

Jaffar Ullah and Anr. v. Union of India and Ors.[WP (C) 859/2013]. Hon'ble Supreme Court of India

Synopsis

Jaffar Ullah and Anr. v. Union of India and Ors. demands that Rohingya refugees from Myanmar living in slovenly camps in Delhi and Mewat district, Haryana have access to regular employment opportunities, adequate shelter, proper nutrition, clean water, toilet facilities, education, maternal, paediatric and other health care and that the Union of India and the governments of Delhi and Haryana not shirk responsibility towards them on the basis of their non-citizenship.

The Public Interest Litigation (PIL) is substantiated by 7 fact-finding missions conducted by health activists in the camps since November 2012, Supreme Court precedents that safeguard right to health and rights of refugees, reports by organisations such as the United Nations High Commissioner for Refugees (UNHCR), Human Rights Watch and the Genocide Prevention Advisory Network and various International Conventions ratified by India.

The petitioners pray that the respondents ensure genuine implementation of government schemes and aid that fortify their rights to life, health, dignity and equality.

Status

All respondents have made submissions in reply to the petition that merely provide lip-service to the people and perpetuate a circle of blame. The Union of India has submitted that state governments have full responsibility for ensuring the health of the people. Thus, the State must lead the process of health sector reforms while the Centre plays a “supportive and facilitative role” and aids the states financially. The state governments submit that foreign nationals invoke the jurisdiction of the Centre under the Union List.

The petitioners have filed a rejoinder affidavit to counter the respondents. The case is likely to be listed on August 21, 2015.

Description

Background

The Rohingya people are a minority community of about 800,000 people from Myanmar. The government of Myanmar officially declared the Rohingya as “Stateless Bengali Muslims” in 1982. Myanmar’s Citizenship law denies citizenship to the Rohingya. They have been officially robbed of their basic civil, political, social and cultural rights.

They are subjected to various forms of extortion and arbitrary taxation, land confiscation, forced eviction, house destruction and financial restrictions on marriage. They must take permission from the state to marry, they cannot own land, travel or hold

government positions, they must sign a document pledging to have a fewer than 2 children and many children are also prohibited from attending school¹.

After being subjected to such violence and discrimination, they came to India in 2012 to seek refuge. In India they have escaped the violence but their non-refugee status makes it nearly impossible for them to have access to a number of benefits. As of 2012, the Rohingya people in India consisted of around 150 families who lived in 2 camps, the Kalindi Kunj camp in Delhi and the camp in Mewat District, Haryana.

Current Status

The fact-finding teams who visited these camps found that the people lived in houses made of tarp which provided little ventilation and insulation in the winter months, muddy water from pumps was used for drinking, cooking and washing and there was no toilet. Children were refused admission in schools because of language and lack of paperwork. The camps were infested with mosquitoes and snakes. A 4 month old infant died due to a snake bite in the Kalindi Kunj camp. They had no access to ante-natal care, contraceptives or post-natal care which meant that most women delivered in the camps with the help of a dai. The few who actually went to government hospitals, for example the Nuh Medical College in Haryana, were either refused, ill-treated, charged heavily or denied medication in violation of the National Health Mission's (NHM) guarantees. Their diet consisted of plain rice and tea and infants were fed sugar water. Residents instituted a 24x7 watch to protect the women from harassment and to protect their belongings.

The Rohingya people's rights to life, health, equality and dignity guaranteed under Articles 21, 14 and 15 of the Constitution of India have been violated repeatedly by the State under the guise of non-citizenship. In *Human Rights Commission v. State of Arunachal Pradesh and Anr.* (1996 SC (1) 743) the Supreme Court held that fundamental rights and protections encompassed in Article 21 of the Constitution of India apply to refugees and non-citizens. Also, the National Health Mission (NHM) which includes the Janani Suraksha Yojana (JSY) and the Janani Shishu Suraksha Yojana (JSSK) ensures maternal care to all women in India.

In *State of Punjab v. Mohinder Singh Chawla* (1997 SCC 83) and *Paschim Banga Khet Mazdoor Samiti v. State of West Bengal & Anr.* (1994 4 SCC 37) the Supreme Court held that the right to health is enshrined in Article 21 which guarantees the right to life and that the government has an obligation to provide adequate medical facilities to the people.

The Respondents in this case also violate International Conventions that have been ratified by the government of India. Some of these are the International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination Against

¹[The Rohingyas: The most persecuted people on Earth? – The Economist, June 13, 2015](#)

Women (CEDAW). The government cannot ignore these conventions as has been held in *Apparel Export Promotion Council v. A. K. Chopra* (1 SCR 117, para 27).

The submissions by the respondents i.e. the Union of India (Respondent 1), the Government of Delhi (Respondents 2 & 3) and the Government of Haryana (Respondents 4 & 5) leave much to be desired. The Respondents have also completely ignored a few issues brought up in the original petition. It is evident that that they do not give importance to the rights of the Rohingya and are only looking to pass on the blame to another party.

Respondent 1 – Union of India

It has been submitted by the Union of India that since the Rohingya do not have documents proving that they belong to SC/ST or BPL category, JSY benefits cannot be availed by them. On the issue of helping them integrate into the community, it has been submitted that since India does not have a domestic law on refugees and is not a signatory to the 1951 United Nations Convention & the 1967 Protocol, the government is under no obligation.

Respondents 2 & 3 -Delhi

The Delhi government states that since the Rohingya are foreign nationals, the jurisdiction of the Union of India is invoked under Entries 10, 14 and 17 of Union List. Two letters have also been annexed by the government that state that bureaucratic action has been taken in trying to ensure that the camps have access to a medical team and water supply. Implementation is yet to be seen.

Respondents 4 & 5 - Haryana

The Haryana government states that the Rohingya people from the Mewat district camps are being duly covered under the Integrated Child Development Scheme (ICDS). This claim is accompanied by a loose table which has no dates, no names, no evidence of frequency of Anganwadi workers and photos that have no evidence of participation by the Rohingya or that they were even taken in the camps.

Rejoinder Affidavit in response to the Respondents

The Petitioner's counter to the Respondents' reply is authenticated by three new fact-findings, one that was conducted in Mewat district on July 21, 2014 and followed up on February 28, 2015 and another that was done in the Kalindi Kunj camp on February 20, 2015.

- a) The fact-finding teams discovered excessive water logging, continued denial of access to safe drinking water, electricity and affordable rations.

- b) In violation of the Indian Public Health Standards, hospitals do not have female doctors which further aggravate the apprehension that women share about the public health system.
- c) While the State tirelessly reaffirms its commitment to education, the Rohingya rely on Madrasas made of tarpaulin where children are taught by an irregular teacher in a language they don't understand.
- d) The only form of solid housing known to them is a camp in Mewat which is located in an abandoned market complex. It's location already makes the access to Health Centres difficult, both physically and financially. Another camp is on a piece of land which has a rent of Rs. 25,000 per year. After the year is over, they will be evicted by the land owner.

In Delhi, the Don Bosco School provides the people with basic vocational training as well as basic medical care and sanitary napkins to adolescent girls. The women here want to study but have no means to do so. It was found that the Mobile Medical Unit referred to by the Delhi government came only on Tuesdays. The residents said that they give bad medicines that have no effect and the team do not come inside the camp.

Timeline

Date	Event
1982	The government of Myanmar officially classifies the Rohingya minority from Rakhine state of Myanmar as "Stateless Bengali Muslims".
December 29, 2011	The Indian Ministry of Home Affairs issues guidelines to deal with foreign nationals in India who claim to be refugees. A non-citizen must approach the FRRO/FRO who will examine his case and recommend him for a Long Term Visa (LTV) which is for a period of 1 year. If LTV is granted, the person is not an illegal immigrant under the Citizenship Act, 1955.
May 2012	The Genocide Prevention Advisory Network (GPAN) issues an alert regarding the Rohingya people in Myanmar.
June 2012	Ethnic violence erupts between the Arakan Buddhists and the Rohingya in Myanmar.
July 12, 2012	Burmese President Thein Sein said "the only solution" to the sectarian strife was to expel the Rohingya to other countries or to camps overseen by the United Nations refugee agency ² .
August 1, 2012	Human Rights Watch documents mass atrocities committed against the Rohingya Muslims in "Abuses Follow Horrific June Violence between Arakan Buddhists and Rohingya" ³ .

²[Why Rohingyas Are Willing To Risk everything To Flee Myanmar – the Huffington Post, May 22, 2015](#)

November 2012	A team of health activists conducts a fact-finding in the Kalindi Kunj camp, New Delhi and discovers that pregnant & lactating women and children do not have access to maternal healthcare, medical care, adequate nutrition and hygiene.
April 2013	A team of health activists visits the camp in Mewat, Haryana to investigate maternal health care and access to contraceptives. They report that the women deliver in the camp and have no access to basic care.
July 2013	A team of health activists re-visit the Kalindi Kunj and Mewat camps to follow up on conditions. No improvement is found.
September 3, 2013	Jaffar Ullah files a PIL (Civil Writ Petition) in the Supreme Court at Delhi under Article 32 of the Constitution of India.
September 2013	The United Nations High Commissioner for Refugees (UNHCR) report "Urban Profiling of Refugee Situations in Delhi" says that Myanmar refugees experience harassment and discrimination due to physical appearance as part of their daily lives.
October 4, 2013	The Supreme Court orders the Respondents to reply.
April 1, 2014	Counter affidavit filed on behalf of the Union of India (Respondent 1).
June 10, 2014	The Delhi Jal Board (DJB) states that it is "technically not feasible to provide permanent water and sewer facility because there is no DJB infrastructure around this cluster. The condition of kaccha approach road is not very suitable for movement of water tankers."
June 26, 2014	The Additional Director health services of GNCTD directs Zonal In charge of Mobile Health Scheme, South Zone to depute a medical team at Rohingya refugee camp, Kalindi Kunj on every Tuesday and Friday
July 14, 2014	Counter affidavit filed on behalf of the Government of Delhi and NCT (Respondents 2 and 3).
July 21, 2014	A fact-finding visit to the Rohingya Haryana camp found that harassment and discrimination forms a part of their daily lives
September 16, 2014	Counter affidavit filed on behalf of Respondent 4.
November 6, 2014	The New York Times article "Myanmar policy's Message to Muslim: Get Out" highlights the continuing pressure from the Myanmar government to leave the country ⁴ .
February 20, 2015	Health activists report little change or improvement in services and living conditions in the Kalindi Kunj camp.

³[Abuses Follow Horrific June Violence Between Arakan Buddhists and Rohingya – Human Rights Watch, August 1, 2012](#)

⁴[Myanmar policy's Message to Muslims: Get Out – The New York Times, November 6, 2014](#)

February 28, 2015	Fact-finding in Mewat, Haryana found unchanged and abysmal conditions in all four camps.
April 15, 2015	Rejoinder affidavit filed by the Petitioner in response to counter affidavits of Respondents.

Further Readings:

- a) Genocide Emergency – Myanmar: the Rohingya: The Genocide Prevention Advisory Network (GPAN) issues an alert regarding the Rohingya people in Myanmar, May 2012.
<http://www.gpanet.org/content/genocide-emergency-myanmar-rohingya>
- b) Abuses Follow Horrific June Violence between Arakan Buddhists & Rohingya: Report by Human Rights Watch, August 2012
(<https://www.hrw.org/news/2012/07/31/burma-government-forces-targeting-rohingya-muslims>)