

The contours of “traditional hospitality”: A study of Rohingyas in india¹

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Introduction

This essay seeks to locate the rights of Rohingyas – recognized as *de jure* stateless but refugees in India – in the context of slums, where a large part of those living in Delhi and Mewat are known to live.

Forced migration studies focusing for instance on the city of Delhi has documented in considerable detail the abysmal living condition of refugees.² In themselves, they make for a compelling account of the state of refugees but remain largely descriptive, without explaining why the quality of protection of refugees remains arguably in a limbo. While it may be argued that the absence of a national law, with institutions that would define a refugee from a mere foreigner is evidence enough for their precariousness, there is little analysis of what I call the second tier of barriers that impact the exercise of their rights. Thus, reporting on the quality of life of refugee communities in the city has failed to account for the material conditions that are marked by acute poverty, discrimination, and absence of opportunities within the broader legal-institutional framework, even while generously employing the language of rights.

Relying on existing scholarship that has analysed various actors, institutions and programmes of slum “improvement” and “resettlement”, in the context of Delhi, this essay attempts to comprehend the legal and institutional frame that governs slums, urban spaces that a significant population of Rohingyas occupy in Delhi, Mewat and Jammu. One of the objectives of this essay then is to attempt to answer the following questions: In what ways does shelter of this nature stop Rohingyas from fulfilling their basic needs? What success stories, if any, do experiences of people reveal? In what ways do the refugees' access to these unauthorized/slum areas in the city speak to the body of rights, both under international law as well as its domestic variety?

Grounding this research within an understanding of the slum in an urban setting is

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- 1 I acknowledge the assistance of the following individuals: Ishita Dey, a PhD scholar at Delhi University gave valuable inputs at the initial stages of my research and asked pertinent questions about the framework that I have employed in this essay. Tarangini Sriraman, Assistant Professor at Delhi University directed me to some fascinating work on identity documentation work among the urban poor that others have undertaken in Delhi and also sharing some of her own work. Ashok Agrawal, Lawyer and my colleague, unwittingly helped also during the preliminary stages of this work, without which this essay would not have taken this shape.
 - 2 There are numerous mainstream print media accounts which describe without contextualizing refugee experiences. I note here just two. Urban profiling of refugee situations in Delhi: Refugees from Myanmar, Afghanistan and Somalia and their Indian neighbours: A comparative study, UNHCR, September 2013, Bright Lights, Big City: Urban Refugees Struggle to Make a Living in New Delhi, Women's Refugee Commission, July 2011, available at <http://womensrefugeecommission.org/resources/document/733-bright-lights-big-city-urban-refugees-struggle-to-make-a-living-in-new-delhi> (last accessed 9.3.2015)

relevant for yet another reason. In the last decade, UNHCR has emphasized urban spaces as the site of care where it also seeks to make “self-reliance” achievable. It must be stated though that this shift in thinking from the “camp” to the “urban areas” is alive not only to the rapid urbanization of cities across the globe but also to the host country conditions, which in India's case is in the nature of a “generous host” and “humanitarian”, in specific reference to India's policy towards Rohingyas.³ But, to repeat, neither characterizing Indian refugee policy as “generous” nor the aspirations of the international refugee agency for the care of refugees as “humanitarian”- can or should be seen in a vacuum. The material conditions of refugees has both, a direct bearing on and reflective of the politics of care and limits of humanitarianism.

Methodology

This research attempts to cover 4 cities (Jaipur in Rajasthan, Hyderabad in Telangana, Jammu in Jammu & Kashmir, Mewat in Haryana and Delhi) over a period of 5 months. In the first leg of the study, which this paper currently reflects, primary data covers Delhi and Mewat. In the second leg, the study intends to analyse data from Jaipur (Rajasthan), Jammu (Jammu and Kashmir) and Hyderabad (Telangana). However, since the author has been in touch with the Rohingyas in Jammu for the last few years, information from either visits or available documentation has also been used where appropriate. The UNHCR, the Foreigners Regional Registration Office, Delhi (FRRO) and UNHCR's implementing partner, the Socio-Legal Information Centre was also contacted on specific queries with respect to their mandate vis-a-vis Rohingyas. Secondary data includes research carried out by UNHCR and its implementing partners, cases decided or pending in courts as well as RTI information sought from various ministries and departments on the applicable law. At the time of submitting this draft of the essay, replies to the RTI application was not received.

The primary data gathered for the purposes of this study is based on unstructured interviews with Rohingyas in Delhi and Mewat. Institutions who have helped provide relief materials to Rohingyas, such as the Social Welfare Trust (affiliated to Jamaat-i-Islami Hind) were contacted.

Introduction: the community

The writ petition in the Supreme Court of India

In 2013, two Rohingya refugees filed a writ petition⁴ under Article 32 of the Constitution before the Supreme Court seeking a number of directions against the Government of India and the governments of Delhi and Haryana praying for access to and availability of basic facilities. The Petition argued that this class of people who has suffered persecution,

3 Jayant Gupta, Khalid's arrest sparks off debate on Rohingyas in India, Times of India, 20 November 2014, <http://timesofindia.indiatimes.com/india/Khalids-arrest-sparks-off-debate-on-Rohingyas-in-India/articleshow/45220794.cms> (last accessed 22.2.2015).

4 Jaffar Ullah and Anr v Union of India, W.P(C) No. 859 of 2013, Supreme Court, pending. Copy of the writ petition was accessed on the website of Human Rights & Law Network. On file.

violence and displacement in Burma are subject to further “serious violation” of the right to life, maternal health and basic human dignity. It noted that Rohingyas live in deplorable conditions in “makeshift camps”⁵ in Delhi and Mewat where basic medical care, education and a conducive atmosphere for a life of dignity is denied. The petition made it clear that it “...does not seek changes to the official refugee status of this community...”, that only humanitarian assistance is prayer for to ensure their survival and well being.⁶

The petition rested its case on the contemporary socio-political context of the Rohingyas in Arakan state of Western Burma as well as fact finding reports of Human Rights & Law Network (HRLN) in 2012 and 2013. The Petitioners are supported by HRLN in the process of filing the petition and defending them in Court. It stated that even if small in numbers (in comparison to the Rohingya immigration to other countries), they “face substantial challenges as a result of language issues, isolation and their stateless/paperless status”.⁷ The petition hinged on the fact finding reports.⁸

Housing conditions, access to adequate and nutritive food supplies, sanitation and water facilities in the locality, the state of the children and lack of educational facilities, the psychological impact of the surroundings on children, access to health care facilities, including maternal health care has been described in some detail.⁹ The petition argued that these conditions in the “camps” had not improved on their second visit (in July 2013, first being November 2012); on the contrary, they had deteriorated.¹⁰ The petition also noted the threats of evictions faced by Rohingyas but does not provide a background to the relationship of the Rohingyas to the land and landowners.¹¹ It concludes:

“...the fact-finding team outlined the following major concerns: The refugees do not have a stable home and they have been asked to leave the land in August 2013. The camp does not have adequate toilet facilities. The camp residents cannot purchase the subsidized rations or access free medical care guaranteed to BPL card carriers. The women are not safe from harassment.”¹²

The fundamental rights argument of the petition rests on Article 21, which, it is argued, guarantees Rohingyas the right to health care services and education. It is also argued that the “camp” conditions in Delhi and Haryana violate “refugee's fundamental rights to life, health and education” while relying upon the cases: Consumer Education and Research

5 Ibid. Para 1. Emphasis added.

6 Ibid.

7 Ibid. Para 9.

8 Three reports were extensively relied upon – Fact-finding on access to contraception, Rohingya refugee camp, Mewat, dated April 2013, Rohingya refugee Camp, Fact Finding, Kalindi Kunj, New Delhi dated November 2012 and Rohingya Delhi Camp, Fact-finding, dated July 2013 – to describe the conditions in the slums in Mewat and Delhi.

9 Supra note 5, Paras 10-20.

10 Ibid. Paras 21-29.

11 Ibid. Para 34.

12 Ibid. Para 40.

Centre v Union of India¹³ and Mahendra Pratap Singh v State of Orissa¹⁴ on the point that the right under Article 21 “is a most imperative constitutional goal” (sic); National Human Rights Commission v State of Arunachal Pradesh and anr¹⁵ to state that Article 21 rights and protection extend to refugees and Paschim Banga Khet Mazdoor Samiti v State of West Bengal and anr¹⁶ where the Supreme Court discusses the welfare obligations of the government in providing health care. It also submitted that Rohingyas are a “disadvantaged group” under the Right of Children to Free and Compulsory Education Act, 2009 (hereafter “Right to Education Act”) and thus qualify for free education. It pointed out that having signed and ratified some international conventions that obligate the state to strive towards making fundamental rights a reality, the State was bound to fulfill the rights of Rohingyas, and specifically, the right to health care and the rights of children to health care and health care services.¹⁷

In its prayer, the petition has sought directions against Respondents No 3 & 5 (NCT of Delhi and State of Haryana):

- To grant the camp residents in Haryana and Delhi permission to stay on the land.
- To take appropriate steps to enrol all children in the nearest public schools as per the Right to Education Act.
- To immediately provide portable water on a weekly basis to the camp residents in Delhi and Haryana.
- To provide porta-cabins and mobile sulabh sauchalaya toilets to ensure protection from the elements and hygienic waste facilities.

And against Respondents No. 2 & 4 (the Department of Health and Family Welfare of both the Delhi and the Haryana administrations):

- To ensure that all pregnancies are registered, that all pregnant women receive antenatal care, that all women deliver with a skilled birth attendant, and receive post-delivery services, including access to contraception are available as per the National Rural Health Mission (NRHM) and its schemes.
- To ensure new born care including vaccinations and adequate nutrition for all infants in the camps including bi-weekly visits from a paediatric physician.
- To issue directions to the Government Medical College, Nuh, Haryana and to the public health facilities in New Delhi to provide free treatment to camp residents.
- To provide nutritional supplements to the residents through local Anganwadi centres and to send Anganwadi workers to the camps to ensure that the camp residents have meaningful access to the local Anganwadi centres.

I draw, in particular, two inferences, from a reading of the writ petition. First, the overall tone and tenor of the petition views the Rohingya refugee problem as one relating primarily

13 (1995) 3 SCC 42

14 AIR 1997 Ori 37

15 (1996) 1 SCC 743

16 1996 SCC (4) 37

17 Jaffar Ullah and Anr v Union of India, W.P(C) No. 859 of 2013, Supreme Court, pending. Copy of the writ petition was accessed on the website of Human Rights & Law Network, paras 43-52.

to health. However, access to health is symptomatic of the structural conditions and institutions that have shaped the community, both State lead (external) and cultural.

Second, the writ petition characterizes slums or habitations as “camps” when officially neither the government of India nor the UNHCR describes them as such. Curiously, a news report of November 2014 in the Times of India describes the settlement in Jammu as the only officially recognized “camp”.¹⁸ The article states, “While an official camp for Rohingyas, under the United Nations High Commissioner for Refugees (UNHCR) is located in Jammu, members of the community are spread across India, including some parts of Kolkata. There are nearly 20-25,000 Rohingyas living in India, most of them in Jammu.” At the end of the article, it further explains, “In India, Rohingyas, after their arrest are supposed to be sent to Tihar Jail over which the UNHCR has jurisdiction. After due processing, the Rohingyas are sent to the camp in Jammu.”

The implication of the terminology “camps” in its classical sense denotes a certain organization and management of refugee population. In the case of Delhi and Haryana, the term “camp” is loosely used, whereas, it would be more appropriate to understand these spaces as they are officially described, i.e. “slums” or “slum-like settlements”. It is pertinent to note that in some instances, such as the settlements in Madanpur Khader and Chandeni village in Mewat, the land belongs to private entities or individuals. Employing official labels reveal not only the reasons for the barriers that the writ petition describes but also allows us to understand the four corners of the institution of the law that is invoked in support of refugee rights.

The social, political and human capital of Rohingyas

Rohingyas have been known to have migrated to India since the late 1970s. Writing in the Economic and Political Weekly, the author, J P Anand, focuses on the large scale migration of Rohingyas into Bangladesh but notes, “India too is concerned about the refugees because small groups of them have succeeded in slipping into this country”.¹⁹

An estimated 9000 Rohingyas are registered with UNHCR, as per figures declared in September 2014. Thousands of others are also reported to be in India but unregistered.²⁰ Within India, Rohingyas are a mobile group²¹, constantly changing locations or cities either due to poverty, evictions or for the fear of arrests. Arrests of Rohingyas, primarily under the Foreigners Act, 1946 and the Passports (Entry into India) Act, 1920 is common but reports

18 See supra note 4.

19 J P Anand, Refugees from Burma, Economic and Political Weekly, July 8, 1978, p.1110.

20 Nita Bhalla, Myanmar's Rohingya stuck in refugee limbo in India, Reuters, 15 September 2014. <http://in.reuters.com/article/2014/09/15/us-foundation-stateless-india-rohingya-idUSKBN0HA07F20140915> (last accessed 22.2.2015)

21 See for instance, Bindu Shajan Perappadan, Rohingya asylum seekers back in Delhi, The Hindu, 18 May, 2012, <http://www.thehindu.com/news/national/rohingya-asylum-seekers-back-in-delhi/article3433267.ece> (last accessed 22.2.2015).

suggest that some have also been suspected to have been involved in serious offences²² under the IPC, the Arms Act and other penal laws.

2012, it may be argued, was a turning point for Rohingyas. Having spent a considerable time in India, Rohingyas had reached out to Muslim organizations such as Jamaat-e-Islami Hind and Jamait Ulema-I-Hind for assistance. In a letter dated 20th April 2012 from Mahmood A. Madani, a former member of the Rajya Sabha, to P. Chidambaram, the former Home Minister, the letter noted the abject living conditions of Rohingyas and asked UNHCR to intervene “...to solve the entangle issue of the grant of refugee status...” (sic) and take “...urgent steps for providing relief and shelter on humanitarian grounds.”²³ In May 2012 protests were carried out before UNHCR at the end of which the government of India issued a notification granting them “Long Stay Visas” and permitted UNHCR to carry out refugee status determination. Until then, most Rohingyas were given “asylum seeker cards” a document that did not legally recognize them as refugees.

A large number of Rohingya nationals in Delhi and Haryana live in slums or slum like conditions. In Delhi, Rohingyas live in, among others, Madanpur Khader²⁴ and Shaheen Bagh²⁵ in South Delhi and in Khajuri Khas²⁶ in North East Delhi. These areas have Rohingya concentrations but refugees have also settled in other localities in the city. The slums, whether on government land (Shaheen Bagh and Khajuri Khas) or private land (Madanpur Khader, Chandeni village, Mewat), lack basic necessities, including portable water, electricity, sanitation and sewage and security – of tenure and from the natural environment.

In Madanpur Khader, the slum housing about 70 families is on land owned by a non-governmental organization, Zakat Foundation, “which collects and utilizes ‘zakat’ or charity for socially beneficial projects in a transparent and organized manner.”²⁷ This organization has been providing assistance to the Rohingyas, atleast from 2012 when the community was mobilized for protests before UNHCR in New Delhi. The organization and the community has however had a uneven relationship, with each accusing the other of mis-appropriation of money in the past. Rohingyas were reportedly asked to leave the plot of land in Madanpur Khader which they had begun to live on when a large number of them arrived a few years ago. Reportedly, the Rohingyas dug their heel and refused to leave, stating that if the NGO has received funds in the name of assisting the community, the least the community can have is a continued permission to live on it.

Mohammad Hamid²⁸ has lived on the Zakat Foundation plot in Madanpur Khader for a few

22 Supra note 4. This newsreport gives a figure of 20000-25000 as Rohingya population in India. It is practically impossible to agree on a number.

23 Letter dated 20th April 2012 from Mahmood A. Madani to P. Chidambaram. On file.

24 A designated resettlement colony near the banks of the Yamuna river and the Okhla barrage.

25 Shaheen Bagh and Madanpur Khader are adjacent localities.

26 Khajuri Khas comprises several blocks including Bihari pur Extension, near C R P Campus, Khajuri Colony E-Block, Khajuri Colony F-Block, Mangal Pandey Road, Khajuri Colony, E-Extn., Left Out Part E-Block, and Khajuri Khas Village – 1) find any report focusing on these slum clusters.

27 <http://www.zakatindia.org/AboutUs.html> (last accessed 2.3.2015)

28 The name of the interviewee has been changed to protect his identity. Interview at the Zakat Foundation plot,

years and is one of the first arrivals in India. This settlement houses 70 families and is the most visited of the sites. The HRLN report (noted in the previous section) on the basis of which the writ petition was filed in the Supreme Court in 2013 refers to the conditions in this settlement in some detail.²⁹ These conditions have hardly changed. However, following permission to build more homes, some construction activity is visible. The settlement has, at its entrance, something akin to a store for old newspapers and scarp where they are sorted and sold.

In Shaheen Bagh, the locality adjacent to Madanpur Khader, government lands that are now the site of the Delhi Metro construction activity, also house the Rohingyas. Not many families live on this site, and it appears that they share the plot with local Indians. This site too is marked by uneven land, unsanitary conditions, lack of sewage and sanitation facility, and the absence of portable water and electricity.

Tahira³⁰ has lived in India for 4 years and is recognized as a refugee. She initially lived in Jammu for 9 months and came to Delhi in May 2012, to be part of the protests. When the UNHCR asked all Rohingyas to return to their place of residence in India, Tahira returned. She successfully applied for refugee status while in Jammu but the costs of travelling compelled her family to move back to the Capital in the Madanpur Khader settlement. She notes that the family left for Rewasan (in Nuh tehsil, Mewat) because of constant harassment. The family, along with 60 other families, was evicted after which they lived in Nangloi in Delhi (a Jhuggi Jhopari colony near Najafgarh in West Delhi). They migrated once again and left for Chandeni village in Mewat where she now works as a caretaker in a school set up by the community and supported by a non government organization.

There are 15 families living in a 3 acre plot of land in Chandeni village. The community has a mosque and a school and is about half a kilometre away from the main Delhi-Alwar highway. Women mostly take care of the homes while men work as construction works and scrap dealers when they find employment. People of this settlement note that they do not work in the fields even though the settlement is surrounded by mustard fields. The land was initially leased to the community for a period of 6 months. Interviewees mentioned that a man from Saudi Arabia agreed to pay the entire rent for 6 months but has reportedly paid only for 3 months. The total rent for the lease is Rs. 1.5 lakhs. No lease agreement exists and it is also not clear on what basis the lease was calculated. The threat of eviction is also real for people in Chandeni village.

Madanpur Khader, Kalindi Kunj, Delhi dated 4.2.2015.

29 See the following reports of UNHCR India and its implementing partners: UNHCR India, Rohingya Refugees and Asylum Seekers in India: A Situational Analysis, February 2014. Soft copy on file; Human Rights and Law Network, Report of the Rohingya Refugee Camp, Kalindi Kunj, New Delhi, November 2012, available at <http://www.hrln.org/hrln/reproductive-rights/reports/1626-rohingya-refugee-camp-kalindi-kunj-new-delhi-november-2012.html> (last accessed 12.1.2015). Other news reports also sketch a similar description of the Rohingyas. See for instance, Navtan Kumar, Burmese Muslim refugees in Delhi, search for haven in J&K, The Sunday Guardian, 2 November 2013, <http://www.sunday-guardian.com/news/burmese-muslim-refugees-in-delhi-search-for-haven-in-jak> (last accessed 2.3.2015).

30 The name has been changed to protect the identity of the interviewee. Interview in Chandeni village, Mewat on 12.2.2015 by the author.

A few kilometers away from Chandeni, is a village off the Delhi-Jaipur highway near the district headquarters, Nuh. Some people living on a government land in this village were interviewed before they were evicted in the third week of February, 2015.³¹ The narrative repeats itself except for the fact that unlike Chendani where children have the opportunity to attend school³² (and not just the madrasa in the neighbourhood), those in this village have not been able to get the district administration to pass a similar order.

The stumbling block: law as it speaks to the Rohingyas

A brief overview of the law

The Constitution, the Foreigners Act, 1946, the Passport Act, 1967 and the Passport (Entry into India) Act, 1920

The Constitutional basis of refugee protection: A very brief account

The fundamental rights chapter of the Indian Constitution has evolved in some progressive ways over the last few decades. A living document, the Constitution has, for long, provided the proponents of refugee rights the most concrete basis available for arguing a for an imprecise scheme of “refugee rights”. Invoking international conventions into Indian law under Article 51, the higher judiciary has included the opportunity to undergo refugee status determination and the right not to be deported with adjudication of asylum claims as a fundamental right under Article 21. In effect, this body of judge made law has trumped the State's power to illegally detain or deport refugees. It would therefore, not be out of place to infer that outside of any coherent legal framework, Constitutional provisions have at best ensured refugees who do not have access to refugee status determination processes at a place outside of Delhi, the right to avail these following a court order. Indeed, for refugees, this becomes the most important of rights. As is evident, for Rohingyas who have been arrested under the Foreigners Act, 1946 and the Passports (Entry into India) Act, 1920, this right assures them a temporary release from judicial custody.

The Foreigners Act, 1946 and the laws relating to Passports

The fundamental rights under the Constitution were further fortified with the Indian government's announcement³³ that every recognized mandate refugee would be issued a

31 Interviews with Mohammad Najeeb, Abdul, Sikander and Ali. The names of the interviewees have been changed to protect their identity. Interview by the author on 12.2.2015.

32 Interview with Mohammad Alisan, Chandeni, Mewat on 12.2.2015.

33 The Government of India announcement following protests of Rohingyas who had gathered from across the country. These protests had turned violent, with evictions of women and children on the grounds that a government land housing an ancient monument was occupied. After the Rohingyas met with UNCHR officials, the latter announced that “...following discussions with the Government of India, UNHCR has been informed that the Government will give them long stay visas that will allow them to legally remain in India, based on their UNHCR asylum-seeker cards. For this purpose, they need to return to their places of residence in India and approach the local Foreigner's Registration Officers (FRO).” For reports about the protests, see Zarni Mann, Rohingya Protesters in Delhi Urged to Leave, Irrawaddy, 16 May, 2012, <http://www.irrawaddy.org/refugees/rohingya-protesters-in-delhi-urged-to-leave.html> (last accessed 24.2.2015) and Bhattacharya, S. 2012. India's Myanmar refugees get visas after month of protests in Delhi, *The Nation*, May 17,

Long Term Visa under the Registration of Foreigners Act, 1939. The effect of this announcement, at the time, was not only that mandate refugees would be tacitly recognized as refugees by the Indian State but that UNCHR would now have the permission to carry out RSD qua Rohingyas.³⁴

As per the information currently available with the Ministry of Home Affairs, Long Term Visas are granted to Bangladeshi and Pakistani nationals of specified categories. This entitles them to apply for Indian citizenship.³⁵ It may be pertinent to add here that certain other categories of foreigners are issued “Stay Visa” which are also called Residence Permits. The MHA document titled “Powers delegated to State Governments/ UT Administrations/FRROs/ FROs for various visa related services” lists the heads under which the “Stay Visa/Residential Permits” are granted to Afghan nationals. In particular, it notes that these visas/residential permits are granted to Afghan nationals who have arrived in India after 2009 on the basis of refugee certificates granted by UNHCR. Although similar Residential permits are granted to Chin nationals from Burma, this has not been mentioned in the above noted document. That the Long Term Visa and Residential Permits are one and the same was also confirmed by FRRO. In case of the Rohingyas too, it was noted that because Rohingyas do not enter India with a valid visa, based on a letter issued by UNHCR attesting to their refugee status, the decision to grant Long Term Visa is taken by MHA.³⁶

According to information available from the Ministry of Home Affairs and the FRRO, the Long Stay Visas, Stay Visas/Residential Permits are issued by the FRRO. This process involves, in case of refugees, an application to the FRRO, a letter from the UNHCR confirming that the applicant is a recognized refugee, utility documents as proof of residence and a letter from the house owner confirming the same. The Ministry of Home Affairs claims that on the basis of the verification conducted by the FRRO or FRO (as the case may be), the Ministry will further verify whether the refugee is an economic migrant or a refugee fleeing persecution and issue a “long term visa” only to the latter.³⁷ Executive decisions that have carved out special cases of “Long Stay Visas”, “Stay Visas/Residence Permits” are inherently capable of being withdrawn.

(<http://www.thenational.ae/news/world/south-asia/indias-myanmar-refugees-get-visas-after-month-of-protests-in-dehli>) (last accessed August 12, 2012). Also see UNHCR, 2012. Summary conclusions of meeting with representatives of asylum-seekers from northern Rakhine State, Myanmar, (<http://www.unhcr.org.in/pages/showmainstory/10>)(last accessed August 11, 2012).

34 Until 2012, a handful of Rohingya nationals who had registered with UNHCR possessed biometric cards recognizing them as refugees. The rest were given upon registration (the first step in the refugee status determination process), an “asylum seeker” card, which is akin to an under-consideration certificate.

35 See Powers delegated to State Governments/ UT Administrations/FRROs/ FROs for various visa related services, Sl Nos. 46-48, last updated 16 September, 2014, mha1.nic.in/pdfs/ForeignD-PwrdlgtFRROs.pdf (last accessed 11.3.2015). The following annual report of Seemant Lok Sanghatan gives a background and update (until 2010) to the Long Stay Visa conundrum as it applies to Hindus from Pakistan: Building Inclusive Citizenship for Development and Peace in South Asia, Annual Report, January to December 2010, Seemant Lok Sanghatan & PEACE. On file.

36 Communication with Mr. Harbhajan, Assistant FRRO, New Delhi dated 9.2.2015.

37 Raina, P. 2012. Thousands of Myanmar Rohingyas struggle for refugee status in India, *The New York Times*, India Edition, May 18, <http://india.blogs.nytimes.com/2012/05/18/thousands-of-myanmar-rohingyas-struggle-for-refugee-status-in-india/> (last accessed September 7, 2012)

Apart from these documents, the Indian Passports Act, 1967 provides an avenue for foreigners whose identity or citizenship is indeterminate to apply for a Certificate of Identity. Section 4(2) of the Passports Act, 1967 lists the classes of “travel documents” that may be issued and includes under Section 4(2)(b), a “certificate of identity for the purpose of establishing the identity of a person”. Rule 4 of the Passports Rules, 1980 gives a list of the classes of passports and persons to whom such travel documents or passports may be issued.³⁸ It appears that only Tibetan nationals, who are the officially recognized category of refugees, are issued with Certificate of Identity.³⁹ Other than this category, the extent to which this provision of law has been invoked in resolving questions of citizenship is unclear.⁴⁰

These laws and the executive decisions noted above are significant for stateless Rohingyas who continue to be arrested by authorities across several cities. One of the known consequences of arrests of stateless individuals is continued detention.

The urban space: slums, slum dwellers and refugees

The urban space however throws up other challenges. While urban areas are recognized (as the Urban Refugee Policy of 2009 does) “... legitimate place for refugees to enjoy their rights, including those stemming from their status as refugees as well as those that they hold in common with all other human beings”, the “protection space” or an environment conducive “... for the internationally recognized rights of refugees to be respected and their needs to be met”⁴¹ is a tall order. How would an indeterminate body of “refugee law”, inherently capable of being withdrawn, speak to demands for shelter, the right not to be evicted, and others such as the rights to health care, education and food? In what ways can these fundamental rights be invoked by Rohingyas as slum dwellers? Is it the case that barriers to access services in urban areas is because of the “... pressure on resources and services that are already unable to meet the needs of the urban poor”? What may be relevant to bear in mind is that protection risks such as detention and deportation may not be the only casualty of exclusion from urban areas and the labour market.⁴² The exclusion from urban areas also manifests by making shelter itself as a casualty of the city.

38 Schedule II of Passports Rules, 1980. See Part II, “Travel documents”.

39 Refer Ministry of External Affairs, Government of India, Passports Seva, <http://passportindia.gov.in/AppOnlineProject/online/faqIdentityCertificate> (last accessed 11.3.2015)

40 The recent decision of the Delhi High Court in *Sheikh Abdul Aziz v State, NCT of Delhi, W.P (CrI) 1426/2013* is an important case in point. The Petitioner in this case was issued a Certificate of Identity and allowed to live in India. What is pertinent to note here are the submissions made by the Amicus Curiae on the delay of the Ministry of Home Affairs to determine the nationality of the Petitioner because of which he continued to be in illegal detention and the further submission that the delay caused entitled the Petitioner to compensation. The Court, in its order dated 17.4.2014 accepted the contention of the Amicus on this point. The order dated 17.4.2014 also indicates that neither the government of Delhi nor the MHA had any objection to the Petitioner being compensated except stating that such an order by the Court should be made while disposing off the writ petition. This matter was disposed off by an order dated 11 December, 2014.

41 UNHCR policy on refugee protection and solutions in urban areas, UNHCR, September 2009.

42 *Ibid.* paras 14-15.

The characteristics of the Rohingya shelter

Slums and the various categories of unauthorized settlements are densely populated government (and at times privately owned) lands that have been central to the imagination of the city. The goal of making world class cities co-exists with more than half its population living in slums in uninhabitable conditions. These unauthorized spaces, both recognized as well as unrecognized under the laws, are contested spaces, where slum dwellers, are caught in the cross roads of legal interpretation of slums as “nuisance” and governmental policy of “improvements” in slums and “resettlement”, a euphemism for evictions, homelessness and marginalization.⁴³

The term “Slum” is generic with different states evolving various categories for administrative convenience.⁴⁴ Among them, the Jhuggi Jhopari clusters, JJ resettlement colonies and the notified slum areas (also called the Slum Designated Areas) reportedly house half of Delhi's population. For the purposes of this paper, only these three settlement types will be taken into account since these are also possibly the settlement types that the Rohingyas have made their homes in.

The law, in brief

The Slum (Improvement and Clearance) Act, 1956 (hereafter the “Slum Clearance Act”), a central legislation governs the “improvement” and “clearance” of slums notified under it. Each State has to issue a notification to enforce this Act in its State. This law has been notified in Delhi⁴⁶ and Haryana⁴⁷ and thus governs all notified slums. Notified slums “are given administrative recognition that guarantees a certain level of basic service provision and due procedure in the case of eviction and rehabilitation.”⁴⁸ The Delhi Urban Shelter Improvement Board Act, 2010 (hereafter “DUSIB Act”), passed by the Delhi Legislative

43 While scholarship on slums and slum policies are far too many to note, I would like to note some that have focused on Delhi. See the set of research papers on the website of the Centre for Policy Research under their Cities of Delhi project (<http://citiesofdelhi.cprindia.org/about/>). See also, D. Asher Ghertner, Analysis of new legal discourse behind Delhi's slum demolitions, *Economic and Political Weekly* 43(20): 57-66, Tarangini Sriraman, Enumeration as Pedagogic Process: Gendered Encounters with Identity Documents in Delhi's Urban Poor Spaces, *South Asia Multidisciplinary Academic Journal*, 8/2013, <http://samaj.revues.org/3655>

44 The government of the National Capital Territory of Delhi, for instance, recognizes seven types of settlements, including Urbanised Village, Jhuggi Jhopari Clusters, Jhuggi Jhopari Resettlement Colonies, Slum Rehabilitation Colonies, Regularized-Unauthorized Colonies, Approved/Planned Colonies, Unauthorized Colonies and Walled city/Notified Slum Areas. Government of the National Capital Territory of Delhi, Annual Plan 2012-13 & 12th FYP 2012-17, Chapter on Urban Development, available at http://www.delhi.gov.in/wps/wcm/connect/DoIT_Planning/planning/plan+documents/index+write+up+volume+-+ii (last accessed 5.3.2015)

45 Shahana Sheikh and Subhadra Banda, *The Delhi Urban Shelter Improvement Board (DUSIB): The Challenges Facing a Strong, Progressive Agency*, May 2014, Centre for Policy Research, p.1.

46 Came into force in the Union territory of Delhi on 8.2.1957.

47 By a notification issued on 16.4.1990, the government constituted the Haryana Slum Clearance Board and adopted the Punjab Slum Areas (Improvement and Clearance) Act, 1961.

48 Shahana Sheikh and Subhadra Banda, *The Delhi Urban Shelter Improvement Board (DUSIB)*, May 2014, Centre for Policy Research, p.5, available at citiesofdelhi.cprindia.org (last accessed 20.2.2015).

Assembly, has constituted the Delhi Urban Shelter Improvement Board (DUSIB) under the Delhi government's Ministry of Urban Development. This department is responsible for the Jhuggi Jhopari clusters in Delhi and is mandated to survey, removal and resettlement, plan for their improvement and redevelopment, implement housing schemes for the people who are re-settled and constitute Basti Vikas Samitis⁴⁹ (Basti Development Councils). The DUSIB Act gives DUSIB with two broad mandates – the power to survey and the power to evict.⁵⁰

The Slum Clearance Act and DUSIB Act together articulate the “...standing policy for 'improving' slums and slum-like areas in Delhi (those which have been notified under the 1956 Act and Jhuggi Jhopari Clusters listed by the DUSIB)”.⁵¹

The table⁵² below provides a comparison of the mandate and functions of both Acts and the local authorities that are mandated to carry out the provisions of the Acts.

	Slum Areas (Improvement and Clearance) Act, 1956	The Delhi Urban Settlement Improvement Board Act, 2010
What is a slum or JJC?	<p>The 1956 Act defines a slum as a place “in any respect unfit for human habitation”; or places that “are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals”.</p> <p>The factors that go into deciding whether or not they are “unfit for human habitation” are the following:</p> <ul style="list-style-type: none"> (a) Repair (b) Stability (c) Freedom from damp (d) Natural light and air (e) Water supply (f) Drainage and sanitary conveniences (g) Facilities for storage, preparation, and cooking of food and for the disposal of waste water 	<p>The definition of a jhuggi jhopri basti in the DUSIB Act retains two bits of the same definition:</p> <ul style="list-style-type: none"> (i) the group of jhuggis is unfit for human habitation; (ii) it has to have been inhabited “at least by fifty households as existing on 31st March, 2002”. <p>The definition allows the Board to notify any jhuggi or jhuggis scattered in the nearby areas as part of a nearby jhuggi jhopri basti.</p>

49 Under the Delhi Urban Shelter Improvement Board Act, 2010, these are bodies designed to “assist and advise the Board on matters relating to the activities of the Board in respect of such basti.” The researchers, Shahana Sheikh and Subhadra Banda, argue that even though the Act envisages community participation through the constitution of these bodies, the Board does not have to seek the agreement of the community while making decisions. Supra note 48.

50 Supra note 48.

51 Supra note 48, p. 5.

52 Source: Shahana Sheikh and Subhadra Banda, The Delhi Urban Shelter Improvement Board (DUSIB): The Challenges Facing a Strong, Progressive Agency, May 2014, Centre for Policy Research, p.6.

Who improves it?	The Slum and JJ Board	All schemes will be prepared by the DUSIB, which may allow the owner of the land to execute the scheme (Section 12-4).
What gets done?	Necessary repairs; structural alterations; provision of light points and water taps; construction of drains, open or covered; provision of latrines; provision of additional or improved fixtures or fittings; opening up or paving of court yards; and removal of rubbish.	Provision of toilets; bathing facilities; improvement of drainage; provision of water supply; street paving, and provision of dustbins, or sites for garbage collection; street lighting, and provision of any like facilities.
Who pays?	Charges can be recovered from residents.	Charges can be recovered from residents (as fees or labour) if scheme is published (Section 10).

The boundaries of the UNHCR operations in India: Legal recognition and “protection”

The inherent structural barriers of slums

Once recognized, Rohingyas formally have access to government schools and hospitals and right to work in the formal sector. Through its implementing partners, UNHCR has also built a network across cities (where its Implementing Partner functions from) through which its policies and programmes of self reliance are implemented.⁵³ The Implementing Partners have a dual role, one involving service delivery and the other, facilitation of services that come within their mandate.

The urban space, and especially “illegal settlements” however are a step removed from the sphere of influence of the UNHCR system. The urban space is a veritable melting pot where citizenship, class, caste, political networks and the law, among others, interact in complex ways. The ability of refugees to fulfill and enjoy these rights, and in our case, the Rohingyas, is determined by the interplay of all these factors.

Evictions and homelessness

Existing scholarship on slums reminds us, repeatedly and in no uncertain terms that slums or illegal settlements have only further marginalized its dwellers. These are due to the inherent risks of the urban environment (unhygienic housing conditions, absence of sanitation, among others) as well as the result of how such settlements are viewed in law and governmental policy.

53 Urban profiling of refugee situations in Delhi: Refugees from Myanmar, Afghanistan and Somalia and their Indian neighbours: A comparative study, UNHCR, September 2013, pp.12 and 13.

A legal analysis of High Court and Supreme Court cases over a 25 year period (between early 1980s to 2000s) qua slums in Delhi and other cities concludes that the Courts have been responsible, in no small measure, to slum demolitions. At the heart of these cases was the interpretation of the nuisance provision under Section 133, Cr.P.C whose meaning, has been reinterpreted and transformed. The case of *Ratlam Municipal Council v Vardichan*⁵⁴, (which concerned nuisance caused by stagnant and putrid water), interpreted Section 133 as the “main channel by which courts ensure that municipal bodies carry out their duty to provide clean and safe environment for city residents”. The *Ratlam* decision was the precedent throughout the 1980s and 1990s for holding municipal authorities responsible to effectively discharge their statutory duties to ensure public health and particularly that of slum dwellers.⁵⁵ The discursive break⁵⁶ came with the decision in *Almitra Patel v Union of India*⁵⁷ (a 2000 decision) which viewed slums and not the municipal authorities as being responsible for solid waste mis-management; in effect slums were now the nuisance, contrary to the import of Section 133. In subsequent cases in the decade of 2000, slums were viewed as a problem of overpopulation, and courts devised dual categories of citizenship where tax paying citizens living in formal colonies were considered the rightful owners of the city while slum dwellers were identified as “illegal”, “aliens”, “anti-social”, “criminal” and “people of Bangladeshi origin” and demolition, the solution.⁵⁸

Dovetailing with this interpretation by the Courts, slum demolitions under the slum policies are carried out in “public interest”; they go hand in hand with resettlement, where slum dwellers are relocated or transferred to resettlement plots. Resettlement programmes, however, also exclude families either because of the eligibility criteria or conditions of the programme implementation. The eligibility of any resettlement programme rests on a certain cut off date which a family has to qualify for. Further, documents such as the voters identity card or the ration card is also an important prerequisite to determine whether the family is eligible. In addition, there are financial implications of such resettlement programs to gain access to a resettlement plot. Financial constraints have often excluded poor families from such programmes which impoverished them even further.⁵⁹ Research shows that evictions have routinely been undertaken without resettlement. And further, resettlement has less to do with improvement of conditions and services in the settlement but is based on the Land Owing Agency's need for the land.⁶⁰ And lastly, scholarship has also focused on

54 AIR 1980 SC 1622.

55 D. Asher Ghertner, Analysis of new legal discourse behind Delhi's slum demolitions, LSE Research Online, p.4.

56 *Ibid.*, p.7.

57 2000 (2) SCC 679.

58 These cases include: *K-Block Vikaspuri RWA v MCD*, CWP No. 593/2002; *Maloy Krishna Das v Govt of NCT of Delhi*, CWP No. 6160/2003; *Kailash Fraternity v Govt. of NCT of Delhi*, CWP No. 8556/2005; *Pawan Kumar v MCD*, CWP No. 3439/2006 and *Jangpura RWA v Lt. Governor of Delhi*, CWP No. 9358/2006 referred to and analysed in *supra* note. 68, pp. 14-19.

59 Veronique Dupont and Damien Vaquier, *Slum Demolition, Impact on the Affected Families and Coping Strategies*, p. 7.

60 Shahana Sheikh and Subhadra Banda, *The Delhi Urban Shelter Improvement Board (DUSIB): The Challenges Facing a Strong, Progressive Agency*, May 2014, Centre for Policy Research, p.12. Researcher and Assistant Professor, Tarangini Sriraman, who has been focusing on identification practices in slums and unauthorized colonies, notes that increasingly a public-private partnership model of slum rehabilitation and in-situ rehabilitation is

and explained how household's livelihood, “incorporating “capital” of different types – human, financial, physical and social – whose paucity or deprivation makes access to certain resources and meeting basic needs more difficult, thereby contributing to poverty and reversely, whose strengthening contributes to the improvement of the households' living conditions.”⁶¹

Although very brief and somewhat oversimplified, this legal and institutional overview of the politics of slum improvement and rehabilitation is a helpful background to understand where Rohingyas specifically identified as stateless and refugees, stand in the larger scheme of the urban life. The “camp-like” situation and the slum conditions that are documented by UNHCR in a Situational Analysis of 2014⁶², the HRLN fact finding reports as well as visits to Rohingya settlements, echo all of the characteristics that have been recorded and critically analysed in the existing scholarship of slums.

The solutions offered include one, immediate relief measures and two, a combination of recommendations that at best exhort and whose effects would be known only at a future point in time. Both are necessary and effective in their own ways. And as experience in case of Rohingyas indicates, while there are some gains, there are also families in a continuing limbo. It may be pertinent to note here that the gains made in some aspects of the lives of Rohingyas such as enrollment of children in schools in one settlement in Mewat or Madanpur Khader in Delhi have been the result of, among others, successful links forged by the community. The social welfare wing of Jamaat-e-Islami Hind appears to step in the most difficult of circumstances, such as evictions. Non-governmental organizations working in a project mode have also intervened, the results of which are visible in addressing needs such as supply of water. However, the ability to intervene and negotiate with local level political and social actors has been uneven and unless the Rohingyas' social and political capital are strengthened and cultural and religious norms are addressed (such as the delivering babies in hospital and not at home which impacts health or enrolling children in schools that do not necessarily impact religious education), humanitarianism would not be sustainable. Refugee rights have to be infused with more meaning that lay the foundation for more sustaining lives. The sketch of the law as it stands now, only empowers partially. The Rohingya case gives a good opportunity to argue for a robust law that is more than just a collection of executive decisions that are guaranteed one day but which may also be withdrawn at a future time.

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gaining currency. See for a critical analysis of the in-situ rehabilitation of Kathputli colony, one of the famous localities in Delhi for its artisans, Subhadra Banda, Yashas Vaidya and David Alder, *The Case of Kathputli Colony: Mapping India's First In-situ Slum Rehabilitation Project*, Centre for Policy Research, June 2013. On file.

61 *Supra* note 63, p. 2.

62 *Rohingya Refugees and Asylum Seekers in India: A Situational Analysis*, February 2014, p. 9. On file.