

## Refugee Children's Right to Education in India: Legal Obligations and Implementation Realities

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### *Abstract*

*The right to education assumes primary significance for refugees as it's crucial to preserving human rights and a clear link to their social and economic empowerment. In this context, the article analyses the international and domestic legal standards in India in protecting the education rights of refugees. Primary data has been collected using interview schedules. Personal interviews and participant observation are the other tools used to provide a thematic analysis of the qualitative data gathered from 200 refugees living in India. Through the analysis and interpretation of the data collected, some of the extensive barriers to education that refugees living in India face have been identified, and ground realities in terms of accessibility of universally recognised educational rights of refugees have also been highlighted. The findings from this study augment the limited empirical knowledge related to the area and expand understanding of the experiences of refugee children in accessing educational rights in India.*

**Keywords:** Refugees, primary education, international human rights and refugee law regime, India

### **I. Introduction**

One social right that has received widespread acclaim as being both a crucial element of the preservation of human rights and a clear link to economic freedom is the right to education. For refugees, this right assumes primary significance as

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it is a crucial tool for their social and economic empowerment. The “Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the 1951 Refugee Convention” are just a few of the international human rights norms that provide that all persons have the right to education and that, at the very least, all children, including refugee children, should be provided with primary or elementary education without facing any form of discrimination.

India, to fulfil its international obligation to universalise primary education, enacted the Constitution (Eighty-sixth Amendment) Act, 2002, which added Article 21 A to the Constitution, making primary education a justiciable fundamental right for all children between the age group of six to fourteen years. Since Article 21A is a basic right available to all persons and the Right of Children to Free and Compulsory Education Act, 2009, was enacted to give effect to this fundamental right, therefore, under the Act, children of the refugee population living in the country have access to primary education as a matter of right.

The right to education is a social right that has direct linkages with the preservation of other human rights and is a crucial tool for the social and economic empowerment of refugees. The majority of refugees in their host country are socially and economically disadvantaged, frequently forced to live in abject poverty, and have insufficient standards of living. They frequently deal with animosity from the local populace and are often labelled as undesirable migrants since they are a financial burden on the resources of the host country. In this scenario, education becomes crucial for refugees since it empowers and enables them to escape poverty and gradually contribute to the economy of the asylum country.

Education is crucial for women who are refugees because it will help them support their families and themselves. For children of refugee background, education helps in overcoming their trauma and developing their identity, aptitude, and other mental-physical attributes. These children frequently experience physical, psychological, and emotional abuse. Thus, by prioritising refugee education, the host nation will help them become socially and

economically advanced so they won't have to deal with local antagonism and can instead be seen as a contributor to the nation's economy.

Recognising the importance of education, the Economic and Social Council, in 1999, emphasised that “In addition to being a human right, education is also a crucial tool for achieving other human rights. Education is the main mechanism by which economically and socially marginalised individuals and children can escape poverty and acquire the means to fully engage in their communities as one of their empowerment rights. Education is essential for empowering women, protecting kids from dangerous and exploitative jobs and sexual exploitation, advancing democracy and human rights, preserving the environment, and reducing population increase.”<sup>4</sup>

Keeping in perspective the immense importance of education for overall well-being, empowerment, and prospects, educational rights for students of refugee backgrounds have found recognition and protection in both international and municipal legal frameworks.

To analyse the legal framework for the guarantee and protection of the right of refugees to education, the present paper has been divided into two parts, wherein Part A examines the international and national legal framework related to the issue, while Part B of the paper, through collection, analysis, and interpretation of primary data, reviews the gap between the statutory guarantee of educational rights and accessibility of the same to refugee communities living in India. It also aims to identify the issues faced by refugee children in accessing these rights in terms of getting admission to schools, facing financial constraints, discrimination, and getting access to vocational training, amongst others.

## **II. International and National Legal Framework for The Protection of Right to Education for Refugees**

It is a well-recognised norm of international human rights jurisprudence that every individual is entitled to educational rights and that, no less than, elementary schooling should be made accessible free of cost to all children sans any discrimination. In its General Comment No. 13, the Committee on Economic,

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<sup>4</sup> Committee on ESC, General Comment No.13 on Right to Education, 1999.

Social, and Cultural Rights (the Committee on ESC) underlined the importance of education as an elementary human right and its inherent role in the implementation of other human rights.<sup>5</sup>

For refugees, the aspects of the right to education that are relevant are as follows:

- a) The state should not discriminate in any way in providing access to public educational institutions;
- b) States should take measures to prohibit and remove any obstruction that can deter the enjoyment of this right; and
- c) Elementary education must be free and compulsory for everyone.

Even though the right to education is recognised in both the 1951 Refugee Convention and other human rights treaties, it is predominantly the latter that has fully developed this right. An analysis of the key normative treaties that have developed and promoted educational rights is given below:

#### **A. Universal Declaration of Human Rights (UDHR)**

UDHR is the genesis of the development of international human rights jurisprudence, and all basic rights, particularly education-related, have emanated from UDHR. Article 26 of the declaration specifically identifies the right to education as an essential human right. It affirms that "everyone has the right to education and that education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms." This article identifies the significance of various forms of education. It calls for technological and professional education to be made generally accessible, acknowledging the need for a range of educational opportunities. In addition, it is highlighted that gaining access to higher education should depend more on an individual's aptitude than on their social or economic standing and that it should be likewise available to everyone owing to merit [Article 26(1)]. The article also underlines that education should be an instrument for endorsing understanding, tolerance, and friendship among individuals and nations, thus fostering world peace [Article 26(2)]. Lastly, it is acknowledged that the parents have the authority to pick what sort of learning that their children

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<sup>5</sup> *Ibid.*

will receive. This respects cultural, religious, and philosophical diversity and ensures that educational choices align with the values and beliefs of the family.

International Covenant on Economic, Social, and Cultural Rights

Articles 13 & 14 of the ICESCR, along with General Comment No. 13 of the Committee on ESC, concerning education rights, enumerate as follows:

- a) Elementary schooling must be compulsory and freely provided to all;
- b) Concrete steps must be taken by the states to make secondary education accessible for all;
- c) Higher educational opportunities must be made possible for all individuals who possess the necessary ability; and
- d) Technical and vocational education should be provided to everyone by using appropriate means.

The obligation to offer compulsory and free primary education as recognised in ICESCR has been given particular importance by the Committee on ESC, which asserts that "the obligation to provide primary education for all is an immediate duty of all States parties and constitutes one of the 'minimum core obligations' in Article 13 ICESCR."<sup>6</sup> The non-discrimination rule as mandated in Article 2(2) of the ICESCR implies that educational rights should be made available to all persons, including refugees.<sup>7</sup> In this regard, Article 13(1) is also relevant since it stipulates that the "right to education is to be enjoyed by everyone" and no constraints are restricting the refugees from availing this right. The Committee on ESC has also reiterated this by providing that "the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of legal status."<sup>8</sup>

### **B. Convention on the Rights of the Child, 1989 (CRC)**

Article 28 of the CRC gives explicit recognition to the right to education of every child. It stipulates that primary education must be freely & compulsorily

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> K. Willems & J Vernimmen, *The fundamental human right to education for refugees: Some legal remarks*, 17(2), *European Educational Research Journal*, 220 (2018).

<sup>8</sup> Committee on ESC, General Comment 13, *Supra* note 1.

provided to all children; secondary education must be made available to everyone, and if necessary, adequate financial support/funds must be provided by the state; and like UDHR and ICESCR, CRC also provides that higher education must be made accessible to all those who have the requisite prerequisite.<sup>9</sup> To ensure continuity in education, the aforesaid article also directs the states to take steps to ensure regular attendance at schools & to decrease the dropout rates. The provision also emphasises appropriate school discipline by requiring the states to ensure that it be administered in a manner consistent with the human dignity of the child.<sup>10</sup>

With a principal focus on developing the least developed countries, Article 29 of the convention imposes an obligation upon the states to "promote and encourage international co-operation in matters relating to education, in particular, to contribute to the elimination of ignorance and illiteracy throughout the world."

The non-discrimination provision in the CRC (Art. 2) ensures that every refugee child enjoys the benefit of the right to education regardless of their background or status.<sup>11</sup>

### **Education under the 1951 Refugee Convention**

In the following terms, Art. 22 of the 1951 Refugee Convention affirms refugees' right to education:

"1. The Contracting States shall accord refugees the same treatment as is accorded to nationals concerning elementary education.

2. The Contracting States shall accord to refugees' treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, concerning education other than elementary education and, in particular, as regards access to studies, the recognition of

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<sup>9</sup> G. Lansdown & Z. Vaghri, *Article 28: The Right to Education* in Z. Vaghri, J. Zermatten, G. Lansdown, & R. Ruggiero (eds) *Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research* (2022).

<sup>10</sup> C. Courtis & J. Tobin, *Article 28: The right to education*. In J. Tobin (Ed.), *The UN convention on the rights of the child: A commentary*, Oxford University Press, 1111(2019).

<sup>11</sup> *Supra* note 6.

foreign school certificates, diplomas, and degrees, the remission of fees, and the award of scholarships."

The preceding clause only applies to education offered by a public authority that is supported or subsidised by government funds, excluding schools that are privately owned. Notably, Article 22 does not contain any requirement about lawful residence and solely applies to refugees (including asylum-seekers) without imposing any additional requirement.<sup>12</sup> It aims to provide basic elementary education to all children by treating refugees equally with citizens.

### **C. Educational Empowerment under the Global Compact on Refugees (GCR)**

GCR is a comprehensive framework adopted by the UN General Assembly in December 2018. It aims to improve the global reaction to heavy refugee movements by enhancing burden and responsibility-sharing among countries and other related stakeholders and by promoting self-reliance and inclusion of refugees in policymaking<sup>13</sup>.

Education for refugees is one of the significant aspects covered in compact in Para. 68 and 69, which accentuates the significance of guaranteeing access to quality education for them. These paras invigorate States and other concerned stakeholders and humanitarian agencies (Ministry of Education of States, UNICEF, UNESCO, UNHCR, etc.) to contribute funds and expertise to develop the required infrastructure to include refugees in their national education systems alongside their host country peers, promoting social cohesion and integration.<sup>14</sup> The compact also emphasises the importance of high-quality education programs that are tailored to the needs of refugees. It also emphasises the significance of recognising and accrediting refugees' education and certificates to allow their access to further study or work. The compact emphasises the value of higher

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<sup>12</sup> R. Costa, *Legal and Protection Policy Research Series. Rights of Refugees in the Context of Integration: Legal Standards and Recommendation*, UNHCR, (2006), <http://www.unhcr.org/44bb90882.pdf>.

<sup>13</sup> V. Türk, *The Promise and Potential of the Global Compact on Refugees*, 30(4) *International Journal of Refugee Law*, 575(2018) <https://doi.org/10.1093/ijrl/eeey068>

<sup>14</sup> L. Morrice, *The promise of refugee lifelong education: A critical review of the field*, 67, *International Review of Education*, 860 (2021), <https://doi.org/10.1007/s11159-021-09927-5>.

education and vocational training for refugees as well. It encourages nations, international organisations, and other stakeholders to support projects that promote higher education and skill development, recognising the long-term benefits for refugees and host communities (Para 68).

Similarly, paragraph 69 calls for additional assistance to meet the unique educational requirements of refugees, specifically girls, and individuals with impairments, using the setting up of safe schools and the implementation of various creative instructional techniques like online education and the offering of flexible certified learning programs especially intended for meeting the educational needs of refugees.

Thus, the compact recognises the significance of education for refugees and endorses a comprehensive and inclusive approach to ensure their access to quality education. An outstanding point of the compact is that it recognises the shared responsibility of the international community for supporting both refugees and host countries in attaining incorporated educational objectives.

#### **D. Sustainable Development Goal - 4 (SDG)**

SDGs: Goal 4 of the SDGs emphasises ensuring inclusive and equitable quality education and developing possibilities for lifelong learning for all. To provide inclusive and high-quality education to everyone, regardless of their status, this goal aims to address the educational needs of refugees and other vulnerable populations.<sup>15</sup>

It's important to note that while the aforesaid international legal instruments set forth the rights and principles relating to the guarantee and protection of educational rights of children of refugee background, their effective implementation and enforcement depend on the commitment and actions of individual states and the international community. Also, to attain the objectives listed in the above instruments, it is pertinent that the educational rights must be modified and personalised to address the precise requirements of children of refugee background to enable their amalgamation into society at large while also ensuring that they are not educationally deficient in contrast with other students. Additionally, to make education a certainty for refugee children, it is imperative

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<sup>15</sup> UNESCO Education Policy 2019.

to impart language training, organise preparatory and adaptive lessons, offer assistance with schoolwork, and provide cross-cultural training in education. An additional important metric in this regard can be to impart education to refugee children in the language and culture of the country of origin, which will also be a means for attaining another objective of education as specified in Article 29(1)(c) of the CRC.

The educational rights of adult refugees primarily pertain to vocational training and enhancing language skills, which will eventually be helpful in the realization of work-related rights for refugees, facilitate their integration into the local community, and be helpful in re-integration while returning to the place of origin. Adopting an approach considering the educational needs of refugees and their children would facilitate the objectives prescribed by Article 13(1) of the ICESCR in terms of “full development of human personality and effective participation in society.”

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### **III. National Legal Landscape on the Right to Education for Refugees in India**

India has a 5000-year tradition of embracing refugees and providing them with a place of honour and dignity in society. At the time of independence and subsequent partition of the country, nearly 20 million people crossed India-Pakistan borders. Since gaining independence, India has provided a safe haven and, most significantly, religious and cultural freedom to Jews, Parsis, Christians, and Muslims. The country has also offered humanitarian aid and protection to millions of refugees from Tibet, Bangladesh, Sri Lanka, Afghanistan, Pakistan, Bhutan, and Myanmar. India has also received refugees from distant countries like Iran, Iraq, Liberia, Myanmar, Somalia, Syria, and Sudan.<sup>16</sup> As of the end of 2023, an estimated 242,835 refugees were living in the country.<sup>17</sup>

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<sup>16</sup> V. Suryanarayan, *Need for National Refugee Law*, ISIL Yearbook of International Humanitarian and Refugee Law 254(2021).

<sup>17</sup> India Refugee Statistics 1964-2023, (February 2024) Online- India Refugee Statistic-<https://www.macrotrends.net/countries/IND/india/refugee-statistics>

Despite the significant number of refugees in the country, there is a lack of specific laws or consistent policies to address their challenges. India has not signed the 1951 Refugee Convention or the Protocol of 1967. Despite this, India has a longstanding tradition of extending humanitarian aid to refugees, showcasing its commitment to international obligations chosen by the country.<sup>18</sup> India is a signatory to the UDHR, Article 14 (right to seek and enjoy asylum), which is the fountainhead for the protection of the human rights of refugees.<sup>19</sup> India is also a party to ICCPR, ICESCR, CAT, CEDAW, and CRC.<sup>20</sup>

Also, the Indian judiciary has been performing a radical and creative role in protecting refugees living in the country. The technique adopted by the judges is the creative interpretation of Articles 14 and 21 of the Constitution, which guarantees the right to equality and the right to life and personal liberty, respectively, for all persons (including refugees). These provisions have been used by courts in several decisions to provide relief to refugees.

#### **A. Right to Education in India**

To fulfil its international obligation undertaken under UDHR, ICESCR, and CRC to universalise primary education, India enacted the Constitution (Eighty-sixth Amendment) Act, 2002, which added Article 21A to the Constitution, imposing a non-derogable mandate upon the State “to provide free and compulsory education to all children between the ages of six to fourteen years.” This amendment also brought about a change in the guarantee of Article 45 of the Constitution by providing that “the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.” An equivalent duty was imposed by the aforesaid amendment upon the parents/guardians under Article 51A(k) “to provide opportunities for education to children between the ages of six and fourteen years.” According to the 86<sup>th</sup> Amendment Act, 2002, the Right of Children to Free and Compulsory Education

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<sup>18</sup> Prabodh Saxena, *Creating Legal Space for Refugees in India: The Milestones Crossed and the Roadmap for the Future*, 19(2) *International Journal of Refugee Law*, 249 (2007).

<sup>19</sup> “Article 14 of UDHR guarantees to every person the right to seek and to enjoy in other countries asylum from persecution”.

<sup>20</sup> “India ratified ICERD in 1969, ICCPR and ICESCR in 1979, CEDAW and CRC in 1993, and joined CAT in 1997.”

Act, 2009 (RTE Act), was enacted “to facilitate the implementation of the fundamental right to free and compulsory primary education for all children.”

Since, Article 21A is a fundamental right available to all persons and the RTE Act was enacted to give effect to this basic right, therefore under the Act, children of the refugee population living in the country have access to primary education as a matter of right. However, so far as higher education is concerned, it remains inaccessible as a matter of right to refugees living in the country.

As per the mandate of Article 21A of the Constitution, it is the responsibility of the government to provide free and compulsory education for children falling within the age group of six to fourteen years. In pursuant to this mandate, the RTE Act adopts a rights-based approach for ensuring elementary education to all children living in the country without any discrimination. Under the Act, it has been recognised that “it shall be the responsibility of the central government, state government, and local bodies to warrant admission, attendance, and completion of primary education by all children.”

Some provisions of the Right to Education (RTE) Act hold significant importance for refugees-

*a.* To begin with, since Article 21A is a fundamental right for all persons living in the country, it becomes applicable to refugees as well. The offshoot of Article 21A, *i.e.*, the RTE Act, hence, recognises that equitable quality primary education is provided to refugee children as well, falling within the age group of six to fourteen years.

*b.* Under the Act, an obligation is cast upon the appropriate government and local authorities to establish schools in areas where no schools exist within three years of the commencement of the Act (Section 6). For establishing these schools, the act provides that the financial burden shall be shared both by the central and state governments (Section 7).

As per the above provisions, it shall be the responsibility of the appropriate government to establish schools in cluster areas where refugee communities are mainly concentrated. Apart from this, the act imposes an obligation upon private unaided schools to give admission to economically weaker sections and other disadvantaged groups at the entry-level, with twenty-five percent of seats reserved for them [Section 12(1)]. This provision is beneficial for those refugee

children who are seeking admission in private schools but do not have the resources to pay the hefty fees thereof.

*c.* As per the act, the documentation required for securing admission to schools is either the birth certificate or any other document which may be prescribed [Section 14(1)]. However, many refugees are forced to flee their country of origin in haste, and often they may not be carrying their passport, proof of previous education of their children, and other formal documentation, thereby posing a challenge for them to secure admission for their children in schools in India. To cover circumstances like this, the act provides that no children should be denied admission to schools merely because of lack or absence of documentation [Section 14(2)].

*d.* Another provision of the act that is of particular relevance to children of refugee background who may have lost years of education in the course of their persecution or flight from their country of origin is Section 4, which provides that in the case of a child who could not be admitted to school till six years or above or those children who could not complete elementary education, then such a child should be admitted in a class appropriate to his age. However, in such cases, to bring the child to par with other students, the act requires special training to be given within a specified time. This clause guarantees children's right to education, particularly those of refugee children who may have been uprooted because of hostilities or persecution.

*e.* Section 13 of the act prohibits the solicitation of capitation fees for admission and putting the children or parents in any assessment process. This ban on capitation fees guarantees that parents of refugee children do not incur additional financial costs while seeking admission to schools. Refugees often encounter economic challenges, and this provision makes education more economically feasible. Additionally, refugee children may come from various school systems and backgrounds. They cannot be rejected or discriminated against based on their previous education or any other assessment that may not reflect their aptitude because the assessment process is forbidden.

*f.* According to Section 16 of the act, a child cannot be held back or expelled from school until they have completed their elementary education or the eighth grade. For children from refugee families, this clause is extremely important since it

guarantees that they can complete their basic schooling without facing any obstacles or expulsion. This program helps refugee children develop a better future despite any adversities they may have experienced due to their displacement by supporting inclusivity, educational continuity, stability, and general well-being.

g. Section 17 of the act protects all children, including refugee children, against physical punishment and mental harassment in educational institutions. This provision helps to create a more welcoming environment for refugee children in schools who may have been traumatised or encountered other hardships during displacement by securing their mental health and well-being.

From the analysis of the above provisions, it is clear that if effectively implemented, the RTE Act is extremely relevant for refugee children because it guarantees their right to complete their primary education without being held back or expelled. This provision promotes inclusivity, continuity of education, stability, and the overall well-being of refugee children, helping them build a better future despite the challenges they may have faced due to displacement. However, even though theoretically a framework exists for guaranteeing them free and compulsory elementary education, the application of the act and accessibility of the right to primary education to refugee children are marred with certain challenges, which have been identified in the following part of the paper.

### **B. Access To Education To Refugees In India**

As already stated in the earlier part of the paper, India is under an obligation to make education accessible for all children, including refugees, to fulfil its commitments undertaken under UDHR, ICESCR, and the CRC, including its optional protocol. The RTE Act also provides for equal access to primary education for all children living in the country, including refugees. Read together with Article 21A of the constitution, this implies that primary education is accessible to refugee children living in the country as a matter of right.

Against the above backdrop, the data was collected to determine the extent to which the right to education is a reality for children of refugee communities living in India and also to identify the challenges they encountered in accessing and asserting this entitlement. This was done by gathering relevant information regarding the difficulties children of refugee background face in having access

to educational facilities, like getting admission in schools, facing financial constraints, discrimination at school, and access to non-formal educational programs, amongst others.

#### IV. Methodology

To attain the above objectives, primary data was collected from a sample of 200 refugees living in the Delhi region who had children between the age group of 6-20 years. This age group was targeted for the reason that it is between this age group that primary, secondary, and higher education are acquired. The upper limit of 20 years was taken because some of the respondents had lost years of education or had pursued their education with interruptions. These 200 respondents belonged to refugee communities from Tibet, Afghanistan, Myanmar, Somalia, Iran, Iraq, Sudan, and Syria. Further, the refugees from Myanmar were divided into two categories, *i.e.*, Myanmar-Chins and Myanmar-Rohingyas.

##### *Sample size*

A sample taken from each category of refugee community present in India is given in table number 1.01. Since the present research is confined to the Delhi region, refugees from Sri Lanka, Bangladesh, and several other countries have been excluded from the study, as refugees from these countries are mainly clustered in Chennai, Arunachal Pradesh, and other regions of the country.

Table 1.01

Sr. No.	Country Of Origin	Sample
1	Tibet (T)	60
2	Afghanistan (A)	50
3	Myanmar-Chins (MC)	35
4	Myanmar-Rohingyas (MR)	45
5	Somalia(S)	5
6	Others(O)	5
	<b>Total</b>	<b>200</b>

Interview schedules, personal interviews, and participant observation are the tools used for the collection of data from respondents to provide a thematic analysis of the qualitative data. The analysis of the data has been done using statistical techniques and presented through bar diagrams/pie charts to make it easy to understand and arrive at qualitative conclusions.

***Sampling Method-***—The stratified and purposive sampling methods were used for collecting primary data wherein the universe of study was divided into homogeneous subgroups of refugees from each country, and then the purposive sampling technique was used to take a sample from each subgroup from those areas where the subgroup from each country is either clustered or is engaged in one or the other income-generating activity.

For the collection of the data, the researcher took assistance from the UNHCR, Delhi Office, & Bosco Organisation for Social Concern & Operation (BOSCO) Delhi [implementing partner of UNHCR], which not only gave valuable inputs on the condition of refugees in the country but also put the researcher in contact with some of the refugee respondents in the sample. They also helped in identifying the main areas of Delhi where the refugee population is clustered. The areas that were identified based on having a high-density refugee population were Wazirabad, Bhogal, Malviya Nagar, Bodella, Madanpuri Khadar, Khajuri Khas, Khirki Extention, Vikaspuri, Nizamuddin, Ashram, Madnagir, Lajpat Nagar, and Burari.

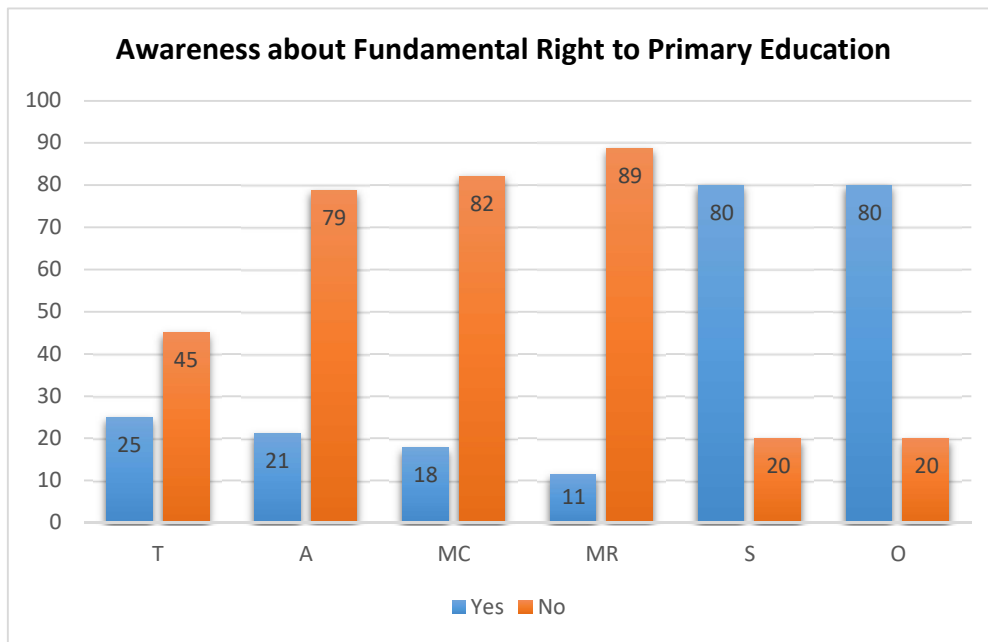
The majority of the sample respondents requested anonymity and therefore were not willing to give their names. During data collection, each respondent explained the purpose of the research and was informed that they were free to decline to answer any question. Considering the target respondents, the most effective means to administer the interview schedule was to read and wherever necessary, to rephrase and translate the questions instead of asking the respondents to complete the schedule by themselves. The reason for doing this exercise was that most of the respondents were not comfortable with writing down information about themselves and also because the majority of the respondents were either illiterate or had no or limited English language skills. Further, by way of reading the questions to the respondent, the researcher in most cases managed to have a relaxed and informal discussion where the respondents communicated more easily and also shared their personal experiences.

Given below is the analysis and interpretation of the data collected from the respondents about their access to the right to primary education in India.

**V. Analysis And Interpretation Of Responses From Respondents On Awareness Of Fundamental Right To Primary Education**

To the revelation of the researcher, the majority of the respondents belonging to all refugee communities taken in the sample had no idea about the fundamental right to primary education guaranteed by Article 21A of the Constitution, which is available to all persons, including the children of refugees, whereas others had only a vague idea about this right (Figure 1.1).

**Figure 1.1**

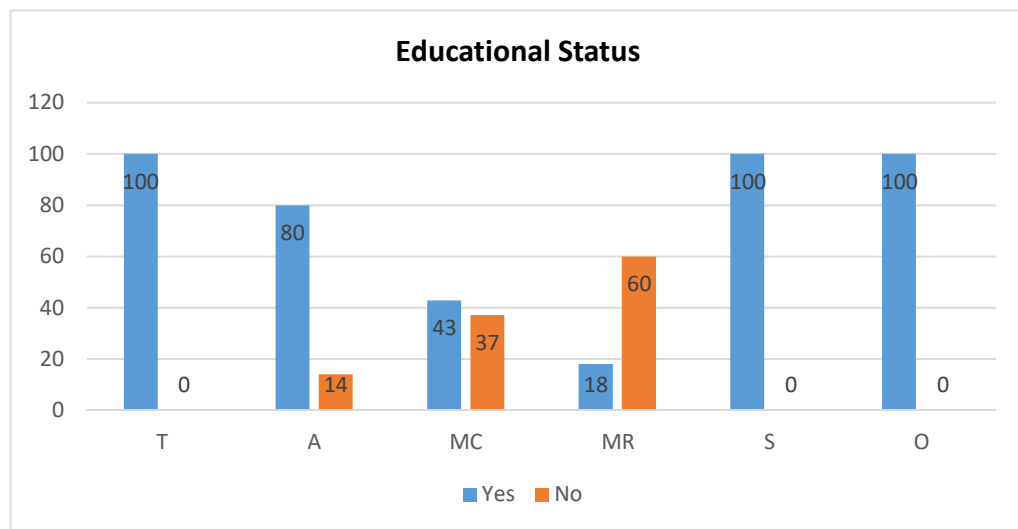


**A. Analysis and Interpretation of Responses from Respondents on Educational Status of Children**

To determine the educational status of the sample population, as stated earlier, the age group of 6-20 years was taken for the reason that it is between this age group that primary education is acquired. The upper limit of 20 years

was taken because many times refugees may have to pursue their education with interruptions. In all, out of the sample size of 200 respondents, 180 respondents had children between the age group of 6-20 years and were attending schools, whereas 20 respondents stated that they were not going to any type of school.

**Figure 1.2**



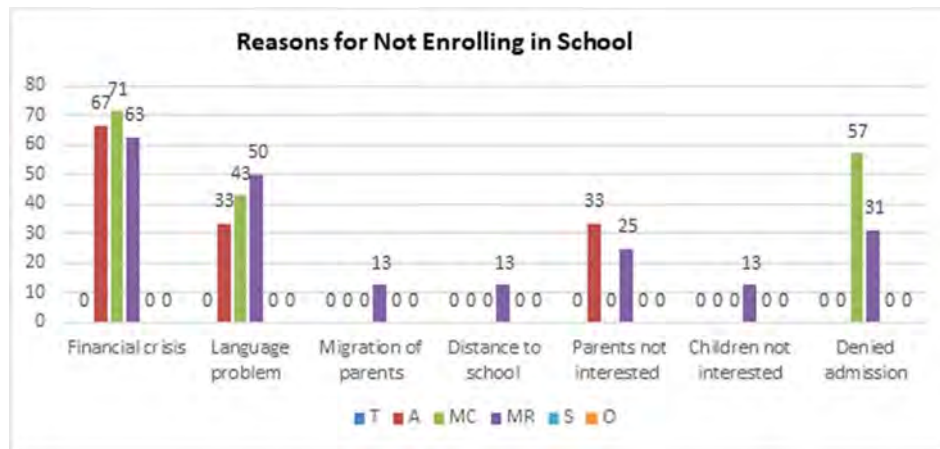
The responses of the respondents, as seen in Figure 1.2, show that 43% of the children of Chin refugees and 60% of the children of Rohingya respondents were not going to any type of school, in contrast to 14% of Afghan refugee children. Thus, illiteracy was found to be high among children of Chin and Rohingya respondents. Whereas all the respondents from Tibetan and Somalian refugee communities and other refugees in the sample population had access to primary education.

**B. Analysis and Interpretation of Responses from Respondents on the Reasons for not enrolling in School**

All respondents from Tibet, Somalia, Iran, Iraq, Sudan, and Syria were found to be enrolled in schools. 20 respondents in the sample population were not

attending any school and as seen from Figure 1.3, there were multiple reasons given by Afghanistan, Chin, and Rohingya respondents for not taking admission. The financial crisis and language problems were the two most prominent reasons given by them. Out of the respondents not going to school, Chin and Rohingya respondents also cited a lack of documentation as a reason for being denied admission by the school authorities.

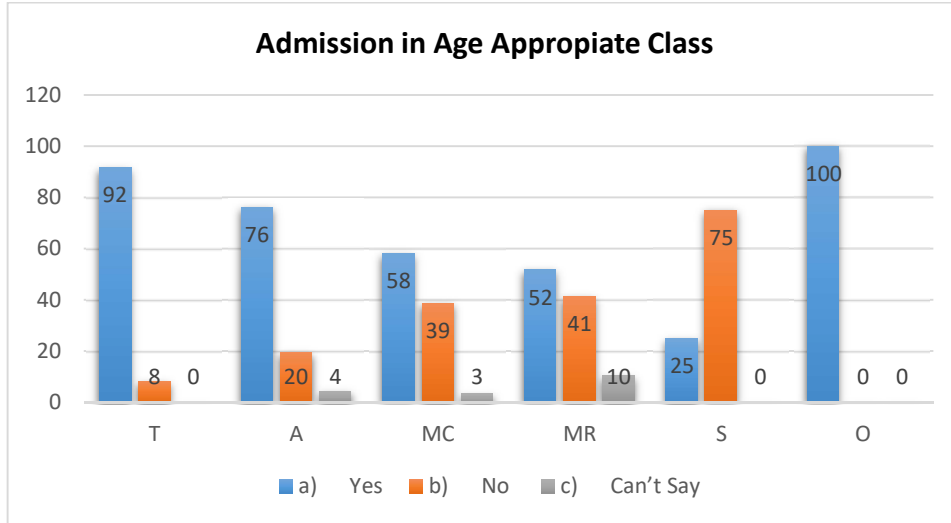
**Figure 1.3**



**C. Analysis and Interpretation of Responses from Respondents on Being Admitted in a Class Appropriate to Their Age**

In response to getting admission to a class appropriate to their age, 8% of Tibetan respondents, 20% of Afghan, 39% of Chin respondents, 41% of Rohingyas, and 75% of respondents from Somalia replied negatively (Figure 1.4). The reasons given by them varied from lack of proper identification documents, which made it difficult to establish their age and identity; language barriers, which hindered their integration into age-appropriate classes; and significant gaps in their academic knowledge and skills, which made it difficult for them to meet the requirements of the appropriate grade level.

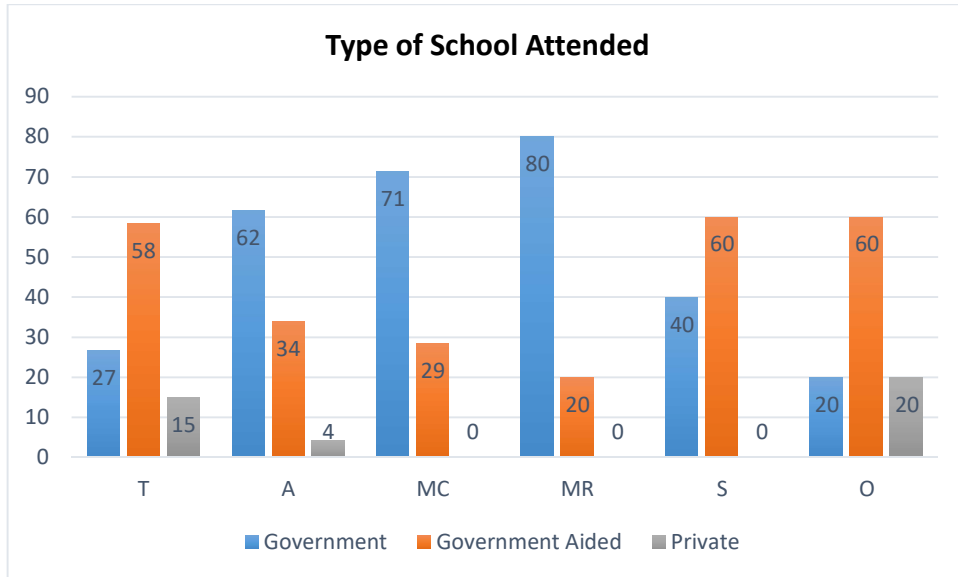
**Figure 1.4**



**D. Analysis and Interpretation of Responses from Respondents on Type of School Attended**

As seen in Figure 1.5, 27% of the Tibetan respondents, 62% of the Afghan respondents, 71% of Chins, 80% of Rohingyas, 40% of respondents from Somalia, and 20% of the respondents from other refugee communities stated that they were going to government schools; whereas 58% of the Tibetan respondents, 34% of the Afghan respondents, 29% of Chins, 20% of Rohingyas, 60% of respondents from Somalia, and 60% of other respondents stated that they were going to government-aided schools. Private schools were stated to be attended by 15% of the Tibetan respondents, 4% of the Afghan respondents, and 20% of the respondents from other refugee communities.

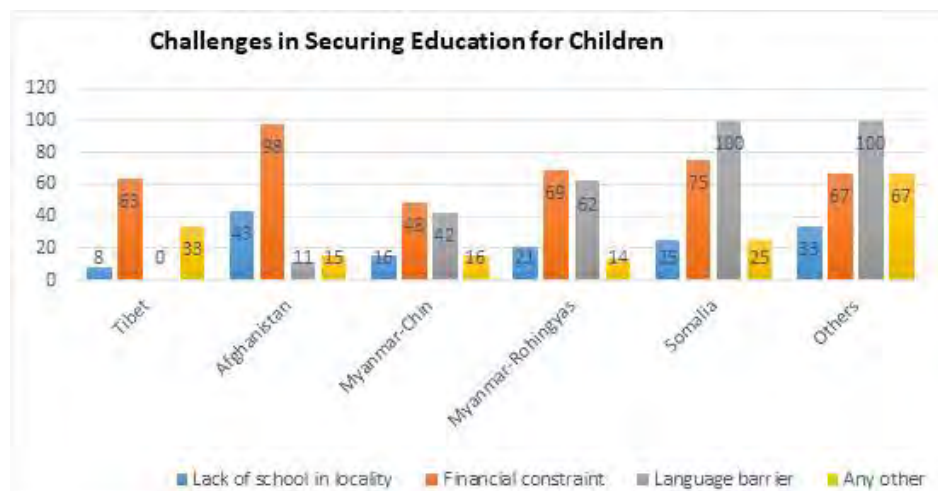
Figure 1.5



**E. Analysis and Interpretation of Responses from Respondents on Challenges Faced in**

**Securing Education for Children**

When asked about the difficulties they faced in ensuring education for their children, as is evident from Figure 1.06, the majority of the sample respondents reported financial constraints as a major hurdle.

**Figure 1.6**

For respondents from Somalia, Chins, and Rohingyas, the language barrier was attributed as another major challenge. However, language was not reported to be a problem for children of Tibetan respondents, and for only 11% of the Afghans, the reason that they are well versed in the local language is because of their long stay in the country. Lack of school in the locality was reported as a challenge for 8% of Tibetan respondents, 43% of Afghans, 16% of Chins, 21% of Rohingyas, 25% of Somali respondents, and 33% of respondents from other countries (Iran, Iraq, Sudan, and Syria).

Apart from the above challenges, there were other reasons also which were given by the respondents, like the necessity to work to sustain themselves and family members, the absence of documentation required for admission, medical reasons, and security issues.

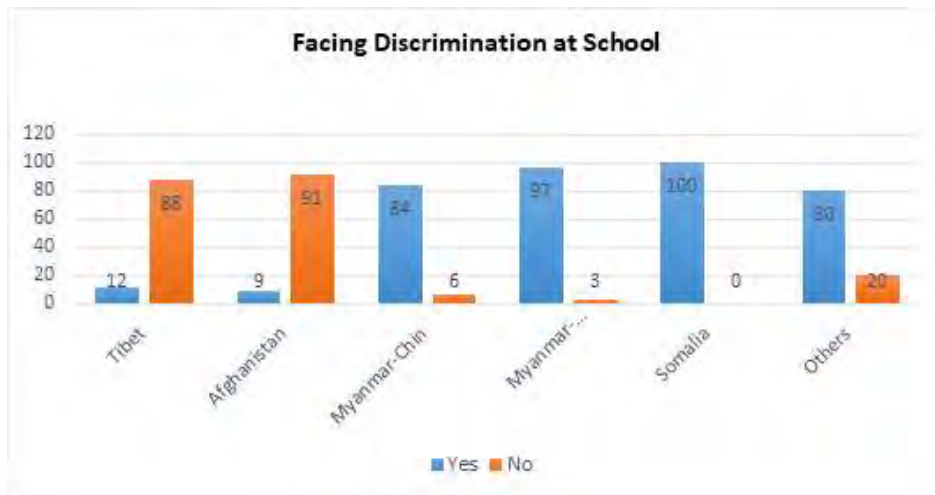
Don Bosco Ashalayam (also known as BOSCO), an implementing partner of UNHCR, was found to be helping children of refugees from Afghanistan, Myanmar, Somalia, and other countries in getting admission to government schools. They also organise tuition classes for those students who are unable to follow the education system in India. Support was also found to be provided by BOSCO through Open school/ Bridge Programmes meant for those refugee children who have missed years of education in the process of flight from their

country of origin. Apart from this, BOSCO also holds language classes to enhance the English and Hindi skills of refugees.<sup>21</sup>

#### F. Analysis and Interpretation of Responses from Respondents on Facing Discrimination in School

On being asked about facing discrimination at school, all the respondents from Somalia, 84% of Chin, 97% of Rohingyas, and 80% of the respondents from other countries (Iran, Iraq, Sudan, and Syria) reported having encountered one or the other form of discrimination (Figure 1.7).

Figure 1.7



Somali respondents reported that their children were often subjected to racial slurs and were teased by fellow students who called them 'kala' or 'habshi.' Parents of a few respondents stated that their children were made to sit at the back of the classroom because of their limited knowledge of the Hindi language. They were also subjected to physical and verbal abuse both by the students and the teachers. However, the majority of the children of respondents from Tibet and Afghanistan responded to have suffered no discrimination. This was probably because Tibetans had a school in their locality where almost all the

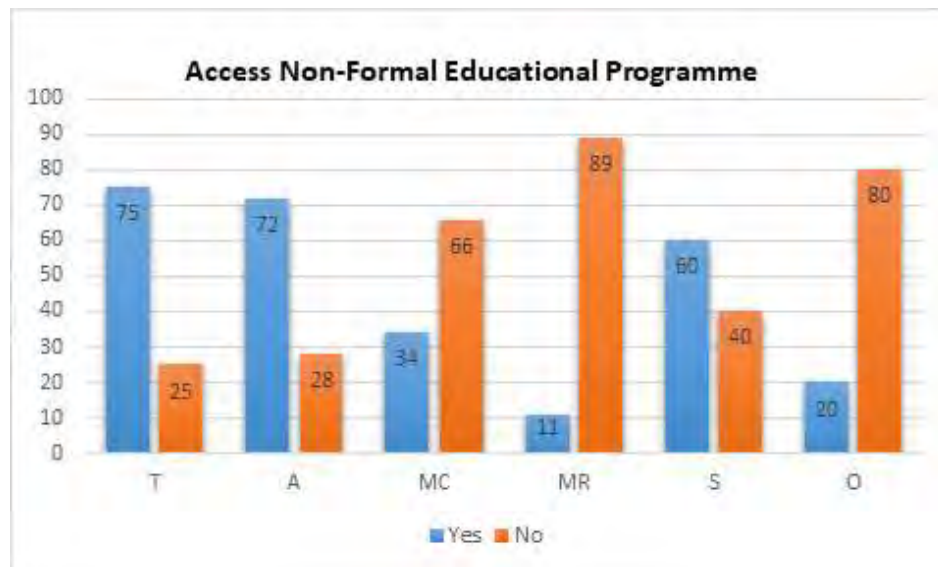
<sup>21</sup> Interview with Arjumand Fatima, Centre Manager, BOSCO, October 27, 2015.

students were Tibetan. Afghans children were not subjected to discrimination because of their looks and their Hindi-speaking skills, due to which they mingled well in Indian society.

### G. Analysis and Interpretation of Responses from Respondents on Access to Non-Formal Educational Programme

As seen in figure 1.8, 75% of respondents from Tibet, 72% of respondents from Afghanistan, 34% Chins, 11% Rohingyas, 60% of Somalis, and 20% of respondents from other countries had access to a non-formal educational program in the form of vocational training, computer literacy, and other skill enhancement courses. Don Bosco Ashalayam has been instrumental in providing vocational training to these refugees, like training in computer skills, English and Hindi language skills, mobile repairing, tailoring, knitting, jewellery making, etc.

Figure 1.8



### VI. Major Findings and Way Forward

The analysis of the data collected has enabled the researcher to examine the various contributory and impeding factors for refugee groups in securing access

to primary education in the country. During the exercise, it also became evident that each refugee community encountered diverse challenges in this regard.

- a) One of the major hurdles in securing admission to government schools for refugee children is that the admission procedure in these schools is tough and complicated. For instance, government schools insist upon birth certificates and residential proof, which many refugee children are unable to provide. Furthermore, sometimes the school administration is unwilling to accept refugee certificates issued by UNHCR for admission of refugee children. This is even though the RTE 2009 makes it clear that school officials must not keep a student from enrolling for lack of proper documentation. There was also found to be a lack of awareness of laws amongst the government school authorities, who have often been reported to have refused admission to refugee children, citing ignorance of the RTE Act 2009.
- b) Financial constraint was found to be another major challenge faced by the majority of the refugees in ensuring education for their children.
- c) For refugees from Somalia, Chins, and Rohingya refugees, the language barrier is another problem since they are unable to speak, read, or write in Hindi, which is a medium of instruction in government schools. Further, refugee children were put in a class grade based on their knowledge of Hindi. Most of the refugees are not proficient in the language, and therefore, often children are placed in grades that do not correspond to their age or the level of education they had already acquired in their country of origin. Additionally, because of language and cultural barriers, these children require special attention, which often overburdened teachers in government schools were unwilling to give.
- d) The data analysis revealed that Somali and Myanmarese refugee children often have to face harassment and discrimination at school. Children of Somali refugees are particularly subjected to racial discrimination. They are also being subjected to physical and verbal abuse both by the students and the teachers. However, the majority of the children in Tibet and Afghanistan suffer no discrimination.
- e) It was found that children of Myanmarese refugees were in greater numbers not attending any type of school in comparison to children of refugees from Tibet, Afghanistan, Somalia, and refugees from other countries included in the sample. This is because children of refugees from Myanmar prefer to earn

their livelihood since their families go through enormous financial difficulties.

- f) For those refugees coming under the mandate of UNHCR, BOSCO (implementing partner of UNHCR) organises tuition classes, particularly for those students who are unable to follow the education system in India. Support is also being provided by BOSCO through Open school/ Bridge Programmes meant for those refugee children who have missed years of education during flight from their country of origin. Apart from this BOSCO also holds language classes to enhance the English and Hindi skills of refugees. It also provides assistance to refugee children in getting admission to government schools.
- g) Education is one aspect that was not found to be a problem for the majority of the Tibetan refugees for the reason that the Tibetan refugee community has about 60 schools in India operated by a range of administrations, where not only traditional but also modern subjects are taught. However, for Tibetan refugees also, it is difficult to have access to higher education in the country because, to get enrolled in colleges and other professional institutions, they have to pay admission fees as foreigners, which most of them cannot afford.

Most of the refugees who come to India are often victims of gross breaches of human rights in their country of origin, and therefore, they expect comparatively better enjoyment of human rights in the country. However, analysis of the data reveals that this has not been a reality for the majority of the respondents in terms of their access to primary education in the country. Thus, from the above analysis of the data and the consequent findings, it is clear that there are not sufficient facilities in the country for ensuring the primary education of children of refugees and there are numerous constraints in the enjoyment of the right to education.

### ***1. Limitations of the Study***

The major limitations of the study were that the geographical area is limited to the Delhi region only and is confined to refugees in India from Tibet, Afghanistan, Myanmar, Somalia, Iran, Iraq, Sudan, and Syria.

### ***2. Way Forward***

In India, refugees are present in large numbers, but despite that, India does not have refugee-specific legislation or policy to take care of their protection needs, particularly in terms of guaranteeing and accessibility of their basic human rights.

Nevertheless, complying with its historical tradition, humanitarian assistance has been provided to refugees primarily because of the international obligations undertaken by India under UDHR, ICCPR, ICESCR, CAT, CEDAW, and CRC. In addition, the Indian judiciary has played a pivotal role in safeguarding the human rights of refugees within the country. Through innovative interpretations of Articles 14 and 21 of the Constitution, which guarantee equality and the right to life and personal liberty, the judiciary has demonstrated a firm commitment to upholding the rights of all individuals, including refugees. These provisions have been used by courts in several decisions to provide relief to refugees.

Concerning the right to education, India enacted the Constitution (Eighty-sixth Amendment) Act, 2002, which added Article 21A to the Constitution. Pursuant to this article and the RTE Act, 2009, all children between the age group of 6 to 14 years are entitled to free primary education. However, drawing on the empirical analysis of the data collected for present research, it can be stated that in most cases, the right to education remains only a theoretical right for the majority of the children of refugee background present in the country.

Though access to government schools is open to all refugee children in India, analysis and interpretation of data collected from respondents revealed that different refugee groups encounter several barriers in having access to safe and quality education in the country: financial constraints, non-availability of documents required for admission, language barriers, facing discrimination and harassment at schools, etc. Addressing these issues requires that both the Indian educational authorities and local Indian schools evolve new strategies to address these problems and work towards ensuring that they provide a safe, healthy, and hospitable learning atmosphere for refugee children. Also, a comprehensive approach that involves collaboration between schools, educational authorities, civil society, NGOs, and support organisations is required. It is crucial to provide language support programs, bridge classes to fill the educational gaps, provide vocational training, run awareness campaigns, and promote inclusive policies to ensure that refugee children receive primary education free of cost and hence empower them to make positive contributions to the socio-economic development of the country in the future.