

**CENTRE FOR INTERNATIONAL LEGAL STUDIES
O.P. JINDAL GLOBAL UNIVERSITY**

WHITE PAPER

REFUGEE LAW CLINIC FOR INDIAN LAW SCHOOLS



Image credits:

UNHCR, the UN Refugee Agency, in partnership with Twitter and 22-year-old Ivorian artist O'Plérou launched the 2020 World Refugee Day emoji that shows two hands linked together in the shape of a heart, symbolizes solidarity and diversity. We have borrowed this emoji from the artist, UNHCR and Twitter for the cover of our White Paper.

ACKNOWLEDGEMENTS

We owe a deep intellectual debt to Professor B.S. Chimni, distinguished jurist and our colleague at the Jindal Global Law School for sharing his vision on the specific challenges for such a clinic and his constant support of our efforts in this direction.

We thank Professor Ajay Pandey, our colleague at the Jindal Global Law School and Executive Director of Clinical Programmes for his leadership in creating a culture of diverse and inclusive areas of focus in clinical studies at the law school.

We are grateful for the support and partnership offered to us during the webinar by:

Oscar Mundia, Chief of Mission, United Nations High Commission for Refugees, India
Roshni Shanker, Executive Director at Migration and Asylum Project, Delhi
Jayant Tripathi, Advocate, Delhi High Court

We thank Pallavi Chatterjee, student at the Jindal Global Law School for her assistance with preparing the Report on the Webinar.

As the project to realise this clinic matures, we shall continue to publish relevant material under the banner of the Centre for International Legal Studies, Jindal Global Law School.

Rashmi Raman, Aman, Suraj Girijashanker

Centre for International Legal Studies, Jindal Global Law School
June 20, 2020

Introduction

On World Refugee Day 2020, as COVID19 has shown, solidarity is more important than ever. In partial fulfilment of our vision to create and run a clinical programme at Indian law schools to further refugee advocacy and law, the Centre for International Legal Studies at the O.P. Jindal Global University is pleased to publish this short white paper. The objectives of this white paper are to *firstly* publish a report of the webinar on Outlining a Refugee Law Clinic for Indian Law Schools organised by the Centre for Clinical Legal Education, Jindal Global Law School on 11 June 2020 and *secondly*, to publish a concept note, based on the learnings from the webinar, on creating a clinical programme for refugee studies (law and advocacy) at Indian law schools.

Part One

REPORT ON WEBINAR 11 JUNE, 2020 ORGANISED BY CLINICAL PROGRAMMES, JINDAL GLOBAL LAW SCHOOL

Panel Members:

1. **Professor (Dr.) B.S. Chimni**, Distinguished Professor of International Law, Jindal Global Law School
2. **Mr. Jayant Tripathi**, Advocate, High Court of Delhi
3. **Ms. Roshni Shanker**, Executive Director, Migration and Asylum Project, Delhi
4. **Professor Rashmi Raman**, Associate Professor of Law, Jindal Global Law School
5. **Professor Suraj Girijashanker**, Assistant Professor, Jindal Global Law School
6. **Professor (Dr.) Ajay Pandey**, Professor and Executive Director (Clinical Programmes), Jindal Global Law School (Moderator)

1. **Professor (Dr.) Ajay Pandey** welcomed the panellists to the webinar. Thereafter, he mentioned the fact that there are more than 1,700 law schools in India and if their legal aid clinics were to be strengthened then they could help in serving people and communities by providing them access to justice and legal aid. The students participating in this exercise would also benefit from this, as they will be able to learn the practical aspect of law and to empathise with people who are often considered to be outside the very 'idea of justice'. In many ways people look at these aspects and term them as the larger disconnect between what law promises and what its reality is at the grassroots.

2. Therefore the purpose of the panel was to explore how these law school clinics could be mobilised and strengthened, so that they could effectively address this disconnect that worried many.
3. **Professor (Dr.) B.S. Chimni** started with expressing his concern about how refugee protection is currently facing very uncertain times not only in India but all around the world and that there is an imperative need for some form of intervention. He emphasised two key themes that must be thought about with respect to refugee law clinics: (i) the concept of a refugee law clinic and (ii) the concept of an international refugee law course, which would either accompany or precede this activity of students in the refugee law clinic.
4. The first point could be thought of both in a narrow and in a broad sense. In the narrow sense we think about the refugee law clinic as we think about law clinics in other fields and domains, as allowing students to get practical legal education and also offer pro bono legal counselling to clients who cannot afford to access professionals in the field. This would be one aspect, the other possibility that he proposed for discussion would be the slightly broader understanding of what a refugee law clinic is, it can be spoken of from the perspective of trying to conceptualise a post-colonial understanding of legal clinics, which he thought needs to be somewhat different from legal clinics that originated and were established in the western universities. This according to him was all the more necessary in refugee issues partly because India does not have a domestic refugee law and there isn't sufficient clarity about the status of refugees and their rights in India. Therefore when somebody is seeking legal advice from you, it is not a straight forward attempt to offer some kind of roadmap to the individual or group in terms of assessing their status as refugees and the rights that go along with it.
5. He also mentioned the need to address the problems faced by the refugees in the pre-litigation phase and post litigation phase because of the peculiarities of the conditions that the refugees confront in India as well as in other post-colonial nations. There must be a debate on what exactly was the concept of the clinical legal education that they wanted to bring to refugee law in particular.
6. The question of refugee law literacy must also be addressed, as one cannot defend the rights of refugees unless one creates the overall environment in which civic society has little understanding of refugee law and refugee rights, etc. There may also be the need to do surveys in refugee communities in order to get a better understanding of how to take up their concerns and this may mean going beyond courts to petition the state or to petition other local authorities to enable them to access rights.
7. Finally he suggested that it was important to create a network of these clinics and NGOs. Thus coming to the conclusion that the broader understanding would be best suited for refugee law clinics in India.
8. He further mentioned that in order to accomplish these objectives through the refugee law clinic, then there was also a need to devise an international refugee law course, which would then sensitise, inform and raise the consciousness of the students in terms of these concerns. A regular formalist positivist course on international refugee law in India, would not be the best approach to take, although they are well suited to Western universities.

9. There is an important need to ensure that this teaching is done through interdisciplinary materials which draws the attention of students on several aspects of refugee law, which include: (i) the live world of refugees, which is very important to understand; (ii) the location of refugees in the global order – this would provide some form of a political theory element in the course; (iii) cognate areas like the problem of statelessness which so stares us in the face today; (iv) the basics of international refugee law which is itself constantly evolving; and (v) the concept of refugee law in India. Therefore while one is thinking of this refugee law clinic, one must also think about the kind of international refugee law course that would enable the refugee law clinic to accomplish the larger or broader aspects of refugee law that it should set itself.
10. If one is talking about the larger landscape of law schools that we want to assemble, then this must also be discussed so that there is some form of an alignment in how these law school clinics approach the world of refugees, the question of their legal status and rights. Thus some amount of preliminary thinking must be done on the idea of a refugee law clinic itself, its scope, the activity that it needs to undertake especially in the context of the refugee problems that we face in our own country and also discuss as if it were the syllabus or the curriculum of a refugee law course, which is very critical as the positivist approach simply doesn't allow somebody to offer legal advice to a refugee in a situation where there is uncertainty, ambiguity, lack of clarity in the law itself. Therefore there is a huge need to undertake this task and to have a wider understanding of the problem which we can then bring to bear on the existential situations that we confront.
11. **Mr. Oscar Mundia** followed with a structured presentation on the nature of refugee work that the UNHCR primarily does. He put forward the definition of certain terms that shouldn't be interchangeably used like refugees, asylum-seekers, internally displaced person, stateless person and returnees. Thereafter he mentioned some important statistics on how more than 52% of the refugees are children, 61% of refugees live in urban areas and 85% of all refugees are hosted by developing countries. He ended by saying that there is a need to provide some support to these extremely fragile groups of concern.
12. **Mr. Jayant Tripathi** reflected on the fact that India has no refugee law framework. Thus the refugee law clinic has to be pinned on to something else other than the refugee law framework. It has to necessarily derive its strength from other sources like Article 21, Article 21-A of the Indian Constitution.
13. In addition to the point made by Mr. Oscar Mundia that more than 52% of the refugees are children, he said that why isn't the RTE Act used to protect these children from being deported? He explained the inability of the courts to interfere in these matters due to the non-existence of refugee law, only those who had proper documentation would be given the right to be in India. This is what leads to the mistreatment of refugees.
14. He pointed out the dire need to compile all the judgements related to refugee law and thereby create a database for the same. Through the example of the *Vishakha guidelines*, he mentioned that the apex court has pointed out the fact that in a question of law where national law was silent, international law would step in. Then the goal

would be to seek some sort of judicial ruling which would prevent unnecessary refoulement.

15. **Ms. Roshni Shanker** spoke next, clarifying quite a few of the questions and doubts that came up during the discussion. She mentioned that refugee children do have access to education in Indian government schools under the RTE Act. She shared the practice that her organisation followed, where instead of looking at everyone under the broad term of ‘refugees’, they tried to break up that population into other categories. For example, if a woman was vulnerable within the territory and was facing sexual violence, then she would be covered by CEDAW, domestic law and even the criminal justice system. Therefore instead of looking at her as a refugee woman, she is seen as just a woman, and that is how support is extended to her.
16. She had some very important suggestions: (i) it was important for the university to have a discussion internally on the prevailing political sensitivities, as it is a difficult environment to be working in and the people needs to have a will to be working within this framework, especially when one is setting out to do direct assistance; (ii) there are serious concerns of mental health, as these cases are not routine cases of mental health because one is getting to hear stories of people from conflict areas – hearing of displaced women, children, people who have been persecuted by insurgent groups. Therefore it is a very difficult case load to deal with. Thus one needs to think of having counsellors on board and about secondary trauma and how that would impact students; (iii) for the pilot refugee law program that her organisation had helped with in another law school, they had devised an integration process for the interested students. They would be providing supportive coaching to this clinic by asking them to do research and provide direct assistance.
17. She shared her concerns for the future or the post COVID world, as it had really changed the way in which traditional service delivery by civil societies were done, as now they are not able to access the communities by physically going there and conducting mobile clinics or run help desks. A lot of this work now has to be dealt with remotely and therefore a radical innovation in this space is extremely necessary by creating new digital platforms, keeping in mind the kind of beneficiaries for the same, the digital capabilities of the target population, etc. Therefore fresh ideas need to be infused and the fresh requirements of these communities needs to be kept in mind, like the access to immediate public services, especially public health and food distribution system, as they are outside all these mainstream systems. This being the reason why the UNHCR has to create a parallel structure to provide their assistance to them. Therefore one extremely important task for this future clinic, is to map the legal gaps and to aid them in accessing services in the post COVID world.
18. One way in which students can contribute is by providing the refugees with legal literacy. This will also give them an opportunity to get to know the community that they will be working for. They would need to create information pamphlets and make them user friendly by translating it into different languages, etc and thus using that for outreach. Constructively engaging with the government through advocacy can also be done by the universities, as they have access to these networks, which small civil societies do not.

19. Finally, given the devastating impact that COVID has had on the migration population in general, having programs or refugee law clinics could cause resentment within the communities or it could lead to othering them. Therefore her suggestion was that all programs and clinics should include the local population in the process because that is the only way in which social cohesion could be promoted and thereby reduce some resentment and prevent communities from looking at each other as somebody else or somebody they cannot relate to. This resentment is likely to grow further in this current climate as everybody has been in a way devastated by what has ensued.
20. **Professor Rashmi Raman** reflected on the polarising and alienating times that we are living in and the fact that COVID is only a part of this story. She felt that as professors of law who had made the conscious decision of shifting back to India, there was a responsibility that she felt they had, i.e., to structure meaningful programs that could possibly have a lasting impact.
21. She mentioned that the refugee law clinic at Jindal Global Law School would be created, keeping in mind all the concerns and opinions that had been put forth by the panellists in the webinar. According to her it was definitely a huge challenge but also an interesting opportunity because it is really important to not isolate legal teaching from the profession and the practice of the law. This kind of artificial division is what fosters many identity crises that law has had to deal with in the past. Therefore until the gap between practice and the academic is bridged, each will always be outsiders to each other and that is why now more than ever, there is a need to open up to each other about how the other can help.
22. She addressed and further expanded on two of the risks that were earlier mentioned by Ms. Roshni Shanker. The first being the feeling of contentment in India in the past with respect to the country having a very unique and Indian approach to refugee protection, by embracing all with open arms, without even having a refugee law framework, much like what is seen even in other areas of the law as well. Therefore now more than ever, both the student and the professor must come into the space, with an open mind and try and see the framework that is available outside the codified regime, as was also mentioned earlier by Mr. Jayant Tripathi.
23. Her second point, was on mental health. She mentioned that there will be vulnerabilities in this space which are professional vulnerabilities, but they definitely come with the job. Therefore there is a need to try and define those vulnerabilities and a mental health secondary system can also be extended to the communities that the clinic will be working with, as universities in India are now equipped to provide this. This could in a way help in sharing the load, thereby having a logistical impact on the partners of the clinic, i.e., the civil society organisations and the practitioners.
24. **Professor Suraj Girijashanker** shared his experience as a UNHCR representative that made him realise the value of legal aid. He was asked to hear about three cases in a day, sometimes without files or translations. He had to understand why somebody had fled their country or why they were unable or unwilling to return back to their country. It was very difficult to get someone to share such intimate details of their lives in such a short span of time. This what made him realise the importance of legal aid. In cases

where representation was there, it made a huge difference to the procedure and to the fairness of the process.

25. On the refugee law clinic, he said that it is very important for students to engage and be able to have the exposure to working with such clinics at this early stage in their lives. This coupled with a refugee law course would give them tremendous experience, even before they had graduated. This would give them a space to reflect on with respect to the concepts that they have or will learn about in theory and the practical aspect of it. And they can in a way challenge those ideas in theory with the help of these legal aid organisations.



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Part Two

CONCEPT NOTE
REFUGEE LAW AND ADVOCACY CLINIC AT INDIAN LAW SCHOOLS

The vision behind a refugee law and advocacy clinic is to be a voluntary organization run by law students and professors, providing free legal advice to asylum-seekers and refugees in India, and also work at the intersections of law, policy and advocacy aimed towards refugee identification and protection in India.

Background: Identity and Belonging

India is and has been a host to asylum seekers from contexts as Sri Lanka, Tibet, Bangladesh, Pakistan, Afghanistan, Myanmar – and many such individuals would fall within the limited definition of the 1951 UN Convention and the 1967 Protocol on refugees.

Despite this, India (like most states in South Asia) has not signed the 1951 UN Convention on Refugees and does not have a clearly codified framework law on asylum. In such an environment, all the three conventional organs of the Indian state have displayed different legal standards of recognition/rejection, and/or protection/ targeting of asylum seekers. Through an MoU with the Government of India, the UN High Commissioner for Refugees (UNHCR) also operates in India with aim of protecting asylum seekers that can fall within its legal mandate.

Such uncertainty around the formal legal status, combined with struggles of the past, the relocation and adjustment in new state, have historically been a significant challenge for many – especially now, when concerns are compounded in the current socio-political climate. In many parts of the world today, migration and the physical movement of large numbers of displaced persons across international borders is at the highest it has been since the end of World War II. India too is now *visibly* seeing the consequences of “othering” through the passage of difficult new laws like the Citizenship Amendment Act 2019, the potential nationwide National Registry of Citizenship, and an active pursuit against permitting members of groups such as the Rohingya and the Karen communities to settle in India (also leading to some deportations).

It is in such a climate of uncertainty that a clinic may be conceived, not just as a helpful but also an increasingly necessary part of a law school’s clinical advocacy toolkit, considering the limited number of actors working in and with the asylum seekers towards better environment of protection. Leading universities across the world have long recognized the role of clinical legal education in human rights fields such as asylum law as a key component in fulfilling their commitment to social justice lawyering. We see no reason why there should be no such intervention in India with respect to asylum-seeker protection, and how such an intervention should be cognizant of the history and the context of India – especially the situation of asylum-seekers, and the lack of any recognition (and, in fact, active denial) of the application of any refugee law in India. In fact, there is a pronounced need for alternative and creative solutions in such contexts. Our proposed clinic is one such step towards creating meaningful efforts by university students and professors to engage with difficult questions of asylum, identity and belonging.

Contextualizing the clinic in the University

Our clinic aims to introduce students to the asylum seeking population in India, their concerns and their engagement with the state, the UNHCR and its partners, and civil society advocacy and grassroots organizations working in the field. It would be run under the supervision of law professors collaborating with practicing lawyers, NGOs, INGOs and the UNHCR, India.

Such a clinic would complement the currently listed electives in refugee law, humanitarian law and international human rights law taught at Indian law schools. While it is intended to model the existing clinics the law school runs and demonstrate the practical application of the material taught in our academic curriculum, like any effective clinic that aims to bridge the gap between academia and practice, it will be developed further with inputs from colleagues who have been teaching courses in international human rights law, migration, politics of identity, social anthropology, refugee law, and especially such courses that have a focus on India and South Asia.

Clinic Activities: Refugee Status Determination, Advocacy, Outreach and Research

Community Engagement: Do no harm

One of the important goals we see for such a clinic is to take active and effective steps to facilitate interactions between members of the clinic and members of the various refugee communities and the organisations/individuals that work with them in India. It is imperative to instil in every individual the understanding that efforts towards asylum seekers cannot be formulated without the active participation of the stakeholders – especially asylum seekers who have a direct stake in the matter. This is especially important in our times where classroom and technical education is understood by many as sufficient to create solutions for human rights crises; as a result of which real people in real difficulty face a direct denial of their agency, identity and voice. Fostering continued effective interactions and relations, we believe, will provide us with more realistic insights into effective interventions, and also give legitimacy and credibility to the work done by the clinic.

Refugee Status Determination

RSD is a legal / administrative process by which governments and/or the UNHCR determines whether a person seeking international protection is considered a refugee. The process is critical for refugees and asylum seekers to realize their rights under international law, including legal recognition and access to socio-economic rights. As mentioned above, in the absence of a refugee law framework in India, RSD for persons of concern from countries other than Bangladesh, Pakistan, Sri Lanka and Tibet is conducted by UNHCR's office in New Delhi.

UNHCR, however, acknowledges that in light of a growing number of persons of concern and a lack of resources, its operation in India remains “stretched”. This naturally has implications for the RSD process. In 2016 UNHCR responded with reforms to its RSD procedural standards, recognizing that legal representation can help “strengthen the quality of decision-making” and calling for “partnerships with established legal aid providers”. This development coincides with the growth of refugee legal aid organizations and clinics based out of universities, which specialize in providing representation to persons of concern before UNHCR’s RSD processes. Refugee law clinics, where students are at the forefront of legal representation, have operated or currently operate at universities including Harvard University, the American University of Cairo, the University of New South Wales, Tel Aviv University, and Pristina University.

One of the key things that the clinic could aim towards is to assist with refugee status determination; this engagement would foreground asylum seekers and refugees within the mandate of the UNHCR and could aim to primarily speak to issues about their registration, and status determination.

Since the onset of COVID-19 in India, UNHCR has suspended RSD interviews, which need to take place in-person to maintain confidentiality. When interviews do resume, UNHCR and legal aid providers are likely to face a backlog of cases. The Clinic’s engagement in the RSD process can help ameliorate this pressure.

Documentation and Capacity building

The members of the clinic can also attach themselves with lawyers in Delhi and eventually local lawyers in other cities who are dealing with litigation around refugee issues – especially deportation and detention under Foreigners Act and other relevant statutes. Such assistance may also be useful at a time when the Supreme Court of India is seized with the matter on the protection concerns of Rohingyas in India. In addition to the same, the clinic can also consider developing a network of lawyers and provide them with legal support around cases asylum seekers in India encounter.

The clinic can also be helpful in bolstering efforts of organisations in India that are involved with the creation of a database that may serve as a useful toolkit for lawyers dealing with issues around the law of asylum. Similarly, it can help to expand on the documentation of case laws, executive policies on refugee issues; and also help in other documentation work done by various individuals and groups in India to add to the small but critical and important body of work that has been published thus far.

Advocacy, Outreach and Research

The Clinic can also help strengthen existing research, policy, outreach and advocacy programs focusing on legal issues surrounding protection and livelihood concerns of refugees taken up by UNHCR, refugee aid organisations, and refugee law centres. While refugee engagements will help us identify spaces for work, an urgent intervention could be towards policy and advocacy efforts around developing an effective law of asylum, and socio-economic rights of

refugees and asylum seekers who have been in India. This may be particularly important in the “post COVID19 world” we are heading into; the pandemic has disproportionately impacted refugees and asylum seekers who without formal identity in India are one of the most vulnerable of the vulnerable sections.

The issue of legal and rights focused literacy in refugee communities is an area that the clinic can and must address, as one cannot defend the rights of refugees unless one creates the overall environment in which civic society has a basic understanding of refugee law and human rights.

Pedagogical tools

Every module would include a class wherein the students will be asked to solve hypothetical questions requiring them to apply the learning from the academic content of the programme. We are committed to fostering an academic culture of critical legal thinking and pedagogy in the classroom and in the clinic. Positioning ourselves as voices of the global south, we are deeply mindful of the inadequacies of narrative that a mainstream education in refugee law implies; we intend to curate and use material that can be understood in opposition to the mainstream to help create a new and more *local* narrative in refugee studies. This could help prepare students to take part in the clinic component of the course where real cases, interviews and interactions, documentation would take place.

Moot Courts and simulations

For the purposes of clinical legal education, the refugee law clinic would look into the possibility of conducting intra and inter college moots on refugee law. In addition to moots, simulations would also be conducted so as to enable students to receive training in refugee law. The teams would take part in simulations and role plays (for example, they could possibly play the role of UNHCR officers, Government officials etc. during a refugee status determination interview simulation) built around a fictitious refugee context. Such training would allow students to understand and appreciate the realities of refugee law while taking into considerations other factors such as the prevailing political climate, sensitivities to employ etc.

Clinical Programme Objectives:

- Equip students with early exposure in providing legal representation to asylum seekers and refugees before UNHCR Delhi’s RSD system and participation in advocacy initiatives designed to advance the rights of these populations;
- Help students develop interpersonal skills, communication skills, cultural sensitivity and form an interdisciplinary understanding (psychology, cultural sensitivity, gender issues etc.) of lawyering as an instrument for social justice;
- Through academic and practical components, as well as mentorship from faculty with expertise in the field, the course’s long-term aim is to educate new generations of refugee rights advocates in India;

- Provide asylum seekers and refugees in Delhi with free legal advice and technical support to advance their rights through advocacy initiatives, while adopting a participatory approach;
- Establish JGU as a leading center for refugee law through developing meaningful partnerships with other actors in the field, such as NGOs, lawyers, UNHCR and its partner organizations in India.

Selected readings:

On the importance of clinics

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