

Protection of Rights of Refugee Women Against Gender Based Violence in India

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Abstract

This research paper examines the multifaceted challenges faced by refugee women in India who are subjected to gender-based violence (GBV) and analyzes the existing legal and policy frameworks for their protection. Despite India's constitutional commitment to equality and human rights, refugee women remain among the most vulnerable populations, experiencing disproportionate levels of sexual violence, domestic abuse, trafficking, and economic exploitation. The study reveals significant gaps in India's approach to refugee protection, particularly the absence of comprehensive domestic refugee legislation and the country's non-ratification of the 1951 Refugee Convention. Through analysis of legal frameworks, case studies of Rohingya and Afghan refugee women, and examination of existing protection mechanisms, this paper identifies critical deficiencies in the current system including lack of legal status, limited access to justice, inadequate support services, and discriminatory practices. The research concludes that while India has made provisions through Article 21 of the Constitution and various domestic violence laws, a comprehensive rights-based approach specifically addressing the unique vulnerabilities of refugee women against GBV is urgently needed. The paper recommends enacting dedicated refugee legislation, strengthening implementation of existing laws, enhancing inter-agency coordination, and establishing specialized support mechanisms to ensure effective protection of refugee women's rights against gender-based violence.

Keywords: Refugee Women, Gender-Based Violence, Human Rights, India, Legal Protection, UNHCR, Constitutional Rights

1. INTRODUCTION

1.1 Background and Context

India hosts approximately 290,000 refugees and asylum seekers from various countries, making it one of the significant refugee-hosting nations in Asia. Among these displaced populations, women constitute a substantial proportion and face unique vulnerabilities due to the intersection of their gender, refugee status, and socio-cultural marginalization. The global refugee crisis has intensified in recent years, with conflicts in Afghanistan, Myanmar, Sri Lanka, and other neighboring countries leading to increased displacement flows into India.

Refugee women in India are considered among the most vulnerable sections of society, facing socio-cultural and economic discrimination, gender-based violence, refugee persecution, and forced engagement in sex trafficking and begging rackets. Their vulnerability stems from multiple factors including lack of legal status, limited access to basic services, language barriers, and discrimination based on religion, ethnicity, and nationality.

1.2 Problem Statement

Despite India's constitutional provisions guaranteeing fundamental rights to all persons and its commitment to various international human rights treaties, refugee women continue to experience severe forms of gender-based violence with limited access to protection and remedies. The absence of a comprehensive national refugee law and India's non-ratification of the 1951 Refugee Convention creates a legal vacuum that leaves refugee women particularly vulnerable to rights violations.

Gender-based violence against refugee women manifests in various forms including sexual assault, domestic violence, human trafficking, early and forced marriage, honor-related crimes, and economic exploitation. These violations are often perpetrated with impunity due to the victims' precarious legal status, fear of deportation, and limited knowledge of available remedies.

1.3 Research Objectives

This research aims to:

- Analyze the current legal and policy framework governing the protection of refugee women against gender-based violence in India
- Examine the various forms of gender-based violence experienced by refugee women

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- Assess the effectiveness of existing protection mechanisms and support systems
- Identify gaps and challenges in the current approach to refugee women's protection
- Propose comprehensive recommendations for strengthening legal and institutional frameworks

1.4 Significance of the Study

This study addresses a critical gap in academic research on refugee women's rights in India and provides evidence-based recommendations for policy makers, legal practitioners, and civil society organizations working on refugee protection. Understanding the specific challenges faced by refugee women against gender-based violence is essential for developing targeted interventions and ensuring compliance with international human rights standards.

2. LITERATURE REVIEW

2.1 Global Context of Gender-Based Violence against Refugee Women

International research demonstrates that refugee women face heightened risks of gender-based violence throughout their displacement journey. Studies from various contexts including Rohingya refugee camps in Bangladesh reveal that reporting of GBV cases has significantly increased, with women and girls experiencing physical assault, sexual violence, emotional abuse, and denial of resources.

The use of sexual and gender-based violence as a tool for ethnic cleansing has had severe impacts on the state of sexual and reproductive health within refugee communities, with inadequate availability of comprehensive care placing women and girls at increased risk of morbidity and mortality.

2.2 Legal Framework for Refugee Protection

The international legal framework for refugee protection is primarily governed by the 1951 Refugee Convention and its 1967 Protocol, along with various regional instruments and human rights treaties. However, the application of these frameworks to gender-related persecution has historically been limited, with refugee laws typically working against women due to narrow interpretations of persecution grounds.

Recent developments in refugee jurisprudence, particularly in cases involving Afghan women under Taliban rule, demonstrate a shift toward recognizing gender-related persecution through cumulative approaches that consider the broad spectrum of discriminatory measures against women's rights.

2.3 Gender-Based Violence: Definitions and Manifestations

Gender-based violence is defined as violence directed against a person because of their gender or violence that affects persons of a particular gender disproportionately. In refugee contexts, GBV encompasses physical, sexual, emotional, and economic violence, often occurring in domestic settings but also in institutional and community contexts.

The manifestations of GBV against refugee women include domestic abuse, rape, dowry-related violence, early and forced marriage, honor crimes, sexual harassment, trafficking, and economic exploitation. These forms of violence are often underreported due to social stigma, fear of retaliation, and lack of accessible reporting mechanisms.

2.4 Previous Studies on Refugee Women in India

Limited academic research exists specifically focusing on refugee women's experiences in India. Existing literature primarily examines refugee protection from a general perspective, with some studies addressing specific communities such as Tibetan, Sri Lankan Tamil, and Rohingya refugees. Research indicates that refugee women in India face particular challenges related to documentation, access to services, and protection from violence due to the absence of comprehensive refugee legislation.

3. Legal and Policy Framework in India

3.1 Constitutional Provisions and Article 21

Article 21 of the Indian Constitution provides that "no person shall be deprived of his life or personal liberty except according to the procedure established by law". This fundamental right extends to all persons, including foreigners and refugees, and has been progressively interpreted by Indian courts to encompass a wide range of rights including the right to live with dignity, protection from violence, and access to basic services.

The Supreme Court of India has established that the principle of non-refoulement can be read into Article 21, providing protection against forcible return to countries where refugees face persecution. However, the scope of this protection varies and is subject to national security considerations.

3.2 International Human Rights Treaties

India is a signatory to several international human rights treaties that create obligations for refugee protection, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

These treaties impose positive duties on India to provide protection to refugees and ensure non-discrimination based on gender, religion, or other protected characteristics. The CEDAW Committee has specifically emphasized state obligations to address sex and gender-based discriminatory aspects of various forms of persecution.

3.3 Domestic Legislation

Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act (PWDVA) 2005 provides comprehensive civil and criminal remedies for women experiencing domestic violence, including physical, sexual, verbal, emotional, and economic abuse. The Act recognizes women's right to reside in violence-free homes and provides for protection orders, residence orders, monetary relief, and compensation.

However, the application of PWDVA to refugee women faces practical challenges due to documentation requirements and limited awareness among refugee communities about available remedies.

Criminal Laws and Gender-Based Violence

Recent legal reforms in July 2024 introduced the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinayam (BSA), which replaced colonial-era criminal laws and strengthened penalties for crimes like rape while introducing measures to expedite justice. The government has established 855 fast-track courts across the country for cases involving crimes against women.

3.4 Gaps in Legal Protection

Despite constitutional guarantees and domestic legislation, significant gaps exist in the protection of refugee women against gender-based violence. India's non-ratification of the 1951 Refugee Convention means that refugee status determination and protection remain ad-hoc and discretionary. The absence of comprehensive refugee legislation creates uncertainty about rights and entitlements, leaving refugee women particularly vulnerable to exploitation and abuse.

4. Current Challenges and Vulnerabilities

4.1 Forms of Gender-Based Violence

Refugee women in India experience multiple forms of gender-based violence throughout their displacement. Physical violence includes beatings, assault, and torture, often perpetrated by intimate partners, community members, or authorities. Sexual violence encompasses rape, sexual assault, forced prostitution, and trafficking for sexual exploitation.

Psychological and emotional abuse includes threats, intimidation, isolation, and verbal harassment based on gender, ethnicity, or religion. Economic violence manifests through denial of resources, forced labor, confiscation of documents, and prevention from accessing employment or education.

4.2 Socio-economic Vulnerabilities

The precarious legal status of refugee women limits their access to formal employment, education, and social services, creating conditions of extreme vulnerability. Many refugee women are forced into informal and exploitative work arrangements, including domestic labor, street vending, and commercial sex work.

Lack of access to healthcare services, particularly reproductive health services, places refugee women at risk of complications during pregnancy and childbirth, sexually transmitted infections, and untreated injuries from violence. Educational barriers affect both adult women and girls, perpetuating cycles of poverty and dependency.

4.3 Lack of Legal Status and Documentation

The absence of legal status and proper documentation creates multiple barriers for refugee women seeking protection from gender-based violence. Without recognized identity documents, refugee women cannot access formal justice systems, open bank accounts, enroll children in schools, or access government welfare programs.

The fear of detention and deportation prevents many refugee women from reporting crimes or seeking help from authorities, creating a climate of impunity for perpetrators. Recent cases of refoulement, including the deportation of Rohingya refugee women to Myanmar, have heightened these fears.

4.4 Access to Services and Support Systems

While India has established 802 One-Stop Centres across the country to provide integrated support to women affected by violence, refugee women face significant barriers in accessing these services due to documentation

requirements, language barriers, and lack of awareness. The services provided include medical aid, legal assistance, temporary shelter, police assistance, and psycho-social counseling, but their accessibility to refugee populations remains limited.

Mental health support for refugee women is particularly inadequate, despite high levels of trauma and psychological distress resulting from persecution, displacement, and ongoing violence. The absence of culturally sensitive and linguistically appropriate services further compounds these challenges.

5. Case Studies and Analysis

5.1 Rohingya Refugee Women

Rohingya refugee women represent one of the most vulnerable groups in India, facing systematic persecution both in Myanmar and continued marginalization in India. Many Rohingya women have experienced intimate partner violence, child marriage, and trafficking, with some being directly trafficked from Myanmar or via Bangladesh and sold as brides.

The case of Hasina Begum, a 36-year-old Rohingya woman and mother of three who was refouled to Myanmar in March 2022 despite orders from the Manipur State Human Rights Commission and pending Supreme Court cases, illustrates the extreme vulnerability of Rohingya refugee women to rights violations. Her deportation was conducted in violation of both international and domestic law, highlighting the gap between legal protections and their implementation.

Living conditions for Rohingya refugee women in settlements across India lack basic amenities including adequate toilets and showers, making menstrual hygiene management extremely difficult and contributing to health problems and social stigma. The fear of detention or deportation prevents these women from reporting violence or crimes against them.

5.2 Afghan Refugee Women

Afghanistan's deteriorating situation, particularly following the Taliban takeover in August 2021, has led to increased numbers of Afghan women seeking refuge in India. According to UNHCR data, there are currently 19,338 Afghan refugees in India, though this excludes nearly 13,000 Afghan students and former military personnel in legal limbo.

Afghan refugee women face particular challenges related to Taliban restrictions on women's rights, including education bans, employment prohibitions, and movement restrictions. The European Court of Justice has recognized that discriminatory measures against women in Afghanistan constitute persecution warranting refugee status for Afghan women and girls.

In India, Afghan refugee women must navigate complex visa and documentation processes, with only about 150 people receiving long-term visas in 2019 according to UNHCR records. The majority remain in precarious situations without proper legal status, making them vulnerable to exploitation and gender-based violence.

5.3 Other Refugee Communities

Women from other refugee communities in India, including Sri Lankan Tamils, Tibetans, and various African and Middle Eastern nationals, face similar challenges related to gender-based violence and protection gaps. The differential treatment of refugee communities based on their countries of origin creates additional vulnerabilities for women from certain nationalities.

The Citizenship Amendment Act (CAA) 2019, which provides fast-track citizenship to certain religious minorities from Afghanistan, Bangladesh, and Pakistan, has been criticized for its discriminatory exclusion of Muslim refugees, including persecuted groups like Rohingya and Hazara women.

6. Protection Mechanisms and Best Practices

6.1 UNHCR Initiatives

The United Nations High Commissioner for Refugees (UNHCR) plays a crucial role in providing protection and assistance to refugee women in India through registration, refugee status determination, and advocacy with the Indian government. UNHCR implements an Age, Gender, and Diversity Mainstreaming (AGDM) approach to screen for vulnerable cases and fast-track protection for women at risk.

UNHCR's guidelines for protection of refugee women emphasize the need for gender-sensitive policies and practices, though implementation depends on the discretion of host country governments. In India, UNHCR works with local NGOs to provide services including legal aid, medical treatment, and education support for refugee women.

6.2 Government Programs

The Indian government has established various mechanisms for addressing violence against women, including the One-Stop Centre scheme under Mission Shakti. These centers provide integrated support including medical aid, legal assistance, temporary shelter, police assistance, and psycho-social counseling to women affected by violence.

However, the accessibility of these services to refugee women remains limited due to documentation requirements and lack of specific provisions for non-citizen populations. The Protection of Women from Domestic Violence Act provides civil remedies for domestic violence but requires awareness and access to legal processes.

6.3 Civil Society Organizations

Civil society organizations play a vital role in bridging gaps in government services and providing specialized support to refugee women. Organizations like the Azadi Project provide leadership skills, livelihood training, and psychosocial support to refugee and marginalized women.

The Jesuit Refugee Service (JRS) India works specifically with refugee women and children, providing educational and livelihood support while managing community centers that enable capacity building and independence. Other organizations focus on legal aid, healthcare access, and advocacy for refugee rights.

6.4 One-Stop Centres and Support Services

India's network of 802 One-Stop Centres represents a significant infrastructure for supporting women affected by violence, though their utilization by refugee populations remains limited. These centers are designed to provide comprehensive services under one roof, including emergency response, medical assistance, legal aid, counseling, and temporary shelter.

The effectiveness of these centers for refugee women could be enhanced through specific protocols for serving non-citizen populations, interpretation services, and partnership with refugee-serving organizations.

7. CONCLUSION

The protection of refugee women against gender-based violence in India presents a complex challenge requiring comprehensive legal, policy, and institutional reforms. While India's constitutional framework and domestic legislation provide some protections, significant gaps exist in their application to refugee populations due to the absence of comprehensive refugee legislation and the precarious legal status of refugees.

Refugee women in India face multiple and intersecting forms of gender-based violence, including physical, sexual, psychological, and economic abuse, often perpetrated with impunity due to their vulnerable status and limited access to justice. The cases of Rohingya, Afghan, and other refugee women illustrate the urgent need for targeted interventions that address their specific vulnerabilities and protection needs.

The existing protection mechanisms, including UNHCR initiatives, government programs, and civil society interventions, while valuable, remain insufficient to address the scale and complexity of challenges faced by refugee women. The One-Stop Centre network represents a significant opportunity for expanding protection services, but requires specific adaptations to serve refugee populations effectively.

Moving forward, India must adopt a comprehensive rights-based approach that recognizes refugee women as rights-holders entitled to protection and services. This requires enacting dedicated refugee legislation, strengthening implementation of existing laws, enhancing inter-agency coordination, and establishing specialized support mechanisms that address the unique intersection of gender and refugee status.

The protection of refugee women against gender-based violence is not only a legal and moral imperative but also essential for India's commitment to human rights and gender equality. As displacement continues to affect millions globally, India's approach to refugee women's protection will serve as a model for the region and contribute to broader efforts to ensure dignity and rights for all displaced populations.

The recommendations presented in this paper provide a roadmap for transforming India's approach to refugee women's protection, emphasizing the need for sustained political will, adequate resources, and collaborative efforts among all stakeholders. Only through such comprehensive reforms can India fulfill its obligations to protect refugee women against gender-based violence and ensure their fundamental human rights are respected and upheld.

8. Suggestions

8.1 Legal and Policy Reforms

Enact Comprehensive Refugee Legislation: India should enact comprehensive national refugee legislation that specifically addresses the protection needs of refugee women against gender-based violence. This legislation should include provisions for refugee status determination, non-refoulement, access to basic services, and protection from discrimination.

Gender-Sensitive Refugee Policies: Develop and implement gender-sensitive policies that recognize the specific vulnerabilities and protection needs of refugee women, including provisions for addressing gender-based persecution and ensuring access to gender-appropriate services.

Strengthen Implementation of Existing Laws: Enhance the implementation of existing domestic violence and criminal laws to ensure their effective application to refugee women, including removal of documentation barriers and provision of interpretation services.

8.2 Institutional Mechanisms

Establish Specialized Units: Create specialized units within police forces and judiciary to handle cases involving refugee women and gender-based violence, with training on refugee law, trauma-informed approaches, and cultural sensitivity.

Coordination Mechanisms: Establish formal coordination mechanisms between government agencies, UNHCR, and civil society organizations to ensure effective referral systems and comprehensive service delivery for refugee women.

National Human Rights Commission Role: Strengthen the role of the National Human Rights Commission in monitoring and addressing violations of refugee women's rights, including establishment of specific protocols for investigating gender-based violence cases.

8.3 Capacity Building

Training Programs: Develop comprehensive training programs for law enforcement officials, judiciary, healthcare providers, and social service workers on refugee rights, gender-based violence, and culturally sensitive service delivery.

Community Awareness: Implement community awareness programs to educate refugee communities about available services, legal rights, and reporting mechanisms for gender-based violence.

Legal Aid Access: Ensure accessible legal aid services for refugee women, including provision of interpretation services and legal representation in cases of gender-based violence.

8.4 Community-Based Interventions

Community Support Networks: Strengthen community-based support networks and women's groups within refugee communities to provide peer support, awareness raising, and early intervention for cases of gender-based violence.

Economic Empowerment: Develop targeted economic empowerment programs for refugee women, including skills training, microfinance, and access to livelihood opportunities that reduce vulnerability to exploitation and abuse.

Mental Health and Psychosocial Support: Expand access to mental health and psychosocial support services for refugee women, including trauma counseling, support groups, and community-based mental health interventions.

WASH and Dignity: Ensure access to gender-appropriate water, sanitation, and hygiene facilities in refugee settlements and camps, including provisions for menstrual hygiene management and privacy.

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