convention relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons and Convention on the Reduction of Statelessness has resulted in a lack of accountability on the rehabilitation, inclusion and naturalisation of the stateless. The situation has been exacerbated by both Pakistan’s exclusionary citizenship laws as well as their interpretation. Pakistan contravenes its constitutional responsibility of ensuring gender equality by denying women the right to transfer nationality to their foreign husbands. Despite recognising the right to citizenship by birth, Pakistan has demonstrated a dismal record of its implementation when it comes to refugees and their children.

Legal and administrative obstacles in acquiring citizenship have thus led to the systematic marginalisation of Afghan refugees and Bihari migrants who have been residing in the country for decades but whose claims to citizenship are often denied by the authorities. These vulnerable groups are also targets of state harassment and coercion and lead a precarious existence in perpetual insecurity.

---

<sup>90</sup> HRCP, *State of Human Rights in 2015*, 14.

<sup>91</sup> Ibid.

<sup>92</sup> UNHCR, *The State*, n.p.

Therefore, there is a pressing need to grant a legal identity to these vulnerable groups, one that facilitates their socioeconomic wellbeing and naturalisation in line with standards set by international instruments and policy guidelines.

### **Recommendations**

- Pakistan should ratify the Convention relating to the Status of Refugees, Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness in order to ensure that its national legal framework includes comprehensive safeguards for both refugees and the stateless.
- In fulfilling its obligations under international human rights conventions as well as its constitutional duty, the Pakistani state should foster gender equality by amending laws to enable women to transfer nationality to their foreign husbands.
- In order to address the protracted refugee situation, Pakistan should undertake efforts to secure adequate financing for the long-term rehabilitation as well as voluntary repatriation of refugees.
- Pakistan should continue playing a constructive role in the Afghan peace process to improve the regional security environment so that Afghan refugees who want to return to Afghanistan are able to do so.
- Efforts should be undertaken to devise political consensus on a policy that gives Afghan refugees a legal identity that allows for their social and economic uplift.
- The state should take measures to launch wider political dialogue on increasing awareness on the rights of refugees. The political class should initiate talks and spread awareness over the status of migrants, refugees and the stateless in Pakistan. This should be followed up with a policy that lays out the strategy and goals with regards to the vulnerable groups.
- The legal regime on citizenship should be streamlined and greater transparency introduced through appropriate legislation and institutional oversight. Arbitrary deprivation of citizenship and cancellation of identity cards should also be brought to an end.

# **Freedom of Religion**

## **The Experience of Religious Minorities, Asylum-Seekers and Refugees in Sri Lanka**

**Tehani Ariyaratne**

---

### **Introduction**

The movement of people to and from Sri Lanka has always been fluid given its proximity to India, its centrality to trade routes, and its colonial experiences. The diversity of its multi-ethnic, multi-religious population has played an important role in its colonial history as well as significantly shaped its post-independence trajectory.

Despite the diversity of the populace, there have been conflicts that originated due to, or were exacerbated by, ethnic identities and religious beliefs. Discrimination and even persecution on the basis of religion is thus not a new phenomenon; it was a feature of Sri Lanka's post-independence reality, and, more recently, is a particular characteristic of its post-war reality.

This chapter will specifically look into discrimination against two of Sri Lanka's religious minorities—Muslim and Christian. It will also broadly examine the violence and discrimination against refugees and asylum-seeking communities after the Easter Sunday attacks of April 2019, and situate these within the larger context of discrimination and violence against religious minorities in the country.

### **Demographic Composition of Sri Lanka**

The Sinhala community makes up 75 per cent of the total population of Sri Lanka.<sup>1</sup> The next two largest ethnic groups are

---

<sup>1</sup> Census of Population and Housing 2012 (Colombo: Department of Census and Statistics Sri Lanka) accessed November 3, 2019, <http://>

Sri Lankan Tamils at 11 per cent and Sri Lankan Moors (Muslims) at 9.3 per cent.<sup>2</sup> Buddhism is the predominant religion with 70 per cent of the population identifying as Buddhists. Followers of Hinduism and Islam make up 12.6 per cent and 9.6 per cent of the population respectively, and Roman Catholic and other Christian denominations make up 7.6 per cent.<sup>3</sup>

Indian Tamils, also known as 'Up-Country Tamils', make up 4 per cent of the population. They are a multi-generational community of Indian origin, descendants of Indians brought to Sri Lanka as plantation labourers in the mid-19th century by the British. They became the primary 'stateless' population in post-independence Sri Lanka after the enactment of the Citizenship Act No. 18 of 1948, which denied citizenship rights to Up-Country Tamils.<sup>4</sup> This was subsequently remedied through a series of legislations, including the Grant of Citizenship to Stateless Persons Act No. 5 of 1986 (GCA 1986), Grant of Citizenship to Stateless Persons (Special Provisions) Act (GCA 1988), and Grant of Citizenship to Persons of Indian Origin Act No. 35 of 2003.<sup>5</sup> Though they now have *de jure* citizenship in Sri Lanka, the Up-Country Tamil community remains one of the most marginalised with many challenges to accessing basic government services and socio-economic rights.

Over the last decade or so, Sri Lanka has also seen an influx of asylum-seekers fleeing religious persecution in countries such as Pakistan, Afghanistan and Myanmar. These groups include the Ahmadiya and Shia Muslims, Pakistani Christians, and Rohingya Muslims. These communities have made their home within Sri Lanka, and are most often at some stage of acquiring refugee status from the United Nations High Commissioner for Refugees (UNHCR). As individuals on Sri Lankan soil, they are eligible to certain rights granted in the Constitution, but not others.<sup>6</sup>

---

[www.statistics.gov.lk/PopHouSat/CPH2012Visualization/htdocs/index.php?usecase=indicator&action=Map&indId=10.](http://www.statistics.gov.lk/PopHouSat/CPH2012Visualization/htdocs/index.php?usecase=indicator&action=Map&indId=10)

2 Ibid.

3 Ibid.

4 Luwie Ganeshathasan and Asanga Welikala, *Report on Citizenship Law: Sri Lanka*, (Italy: European University Institute, 2017), 4.

5 Ibid, 9-11.

6 Discussed in section on refugees and asylum seekers.

## Violence against Religious Minorities

Following the end of the 26-year-long civil war in Sri Lanka in 2009, the existence of prolonged and systematic attacks, human rights violations, and discrimination against religious minorities was brought into sharper focus. An examination of the last two decades of intercommunal relations in Sri Lanka vis-à-vis the freedom to practise one's religion reveals a notable increase in both the frequency of incidents of violence as well as systematic discrimination and harassment of religious minorities, often coupled with State inaction. The post-tsunami period in 2004-05, with its influx of religiously-affiliated aid and rescue workers; the post-war period; and the establishment of the Bodu Bala Sena (BBS)<sup>7</sup> in 2012 can be considered critical junctures which have impacted and shaped contemporary relations among religious communities. In the first years of this period, there were separate proposals to introduce laws against conversion by the political party, Jathika Hela Urumaya (JHU)<sup>8</sup> and also by President Chandrika Kumaratunga's government,<sup>9</sup> which faced opposition from civil society organisations and minority religious groups on the basis that, inter alia, the broad interpretation of 'conversion' infringes on constitutional guarantees of right to freedom of religion.

Extensive research and documentation in the last decade by local civil society organisations<sup>10</sup> and INGOs<sup>11</sup> along with UN

---

7 The BBS is a Sinhala Buddhist nationalist organisation, founded as a breakaway organisation from the Jathika Hela Urumaya, a Sinhala nationalist right wing political party in Sri Lanka. Its aim is the protection of Buddhism in Sri Lanka, and it often targets minority communities in its advocacy campaigns.

8 Prohibition of Forcible Conversion of Religion Bill, 2004.

9 Freedom of Religion Bill, 2005.

10 See Vijay Nagaraj and Farazana Haniffa, *Towards Recovering Histories of Anti-Muslim Violence in the Context of Sinhala-Muslim Tensions in Sri Lanka*, 2017; Gehan Gunatilleke, *The Chronic and the Acute: Post-War Religious Violence in Sri Lanka*, 2015; Nirmal Ranjith Dewasiri, *New Buddhist Extremism and the Challenges to Ethno-Religious Coexistence in Sri Lanka*, 2016; Gehan Gunatilleke, *The Chronic and the Entrenched: Ethno-Religious Violence in Sri Lanka*, 2018; Dhammika Herath and Harshana Rambukwella, *Self, religion identity and politics: Buddhist and Muslim encounters in contemporary Sri Lanka*, 2015; Farzana Haniffa, Harini Amarasuriya, Vishakha Wijenayake and Gehan Gunatilleke, *Where Have all the Neighbours Gone? Aluthgama Riots and its Aftermath*, 2014; NCEASL Incident Reports.

11 See 'We are not safe here': Refugees under attack in Sri Lanka and

reports and press releases<sup>12</sup> have captured incidents of violence between religious communities as well as against refugees and asylum-seekers in Sri Lanka. While violence against Muslim and Christian minorities by factions of the majority Buddhist community predominates, there have also been documented incidents of violence and discrimination by Sunni Muslims against Sufi and Ahmadiya Muslim minorities, and sporadic violence between Christian and Hindu communities, and Muslim and Hindu communities.<sup>13</sup>

That was the situation when on 21 April 2019, Easter Sunday, Sri Lanka witnessed the most violent attack on its citizens since the end of the civil war. Islamic extremists, identified as members of local militant groups, National Tawheed Jamaat (NTJ) and Jamathe Millathu Ibrahim (JMI),<sup>14</sup> attacked Christian places of worship and luxury hotels, causing large-scale death and destruction. In keeping with the modus operandi of ISIS, their targets were Christians and Western tourists, and it is thought that the bombers were seeking a higher profile that would accompany this affiliation with ISIS.<sup>15</sup> The aftermath of this attack on the Muslim community and the refugees and asylum seekers in Sri Lanka, specifically on their

---

the need for resettlement, 2019, <https://www.amnesty.org/en/documents/asa37/0558/2019/en/>; 'Act now to prevent further anti-Muslim violence', 2017, <https://www.amnesty.org/en/documents/asa37/6361/2017/en/>; 'Refugees fear for their safety amid desperate conditions', 2019, <https://www.amnesty.org/en/latest/news/2019/05/sri-lanka-refugees-fear-for-their-safety-amid-desperate-conditions>.

12 See 'Report submitted by the Special Rapporteur on freedom of religion or belief, Asma Jahangir', 2005, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/5/Add.3&Lang=E>; 'Pillay alarmed by intercommunal violence, calls for end to hate speech', 2014, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14715>; 'Joint Statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide, and Karen Smith, United Nations Special Adviser on the Responsibility to Protect, on attacks against religious minorities in Sri Lanka', 2019, <https://reliefweb.int/report/sri-lanka/joint-statement-adama-dieng-united-nations-special-adviser-prevention-genocide-and>.

13 'Report submitted by the Special Rapporteur on freedom of religion or belief, Asma Jahangir', (NY: United Nations Economic and Social Council, 2005), accessed on November 3, 2019 <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/5/Add.3&Lang=E>.

14 *After Sri Lanka's Easter Bombings: Reducing Risks of Future Violence—Crisis Group Asia Report*, (Brussels: International Crisis Group, 2019), 5.

15 *Ibid.*, 6.

right to religious expression as well as access to services are briefly explored in the following sections.

## **Freedom of Religious Belief and Politicisation of Religion**

Sri Lanka's Constitution protects and upholds the fundamental right of its citizens to freedom of religion and belief as well as non-discrimination based on religion. Sri Lanka is also signatory to the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of thought, conscience and religion. However, the Sri Lankan Constitution also gives Buddhism the 'foremost place' and commits the state to the protection of Buddhism,<sup>16</sup> which gives it *de facto* recognition as the religion of the State.

This pre-eminence of Buddhism leaves the secular nature of the Sri Lankan state open to questions and interpretations. In her analysis of legal judgements related to freedom of religion, Esufally notes that in 2004 the Supreme Court adopted a progressive stance on its verdict against the JHU's constitution amendment bill to make Buddhism the official state religion.<sup>17</sup> The court noted: "The theoretical content of the amendment remains a subtle and constant reminder to religious minorities within the country of their differences with, and alienation from, the dominant religious culture."<sup>18</sup>

Successive governments, however, have continued to prioritise and uphold Buddhism as the *de facto* state religion. Buddhism has also consistently been invoked as a political tool by political actors from the majority Sinhala community, going back to the actions of Anagarika Dharmapala and others in mobilising resistance to the British colonial powers in the late 19th and early 20th centuries; the inclusion of the Article on Buddhism in the 1972 Constitution; the resurgence of Sinhala Buddhist nationalism in the 1980s, particularly the intellectual movement of the Jathika Chinthanaya; the formation of the JHU in the early 2000s; and the rise to power

---

16 Article 9.

17 Sabrina Esufally, *Judicial Responses to Religious Freedom: A Case Analysis*, (Colombo: National Christian Evangelical Alliance of Sri Lanka, 2015).

18 *Nineteenth Amendment to the Constitution*, S.C. Determination No. 32/2004. Quoted in *Ibid.*, 13.

of Mahinda Rajapakse in 2005 with the support of a powerful Sinhala Buddhist voting bloc.<sup>19</sup> This 'revival of Sinhala-Buddhist nationalism' is seen as integrally linked to the 'new radicalisation of political Buddhism'.<sup>20</sup>

Following the end of the civil war, the state has pursued an active agenda of promoting Buddhism by providing patronage in some instances and failing to act in others, as right-wing majoritarian forces engaged in hate speech, harassment and violence against minority religious communities. Some of the, mostly unsubstantiated, themes along which these groups engage in fear-mongering while inciting violence and ethno-religious animosity are: the relative decline of the Sinhala Buddhist population in the face of a growing Muslim one; forced conversions of Buddhists by evangelical Christian groups; the economic prosperity of Muslim-owned businesses; and the erosion of Sinhala Buddhist culture.

### **Discrimination against Muslims**

The extent of violence against Muslims was brought to national attention following the end of the war in 2009. Stand-out incidents over the last decade include the anti-*halal* campaigns in 2013,<sup>21</sup> calls to ban the *niqab*,<sup>22</sup> the attacks on Muslims in 2014, 2017 and 2018,<sup>23</sup>

---

19 Nirmal Ranjith Dewasiri, *New Buddhist Extremism and the Challenges to Ethno-Religious Coexistence in Sri Lanka* (Colombo: International Centre for Ethnic Studies, 2016).

20 Ibid, 11.

21 See Ameer Ali, 'Four Waves of Muslim-Phobia in Sri Lanka: c.1880–2009,' *Journal of Muslim Minority Affairs* 35:4 (2015):497; Mohammad Agus Yusoff and Athambawa Sarjoon, 'Anti-Halal and Anti-Animal Slaughtering Campaigns and Their Impact in Post-War Sri Lanka,' *Religions* 8(4):46 (April 2017) for a discussion on the social and economic dimensions of these campaigns.

22 Megara Tegal, 'BBS Call for Ban on Niqab,' *The Sunday Leader*, June 23<sup>rd</sup> 2013, accessed January 28, 2020, <http://webcache.googleusercontent.com/search?q=cache:http://www.thesundayleader.lk/2013/06/23/bbs-calls-for-ban-on-niqab>.

23 Farzana Haniffa, Harini Amarasuriya, Vishakha Wijenayake and Gehan Gunatilleke, *Where Have All the Neighbours Gone? Aluthgama Riots and Its Aftermath*, (Colombo: Law and Society Trust, 2014); M. Riza, 'Fear grips Muslims in Sri Lanka's Ginthota after attack,' *Al Jazeera*, 24<sup>th</sup> November 2017, accessed 25th January 2020 <https://www.aljazeera.com/indepth/features/2017/11/fear-grips-muslims-sri-lanka-ginthota-attack-171123131130193.html>; and United States Department of State, 'Sri Lanka 2018 International Religious Freedom Report', in *International Religious Freedom Report for 2018*, (Washington DC: United States Department of State, 2018).

and the violence following the Easter Sunday attacks in multiple districts.<sup>24</sup> However, evidence shows that violence against Muslims is not a new phenomenon. The present trend of violence ‘does not derive merely from post-war tensions nor is it necessarily a response to global, Islamist terrorism’,<sup>25</sup> as historical records show that violent incidents and anti-Muslim rhetoric have existed at least as far back as the late 19th century. According to Ameer Ali, Sri Lanka is currently in the fourth wave of anti-Muslim violence, with the first dating back to 1880, beginning with ‘inflammatory speeches and writings by Buddhist nationalists’ that culminated in the anti-Muslim riots of 1915.<sup>26</sup>

The Muslim community, particularly the ‘Coast Moors’ or Muslims who migrated from South India at the end of the 19th and early 20th centuries, flourished through trade under colonial capitalism.<sup>27</sup> Sentiments towards the immigrant Muslim community were not favourable though, and were further worsened by the rising cost of living. The Sinhalese low-country traders who were in competition with Muslim traders for business capitalised on this sentiment through actions such as forming exclusive Buddhist traders’ associations.<sup>28</sup> This inter-community competition and tension, coupled with the ethno-religious nationalist sentiment driven by the Buddhist revivalist movement, made Muslims an easy mark for violence. The 1915 riots, triggered by the diversion of a Buddhist procession away from a mosque in Kandy under a colonial law regarding noise pollution, resulted in at least four rapes, 25 deaths, and attacks on more than 4,000 Muslim properties across 5 provinces.<sup>29</sup>

---

24 Saeed Shah and Uditha Jayasinghe, ‘Buddhist Mobs Target Muslims in Sri Lanka Following Deadly Easter Bombings,’ *The Wall Street Journal*, May 14th, 2019, accessed September 15, 2019 <https://www.wsj.com/articles/buddhist-mobs-target-muslims-in-sri-lanka-11557854344>.

25 Shamara Wettimuny ‘A brief history of anti-Muslim violence in Sri Lanka’ *Sunday Observer*, July 14, 2019, accessed September 15, 2019 <http://www.sundayobserver.lk/2019/07/14/opinion/brief-history-anti-muslim-violence-sri-lanka>.

26 Ali, ‘Four Waves’, 490.

27 Ibid.

28 Robert Chalmers to the Secretary of State, 11 August 1915, Court Documents. 8167. Quoted in Ibid., 488-89.

29 Wettimuny, ‘A brief history’.

The 1970s saw the next wave of violence<sup>30</sup> marked by the attack in Puttalam in February 1976.<sup>31</sup> This was followed by a period of brutal violence against Muslim communities in the North and East by the Liberation Tigers of Tamil Eelam (LTTE)<sup>32</sup>, which included the Kattankudy and Eravur massacres, and the expulsion of Muslims from the North in 1990, leaving hundreds dead and thousands internally displaced.<sup>33</sup> There was also, to a lesser extent, conflict between the Sinhala and Muslim communities, and incidents of violence across the southern, western and central parts of the country.<sup>34</sup> These incidents reflected the tensions that existed between the two communities as a result of the political-economic changes taking place, such as the impacts of the open economy reforms introduced by the-then government, increasing economic inequalities, the formation of the Sri Lanka Muslim Congress, and the rise in Sinhala Buddhist ethno-nationalist organisations.<sup>35</sup>

The most recent period of post-war violence against minorities is characterised by the overt triumphalism and Sinhala Buddhist nationalist discourse of the Sinhala community, fuelled by the rise of organisations like the Bodu Bala Sena (BBS) and Sinhala Ravaya, led by Buddhist clergy and laymen, with the tacit support of the post-war Rajapakse government.<sup>36</sup> This, coupled with increasing economic inequality and rise in debt and dispossession caused by the post-war development policies has led to harassment, hate speech and violence against minorities, particularly the Muslim

---

30 As conflict between the Sinhalese and Tamils intensified during this period, anti-Muslim tensions took on more of a structural nature. Ali (*Four Waves*, 490-494) attributes this to two factors: economic challenges faced by Muslims due to the United Front-Government's (UFG) closed economic policy and changes to education policy which resulted in the emergence of an educated professional class of Muslims; both which lead to an increase in tensions between the majority and minority community.

31 See Ali, 'Four Waves', 493-494; Nagaraj and Haniffa, *Towards Recovering Histories*'.

32 The LTTE was a militant Tamil organisation fighting for a separate state and self-determination for Tamil people, in the North and East of Sri Lanka, since the early 1980s. They were militarily defeated by the Sri Lankan state in 2009.

33 Ali, 'Four Waves', 495.

34 Nagaraj and Haniffa, *Towards Recovering Histories*.

35 Ibid.

36 Nira Wickramasinghe 'Sri Lanka in 2014: Cracks in the Edifice', *Asian Survey*, Vol. 55, No. 1, A Survey of Asia in 2014 (January/February 2015), 62.

community, which is seen as being relatively more prosperous.<sup>37</sup> In the 2009-2015 period, several incidents of vandalism and looting of Muslim businesses and mosques, most often led by Buddhist clergy, were documented across the island.<sup>38</sup>

The Aluthgama attack in June 2014 was particularly significant for the extent of its violence. The attack was triggered by the alleged assault of a Buddhist monk by three Muslim youth in Dharga Town, following which the situation became tense. The next day, the BBS held public meetings across Kalutara district, and in a speech designed to incite racist and anti-religious sentiment, the BBS leader, Galagoda Aththe Gnanasara Thera, spoke to a large gathering in Aluthgama, saying: 'In this country we still have a Sinhala police; we still have a Sinhala army. After today if a single *Marakkalaya*<sup>39</sup> or some other *paraya*<sup>40</sup> touches a single Sinhalese.....it will be their end.'<sup>41</sup> Following the rally, the gathering moved to Dharga town, and clashes broke out with the resident Muslims. The violence continued well into the night and the next day, spreading to surrounding neighbourhoods, despite a curfew being in place.<sup>42</sup> Four people were killed in the attacks and scores injured;<sup>43</sup> 155 houses, business and mosques were damaged amounting to a loss of more than 600 million Sri Lanka rupees;<sup>44</sup> while 10,000 people, including 8,000 Muslims were displaced by the attacks.<sup>45</sup>

The attacks on Muslims continued even after the change

---

37 Ahilan Kadirgamar, 'The Political Economy of Anti-Muslim Attacks', *The Island*, March 2, 2013, accessed September 22, 2019 [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=73829](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=73829).

38 Ali, 'Four Waves', 495-96

39 A derogatory term to refer to Muslims.

40 Meaning an alien.

41 Quoted in Tisarane Gunasekara, 'Horror in Aluthgama: Their Crime; Our Shame,' *Sri Lanka Guardian*, June 16<sup>th</sup> 2014, accessed September 21, 2019 <http://www.srilankaguardian.org/2014/06/horror-in-aluthgama-their-crime-our.html>.

42 See Haniffa et al, *Where Have All the Neighbours Gone?* for a detailed account.

43 Secretariat for Muslims, 'Violations of Muslims' Civil & Political Rights in Sri Lanka,' *Stakeholder Report, UN Human Rights Committee*, September 9<sup>th</sup> 2014.

44 Haniffa et al, *Where Have All the Neighbours Gone?* Annex 2.

45 Waruni Karunarathne, 'The Human Tragedy of Aluthgama' *The Sunday Leader*, June 22, 2014, accessed February 16, 2020 <http://webcache.googleusercontent.com/search?q=cache:http://www.thesundayleader.lk/2014/06/22/the-human-tragedy-of-aluthgama/&strip=1&vwsrc=0>.

in government in 2015. Extensive documentation by civil society groups reveal the extent to which Muslims experienced harassment, intimidation and violence in Sri Lanka during President Maithripala Sirisena's presidency, demonstrating that 'ethno-religious violence, and the fault lines that underlie them, have persisted despite democratic transitions in Sri Lanka.'<sup>46</sup>

Such violence has taken the form of consistent, low-intensity attacks, mostly in the form of hate speech and harassment. The Minority Rights Group reported that from November 2015 to June 2016 there were 64 documented incidents against the Muslim community, of which the majority was hate speech, followed by threats and intimidation.<sup>47</sup> According to the International Religious Freedom Reports of 2017 and 2018,<sup>48</sup> sporadic attacks took place on mosques and prayer rooms, including threats to shut down Muslim places of worship. In May 2017, the Human Rights Commission of Sri Lanka expressed its concern over the increasing acts of violence and aggression toward the Muslim community in a letter to President Sirisena.<sup>49</sup> Large-scale anti-Muslim riots took place once again in February and March 2018 in Ampara<sup>50</sup> and Kandy<sup>51</sup> districts.

On 21 April 2019, Islamic militants attacked three Christian churches and three luxury hotels in the Western and Eastern provinces.<sup>52</sup> Around 270 people were killed, which included Sri Lankans of all faiths as well as visiting foreign nationals. The attack

---

46 Gehan Gunatilleke, *The Chronic and the Entrenched: Ethno-Religious Violence in Sri Lanka*, (Colombo: International Centre for Ethnic Studies and Equitas—International Centre for Human Rights Education, 2018), 28.

47 Roshini Wickremesinghe, *Confronting Intolerance: Continued Violations Against Religious Minorities in Sri Lanka* (Minority Rights Group International, 2016), 15-16.

48 Published by the United States Department of State—Bureau of Democracy, Human Rights, and Labour.

49 Human Rights Commission's letter to His Excellency the President on growing religious intolerance, May 31, 2017, <http://hrcls.lk/english/2017/06/02/human-rights-commissions-letter-to-his-excellency-the-president-on-growing-religious-intolerance>.

50 'Tension in Ampara Town', *Daily Mirror*, February 27, 2018, <http://www.dailymirror.lk/article/Tension-in-Ampara-town-146513.html>.

51 Zaheena Rasheed and Irfan Cader, 'Sri Lanka 'on the brink' amid fresh anti-Muslim violence', *Al Jazeera*, March 8 2018, accessed November 2, 2019 <https://www.aljazeera.com/news/2018/03/sri-lanka-brink-fresh-anti-muslim-violence-180307203031915.html>.

52 *After Sri Lanka's Easter Bombings*, 3.

brought a new dimension to religious relations in the country, linking Sri Lanka with the global 'war on terror', and resulting in on-the-ground attacks on local Muslim populations, and harassment and violence against refugees and asylum-seekers from Pakistan and Afghanistan.<sup>53</sup> Following the attack, the President imposed a State of Emergency that lasted four months. The State of Emergency gave security forces sweeping powers to arrest and detain suspicious persons, and also included social media restrictions and a temporary ban on the *burqa*.<sup>54</sup> The narrative of a volatile national security context has and may continue to result in discrimination against those of the Muslim faith and from Muslim countries.

Following the Easter Sunday attack, violence immediately erupted in several districts in the North Western and Western provinces of Sri Lanka. CCTV and mobile phone footage showed mobs of men armed with bottles and iron rods marching through streets, vandalising and setting fire to property. Mosques, shops and even homes of Muslims were damaged or destroyed in the riots, and at least one Muslim man was killed in the attacks.<sup>55</sup>

In Kurunegala district of North Western Province alone, 2477 individuals from 516 families were directly affected, and 272 houses, 251 businesses and 83 vehicles were destroyed or damaged.<sup>56</sup> A community leader of the area described the attack as follows:

It began in the afternoon today. It was like they [the mobs] had planned to move from one village to the next, attacking our homes and property. [...] A group of men are still on motorbikes,

---

53 Amnesty International, 'Refugees fear for their safety amid desperate conditions', *Amnesty International*, May 16, 2019, accessed November 2, 2019 <https://www.amnesty.org/en/latest/news/2019/05/sri-lanka-refugees-fear-for-their-safety-amid-desperate-conditions>.

54 'Sri Lanka ends emergency rule imposed after Easter bombings', *Al Jazeera*, August 23, 2019, accessed November 2, 2019 <https://www.aljazeera.com/news/2019/08/sri-lanka-ends-emergency-rule-imposed-easter-bombings-190823134350525.html>.

55 'Sri Lanka orders nationwide curfew amid anti-Muslim riots', *Al Jazeera*, August 23, 2019, accessed November 2, 2019 <https://www.aljazeera.com/news/2019/05/sri-lanka-nationwide-curfew-crowds-attack-mosques-190513144625670.html>.

56 Muslim Aid Sri Lanka, *Economic Empowerment of Low-Income Families in Areas Affected by the Mob Attacks: Progress Report*, (Colombo: The Muslim Council of Sri Lanka and Muslim Aid Sri Lanka, 2019), 1.

making a big noise, while villagers are either indoors, or hiding in the nearby jungles in fear.<sup>57</sup>

In the days and months following the Easter Sunday attack, harassment and discrimination against Muslims persisted. A few significant cases illustrating the nature of the harassment are described below.

### ***Accusations against Dr Shafi Shihabdeen***

Dr Shafi Shihabdeen, a gynaecologist at the Kurunegala Teaching Hospital, was accused of sterilising his female Sinhala patients, amassing wealth in a questionable manner, and having links to extremist Islamic groups. He was arrested under the Prevention of Terrorism Act (PTA). In the following days, hundreds of women lodged complaints about suspected sterilisations performed during their caesareans by Dr Shafi, but few agreed to undergo tests to substantiate the allegation. Dr. Shafi was granted bail two months after his arrest. The investigation conducted by the Criminal Investigations Department (CID) concluded that there was no evidence to support the allegations against him. It was later revealed that the Director of the hospital, the Kurunegala magistrate and law enforcement officials had colluded to fabricate evidence. They are currently under investigation for misleading the court, obstructing a criminal investigation and corruption. The media too had a prominent role in sensationalising the story and fanning the flames of ethno-nationalist, anti-Muslim sentiment regarding the case.<sup>58</sup> However,

---

57 Community leader from Kurunegala, quoted in 'Mobs attack mosques, Muslim-owned shops and homes in Sri Lanka's Kurunegala District', *The Hindu*, May 13, 2019, accessed November 3, 2019, <https://www.thehindu.com/news/international/mobs-attack-mosques-muslim-owned-shops-and-homes-in-sri-lankas-kurunegala-district/article27119473.ece>.

58 For more information on the case see: 'This country has destroyed image of our whole family, not only that of my husband, says Dr. Shafi's wife' <http://www.sundaytimes.lk/190630/news/this-country-has-destroyed-image-of-our-whole-family-not-only-that-of-my-husband-says-dr-shafis-wife-355945.html>; 'Prosecutors say tests needed before Sri Lanka sterilization case can proceed' <https://www.reuters.com/article/us-sri-lanka-doctor/prosecutors-say-tests-needed-before-sri-lanka-sterilization-case-can-proceed-idUSKCN1U62O5>; 'Sri Lanka police uncover criminal conspiracy over sterilization claims' <https://economynext.com/sri-lanka-police-uncover-criminal-conspiracy-over-sterilization-claims-15068>; 'Dr. Shafi case: CID reveals Hospital Director falsified

the case against Dr. Shafi was re-opened soon after the election of President Gotabaya Rajapakse in December 2019, following appeals made to the President by allegedly affected women.<sup>59</sup>

### ***Harassment of Muslim Women***

The emergency regulations immediately after the Easter Sunday attacks banned clothing concealing the entire face, which included the niqab and burqa worn by Muslim women,<sup>60</sup> and resulted in Muslim women being harassed for their clothes on the street, in public and private establishments, and even in their places of work.<sup>61</sup> Many instances of harassment of Muslim women were reported and the harassment continued even after the emergency regulations were lifted.

My friend's mother was asked to remove her *hijab* and put it around her neck. She was asked to do this in public, at the gate. Also, once she removed her *hijab* and put it on her head to cover her hair, she was again asked in a rough tone by the male guard to put the *hijab* around the neck. Also, this happened to every single Muslim lady who visited the hospital, but the Catholic nuns who passed by the entrance were allowed in without any questioning or demands. (Incident reported from the IDH base hospital, 29 April 2019)

I was asked to remove my head scarf and put it into the bag, if I wanted to travel in the bus. (Incident reported from a bus in Kohuwela, 1 May 2019)<sup>62</sup>

---

complaints' <http://www.sundayobserver.lk/2019/07/14/news-features/dr-shafi-case-cid-reveals-hospital-director-falsified-complaints>.

59 S.M. Wijayarathne, 'Dr. Shafi's case: Hospital director gives fresh statements to CID', *Daily News*, December 24, 2019, accessed February 14, 2020 <http://www.dailynews.lk/2019/12/24/law-order/206553/dr-shafi-per-centE2-per-cent80-per-cent99s-case-hospital-director-gives-fresh-statements-cid>.

60 Dinesha Samararatne, 'Understanding the 'prohibition to wear any garment concealing the full face', *Daily FT*, May 6, 2019, accessed February 14, 2020, <http://www.ft.lk/columns/Understanding-the--prohibition-to-wear-any-garment-concealing-the-full-face-4-677592>.

61 'Sri Lanka: Muslims Face Threats, Attacks,' *Human Rights Watch*, July 3, 2019, <https://www.hrw.org/news/2019/07/04/sri-lanka-muslims-face-threats-attacks>.

62 Reports of harassment compiled by citizens' groups.

### **Boycott of Muslim Businesses**

Continuing with the trend of sporadic calls to boycott Muslim businesses over the years, the Chief Priest of the Asgiriya Chapter, Venerable Warakagoda Sri Gnanarathana Thera, gave an incendiary speech in June, stating, ‘The Muslim community doesn’t love us. [...] I would ask you all to boycott these businesses and even refrain from eating at Muslim restaurants. It is quite evident that they were a community that planned to poison the Sinhala community.’<sup>63</sup>

In Batticaloa, another site that came under attack on Easter, there was a similar call by a Tamil group to boycott Muslim businesses.<sup>64</sup> The calls for boycott were largely spread and amplified through social media, where misinformation was rife, and targeted and localised boycotts also appeared to be taking place.<sup>65</sup>

### **Discrimination against Christians**

Violence against Christian communities, particularly evangelical and other minority Christian groups, has occurred consistently over the years in Sri Lanka’s recent history. They have been facing violence from the Sinhala Buddhist majority, from other minority groups such as the Hindu community in areas in which they are the dominant religious group,<sup>66</sup> as well as intra-religious attacks and harassment from members of the Catholic community against ‘non-traditional Christian groups’.<sup>67</sup>

It is commonly believed that violence against Christian

---

63 K. Wickramasinghe, ‘Asgiriya prelate’s rhetoric draws criticism’, *Daily Mirror*, June 21, 2019, accessed February 14, 2020 <http://www.dailymirror.lk/news-features/Asgiriya-prelate-per-centE2-per-cent80-per-cent99s-rhetoric-draws-criticism/131-169728>.

64 A. Ananthalakshmi and Ranga Sirilal, ‘Muslims afraid, resentful as ethnic divide deepens in Sri Lanka’, *Reuters*, May 10, 2019, <https://www.reuters.com/article/us-sri-lanka-blasts-backlash/muslims-afraid-resentful-as-ethnic-divide-deepens-in-sri-lanka-idUSKCN1SG0TU>.

65 Nishel Fernando, ‘Atlas falls victim to anti-Muslim boycott campaign’, *Daily Mirror*, July 5, 2019, <http://www.dailymirror.lk/business-news/Atlas-falls-victim-to-anti-Muslim-boycott-campaign/273-170579>.

66 Janeen Fernando, *Silent Suppression: Restrictions on Religious Freedoms of Christians, 1994-2014*, (Colombo: National Christian Evangelical Alliance of Sri Lanka, 2015), 3.

67 *Attacks on Places of Religious Worship in Post-War Sri Lanka*, (Colombo: Centre for Policy Alternatives, 2013), 34.

minorities arises as a result of suspected forced conversions of members of other religions.<sup>68</sup> This played out in the aftermath of the tsunami in 2004, where the influx of foreign humanitarian organisations, including those with religious affiliations, gave rise to claims that they were taking ‘advantage of the disaster to promote their religion’.<sup>69</sup> The JHU bill in 2004 against conversions was in reaction to this perception, and there was a spike in violence that could be associated with this political move.<sup>70</sup> The National Christian Evangelical Alliance Sri Lanka (NCEASL) also attribute unfounded suspicions of the involvement of Christian groups in the death of a popular Buddhist monk, Venerable Gangodawila Soma Thero, in Russia in 2003 to an increase in violence against the Christian community.<sup>71</sup>

Following the end of the war in 2009, there was renewed attention on the activities of Christian communities. Proselytisation to propagate the religion was seen to be ‘fundamentally at odds with the constitutionally protected aim to protect and foster Buddhism.’<sup>72</sup> Furthermore, suspicions of conversion and the threat posed by minority religions, particularly after the defeat of the LTTE, played directly on the existential anxiety of Sinhala Buddhists and the project of the Sinhala Buddhist nation-state.<sup>73</sup> Data to justify that unethical conversions are taking place is scarce. Instead, the incidents of violence can be linked to the need to maintain the status quo by the majority community, and the subsequent emergence of a range of religious and ethno-nationalist political movements, such as the BBS, the Ravana Balaya and the Sinhala Ravaya.<sup>74</sup>

---

68 UN Commission on Human Rights, *Civil and Political Rights, Including The Question of Religious Intolerance Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir*, January 9, 2006, E/ CN.4/2006/5, para 33, accessed November 9, 2019 <https://www.refworld.org/docid/441181fe0.html>; *Attacks on Places of Religious Worship*, 34.

69 *Civil and Political Rights*, para 34.

70 Fernando, *Silent Suppression*, 7.

71 Interview with NCEASL, September 30, 2019, Colombo.

72 Gehan Gunatilleke, *The Chronic and the Acute: Post-War Religious Violence in Sri Lanka*, (Colombo: International Centre for Ethnic Studies and Equitas—International Centre for Human Rights Education, 2015), 37.

73 Dewasiri, *New Buddhist Extremism*.

74 *Ibid.*, 12-13; *Attacks on Places of Religious Worship*, 34; Fernando, *Silent Suppression*, 7.

In the period between 2012 and 2015, there was a noticeable increase in the number of violent attacks, which NCEASL officials attribute to the emergence of the BBS and the proliferation of their activities, including rallies, hate speech and incitement of Sinhala Buddhist communities.<sup>75</sup> A report that analysed NCEASL incident data, pointed out that there wasn't a strong correlation between the campaigns by the BBS and the increase in local violence, but that their activities and rhetoric may have emboldened local actors.<sup>76</sup> Another report suggested that the violence and harassment is at least partially attributable to the enforcement of a 2008 circular mandating that the construction of new places of worship be registered with the government.<sup>77</sup> The circular was updated in 2011 to require permission for the 'continuation of place of worship or any activity headed by a religious leader'.<sup>78</sup> Though the 2011 circular was repealed in 2012, it enabled the local-level public officials to threaten, harass and 'shut down' Christian places of worship.

The perception of implicit and in some cases, explicit support by the post-war state<sup>79</sup> was also seen as a factor in emboldening both organised extremist forces and local actors in carrying out attacks against Christian leaders and places of worship.<sup>80</sup> As one source put it:

The main issue is not conversion; we also see it as the mere existence of a minority religion in the space of a dominant religion. It's perceived as a challenge to the status quo, as challenging the supremacy of one identity and the predominant identity of the village. They want to pushback saying you don't belong here, you don't have a legitimate right to be here.<sup>81</sup>

---

75 Interview with NCEASL.

76 Fernando, *Silent Suppression*, 7.

77 Esumally, *Judicial Responses*, 7-8.

78 Ministry of Buddha Sasana and Religious Affairs, Circular dated 02.10.2011, quoted in United States Department of State, *2014 Report on International Religious Freedom—Sri Lanka*, 14 October 2015, accessed November 8, 2019, <https://www.refworld.org/docid/5621054999.html>.

79 For example, the Bodu Bala Sena Leadership Academy was declared open in March 2013 by then Defense Secretary Gotabaya Rajapaksa.

80 Fernando, *Silent Suppression*, 7.

81 Interview with NCEASL.

The 2015 election and regime change resulted in a change in the trend of violence. While the number of very violent attacks reduced significantly,<sup>82</sup> there was no decrease in the number of incidents. These incidents take the form of misapplication of the 2008 circular by government officials, and intimidation by mobs, particularly around the validity and registration of places of worship. NCEASL officials hypothesise that the change in the nature of incidents is related to the decrease in tacit approval and direct instigation of incidents by the state, and that extremist groups appear to be working indirectly with communities and targeting youth.<sup>83</sup> The consistency in the number of incidents is attributable to the systemic nature of structural violence, such as discrimination and harassment that is entrenched in state structures and continues regardless of changes in government.<sup>84</sup>

In 2018/19, the most incidents documented were from Batticaloa in Eastern Province, which shows a change in the geographic spread of attacks from the previous years. Though there had been incidents in the past in the area, their frequency has increased and more churches have been attacked.<sup>85</sup> Another relevant, and related, phenomenon is the rise of Hindu nationalist sentiment, influenced by right-wing conservative groups like the Rastriya Swayamsewak Sangh (RSS) in India. Preliminary reports indicate that there has been a growing influence of the RSS in the North and the East for a number of years and local RSS groups have been mobilising members of the community.<sup>86</sup> NCEASL officials observed that they promoted Hindu nationalist ideology and appeared to be instigating the Hindu community against Christians.<sup>87</sup>

Data on the violence and harassment faced by the Christian community over time in Sri Lanka can be analysed temporally

---

82 Ibid.

83 Ibid.

84 Janeen Fernando and Shamara Wettimuny, 'Religious violence in Sri Lanka: A new perspective on an old problem', Daily FT, May 26, 2017, accessed November 3, 2019 <http://www.ft.lk/article/617872/Religious-violence-in-Sri-Lanka-A-new-perspective-on-an-old-problem>.

85 Interview with NCEASL.

86 Vimukthi Fernando, 'Anti-beef campaign heats up in the North and South,' *Sunday Observer*, June 17, 2018, <http://www.sundayobserver.lk/2018/06/17/news-features/anti-beef-campaign-heats-north-and-south>.

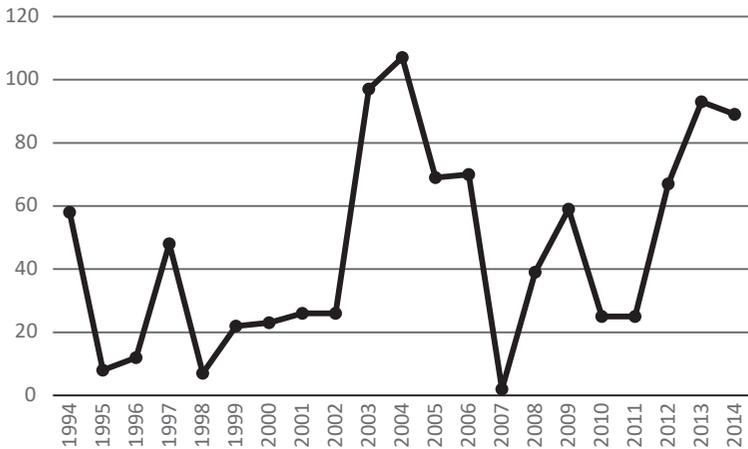
87 Interview with NCEASL.

as follows with the periods distinguished by change in political power at the centre.

### 1990s to 2015

NCEASL data over a period of two decades (1994-2014) shows an increase in incidents during the 2003/04 and 2012/2014 periods (Figure 1). The types of incidents that occurred the most were those classified as ‘threats, intimidations or coercion’ and ‘destruction of property’.<sup>88</sup> Nearly 45 per cent of the incidents included either property damage or physical violence; the former included theft, arson and damaging religious symbols, while the latter included assault and murder.<sup>89</sup> Places of worship and members of the clergy were the top two primary targets, and unidentified individuals and groups and members of the clergy of other faiths, the majority being Buddhist monks, were the top two perpetrators against them.<sup>90</sup> The number of incidents in which state actors such as the police, local magistrates, divisional secretaries and Grama Niladharis<sup>91</sup> were key perpetrators saw a marked increase in 2013/14.<sup>92</sup>

Figure 1: Number of incidents against Christians , 1994 to 2014



Source: Fernando, *Silent Suppression*.

88 Fernando, *Silent Suppression*, 9.

89 *Ibid.*, p. 8.

90 *Ibid.*, p. 13.

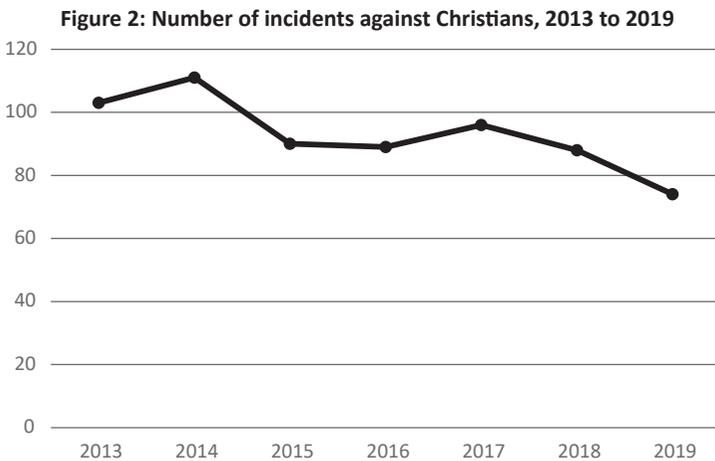
91 Public administrative officials working at the sub-divisional secretariat level

92 Fernando, *Silent Suppression*, 18 fig. 16.

Following the end of the war up to 31 December 2013, the majority of mob attacks on churches has been in the South, in districts such as Kalutara, Gampaha, Colombo, Matara and Puttalam.<sup>93</sup>

### Post-2015

The period immediately following the 2015 election and the change in government has some distinct characteristics of its own. As seen in Figure 2, NCEASL data shows a slight decrease in incidents compared to the pre-election data, but the number of attacks remains high overall.



Note: \*2019 data reflects incidents only up to 22 September 2019.

Source: Based on annual incident reports compiled by NCEASL

While comprehensive data for recent years are hard to come by, NCEASL has continued to document incidents across the country. A press release by NCEASL in May 2017 reported that ‘190 incidents of religious violence against churches, clergy, and Christians have been recorded’ since the new government took office.<sup>94</sup> A Minority Rights Group report, analysing NCEASL data for the period between November 2015 and September 2016,

<sup>93</sup> *Attacks on Places of Religious Worship*, 41.

<sup>94</sup> National Christian Evangelical Alliance of Sri Lanka, ‘Increase in Attacks on Religious Minorities in Sri Lanka’, *NCEASL Press Release* 27 May 2017.

found 47 incidents of violence documented, of which 14 incidents involved the use of the 2008 circular.<sup>95</sup>

### **Legal Framework**

This section will focus on two pieces of legislation relevant to the attacks against Christian minorities.<sup>96</sup>

#### ***The 2008 Circular***

In 2008, the Ministry of Religious Affairs passed a circular requiring its approval for the construction of new places of worship whereby local government officials, such as the provincial councils and district secretaries, would have to comply with this order when approving new construction.<sup>97</sup> A second circular, published in 2011, extended the requirements of the 2008 circular for new places of worship to existing places of worship as well although it was repealed four months later.<sup>98</sup> While the 2008 circular did not immediately have a noticeable impact on religious communities and practices, taken together with the circular issued in 2011, it became commonly used by local government officials to harass and shut down places of worship of minority Christian groups,<sup>99</sup> many of which were small congregations conducting prayer meetings in the homes of the clergy or a member of the congregation, i.e., not recognisably as an 'official' place of worship.

NCEASL officials contend that since individual ministries have been instituted for each religion, the Circular should not be considered valid any longer, and furthermore, that it has no basis in law.<sup>100</sup>

#### ***Anti-conversion Legislation***

When the ethno-nationalist party, the Jathika Hela Urumaya, presented a bill before the Parliament entitled Prohibition of

---

<sup>95</sup> Wickremesinghe, *Confronting Intolerance*, 9.

<sup>96</sup> Further analysis on legal frameworks can be found in *Attacks on Places of Religious Worship*; and Esufally, *Judicial Responses*.

<sup>97</sup> Circular on Construction of New Places of Worship, 16.10.2008, Ministry of Religious Affairs and Moral Upliftment.

<sup>98</sup> Ministry of Buddha Sasana and Religious Affairs, Circular dated 02.10.2011.

<sup>99</sup> Fernando, *Silent Suppression*.

<sup>100</sup> See analysis on 'Legal Framework Governing Places of Religious Worship' in *Attacks on Places of Religious Worship*.

Forcible Conversion of Religion Bill in 2004, it was challenged in the Supreme Court by several civil society groups and sections of it were found to be unconstitutional.<sup>101</sup> In 2005, the government tried to introduce its own Freedom of Religion Bill but could not get cabinet approval. In 2009, once again there were discussions of the Bill being reintroduced to the Parliament, with amendments to address the Supreme Court judgement but nothing came of it. In 2017, Cardinal Malcolm Ranjith, the Archbishop of Colombo, expressed his view that the Government should legislate the banning of forcible conversion to preserve religious harmony.<sup>102</sup>

### **Refugee and Asylum-seekers in Sri Lanka**

Over the last decade or so, Sri Lanka has seen an influx of foreign citizens fleeing persecution in countries such as Pakistan, Afghanistan and Myanmar. At present, there are approximately 1600 refugees and asylum-seekers in Sri Lanka.<sup>103</sup> Most are from religious or ethnic minorities in Pakistan, Afghanistan, Iran and Myanmar, such as Pakistani Christians, Ahmadiyahs and Shia Muslims, and Rohingya Muslims from Myanmar. Many are registered as asylum-seekers with the United Nations High Commissioner for Refugees (UNHCR) and are awaiting approval of their refugee claim.<sup>104</sup> Those who have been already granted refugee status await resettlement in a third country, while those who have been denied claims may reside as undocumented individuals in Sri Lanka or be repatriated.<sup>105</sup> Since 2015, 495 asylum seekers have received refugee status by the UNHCR and have been

---

101 For an analysis of the Bill and the Supreme Court judgment see Esufally, *Judicial Responses*, 11-13.

102 Ajith Alahakoon, 'Cardinal calls for new laws to ban forcible conversion', *The Island*, March 29, 2017, accessed November 4 2019 [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=162777\\_per centC2 per centA0 per centC2 per centA0 per cent20 per centC2 per centA0 per cent20](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=162777_per centC2 per centA0 per centC2 per centA0 per cent20 per centC2 per centA0 per cent20).

103 Michael Safi, 'Muslims in hiding in Sri Lanka as tensions rise after bombings,' *The Guardian*, April 26, 2019, accessed November 4 2019, <https://www.theguardian.com/world/2019/apr/25/muslims-flee-town-in-sri-lanka-as-tensions-rise-after-bombings>.

104 Interview with Rabia Mehmood, Regional Researcher for Amnesty International, November 1, 2019, Colombo.

105 Ibid.

resettled in third countries, most often in the USA and Canada.<sup>106</sup>

Although Sri Lanka is not a signatory to the 1951 UN Convention relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees, it is bound by the principle of non-refoulement<sup>107</sup> to prevent the forcible return of asylum seekers to places where they might be subject to human rights violations. Furthermore, as part of the 2005 Memorandum of Understanding between the UNHCR and the Sri Lankan government, the UNHCR is permitted to carry out its mandate for asylum-seekers and refugees, which includes registration, documentation and refugee status determination (RSD) procedures for asylum-seekers, and facilitation of third country resettlement for refugees.<sup>108</sup>

As individuals on Sri Lankan soil, refugees and asylum-seekers are eligible to some rights granted in the Constitution, but not to rights guaranteed only to citizens. For instance, they are not entitled to the right to non-discrimination<sup>109</sup> or right to freedom of speech, assembly, association, to engage in lawful occupation, movement and right to information.<sup>110</sup> They are entitled to the right to freedom of thought, conscience and religion, freedom from torture, equal protection of the law, and freedom from arbitrary arrest, detention and punishment, as rights guaranteed to all persons in Sri Lanka. While their claims are being processed, they are not allowed to engage in any form of employment, and the state does not provide them with any support or services, including any transitional shelter, monetary allowance, education for their children, or access to government programmes.<sup>111</sup> They can, however, access free healthcare in state hospitals. Once their claim is approved, they

---

106 Amnesty International, *We are not safe here: Refugees under attack in Sri Lanka and the need for resettlement*, (Colombo: Amnesty International, 2019), 10-11.

107 Amnesty International and Minority Rights Group International, *Unsafe at Home Unsafe Abroad: State Obligations Towards Refugees & Asylum-Seekers in Sri Lanka*, (London: Amnesty International, 2019), 9-10.

108 United Nations High Commissioner for Refugees, 'UNHCR Submission on Sri Lanka : UPR 28th Session', March 2017, accessed February 10, 2020, <https://www.refworld.org/docid/5a12ae1f2.html>.

109 Article 12 (2).

110 Article 14(1).

111 Ruki Fernando, 'Refugee crisis in Sri Lanka after the Easter Sunday bombings,' *Groundviews*, May 4, 2019, <https://groundviews.org/2019/05/04/refugee-crisis-in-sri-lanka-after-the-east-sunday-bombings>.

receive a refugee certificate, which entitles them to a small monthly stipend and assistance for their children's education.<sup>112</sup>

Refugees and asylum-seekers have to rely on local and international support networks for the fulfilment of their basic needs. Faith-based and civil society groups support them with food, clothing, and informal education for children. Yet, they face many challenges in Sri Lanka. One challenge highlighted by local activists was that in some cases, when there is a death in a refugee family, the hospital may require the family to provide official documentation to release the body back to them.<sup>113</sup> This includes documentation from the police and their relevant High Commission or Embassy, neither of which is easily available. As an Amnesty International official put it,

As a process this is a very inhumane practice. While it makes sense in the system—the legality of it, they need to do some verification probably—it adds to the misery of the community which is already at a lot of disadvantage. I was told this is a standard practice...It's really strange because these communities have fled persecution in their countries, but for some reason, despite being registered by the UNHCR, they are still made to go back to the High Commissions of their countries. What if it's a political dissident? What if it's someone who has fled a false case of treason by the state, like a political blogger for example? What happens in that scenario?<sup>114</sup>

Refugees and asylum-seekers, while most often living peacefully within communities across Sri Lanka, have come under sporadic attacks over the years. Amnesty International documents incidents from 2014 when the state arrested and forcibly deported 183 people to Afghanistan and Pakistan, and in 2017 when a UNHCR safe-house sheltering a group of Rohingya Muslims came under attack.<sup>115</sup> Following the Easter Sunday attacks in 2019, refugees and asylum-seekers from Pakistan, Afghanistan and Iran were subject to mob

---

112 'UNHCR Submission on Sri Lanka', 1.

113 Fernando, 'Refugee crisis in Sri Lanka'.

114 Interview with Rabia Mehmood, Regional Researcher for Amnesty International, November 1, 2019, Colombo.

115 Amnesty International, *We are not safe here*, 3 .

attacks in the Catholic-majority town of Negombo, the site of one of the church bombings.<sup>116</sup> Many were evicted from their rented homes and sought shelter in police stations, places of worship and community centres.<sup>117</sup> In some instances, of young men went door to door, evicting refugees and asylum-seekers.<sup>118</sup> One such asylum-seeker lamented: 'The people in Pakistan attacked us and say we're not Muslims. Then in Sri Lanka, people attack us because they say we are Muslims.'<sup>119</sup>

This period was fraught with tension and anxiety for the refugees and asylum-seekers who were displaced from their homes. In the immediate aftermath of the attacks, it was impossible for them to find housing or any kind of shelter, as fear of and bigotry toward Muslims were pervasive among locals. People relied on their community networks to find shelter, and local activists and community organisations stepped in to provide them with basic services such as food, clothing, medicine and sanitation. Over 100 individuals stayed for up to a week in makeshift shelters in the Negombo police station, and another 700 were accommodated in a community centre in Pasyala.<sup>120</sup> However, none of these locations had the necessary facilities to accommodate overnight guests and the conditions were very poor. In a report, an official of the UNHCR describes the living conditions in the police station and the resultant outbreak of illness due to the heat, open air living area, and poor sanitary facilities.<sup>121</sup>

In the weeks following the Easter attacks, security forces conducted search operations at these temporary shelters and several persons were detained arbitrarily, including people who lacked the requisite documentation to prove that they were registered with the UNHCR. This affected many individuals who had arrived in the country just prior to the bombings and had been taken to the shelters before they could be registered. Others

---

116 Amnesty, *We are not safe here*, 2.

117 Caroline Gluck, 'Pakistani and Afghan Refugees Seek Safe Haven in Sri Lanka' *Inter Press Service*, May 31<sup>st</sup> 2019, accessed November 4, 2019, <http://www.ipsnews.net/2019/05/pakistani-afghan-refugees-seek-safe-haven-sri-lanka>.

118 Amnesty, *We are not safe here*, 2.

119 Quoted in Safi, 'Muslims in hiding in Sri Lanka'.

120 A town about 40km from Negombo.

121 Gluck, 'Pakistani and Afghan Refugees'.

were arrested based on their possessions, including mobile phones.

Six months after the attacks, the situation for these refugees and asylum-seekers has returned to a semblance of what it had been before. Many have returned to their homes, or found new homes and resumed their lives. However, those whose asylum claims had been rejected now face serious risks. Some families have made the decision to repatriate, at the risk of their lives.<sup>122</sup> There have also been cases of asylum-seekers from Pakistan being deported by Sri Lankan immigration, in violation of the principle of non-refoulement, as well as of the 2005 Memorandum of Understanding between UNHCR and Sri Lanka, which assures the UNHCR ‘unimpeded access’ to asylum-seekers.<sup>123</sup> The Sinhala Buddhist nationalist election campaign during the November 2019 presidential elections, and the negative political climate toward Muslims appear to have resulted in the government taking drastic measures towards asylum-seekers, and at least informally there appears to now be a policy to deport asylum-seekers.<sup>124</sup>

### **The 2019 Presidential Elections**

In the presidential election of 2019, the two leading candidates were the strongly nationalist Gotabaya Rajapakse of the Sri Lanka Podujana Peramuna (SLPP) and the market-oriented, neoliberal Sajith Premadasa of the New Democratic Front (NDF). Their campaign rhetoric and election manifestos indicated their approach towards religious minorities under their presidency.

Rajapakse promised to ‘[...] provide vision and leadership guided by Buddhist philosophy and nurtured by other religions, for all Sri Lankans to live in harmonious co-existence.’<sup>125</sup> He also leant on the contradiction in the constitution and states that Buddhism will be given the foremost place as per Article 9 of the constitution, while also committing to ‘fulfil all the duties and obligations of the

---

122 Mehmood, interview.

123 Ruki Fernando, ‘Sri Lanka resumes deportation of asylum seekers,’ Groundviews, October 21, 2019, accessed November 4, 2019, <https://groundviews.org/2019/10/31/sri-lanka-resumes-deportation-of-asylum-seekers>.

124 Ibid.

125 Gotabaya Rajapaksa’s election manifesto, accessed November 5, 2019, <https://gota.lk/sri-lanka-podujana-peramuna-manifesto-english.pdf>.

government to protect the rights of every religion'.<sup>126</sup> Premadasa's manifesto promised to 'create a democratic and pluralistic society in which the rights of all people are protected, and the beliefs of all people are respected'.<sup>127</sup> But even his manifesto stated that 'Buddhism shall have the foremost place'.<sup>128</sup>

Rajapakse was elected as the seventh Executive President of Sri Lanka on 16 November 2019 with 52.5 per cent of the votes, primarily from the majority Sinhala Buddhist community.<sup>129</sup> The election revealed the high degree of ethno-religious polarisation in the country, with minority communities overwhelmingly voting for Premadasa.<sup>130</sup> In his first speech, President Rajapakse made note of this fact, saying: 'We knew right from the start that the main factor of this election victory is the Sinhalese majority of the country. Although I knew that the Presidential Election could have been won with only the support of the Sinhalese, I made a special request from the Tamil and Muslim people to be partners in that victory. The response to that was not up to my expectation'.<sup>131</sup>

How this polarisation will shape the realities of the ethno-religious minorities in Sri Lanka, and the exercise of their religious freedoms in the years to come remains to be seen. However, as laid out in the preceding sections, the entrenched nature of religious discrimination and the dominance of the Sinhala Buddhist political imagination is likely to remain unchanged, regardless of which party is in power.

---

126 *Ibid.*, 9.

127 Sajith Premadasa's manifesto, accessed November 5, 2019, <https://sajithpremadasa.lk/manifesto/english>.

128 *Ibid.*, 63.

129 Hannah Ellis-Petersen, 'Gotabaya Rajapaksa elected president of Sri Lanka', *The Guardian*, November 17, 2019, <https://www.theguardian.com/world/2019/nov/17/sri-lanka-presidential-candidate-rajapaksa-premadasa-count-continues>.

130 *Ibid.*

131 'President will establish new govt. to execute his policies', *Presidential Secretariat*, November 18, 2019, <https://www.presidentsoffice.gov.lk/index.php/2020/01/03/the-policy-statement-made-by-his-excellency-gotabaya-rajapaksa-president-of-the-democratic-socialist-republic-of-sri-lanka-at-the-inauguration-of-the-fourth-session-of-the-8th-parliament-of-sri-lanka/?lang=en> accessed on February 2, 2020.

## **Conclusion**

This chapter was an attempt to demonstrate the extent to which religious freedom is under attack in Sri Lanka. There have been distinct periods within recent history which have shaped and re-shaped both inter-community relations and the relationship between the state and religious minorities. Going forward, one area of concern is the renewed focus on national security, which was a by-product of the Easter Sunday attacks. Both leading presidential candidates devoted chapters in their manifestos to plans on combating extremism and strengthening national security and the intelligence services, and President Rajapakse has made strengthening the national security regime one of his top priorities.<sup>132</sup> How this will impact the rights of individuals to practise their beliefs, particularly for those from smaller sects and non-denominational religions, is not yet clear although the current environment has led to fear of intimidation and harassment among them. The rhetoric of ‘extremism’ can also be manipulated and deployed by major religious groups to also intimidate smaller factions of their own faith who may be in disagreement with their hegemonic interpretations.

Sinhala Buddhism, as a political movement with extremist elements, looms large over the context in which other faiths co-exist in Sri Lanka. The state and religious actors draw upon their own interpretations of existing government edicts and the aforementioned constitutional contradictions to dictate the terms upon which other religious communities can follow their faith. This severely impacts the religious plurality of Sri Lanka, and is a major barrier to creating an inclusive society. It is also likely to generate a defensive ethno-nationalism among other religious groups.

Finally, in the case of asylum-seekers and refugees, there exists a hostile environment for people already fleeing persecution in their own countries, which contributes towards the re-victimisation and re-living of the trauma these individuals hoped to escape.

---

<sup>132</sup> ‘A sound strategy for defense, national security’, Ministry of Information and Mass Media, 28th January 2020, <https://www.media.gov.lk/media-gallery/latest-news/2305-a-sound-strategy-for-defence-national-security> accessed on 2nd February 2020.

## **Recommendations**

Based on the analysis provided in this report, and in keeping with key issues raised by UNHCR at Sri Lanka's Universal Periodic Review,<sup>133</sup> it is recommended that the state:

- Accede to the 1951 UN Convention relating to the Status of Refugees, and the 1967 Protocol relating to the Status of Refugees.
- Establish a national legal and policy framework regarding asylum-seekers and refugees living within its borders, including but not limited to access to services and government assistance, formal employment opportunities and education services.
- Ensure that the UNHCR is given access to all asylum-seekers and is able to carry out its mandate, including refugee status determination procedures.
- Ensure that asylum-seekers are not detained at or deported from the border entry points.
- Refrain from arbitrary arrest or detention of asylum-seekers and refugees, and allow UNHCR access to individuals in detention.

---

133 'UNHCR Submission on Sri Lanka: UPR 28th Session'.

# State of South Asian Minorities 2019

## Afghanistan

At the time this volume went to press the result of the September 2019 presidential election in Afghanistan had just been announced, declaring that incumbent president, Ashraf Ghani, had won. The Chief Executive, Abdullah Abdullah, has rejected the result and vowed to form a parallel government. The controversies over the preliminary result of the election, and, even during the election campaign incited ethnic tensions as presidential elections are usually contested between two major ethnic groups. The final result of the election has literally pushed the government to the verge of collapse. Any instability is likely to exact a great toll on the minorities.

Ghani's government has also been accused of fuelling ethnic tensions. His policy of favouring his own ethnic group over others has caused widespread resentment among other ethnic groups.<sup>1</sup> His re-election as President of Afghanistan has raised fears among minority groups for being further marginalised during his tenure in the coming five years.

Another important development in 2019 was the peace talks with the Taliban insurgent group. However, as the talks continue between the US and the group, there are speculations that intra-Afghan peace talks will also begin soon,<sup>2</sup> following an initial agreement between the parties to the current peace negotiations. In the hagggle over power-sharing, the Taliban, which is well-known for its maltreatment of women and minorities, might win a big share

---

1 International Crisis Group, 'Afghanistan: The Future of the National Unity Government,' (Asia Report, no. 285, 2017) <https://www.crisisgroup.org/asia/south-asia/afghanistan/285-afghanistan-future-national-unity-government>.

2 Kathy Gannon, 'Taliban say new intra-Afghan peace talks to be held in China,' *ABC News*, accessed February 22 2020, <https://abcnews.go.com/International/wireStory/taliban-intra-afghan-peace-talks-held-china-66443244>.

of power should an agreement be reached between the parties to the peace process in Afghanistan. The process has raised concerns among women and minority groups. Both representatives of women and members of minority groups have asked the governments of Afghanistan and the US to ensure that the process is inclusive, that their concerns are addressed, and that the post-Taliban gains in terms of human rights and democracy are consolidated.<sup>3</sup>

The drafting process of the anti-discrimination law that was begun two years back is still ongoing. President Ghani ordered the enactment of the law following a memo leaked out of his office, asking that members of minority groups holding senior positions in the Office of President, be replaced with members of the ruling (the President's) ethnicity. The memo caused an uproar in the mass media, and the President had to ask for drafting of the law.

There was also some controversy related to statements made by important political figures regarding minorities. In a Facebook post on 25 November 2019, Amrullah Saleh, the running mate of the President Ghani's election camp and former Minister of Interior and Head of Intelligence, wrote that he has evidence that a senior member of Abdullah Abdullah's election camp has made insulting and derogatory remarks about the Hazara ethnic group in an informal meeting.<sup>4</sup> Elaborating his claims, he said the official had said that 'the Hazara people have rights no more than the size of their nose as God gave Hazara a smaller nose when God was distributing noses and told the Hazaras it is up to you to accept the smaller nose or not'. Later in his post, he claimed that others present in the meeting laughed at the remarks of their colleague. Saleh threatened to take the case to the Attorney General's Office and the courts for legal actions against those insulting and discriminatory remarks. When challenged to substantiate his claim, Saleh could not produce evidence.

---

3 Belquis Ahmadi, 'Afghans want U.S.-Taliban talks to resume, but with new approach,' United States Institute of Peace, October 3, 2019, accessed February 22 2020, <https://www.usip.org/blog/2019/10/afghans-want-us-taliban-talks-resume-new-approach>.

4 'Saleh's claims about alleged insult of Hazara people spark furor amid election tensions,' *Khama Press*, November 25, 2019, accessed February 22 2020, <https://www.khama.com/salehs-claims-about-alleged-insult-of-hazara-people-spark-furor-amid-election-tensions-04392>.

On 9 December, a video clip<sup>5</sup> of Mohammad Halim Tanwir, a former minister and close ally of President Ghani, went viral on social media in which he says he would have married Hazara girls to Pashtun men if he were in power in order to end social inequality. He also said that ‘for equality of rights in Afghanistan, Dostum [an Uzbek leader] and Mohaqiq [a Hazara leader] and others [probably referring to leaders of other ethnic groups] must be killed’. He further said that he is a follower of Mohammad Gul Khan Momand, a senior advisor to King Mohammad Nader Shah (1929-1933), who ruthlessly suppressed other ethnicities and tribes during his rule. Many interpreted Tanwir’s comment on ‘marrying Hazara girls to Pashtun men’ as enslaving the girls and then marrying them,<sup>6</sup> a perceived reference to a common practice in the past to kill the male members of an ethnic group and enslave their female members as concubines and wives.

## Bangladesh

Bangladesh has a progressive constitution which guarantees equal rights to all citizens irrespective of sex, caste, creed, or race. Articles 27, 28, 29, and 31 seek to establish equality and non-discrimination on the basis of religion and ethnicity, and Article 41 grants religious freedom for all. The constitution also provides for ‘special provision for backward sections’ although without clarification of what this entails (Article 28). However, despite constitutional commitments, minority communities often experience flagrant violation of their rights that includes physical and emotional violence such as killing and rape, destruction of houses and wealth, and forced eviction, among others.

Several incidents of violence on minority community took place all over the country, following a now-common pattern of behaviour on social media that starts with hacking the Facebook ID

---

<sup>5</sup> ‘Tanwir: I would marry Hazara girls to Pashtoon men if I am in power,’ *Baztab News*, December 09, 2019, accessed February 22 2020, <https://baztab.news/article/1215063>.

<sup>6</sup> ‘Letter from Halim Tanvir’, <http://afghanistan.fi/blog/2019/12/12/ی-مدان-دوین-ریونت-مدیل-حن-ان-خس-هپ>; ‘Distorting the words of Halim Tanvir’, <http://daikondi.blog.ir/1398/09/21/ریونت-مدیل-حن-ان-خس-ف-رح>

of a minority person, posting images or messages hurting religious sentiment of the majority groups, its going viral, the resultant growing outrage on social media and streets, which finally ends in attacks on minority communities. In October 2019, this pattern was repeated in an incident in Bhola District in southern Bangladesh, which left four dead, following a message that hurt the religious sentiment of Muslims. The clash between the police and religious bigots in Bhola, following the social media propaganda, can also be seen as a consequence of the failure of the administration and the police to take action in previous incidents.

The violence took place after some anti-religious messages went viral through Facebook posts by one Biplob Chandra of Borhanuddin Upazila of Bhola District. Before the violence occurred, Chandra had gone to the local police station and informed the police that his Facebook ID has been hacked and used to spread anti-religious messages. In the meantime, the local Islamist group was already enraged and demanded tougher action against the perpetrator. In order to control the situation, police arrest Chandra immediately and convinced the Islamist group not to hold any demonstrations. However, despite the Islamist group reaching an understanding with the police and administration, local vested groups attacked the police and local administration during which four Muslims were killed. Police had already identified two hackers who had spread the message, but the religious extremists took advantage of the situation following the deaths of the four people and attacked some of the houses and property of Hindus in the locality and Hindus remained in utter fear of fresh violence against them.

Similar violence has earlier occurred in Ramu in Cox's Bazar in 2012; Nasirnagar in Brahmanbaria in 2016 and Nabinagar in Brahminbaria in 2018, but none of the police investigations that followed could find enough evidence to prove that those accused had made the posts. The cases against the accused, however, have not been dismissed. The police have also failed to bring to book those who instigated the attacks that led to destruction of religious temples and vandalism of the homes of minorities. According to the Bangladesh Hindu Buddhist Christian Oikya Parishad (Bangladesh Hindu Buddhist Christian Unity Council [BHBCOP]) a non-

partisan coalition of religious and ethnic minorities, minorities suffered 250 incidents of violence, including rape and murder in the first four months of 2019.<sup>7</sup>

The Ahmadiya community, a small Islamic revival movement, experienced a number of scattered incidents of violence in different part of the country in 2019. In February 2019, the Ahmadiya in Panchgarh District came under attack when they were arranging a 'Jalsha' (annual conference of the Ahmadiya Muslim Jamaat). Supporters of three Islamist organisations, Sammilito Khatme Nabuwat Shangrakkhan Parishad, Iman Akida Rokkha Committee, and Touhidi Janata, urged the government to prohibit the conference as well as declare the Ahmadiya non-Muslim. Around 500 people from the Islamist groups attacked Ahmednagar village of Panchagarh Sadar Upazila, vandalised houses, and looted the Ahmadiya.

Tension was also palpable regarding the National Register of Citizens (NRC) implemented in the neighbouring Indian state of Assam. Except for a few demonstrations by Islamist organisations, no other incident occurred. However, following the adoption of the Citizenship (Amendment) Act 2019 by India, tension has flared up in the border areas of Bangladesh.

Since the adoption of CAA in India, incidents of illegal entry of Bengali Muslims from Assam to Bangladesh increased. The media reported that till November 2019 329 people have been arrested for illegal trespassing into Bangladesh from India in the bordering district of Jhenaidah and Jessore.<sup>8</sup> All the arrestees are Bengali-speaking Muslim people but failed to show and legal documents to prove their Bangladeshi citizenship. They claimed that they tried to flee from India as they were afraid of detention and harassment by the police. If such migration continues it may result in an increase in physical violence against religious minorities in Bangladesh,

<sup>7</sup> The statement was made in a press briefing of BHBCOP held on 19 May 2019. Please see- Repression on the rise, minorities allege, <https://www.thedailystar.net/country/rape-incidents-in-bangladesh-repression-on-rise-minorities-allege-1745902>; also see- <http://bhbcop.org/wp-content/uploads/2019/10/Parishad-B-May-2019-compressed.pdf>; <http://bhbcop.org/wp-content/uploads/2019/10/Parishad-B-May-2019-compressed.pdf>

<sup>8</sup> 'BGB detains over 300 intruders from India.' *The Daily Star*, November 22, 2019 <https://www.thedailystar.net/backpage/news/bgb-detains-over-300-intruders-india-1830355>.

especially the Hindu community, in order to force them to leave the country.

Marginalisation of indigenous communities by state and non-state actors, both in the plains and the Chittagong Hill Tracts (CHT), increased substantially. Economic tourism and infrastructure development often does not consider the needs and culture and heritage of the indigenous communities in CHT, and neither are they made part of any consultations. Eviction of indigenous people from their land is common while undertaking development work. According to the Bangladesh Indigenous People's forum, the implementation of the 1997 Chittagong Hill Tracts Peace Accord is not only slow, it also remains largely stagnant and hill people are forced to live a miserable life in uncertainty and insecurity. In July 2019, police fabricated charges against the alleged perpetrators of Gobindaganj mass attack on Santal village of November 2016, which left three indigenous people dead and hundreds injured, and also led to the eviction of thousands of families from their ancestral land. However, the affected community rejected the charge sheet as they claimed that the main accused were not included in the charge.

Allegations of silent disappearance of CHT leaders and thinkers increased this year. In April 2019, Michael Chakma, a popular leader and thinker went missing. He belonged to the United People's Democratic Front (UPDF), a Chittagong Hill Tracts-based organisation. The leaders of the UPDF believed that Chakma was abducted as part of a state-sponsored conspiracy to destroy the legitimate movement of the oppressed people of the Chittagong Hill Tracts.

## **India**

The year 2019 was a tumultuous one for India's religious minorities, particularly its Muslims, with the country's liberal-secular polity coming under fresh and renewed attack following the re-election of the Hindu nationalist Bharatiya Janata Party (BJP) government led by Narendra Modi. The election campaign itself was heated and communally charged, with several political leaders openly

indulging in religious hate speech—both in explicit and in dog-whistle terms.<sup>9</sup> A number of these politicians were elected or re-elected to the Parliament, including the BJP's Pragya Singh Thakur, the prime accused in a series of bombings in 2008 near a mosque in western India that had left at least 10 dead.

In the first parliamentary session after its resumption of power, the BJP government unveiled a slew of legislations that have the potential to further embolden the targeting of the country's religious minorities: the Unlawful Activities (Prevention) Amendment (UAPA) Act, 2019, which makes it possible for the state to declare individuals as terrorists before they have ever been convicted of a crime;<sup>10</sup> the Muslim Women (Protection of Rights on Marriage) Act, 2019, which has made 'triple talaq', or instant divorce, a punishable criminal offence, leaving it ripe for abuse by the state to harass Muslim men;<sup>11</sup> and the Jammu and Kashmir Reorganisation Act, 2019, which revoked Article 370 of the Indian constitution—a clause that had granted limited autonomy to Jammu and Kashmir, which had been India's only Muslim-majority state.<sup>12</sup> The former state, including the restive Kashmir valley, was bifurcated and downgraded to Union Territory status, essentially bringing it under the direct control of the central government in New Delhi.

Opposition to the revocation of Kashmir's autonomy has been ruthlessly crushed. In the midst of a near-total communications blackout,<sup>13</sup> thousands of local Kashmiri Muslims, including

---

<sup>9</sup> 'Senior Indian Politicians Censured for Hate Speech as Election Begins,' *Bloomberg*, April 4, 2019, <https://www.bloomberg.com/news/articles/2019-04-15/senior-politicians-censured-for-hate-speech-as-india-polls-begin>.

<sup>10</sup> Press Trust of India, 'Individuals Can Now Be Declared as Terrorists: President Kovind Gives Assent to UAPA Amendments,' *India Today*, August 9, 2019, <https://www.indiatoday.in/india/story/individuals-declared-terrorists-president-kovind-assent-uapa-amendments-1579141-2019-08-09>.

<sup>11</sup> Abhishek Sudhir, 'The Triple Talaq Bill Is Hasty, Impulsive and Cruel—Much like the Act It Seeks to Criminalise,' *Scroll.in*, December 25, 2017, <https://scroll.in/article/862502/the-triple-talaq-bill-is-hasty-impulsive-and-cruel-much-like-the-act-it-seeks-to-criminalise>.

<sup>12</sup> 'The Jammu and Kashmir Reorganisation Bill, 2019,' *PRS Legislative Research*, October 17, 2019, <http://prsindia.org/billtrack/jammu-and-kashmir-reorganisation-bill-2019>.

<sup>13</sup> Amy Kazmin, 'A Voice Pierces the Silence Imposed on Kashmir,' *Financial Times*, September 16, 2019, <https://www.ft.com/content/c8437230-d7b1-11e9-8f9b-77216ebe1f17>.

activists, journalists, political leaders, and children as young as nine years old, were arbitrarily detained, over the protestations of the international human rights community.<sup>14</sup> News reports that have trickled out of the region have revealed stories of intimidation campaigns, night-time raids, and widespread torture by Indian security forces.<sup>15</sup> While the communications blockade has been partially lifted, internet services remained blocked when this review was written, the longest such instance in any democracy.<sup>16</sup> India's moves in Kashmir have resulted in catastrophic losses to the local economy,<sup>17</sup> choked access to information and communication for Kashmiris, and led to the region's education system coming to a virtual halt.<sup>18</sup> Earlier in the year, Kashmiri Muslims across mainland India faced harassment and targeted violence following a terrorist attack in the erstwhile state that had left 40 Indian paramilitary personnel dead.

In the eastern state of Assam, the publication of the final National Register of Citizens (NRC) left 1.9 million people, around 40 per cent of whom might be Muslims, one step closer to being stripped of their citizenship,<sup>19</sup> in a move that has been condemned

---

14 Press Trust of India, 'UN Human Rights Chief Urges India to Ease Lockdown, Curfew in Kashmir,' *Business Standard*, September 9, 2019, [https://www.business-standard.com/article/pti-stories/un-rights-chief-asks-india-pakistan-to-respect-and-protect-human-rights-of-kashmiris-119090900622\\_1.html](https://www.business-standard.com/article/pti-stories/un-rights-chief-asks-india-pakistan-to-respect-and-protect-human-rights-of-kashmiris-119090900622_1.html).

15 'Thousands Detained in Indian Kashmir Crackdown, Official Data Reveals,' *Reuters*, September 12, 2019, <https://in.reuters.com/article/india-kashmir-detentions/thousands-detained-in-indian-kashmir-crackdown-official-data-reveals-idINKCN1VX12W>.

16 'India's Internet Shutdown in Kashmir Is the Longest Ever in a Democracy,' *The Washington Post*, December 16, 2019, [https://www.washingtonpost.com/world/asia\\_pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da\\_story.html](https://www.washingtonpost.com/world/asia_pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da_story.html).

17 'Kashmir Economy Suffered Loss of Rs. 17,878 Crore in 4 Months after Abrogation of Article 370,' *News18*, December 18, 2019, <https://www.news18.com/news/india/kashmir-economy-suffered-loss-of-rs-17878-crore-in-4-months-after-abrogation-of-article-370-2428417.html>.

18 Kaiser Andrabi, and Saqib Mugloo. 'Inside Kashmir's Education Crisis,' *The Kashmir Walla*, December 8, 2019, <https://www.thekashmirwalla.com/2019/12/inside-kashmirs-education-crisis/>.

19 'The Clock Is Ticking': Race to Save 2 Million from Statelessness in Assam,' *The Guardian*, November 20, 2019, <https://www.theguardian.com/global-development/2019/nov/20/race-to-stop-2-million-becoming-stateless-as-the-clock-starts-ticking-in-assam>.

by the UN High Commissioner for Refugees (UNHCR) as an 'enormous blow to global efforts to eradicate statelessness',<sup>20</sup> and led Genocide Watch to renew its genocide alert for the state.<sup>21</sup> The Indian government has announced its intentions to extend the NRC exercise to the rest of the country and has already begun the construction of massive detention centres in anticipation. In a bid to ensure that only Muslims would be affected by such an exercise, the government passed the Citizenship (Amendment) Act (CAA), 2019. The CAA, which significantly eases the path to Indian citizenship for all non-Muslims fleeing religious persecution in Afghanistan, Bangladesh, and Pakistan, would give a workaround for all non-Muslims excluded from the NRC in Assam. Together with the government's declared plans to prepare an NRC for the rest of India too, the CAA has sparked fears of disenfranchisement of Muslims not just in Assam, but across the country.<sup>22</sup> The 'fundamentally discriminatory nature' of the CAA has been condemned by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which also urged India to reconsider the compatibility of the law with its international human rights obligations.<sup>23</sup>

The passing of the CAA sparked protests in India's north-eastern states, where the BJP is accused of communalising an ethno-linguistic issue,<sup>24</sup> and in Muslim universities across the country, including the Jamia Milia Islamia in New Delhi and the Aligarh Muslim University in Uttar Pradesh. The violent police response,

---

20 United Nations, *UN High Commissioner for Refugees Expresses Alarm at Statelessness Risk in India's Assam*. UNHCR, Accessed December 21, 2019, <https://www.unhcr.org/news/press/2019/9/5d6a24ba4/un-high-commissioner-refugees-expresses-alarm-statelessness-risk-indias.html>.

21 Gregory Stanton, *Genocide Watch for Assam, India—Renewed*. Genocide Watch, August 19, 2019, <https://www.genocidewatch.com/single-post/2019/08/18/Genocide-Watch-for-Assam-India---renewed>.

22 'NRC Soon in Entire Country: Amit Shah,' *The Hindu BusinessLine*, November 20, 2019, <https://www.thehindubusinessline.com/news/national/nrc-process-to-be-carried-out-in-entire-country-amit-shah/article30027360.ece>.

23 'New Citizenship Law in India 'Fundamentally Discriminatory': UN Human Rights Office,' *UN News*, United Nations High Commissioner for Refugees. Accessed December 21, 2019, <https://news.un.org/en/story/2019/12/1053511>.

24 'North-East India Gripped by Protests over Citizenship Bill Excluding Muslims,' *The Guardian*, December 10, 2019, <https://www.theguardian.com/world/2019/dec/10/india-braces-for-protests-over-citizenship-bill-excluding-muslims>.

with visuals of protestors being shot, tear-gassed and assaulted spreading widely among the general public,<sup>25</sup> and the government's use of other undemocratic tactics like the enforcement of curfews and communications shutdowns, has galvanised more protests elsewhere in the country, cutting across religious divides.<sup>26</sup> At the time this review was prepared, these protests were intensifying, with the police exercising relative restraint in some cosmopolitan areas where media presence is strong, while at the same time unleashing brute force on protests in localities inhabited by working-class Muslims, resulting in several deaths.<sup>27</sup> These have been most severe in Uttar Pradesh, ruled by the BJP with Yogi Adityanath, founder of the militia group Hindu Yuva Vahini (Hindu Youth Army), as its Chief Minister.<sup>28</sup>

The CAA has been challenged in India's Supreme Court (SC), where it must pass a test of constitutionality. The recent track record of the SC on minority rights, however, raises serious questions about its ability to defend India's founding principle of secularism. The NRC exercise in Assam, the harbinger of the current turmoil over citizenship, was closely overseen by the Court.<sup>29</sup> In late 2018, it refused to stay the deportation of Rohingya Muslim refugees back to Myanmar, violating the international principle of non-refoulement.<sup>30</sup> And in November 2019, a five-judge bench of the SC

---

25 'India's Police Response to Protests Was Swift and Violent, Videos Show,' *The New York Times*, December 17, 2019, <https://www.nytimes.com/video/world/asia/100000006877279/india-protests-police.html>.

26 'As Modi Pushes Hindu Agenda, a Secular India Fights Back,' *The New York Times*, December 20, 2019, <https://www.nytimes.com/2019/12/20/world/asia/india-muslims-citizenship.html>.

27 'Death Toll in India Citizenship Law Protests Climbs to a Least 17,' *TRT World*, December 21, 2019, <https://www.trtworld.com/asia/death-toll-in-india-citizenship-law-protests-climbs-to-a-least-17-32381>.

28 'UP: Yogi Adityanath's Hindu Yuva Vahini goes from fringe to mainstream,' *The Hindustan Times*, Accessed December 22, 2019, <https://www.youtube.com/watch?v=bWXc-Lw7ADc>.

29 Sruthisagar Yamunan, 'How the Supreme Court's Hardline Stance on Citizenship Deepened the Flaws in Assam's NRC,' *Scroll.in*, July 31, 2019, <https://scroll.in/article/932176/how-the-supreme-court-s-hardline-stance-on-citizenship-deepened-the-flaws-in-assams-nrc>.

30 'Supreme Court Refuses to Stop Deportation of 7 Rohingya Refugees,' *The Hindustan Times*, October 4, 2018, <https://www.hindustantimes.com/india-news/supreme-court-refuses-to-stop-deportation-of-7-rohingya-refugees/story-BczG2dPkvwUNxcu4nGm40I.html>.

unanimously awarded the site of the demolished Babri mosque in Ayodhya to Hindus and ordered the construction of a temple at the site, even as it acknowledged that the demolition of the mosque in 1992 by radical Hindus was a crime.<sup>31</sup>

Elsewhere in India, the violent targeting of religious minorities, a phenomenon that has persisted in India for decades but has significantly spiked following the assumption of power at the centre by the BJP, continued, according to Amnesty International, which recorded 181 incidents of violent hate crimes and at least 37 deaths in just the first six months of the year.<sup>32</sup> A closer look at these incidents, which have been reported from across the country, from the rural hinterlands of Uttar Pradesh,<sup>33</sup> Jharkhand<sup>34</sup> and Tamil Nadu<sup>35</sup> to the urban sprawls of New Delhi,<sup>36</sup> Mumbai<sup>37</sup> and Kolkata,<sup>38</sup> suggests that there are a few discernible trends: the victims are usually Dalits or Muslims, often the poorest and most vulnerable among them. The National Campaign on Dalit Human Rights (NCDHR) has documented 43 instances of atrocities being perpetrated upon Dalits in 2019.<sup>39</sup> The real number of atrocities is

---

31 'Ayodhya Verdict: Indian Top Court Gives Disputed Site to Hindus,' *Al Jazeera*, November 9, 2019, <https://www.aljazeera.com/news/2019/11/babri-mosque-case-indian-top-court-disputed-site-hindus-191109052713446.html>.

32 'Amnesty Report: Hate Crimes Rose Sharply the First Half of 2019,' *The Hindu*, October 4, 2019, <https://www.thehindu.com/news/national/amnesty-report-hate-crimes-rose-sharply-the-first-half-of-2019/article29598191.ece>.

33 'Teenager Refuses to Say 'Jai Shri Ram', Set Ablaze,' *National Herald*, July 30, 2019, <https://www.nationalheraldindia.com/india/teenager-refuses-to-say-jai-shri-ram-set-ablaze>.

34 'Jharkhand: Muslim Man Beaten up on Suspicion of Theft, Forced to Chant Jai Shree Ram, Succumbs to Injuries,' *India Today*, June 23, 2019, <https://www.indiatoday.in/india/story/jharkhand-muslim-man-lynching-jai-shree-ram-jai-hanuman-1554634-2019-06-23>.

35 'Caste Tensions in Madurai Village: Dalit Families Forced to Pull Kids out of School,' *The News Minute*, June 14, 2019, <https://www.thenewsminute.com/article/caste-tensions-madurai-village-dalit-families-forced-pull-kids-out-school-103609>.

36 'Minor Muslim Boy Lynched to Death by Mob in Delhi's Adarsh Nagar Area,' *The Muslim Mirror*, July 27, 2019, <http://muslimmirror.com/eng/minor-muslim-boy-lynched-to-death-by-mob-in-delhis-adarsh-nagar-area/>.

37 'After Jharkhand Mob Lynching, Thane Cab Driver Beaten Up, Forced To Chant 'Jai Shri Ram'', *ScoopWhoop*, June 28, 2019, <https://www.scoopwhoop.com/news/thane-cab-driver-beaten-up-jai-shri-ram/>.

38 'Bengal: 24-Year-Old Beaten up for 'Theft' Dies, Malda Tense,' *The Indian Express*, July 1, 2019, <https://indianexpress.com/article/india/bengal-24-year-old-beaten-up-for-theft-dies-malda-tense-5808110/>.

39 *Atrocity Tracking and Monitoring System (ATM)*. Accessed December

believed to be significantly higher. Christians are not spared either from the violence, with another report, by the Alliance for Defending Freedom (ADF), revealing 159 violent incidents in the first half of the year.<sup>40</sup> The perpetrators are usually radical Hindus, often affiliated directly to the Sangh Parivar, the umbrella of Hindu nationalist organisations of which the ruling BJP is a member. In many cases, they operate with impunity, sometimes aided by the local police and bureaucracy.<sup>41</sup> The official state response to the phenomenon of violent targeting of religious minorities, meanwhile, has been one of denial. The National Crime Records Bureau (NCRB), in its report for 2017 that was released in October 2019, refused to divulge any data about mob lynching, despite having the information 'ready and fully compiled and analysed'.<sup>42</sup> Instead, the NCRB has introduced a chapter on violence by 'anti-national elements',<sup>43</sup> a common dog-whistle term for those opposed to the ruling dispensation.

## Nepal

The International Dalit Solidarity Network identifies religious and sexual minorities, Dalits, refugees, and stateless people as minorities suffering the worst forms of discrimination in South Asia and women as an intersectional vulnerable group.<sup>44</sup> This holds true in Nepal where women and members of specific caste and ethnic communities such as Dalits, Janajatis and Madhesis

---

22, 2019, <http://www.annihilatecaste.in/atrocity-cases/any-title/all-states/all-districts/all-atrocities/2019-1-1/2019-12-22/newer-top>.

40 'Violence Against Christians: India in Denial,' *The Year 2019 So Far*. New Delhi: Alliance for Defending Freedom (ADF) India, 2019.

41 'Tension Brews in Naya Bans, Muslims 'Forced' to Migrate,' *NewsClick*, May 27, 2019, <https://www.newsclick.in/Uttar-Pradesh-Narendra-Modi-Muslims-Forced-Migration>.

42 'Despite Collecting It, NCRB Hasn't Published 2017 Data on Lynchings,' *The Wire*. Accessed December 21, 2019, <https://thewire.in/government/despite-collecting-it-ncrb-hasnt-published-2017-data-on-lynchings-religious-murders>.

43 'Centre Introduces Chapter on Violence by 'Anti-Nationals' as Part of NCRB Data,' *The News Minute*, October 22, 2019, <https://www.thenewsminute.com/article/centre-introduces-chapter-violence-anti-nationals-part-ncrb-data-110975>.

44 They also include internally displaced persons in the list. See International Dalit Solidarity Network (IDSN), 'Caste based discrimination in South Asia', (Copenhagen: IDSN, 2009).

have been disproportionately under-represented in public life.<sup>45</sup> This chapter is a brief overview of the status of these minorities in Nepal in 2019, encompassing political, legal or policy-based developments related to minorities, as well as incidents that uplift or curtail their freedom and rights.

## ***The Status of Refugees***

### **Bhutanese**

There are 6,470 Bhutanese and 12,540 Tibetan refugees in Nepal recorded by the United Nations High Commissioner for Refugees (UNHCR) and 378 Rohingya who have entered the country until the end of 2019.<sup>46</sup> The Rohingya are not recognised as refugees by the government of Nepal.<sup>47</sup> They have been living in Nepal since 2012<sup>48</sup> and consider it to be the safest and most tolerant country in South Asia.<sup>49</sup> Yet there has been resistance to their settlement here<sup>50</sup> as seen by the recent eviction of some Rohingya from a plot of land they had rented and constructed temporary cottages in.<sup>51</sup> UNHCR has also stopped providing monetary relief to the Rohingya since 2015,<sup>52</sup> forcing them to find menial employment to sustain themselves.<sup>53</sup>

---

45 Pratyoush Onta, 'The Growth of the Adivasi-Janjati Movement in Nepal after 1990: The Non-Political Institutional Agents', *Studies in Nepali History and Society* 11, no. 2 (2004): 303-354.

46 Devendra Bhattarai, 'Nepal has refugees from nine countries,' *Kantipur*, December 13, 2019, <https://ekantipur.com/news/2019/12/13/157620509938678727.html>.

47 *ibid.*

48 Robic Upadhyay and Ashwin Sharma, 'A new beginning,' *The Record*, <https://www.recordnepal.com/wire/videos/a-new-beginning-for-rohingya-refugees-in-nepal>.

49 'Rohingyas in Nepal: Give us citizenship or send us elsewhere,' *Onlinekhabar*, June 05, 2019, <https://english.onlinekhabar.com/rohingyas-in-nepal-give-us-citizenship-or-send-us-elsewhere.html>.

50 Makar Shrestha, 'Rohingya enter by spending 30,000 taka,' *Kantipur*, December 12, 2019, <https://ekantipur.com/news/2019/12/12/157611753610886152.html>.

51 Nagendra Adhikari, 'A week's notice of eviction to Rohingyas,' *Kantipur*, December 13, 2019, <https://ekantipur.com/news/2019/12/13/157624814196224629.html>.

52 *Ibid.*

53 Robic Upadhyay and Ashwin Sharma, 'A new beginning,' *The Record*, <https://www.recordnepal.com/wire/videos/a-new-beginning-for-rohingya-refugees-in-nepal>.

After the bulk of the 108,000 Bhutanese refugees opted for third-country settlement after 2007, the remaining Bhutanese refugees<sup>54</sup> in Nepal now find themselves in a limbo as several humanitarian agencies, including the World Food Programme, stated that their support will cease in 2019.<sup>55</sup> Nepal has rejected any possibility of their local assimilation while expressing commitment to resuming talks with Bhutan to repatriate the remaining refugees.<sup>56</sup> However, any plans or initiatives are yet to materialise. The difficulties of Bhutanese refugees are further exacerbated by two factors. One, there are still refugees in the camp who want to get resettled elsewhere but cannot as they do not have a refugee card.<sup>57</sup> Second, while refugee females married to Nepali males have easier paths to citizenship, and, thereby, assimilation, difficulties still persist for refugee males married to Nepali females.<sup>58</sup>

---

54 Nepal hosted up to 107,000 Bhutanese refugees since early 1990s (UNHCR, 'Refugees from Bhutan poised for new start', <https://web.archive.org/web/20110510005625/http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=47a30dc82&query=bhutan>) when third-country resettlement started and eventually more than 112,800 refugees were resettled in the United States, Canada, Australia, New Zealand, Denmark, Norway, the Netherlands, and the United Kingdom (Anil Giri, 'Nepal to resume talks with Bhutan on refugee repatriation,' *The Kathmandu Post*, February 3, 2019, <https://kathmandupost.com/national/2019/02/03/nepal-decides-to-resume-talks-with-bhutan-on-refugee-repatriation>).

55 Anil Giri, 'Bhutanese refugee issue resurfaces after provisions dry up,' *The Kathmandu Post*, December 5, 2018, <https://kathmandupost.com/valley/2018/12/05/bhutanese-refugee-issue-resurfaces-after-provisions-dry-up>.

56 Official talks of repatriation ceased in 2004 after an alleged attack on the Bhutanese Joint Verification Team at a refugee camp. See B. Gautam and T.P. Mishra, 'Who stands with Bhutanese refugees in Nepal,' *Nepali Times*, June 19, 2019, <https://www.nepalitimes.com/opinion/who-stands-with-bhutanese-refugees-in-nepal/>; On Nepal government's refusal to assimilate the refugees, see Anil Giri, 'Nepal to resume talks with Bhutan on refugee repatriation,' *The Kathmandu Post*, February 03, 2019, <https://kathmandupost.com/national/2019/02/03/nepal-decides-to-resume-talks-with-bhutan-on-refugee-repatriation>.

57 A refugee card is mandatory to begin the resettlement process, which has also ceased now. Refugees who were working outside of the camp at the time of the verification have not received refugee cards. See Chetan Adhikari, 'Bhutanese refugees devoid of IDs facing uncertain future,' *The Kathmandu Post*, January 7, 2015, <http://kathmandupost.ekantipur.com.np/news/2015-01-07/bhutanese-refugees-devoid-of-ids-facing-uncertain-future.html>.

58 If a Nepali man marries a foreign woman, he can get Nepali citizenship for her and their children automatically. But if a Nepali woman marries a foreigner, the husband does not immediately get citizenship and their children cannot be Nepali by descent. 'Patriarchy in an oligarchy,' *Nepali Times*, March 22, 2019,

## Tibetans

Before the Chinese President Xi Jinping's visit to Nepal in October 2019, the police arrested 22 free-Tibet movement campaigners and human rights activists from Kathmandu.<sup>59</sup> Individuals unwittingly wearing garments with Tibetan signage were also detained along with journalists perceived to be sympathetic to the movement.<sup>60</sup> The celebrations of the 84th birthday of the Dalai Lama in July was banned for Tibetans living in Nepal which was a massive reversal from previous years.<sup>61</sup> In September 2019, the Nepal police handed over six Tibetans to the Chinese police mere hours after they had crossed into Nepal to seek asylum, in blatant violation of the obligation of non-refoulement.<sup>62</sup>

## Religious and Ethnic Minorities

The Constitution of Nepal 2015 defines the country as secular. Yet there are inherent contradictions as laws that disadvantage certain communities over others still exist. One example is the criminalisation of slaughtering of cows, animals that are sacred only to Hindus. In 2018/19, 34 such cases have been registered in the Supreme Court, mostly against members of Dalit, Magar and Tamang communities.<sup>63</sup> Additionally, acts of religious conversion are prohibited by the constitution as a criminal offence. It was reported that four Christians in April<sup>64</sup> and three in July were

---

<https://www.nepalitimes.com/editorial/patriarchy-in-an-oligarchy>.

59 '11 Tibetan refugees among 22 held,' *The Himalayan Times*, October 13, 2019, <https://thehimalayantimes.com/kathmandu/11-tibetan-refugees-among-22-held>.

60 Bhrikuti Rai, 'Nepali citizens detained during Xi Jinping's visit for Tibetan signage on clothes and accessories,' *The Kathmandu Post*, October 17, 2019, <https://kathmandupost.com/2/2019/10/17/nepali-citizens-detained-during-xi-jinping-s-visit-for-tibetan-signage-on-clothes-and-accessories>.

61 Thomas David, 'Nepal bans spiritual events of Tibetan refugees, further undermining their rights,' *Tibet Post International*, July 09, 2019, <http://www.thetibetpost.com/en/impact/politics/6551-nepal-bans-spiritual-events-of-tibetan-refugees-further-undermining-their-rights>.

62 'Nepal Deports 6 Tibetan Asylum Seekers to China,' *Radio Free Asia*, September 09, 2019, <https://www.rfa.org/english/news/tibet/nepal-deport-09092019064318.html>.

63 Shiva Hari Gyawali, 'Criminalization of cow-slaughter is a tool of caste terror,' *The Record*, June 14, 2019, <https://www.recordnepal.com/podcast/criminalization-of-cow-slaughter-is-a-tool-of-caste-terror>.

64 'Christians seized by police while training pastors in Nepal,' *Barnabas Fund*,

arrested under the suspicion of converting people to Christianity.<sup>65</sup> A recent news report also warned that elements of Hindutva were making religious minorities in Janakpur, mostly Muslims, uncomfortable as saffron, the colour associated with Hindu nationalism, was freely distributed by the local government to colour public and private properties in the city.<sup>66</sup>

Reservations for minorities and marginalised groups in public service is also facing obstacles. The Public Service Commission issued a vacancy notice in May to recruit more than 9,000 staff at the local level, which drew criticism for i) overstepping its jurisdiction, and ii) failing to ensure 45 per cent of the seat seats for the marginalised as per the Civil Service Act.<sup>67</sup> This will reportedly lead to a reduction in quotas of Madhesis by 92 per cent and Janajatis by 52 per cent in these positions.<sup>68</sup> The vacancy notice led to protests from people of various marginalised communities, their associations as well as political parties, mostly in Kathmandu.<sup>69</sup>

There have been some policy developments in 2019 for the benefit of Dalits. In September, the government stipulated a provision of providing land to landless Dalits.<sup>70</sup> The government of

---

April 24, 2019, <https://barnabasfund.org/en/news/christians-seized-by-police-while-training-pastors-in-nepal>.

65 'Three Foreigners Arrested Over Religious Conversion Accusations In Nepal,' *New Spotlight Online*, July 24, 2019, <https://www.spotlightnepal.com/2019/07/24/three-foreigners-arrested-over-religious-conversion-accusations-nepal>.

66 Sweksha Karna, 'Janakpur is decked out in saffron, and not everyone is thrilled,' *The Kathmandu Post*, September 28, 2019, <https://kathmandupost.com/province-no-2/2019/09/28/janakpur-is-decked-out-in-saffron-and-not-everyone-is-thrilled>.

67 Deepak Thapa, 'In filling public sector jobs, the federal government is making mistakes,' *The Kathmandu Post*, June 12, 2019, <https://kathmandupost.com/opinion/2019/06/12/in-filling-public-sector-jobs-the-federal-government-is-making-mistakes>; Prithvi Man Shrestha, 'Instead of encouraging provinces, federal government went ahead with staff recruitment,' *The Kathmandu Post*, June 12, 2019, <https://kathmandupost.com/politics/2019/06/12/instead-of-encouraging-provinces-federal-government-went-ahead-with-staff-recruitment>.

68 'SRC continues protest against FPSC,' *The Himalayan Times*, July 18, 2019, <https://thehimalayantimes.com/kathmandu/save-reservation-campaign-continues-protest-against-federal-public-service-commission>.

69 'Hundreds protest against FPSC's job notice,' *The Himalayan Times*, July 16, 2019, <https://thehimalayantimes.com/kathmandu/hundreds-protest-against-fpsc-job-notice>.

70 'Land Rules amended to benefit landless Dalits,' *The Himalayan Times*,

Province 2 has drafted a bill proposing full scholarship to all Dalit students in higher and technical education as well as ration cards and health benefits.<sup>71</sup>

Irrespective of the state's stance and policies toward Dalits, they report facing both structural and physical violence in their communities. There are reports of Dalits, even lawmakers, being denied accommodation in the capital,<sup>72</sup> being barred from shops,<sup>73</sup> and being confined to specific areas during festivals and celebrations.<sup>74</sup> On the representation front, there is just one Dalit ministers in the seven provincial governments, just one Dalit mayor in a rural municipality and six in urban municipalities.<sup>75</sup> Dalit women make up 19 per cent of all registered rape cases in Nepal, even they Dalits constitute only 13 per cent of the country's population.

### **Sexual minorities**

Nepal has been hailed as a leader in South Asia for upholding

---

October 14, 2019, <https://thehimalayantimes.com/nepal/land-rules-amended-to-benefit-landless-dalits>.

71 Ram Kumar Kamat, 'Scholarships, ration cards, health benefits to poor Dalits proposed,' *The Himalayan Times*, September 09, 2019, <https://thehimalayantimes.com/nepal/scholarships-ration-cards-health-benefits-to-poor-dalits-proposed>. Implementation is the key here since even in 2013, the government had announced housing stipends for Dalits in Baglung district, but these houses remain unfinished due to 'budget shortage'. Prakash Baral, 'Dalits await houses under People's Housing Programme in Baglung,' *The Kathmandu Post*, October 11, 2019, <https://kathmandupost.com/gandaki-province/2019/10/11/dalits-in-baglung-await-houses-under-the-people-s-housing-programme>.

72 Binod Ghimire, 'People refuse to rent me a room when I tell them my surname,' *The Kathmandu Post*, July 19, 2019, <https://kathmandupost.com/national/2019/07/19/people-refuse-to-rent-me-a-room-when-i-tell-them-my-surname>.

73 Binu Timsina, 'A discrimination case riles up Dalit activists in Morang district,' *The Kathmandu Post*, November 03, 2019, <https://kathmandupost.com/province-no-1/2019/10/19/a-discrimination-case-riles-up-dalit-activists-morang-district>.

74 Shiva Puri, 'In Rautahat, people from Dalit communities continue to face ostracisation during Chhath celebrations,' *The Kathmandu Post*, November 03, 2019, <https://kathmandupost.com/province-no-2/2019/11/03/in-rautahat-people-from-dalit-communities-continue-to-face-ostracisation-during-chhath-celebrations>.

75 Chandan Kumar Mandal, 'Discrimination against Dalits still rife, continue to be left out of decision-making processes,' *The Kathmandu Post*, September 08, 2019, <https://kathmandupost.com/national/2019/09/08/discrimination-against-dalits-still-rife-continue-to-be-left-out-of-decision-making-processes>.

the rights of sexual minorities. The constitution forbids all discrimination based on sexual orientation, and citizenship certificates and passports have the option for an 'other' category for gender.<sup>76</sup> The Equality Index of Nepal is higher than that of the United States,<sup>77</sup> and as of 2019, 1,500 individuals have received their citizenship in this category.<sup>78</sup> Despite such legal progress, a recent report by Mitini Nepal detailed that 51 per cent of lesbian, transgender, and bisexuals across the country reported facing discrimination with 36 per cent admitting that they were not accepted in their homes.<sup>79</sup>

Further, the Civil and Criminal Codes of 2018 both define marriage as a union between a man and a woman, thereby invalidating same-sex marriage<sup>80</sup> even though a 2015 report commissioned by the Supreme Court and presented to the Prime Minister's Office recommended that the government legalise same-sex marriage.<sup>81</sup> The law also remains unclear on adoption by same-sex couples.<sup>82</sup>

### ***Political marginalisation of women***

Even though Nepal moved up two spots on the 2019 Human Development Index, it has a poor Gender Inequality Index with

---

76 'Nepal's sexual minorities say progress in rights has stalled,' *The Himalayan Times*, September 18, 2019, <https://thehimalayantimes.com/nepal/nepals-sexual-minorities-say-progress-in-rights-has-stalled>.

77 The Equality Index is an experimental rating to help visualize the legal rights and public attitudes towards LGBT people in a given region. See <https://www.equaldex.com/region/nepal>.

78 '1500 members of sexual and gender minority receive citizenship on the basis of gender identity,' *Pahichan*, July 23, 2019, <https://pahichan.com/1500-members-of-sexual-and-gender-minority-receive-citizenship-on-the-basis-of-gender-identity>.

79 'LGBT community seeks an end to discrimination,' *The Himalayan Times*, December 11, 2019, <https://thehimalayantimes.com/kathmandu/lgbt-community-seeks-an-end-to-discrimination>.

80 Aasna Sijapati and Ankit Khadgi, 'Celebration of diversity and sexuality: country's first pride parade,' *The Himalayan Times*, June 29, 2019, <https://thehimalayantimes.com/kathmandu/celebration-of-diversity-and-sexuality-countrys-first-pride-parade>.

81 Asmita Manandhar and Alisha Sijapati, 'Nepal's indecision on same-sex marriage leaves couples in limbo,' *Pahichan*, May 29, 2019, <https://pahichan.com/nepals-indecision-on-same-sex-marriage-leaves-couples-in-limbo>.

82 'Nepal's sexual minorities say progress in rights has stalled,' *The Himalayan Times*, September 18, 2019, <https://thehimalayantimes.com/nepal/nepals-sexual-minorities-say-progress-in-rights-has-stalled>.

a value of 0.476, ranking it 115th out of 162 countries<sup>83</sup> which is reflected in the political sphere of the country. The Constitution of Nepal, 2015 reserves political seats for women, which has led to an increase in the number of women in decision-making positions,<sup>84</sup> but even now they report feeling undermined by male subordinates as well as the community.<sup>85</sup> A recent cabinet reshuffle by the Prime Minister saw a decline in women in the executive body, with widespread outcry over the replacement of a woman as the Minister of Women, Children and Senior Citizens by a man.<sup>86</sup> The Deputy Speaker of the lower house of the national parliament, a woman from a marginalised community, is likely to be ousted in favour of a male colleague.<sup>87</sup>

## Pakistan

In Pakistan, a country with nearly 39 per cent of the population living in multidimensional poverty,<sup>88</sup> it is the minority communities that suffer the worst. Christians, Hindus, Ahmadiyas, Baloch and Pashtun are the ones particularly under attack, by both state and non-state actors. Even though Pakistan has ratified the International Covenant on Economic, Social and Cultural Rights,

---

83 Sangam Prasain, 'Nepal moves up in Human Development Index but still lags behind in South Asia', *The Kathmandu Post*, May 26, 2019, <https://kathmandupost.com/national/2019/12/11/nepal-moves-up-in-human-development-index-but-is-still-ranked-second-to-last-in-south-asia>.

84 Tufan Neupane, 'Just Women', *Nepali Times*, July 16-22, 2017, <https://archive.nepalitimes.com/article/from-nepali-press/Just-women,3856>.

85 Bhrikuti Rai, 'Itahari mayor misbehaves with a journalist and deputy mayor issues apology', *The Kathmandu Post*, May 26, 2019, <https://kathmandupost.com/national/2019/05/26/itahari-mayor-misbehaves-with-a-journalist-and-deputy-mayor-issues-apology>.

86 Bhrikuti Rai, 'All the prime minister's men', *The Kathmandu Post*, November 21, 2019, <https://kathmandupost.com/politics/2019/11/21/all-the-prime-minister-s-men>.

87 'Who is next speaker? Race begins in NCP', *myRepublica*, December 13, 2019, <https://myrepublica.nagariknetwork.com/news/who-is-next-speaker-race-begins-in-ncp>.

88 'Pakistan's new poverty index reveals that 4 out of 10 Pakistanis live in multidimensional poverty', <https://www.pk.undp.org/content/pakistan/en/home/presscenter/pressreleases/2016/06/20/pakistan-s-new-poverty-index-reveals-that-4-out-of-10-pakistanis-live-in-multidimensional-poverty.html>

there is a significant gap in the implementation of its provisions that cover fundamental rights such as the right to work, the right to standard of living, the right to health, and the right to education, and neither have they been or integrated into domestic legislation.

Lack of data prevents a more thorough analysis of the situation, making it difficult to plan for action against discrimination against minorities. The intersections between economic marginalisation, gender discrimination and religious exclusion result in excessive inequality, which is weighted against religious minorities in particular. Further, the country's vaguely formulated blasphemy law, in which a conviction is followed by a mandatory death sentence, targets religious minorities disproportionately and is in many instances used to settle personal scores.<sup>89</sup>

The last year has seen increasing instances of attacks against religious minorities. A Hindu veterinarian's clinic as well as nearby Hindu shops were burned down due to blasphemy accusations,<sup>90</sup> and a violent attack towards a Hindu school took place because of blasphemy accusations towards its principal.<sup>91</sup> This year the National Assembly rejected a bill allowing non-Muslims to serve as president and prime minister, which prolongs the subordinate status of religious minorities.<sup>92</sup> Private buildings display signs that say 'Selling or renting any apartment in this building to non-Muslims is prohibited';<sup>93</sup> shopkeepers forbid services to Ahmadiyas and Shias.<sup>94</sup> Fourteen-year-old Pakistani Christian, Samra Bibi, was

---

89 'Pakistan Overturns Man's Blasphemy Conviction after 17 Years on Death Row,' *Yahoo! News*, September 26, 2019, <https://news.yahoo.com/pakistan-overturns-mans-blasphemy-conviction-17-years-death-142219571.html>.

90 'Pakistan Vet Charged with Blasphemy over Medicine 'Wrapped in Religious Text'', *BBC News*, May 28, 2019, <https://www.bbc.com/news/world-asia-48438333>.

91 'Hindus Fear for Their Lives after Pakistan Blasphemy Riots,' *Deutsche Welle*, Accessed December 22, 2019, <https://www.dw.com/en/hindus-fear-for-their-lives-after-pakistan-blasphemy-riots/a-50448332>.

92 'National Assembly Rejects Bill That Opens Highest State Offices to Minorities,' *AsiaNews.it*, Accessed December 22, 2019, <http://www.asianews.it/news-en/National-Assembly-rejects-bill-that-opens-highest-state-offices-to-minorities-48184.html>.

93 'Seeds of intolerance: Private building in Karachi displays anti-minority notice, draws mass ire,' *The Express Tribune*, Accessed December 22, 2019, <https://tribune.com.pk/story/2065331/1-seeds-intolerance-private-building-karachi-displays-anti-minority-notice-draws-mass-ire/>.

94 <https://twitter.com/husainhaqqani/status/1177957117682167815>

abducted, forced to convert to Islam and marry in one of many cases in a similar pattern where Christian minors are targeted due to their vulnerable situation.<sup>95</sup> The phenomenon of religious minority women being fraudulently married to Chinese men and forced into prostitution or slavery has been on the rise, and while the government has anti-trafficking programmes, it brushes off testimonies of sexual exploitation during the trafficking as ‘rumours and fabricated facts’.<sup>96</sup>

The government claims reports of Christians being persecuted to be false and blames ‘Western interests’, going further to state that individual incidents do not indicate a structural issue.<sup>97</sup> Authorities have reached out to social media platforms such as Facebook and Twitter for help in tracking blasphemy in order to ‘track down those who spread such material’, both within the country and abroad, but many fear this is simply another tool for widespread censorship.<sup>98</sup> Earlier in the year, a case of two Hindu sisters, Reena and Raveena, who had been abducted and forcibly converted in Daharki, Sindh Province, surfaced in the news media.<sup>99</sup> Though a first information report (FIR) was registered under the Sindh Child Marriages Restraint Act 2013, the police continued to discount the case as a ‘family dispute’, relying on a video confession that appeared to have been recorded under possible coercion and pressure.<sup>100</sup> A similar video confession was also used in the recent case of kidnapping of a 14-year-old Hindu girl in Karachi. These

---

<sup>95</sup> ‘A 14-Year-Old Faisalabad Christian Girl Is Kidnapped, Forced to Convert and Marry,’ *AsiaNews.it*, Accessed December 22, 2019, <http://asianews.it/news-en/A-14-year-old-Faisalabad-Christian-girl-is-kidnapped,-forced-to-convert-and-marry-48099.html>.

<sup>96</sup> “Please Save Me”: Pakistani “Brides” Plead For Help From China Amid Trafficking Claims,’ *Radio Free Europe/Radio Liberty*, July 14, 2019, <https://www.rferl.org/a/please-save-me-pakistani-brides-plead-for-help-from-china-amid-trafficking-claims/30054845.html>.

<sup>97</sup> ‘Pakistan Plays Down Accusations of Christian Persecution,’ *The Guardian*, June 25, 2019, <https://www.theguardian.com/world/2019/jun/25/pakistan-plays-down-accusations-christian-persecution>.

<sup>98</sup> ‘Pakistan Asks Facebook, Twitter to Help Track Blasphemers.’ *Deutsche Welle*, Accessed December 22, 2019, <https://www.dw.com/en/pakistan-asks-facebook-twitter-to-help-track-blasphemers/a-37987689>.

<sup>99</sup> Akhlaq Ullah Tarar, ‘Forced Conversions,’ *dawn.com*, March 31, 2019, <https://www.dawn.com/news/1472977>

<sup>100</sup> Human Rights Commission of Pakistan, *Forced Conversions in Ghotki?: Field Investigation Report*, 2019.

cases remain unresolved despite pleas for justice.<sup>101</sup> Six months after the approval of legislation against forced conversions, by both houses of the legislature, the parliamentary committee tasked to work on it was finally notified. The committee still remains bogged down by administrative delays and by lack of a Chairperson to head it.<sup>102</sup>

Minorities still await final verdict against Khadim Rizvi, a hard-line cleric and proponent of the blasphemy law, who was indicted for sedition and terrorism after inciting nationwide protests.<sup>103</sup> On the other hand, Junaid Hafeez, a young academic who had been wrongfully accused of making blasphemous statements while giving a lecture in 2013, locked in solitary confinement without proper trial, and having had his lawyer gunned down in 2014, was sentenced to death in December 2019.<sup>104</sup>

Prime Minister Imran Khan recently attended the Global Refugee Forum and highlighted the role Pakistan had played, stating that Islamabad hosted 1.4 million Afghan refugees for 40 years. He also pointing to the role Pakistan was playing in the Afghan peace process so that refugees could return to their country with dignity.<sup>105</sup> He also warned the world of an impending refugee crisis in South Asia referring to recent developments in India, referring to the controversial amendment to the citizenship law. The consequent critique by India of mistreatment of Pakistan's religious minorities whose share of population has decreased to 3.7 per cent from 23 per cent in 1947 was discounted by the Foreign

---

101 'Forced Conversion': Mother of 14-Year-Old Waits for Justice,' *Daily Times*, November 30, 2019, <https://dailytimes.com.pk/510645/forced-conversion-mother-of-14-year-old-waits-for-justice/>

102 Kalbe Ali, 'Parliamentary Panel against Forced Conversion Notified,' *dawn.com*, November 24, 2019, <https://www.dawn.com/news/1518513/parliamentary-panel-against-forced-conversion-notified>

103 'Minorities in Pakistan Wait as Hard-Line Islamic Cleric Indicted,' *Voice of America*, <https://www.voanews.com/extremism-watch/minorities-pakistan-wait-hard-line-islamic-cleric-indicted>

104 'Junaid Hafeez: Academic Sentenced to Death for Blasphemy in Pakistan,' *BBC News*, December 21, 2019, <https://www.bbc.com/news/world-asia-50878432>

105 Sanaullah Khan, 'PM Imran Warns Global Community of Impending Refugee Crisis in South Asia,' *DAWN.COM*, December 17, 2019, <https://www.dawn.com/news/1522772>

Office.<sup>106</sup> Pakistan also rejected its listing by the United States in December 2019 as one of the Countries of Particular Concern as a violator of religious freedoms.<sup>107</sup>

A video surfaced on social media where the Assistant Commissioner of Attock in Punjab Province was harassed and forced to apologise by a horde of students for her calling for equal rights and harmony with the Ahmadiya community, exemplifying the underlying hatred and intolerance, repressing free speech and equality.<sup>108</sup>

The discrimination comes, as shown above, from both citizen vigilantism as well as the government (in)actions. The country's poor resolve to address minority concerns does not hold a promising future.

## Sri Lanka

Several factors impacting minority communities in Sri Lanka in the year 2019 can be linked to two key events; first, the terrorist bombings that took place on Easter Sunday in April, and second, the election of Gotabaya Rajapaksa as president in November.

Many of the political, policy, and legal developments as well as hate speech, incidents of violence and incarceration that took place can be drawn from these two events. However, it is important to note that attacks on minorities existed before and outside of these events as well.

---

106 'Foreign Office Denies India Allegations on Pakistan Minorities,' *Newsweek Pakistan*, December 20, 2019, <https://www.newsweekpakistan.com/foreign-office-denies-india-allegations-on-pakistan-minorities/>

107 Asad Hashim, "Arbitrary": Pakistan rejects US religious freedom designation,' *Aljazeera.com*, December 25, 2019, <https://www.aljazeera.com/news/2019/12/pakistan-rejects-religious-freedom-designation-191225072023139.html>.

108 'Attock AC Lands in Trouble for Calling for Equal Rights for Minorities,' *Pakistan Today*, December 12, 2019, <https://www.pakistantoday.com.pk/2019/12/12/attock-ac-lands-in-trouble-for-calling-for-equal-rights-for-minorities/>.

### ***Attack on Methodist Prayer Centre in Anuradhapura***

On Palm Sunday (14 April), mobs hurled stones and firecrackers at the Methodist prayer centre in Kundichchaankulam. The local police took time to respond to Bishop Asiri Perera's urgent call, therefore the mob locked the worshippers within the premises.

Bishop Perera had to meet with then-Prime Minister Ranil Wickremesinghe and then-IGP Pujith Jayasundera to secure police protection for the church, because of the police's reluctance to act against the perpetrators.

### ***The Easter Sunday (21 April 2019) Terrorist Attack***

Islamist terrorists were identified as the perpetrators behind the six bombings that took place on Easter Sunday. The then-President Maithripala Sirisena declared a state of emergency in the country in order to bring the situation under control. There was increased scrutiny of Muslims by security and law enforcement personnel. A disproportionate number of Muslims were arrested for the possession of the Quran and Islamic writings in their homes, or for the contents of their social media accounts.

Among the emergency regulations that were put in place, one was a ban on wearing the burqa or niqab. Due to a lack of knowledge on the part of citizens and law enforcement and other officials, Muslim women who were wearing the hijab were also subject to discrimination or denied entry into private and public institutions.

Under the state of emergency, there was an increase in military presence and checkpoints, with a particular increase in the Northern Province. These are regions where Tamil citizens have lived with constant military presence since the end of the war; and after the bombings in April, the scrutiny increased once again.

In the immediate aftermath, a rise in hate speech and false news towards and about Muslims was observed, originating from civilians as well as from political leaders. These were recorded on mainstream as well as social media. Buddhist monks were also recorded expressing violent speech towards the Muslim community. There were calls orchestrated by the media to boycott Muslim businesses resulting in hardship.

In the month of May, there was a series of attacks against

Muslim-owned businesses and mosques in the North-Western Province, across areas such as Kurunegala and Minuwangoda. Mobs damaged the windows of mosques with stones and set fire to some shops and a large factory. One Muslim man was killed during these attacks.

### ***Arrest of Dr Mohamed Shafi Shihabdeen***

Based on allegations printed in the Divaina newspaper that he was forcefully sterilising patients, police placed Dr Shafi Shihabdeen in remand custody. There was a public outcry—from civilians and Buddhist monks—regarding the allegations that Dr Shafi, who is Muslim, was trying to sterilise Sinhala mothers.

In the months that followed, investigations proved that such allegations were false, with the Director of the Kurunegala Hospital, where Dr Shafi worked, having fabricated these claims against the doctor. He has since been released on bail. However, in the last week of December, a directive was made that a new group of CID officials would re-open the investigation against him.

### ***Lack of Progress on MMDA***

In the aftermath of the attacks, several politicians and Buddhist religious leaders questioned the need for Muslims to have ‘different laws’ in Sri Lanka, in reference to the Muslim Marriage and Divorce Act (MMDA). The amendment of this law has been the goal of several Muslim women’s rights groups for the last few decades, but calls to reform it at this stage were accompanied by a prejudicial attitude towards the community.

The cabinet hastily passed a draft bill and its contents were not made public until much later. Activists noted that it was inadequate in protecting Muslim women in marriage and also it did not make allowances for women to serve as judges in the quasi-courts that administered this law.

### ***Gotabaya Rajapaksa’s Victory in the Presidential Election, 16 November 2019***

Minorities expressed concerns when Rajapaksa announced his candidacy in the aftermath of the Easter attacks. For Tamils, there were concerns about the lack of accountability for violence of the

final stages of the war, which he presided in his capacity of Defence Secretary. One key campaign promise was the release of all forces personnel in remand, continuing the impunity afforded to those who perpetrated violence against Tamils citizens. For Muslims, Rajapaksa's continued patronage of the Bodu Bala Sena (BBS), an extremist group that has spread violent speech and coordinated violence against their community was a cause for concern.

Stoking fears against the Muslim community constituted a large part of the Rajapaksa campaign, either through social media posts or politicians and MPs who supported him. There was an emphasis on the status of Buddhism in Sri Lanka, and several monks also spoke on behalf of Rajapaksa.

On Election Day, observers recorded two key violent incidents against minorities, both perpetrated by supporters of the Sri Lanka Podujana Peramuna (SLPP), Rajapaksa's party. A bus of Muslim voters was attacked and shot at as they travelled to their polling stations. Rajapaksa supporters attacked a Tamil man and claimed they were attacking him because he didn't vote for Rajapaksa.

When the results were announced, electoral maps indicated that support for Rajapaksa was lowest in the Northern and Eastern provinces, where Sajith Premadasa, Rajapaksa's main opponent—, won overwhelmingly. Sinhala citizens and commentators on social media used this voting pattern and map to claim that Tamil and Muslim people in these areas still wished for 'Eelam'. This was part of a large volume of hate speech against Tamil and Muslims on social media that consisted of threats of violence and targeted violent speech. The posts and articles claimed that Sinhala people should now go and settle in the North and East to reclaim these areas from minority communities. They also compared Premadasa to Velupillai Prabhakaran, the leader of the erstwhile Liberation Tigers of Tamil Eelam (LTTE), for his perceived popularity among the Tamil community.

The assertion that Rajapaksa won 'without the support of the minorities' has been used to reinforce the status of Sinhala-Buddhists in Sri Lanka. Monks agitated that those who insult Buddhism and the Sangha should not be included in the political space.

### ***Status of Gender and Sexual Minorities***

For the first time in Sri Lankan history, a presidential candidate spoke on behalf of the LGBTIQ+ community and promised them equal rights before the law. Anura Kumara Disanayake, candidate for the National People's Power Movement (NPP), stated that the sections of law that discriminate against the community would be repealed, and discrimination faced by them would be addressed.

There has been no progress in improving the status of gender and sexual minorities in Sri Lanka, even under the previous government of President Sirisena and Prime Minister Ranil Wickremesinghe. Disanayake's defeat, and that the silence of Rajapaksa and the SLPP on this community's needs, indicates it is unlikely there will be an improvement in their status over the next five years.

### ***Implications for Pluralism and Religious Freedom***

While his inauguration ceremony was loaded with Sinhala-Buddhist symbolisms, in his inauguration speech, Rajapaksa invited Tamil and Muslim communities to 'join him' in the country's journey forward. Whether this will transform into genuine engagement remains to be seen, but many ground-level activists from these communities are already concerned for their safety due to the surveillance they faced during the previous Rajapaksa regime.

Continued impunity for violence against minority communities—be in the context of the conflict or violent riots—does little to promote pluralism or indicate equality among the different communities in Sri Lanka.



# SOUTH ASIA STATE OF MINORITIES REPORT 2019

As conflict, persecution or the pursuit of better opportunities has led to increased migration throughout South Asia, our understanding of minorities must also similarly evolve. The region's religious, ethnic, linguistic and gender minorities remain marginalised from the mainstream of development, and experience violence from both state and the non-state actors. Refugees, migrants and the stateless make up a disproportionate number of the poor and excluded in these countries, and it is these very minorities who disproportionately tend to become refugees or stateless.

*South Asia State of Minorities Report 2019: Migrants, Refugees and the Stateless* seeks to identify the different groups that have been denied, among other things, access to fundamental rights and services, and, in some cases, even recognition of their status. The report demonstrates how this impacts their everyday experiences and enables abuse of their human rights. The report presents six country chapters—Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka—reporting on the condition of the refugees, migrants and the stateless population within their territories, while also providing recommendations to better protect their rights.

The South Asia State of Minorities Report is planned as a tool for advocacy. It is hoped that the periodic reports on outcomes for minorities and the quality of state provisioning for them, will spur public debate on the subject in the region and create the conditions for state parties and the South Asia Association for Regional Cooperation (SAARC) to agree to give serious consideration to issues of minorities, refugees, migrants and the stateless and how to deliver for them. The purpose of the project is about promoting citizenship, a central challenge of the 'deepening democracy' agenda in the region. This publication is the third in the series following the publication of *South Asia State of Minorities Report 2018: Exploring the Roots* and *South Asia State of Minorities Report 2016: Mapping the Terrain*.

The South Asia Collective is a group of human rights activists and organisations that dream of a just, caring and peaceful South Asia, that came together in December 2015 to document the condition of the region's minorities—religious, linguistic, ethnic, caste and gender, among others—hoping this would help in better outcomes for South Asia's many marginalised groups.

The  
South Asia  
Collective

Co-funded by  
the European Union



Norad

