

REFUGEE PROTECTION IN INDIA: LEGAL GAPS AND CHALLENGES

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The idea that every person should enjoy their citizenship is rooted in fundamental human rights and democratic principles. Citizenship provides individuals with legal identity, rights and responsibilities within a state, ensuring access to education, healthcare, employment, and political participation. However millions of people worldwide, including stateless persons and refugees are deprived of these rights due to displacement, discrimination or lack of legal recognition.

In order to protect these people who have been forced to leave their home countries because of persecution, conflict, violence, or breaches of human rights, a sophisticated system of legal concepts and tools known as international refugee law has been put in place. The 1951 Refugee Convention and its 1967 Protocol, which specify who is a refugee and lay out the rights and obligations of both refugees and nations, are the cornerstones of this corpus of legislation. A refugee is defined by the Refugee Convention as a person who is outside their country of origin or habitual residence who is either unable or unwilling to return because of a legitimate fear of being persecuted because of their race, religion, nationality, membership in a specific social group, or political beliefs.¹ The foundation for refugee protection worldwide is this well accepted definition.

Numerous international and regional instruments, such as Convention on Status of Refugees, The Universal Declaration of Human Rights and regional refugee treaties like the Cartagena Declaration in Latin America in 1984 and the Organization of the African Unity and the convention of the African Union in 1969, uphold these concepts.

India has a long history of hosting refugees, providing shelter to displaced populations from neighbouring countries and beyond. Despite not being a signatory to the 1951 United Nations Refugee Convention or its 1967 Protocol, India has accommodated refugees based on humanitarian principles. The country has hosted Tibetians, Sri Lankans, Bangladeshis, Afghans, Rohingyas and others over the years. However the lack of legal framework for refugees poses challenges in their recognition, rights and integration.

Major Refugee Groups In India:

India has been hosting various refugee groups for decades and has found solutions for many forcibly displaced persons. UNHCR supports the efforts of the Government and its people in assisting refugees across 11 states, working closely with varied stakeholders,

¹ Article 1(A)(2) of International Convention on Status of Refugees, 1951

including line ministries, community groups, and NGOs. Following are the major refugee groups in India:

- 1) **Tibetan Refugees:** Following the 1959 Chinese occupation of Tibet and the Dalai Lama's flight to India, a large number of Tibetan refugees sought asylum in India, where they established settlements and maintained their cultural and political identity, with the largest settlement being in Bylakuppe, Karnataka. Tibetans are granted special legal status and reside in the designated settlements with access to education and employment.
- 2) **Shrilankan Tamil Refugees:** They fled in India due to civil war in their own country. As of 2023, there were approximately 58,200 Sri Lankan refugees living in 104 camps across Tamil Nadu, and over 33,200 living outside the camps. The Indian government provides relief and rehabilitation assistance to Sri Lankan refugees in the camps, including subsidized rice, clothing, and other necessities.
- 3) **Bangladeshi Migrants:** Following the Partition of Bengal in 1947 and the Bangladesh Liberation War in 1971, a large number of people, primarily Bengali Hindus, migrated from East Pakistan (present-day Bangladesh) to India, seeking refuge, particularly in states like West Bengal, Assam, and Tripura. Many of the pre-1971 refugees were granted refugee status and rehabilitation packages, while those who arrived later faced challenges in obtaining legal recognition and faced the prospect of being deported.
- 4) **Afghan Refugees:** India hosts a significant number of Afghan refugees, with over 15,000 registered with UNHCR, and many more unregistered, primarily residing in Delhi and surrounding areas, facing challenges in accessing long-term visas, education, and employment.
- 5) **Rohingya Refugees:** These persecuted Muslim minority from Myanmar who have been facing violent persecution at the hands of the Myanmar government, military and Buddhist nationalists. According to Indian home ministry estimates, there are around 40,000 Rohingya Muslims living as undocumented refugees in various parts of India.² Their presence in India has been controversial with debates over security concerns and deportation.

Indian Constitution & Refugees:

The Constitution of India protects the human rights of refugees to live with pride. Chapter III of the Constitution includes fundamental rights some of them are applicable only to Indian citizens while some are applicable to any person citizen or non-citizens. Refugees in India can enjoy these rights namely;

- Article 14 (Right to Equality): Guarantees that refugees are treated equally under the law, meaning they cannot be subjected to discriminatory treatment.
- Article 20 (Protection in Respect of Conviction of Offences): Provides safeguards against arbitrary arrest and detention, ensuring that refugees are not subjected to unfair legal proceedings.

² <https://www.scobserver.in/cases/mohammad-salimullah-rohingya-deportation-case-background/>, accessed on dated 1st April 2025

- Article 21 (Right to Life and Personal Liberty): This is a crucial provision. It is light to live with human dignity and also include bundle of rights required to live life with dignity. The Supreme Court has interpreted it to include the right to non-refoulement (not being forced to return to a country where they face persecution).
- Article 22 (Protection against Arbitrary Arrest and Detention): Guarantees protection against arbitrary arrest and detention, ensuring that refugees are not subjected to unfair or unlawful imprisonment.
- Article 25 (freedom of religion): it protects the right of refugees to profess, practise and propagate the religion of their own choice.
- Article 32: right to address Supreme Court for enforcement of Fundamental Rights are as much possible to non-citizens, including refugees, as they are to citizens.

Legal Framework:

India does not have specific law dedicated to refugees though India is a home for maximum number of refugees. Currently, refugees in India are considered as foreigners. The municipal laws directly applicable to them are:

The Foreigners Act, 1946:

This Act applies to all foreigners including refugees giving the government power to regulate their entry, stay and deportation.

The Citizenship Act, 1955:

The law governs citizenship but does not distinguish between refugees and other immigrants. The law has been amended in 2019 to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for Indian citizenship. They will only have to live or work in India for six years to be eligible for citizenship by naturalisation, the process by which a non-citizen acquires the citizenship or nationality of that country.

The Passports Act, 1967:

It regulates the entry of foreigners, including asylum seekers, making it illegal for undocumented migrants to stay in India.

The Extradition Act, 1962:

It provide for the return of criminals but does not account for individuals fleeing persecution.

Moreover, refugees are subject to the applicability of various overarching laws, including The Bhartiya Nyaya Sanhita, 2023; The Bhatiya Nagarisuraksha Sanhita, 2023 ; The Bhartiya Saksha Adhiniyam, 2023 among others. While India has provided shelter to refugees from neighbouring nations, the lack of transparency in administrative policies related to granting asylum, facilities, grants, etc., coupled with instances of discriminatory treatment toward specific refugee individuals or groups under similar circumstances without clear

justification, is a prevalent issue.

Despite the absence of a dedicated refugee law, the Indian Government has provided protection to various refugee groups based on administrative decisions and diplomatic considerations.

In 2011, the Government of India adopted a Standard Operating Procedure (SOP) to be followed by law enforcement agencies while dealing with “foreign nationals who claim to be refugees”, which was amended in 2019 by Lok Sabha. It provides for Long Term Visa (LTV) to such persons and thus allows them to freely work and study in India too. For the first time in the Indian context, the text of the SOP acknowledged distinct criteria for the identification of certain foreigners as refugees.³

Role of Judiciary in Protecting the Rights of Refugees In India:

The Indian judiciary has played vital role in protecting the rights of refugees in India by extending the protection of fundamental rights to them. Though the word refugee is not explicitly mentioned in the Constitution, the courts have recognized that the term 'person' in the constitutional provisions encompasses refugees. The Court interpreted constitutional provisions, particularly Article 21 and Article 14, ensuring these rights are not arbitrarily violated, and by upholding the principles of non-refoulement.

In the case of *State of Arunachal Pradesh v. Khudiram Chakma*,⁴ the Apex Court held that Article 21 of the Constitution of India, which guarantees the fundamental right to life and personal liberty of Indian citizens is extended to all including non-citizens. However, does not include the right to settle and reside in the country, which is a right available only to citizens of India.

In the case of *K. A. Habib v. Union of India 1999*⁵, the Court prohibited the expulsion of two UNHCR certified Iraqi refugees after observing that the principle of non-refoulement is encompassed in Article 21. It held that the refugees must be protected from persecution in their home country, as long as their presence in India is not prejudicial to national security.

In the landmark case *National Human Rights Commission v. State of Arunachal Pradesh*,⁶ the Supreme Court safeguarded the fundamental constitutional rights of the Chakma refugees who had taken refuge in large number from erstwhile East Pakistan (now Bangladesh) in parts of Assam and Tripura by restraining forcible expulsion of Chakma Refugees from the state.

In the cases of *Luis de Readt*⁷ and *Khudiram*⁸, the Supreme Court held that Art. 21 of

³ RAJYA SABHA SECRETARIAT. (2019). PARLIAMENTARY DEBATES RAJYA SABHA OFFICIAL REPORT.

<https://cms.rajyasabha.nic.in/UploadedFiles/Debates/OfficialDebatesDatewise/Floor/250/F20.11.2019.pdf>

⁴ AIR 1994 SC 1461

⁵ K. A. Habib v. Union of India, 1999, CriLJss 919, Gujarat High Court.

⁶ AIR 1996 SC 1234

⁷ (1991) 3 SCC 554

⁸ 1994 Supp. (1) SCC 615

the Constitution of India, which protects the life, and liberty of Indian citizens are extended to all, including aliens

*U. Myat Kayew and another v. State of Manipur*⁹, has contributed substantially to India's refugee policy. The Guwahati High Court also upheld the right of asylum seekers who have entered in India illegally.

In *Nuang Maung Mye Nyant versus Govt. of India and Shar Aung vs Government of India*, of 1998 the courts upheld the right to leave the country for third country resettlement even if cases against them for illegal entry were ongoing.

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The judiciary has played a significant role in enforcing humanitarian principles in the absence of specific legislation. By considering India's commitment to international human rights treaties and conventions, the courts have emphasized the importance of treating refugees with dignity, ensuring their access to education, healthcare, and basic amenities.

Conclusion:

India's approach to refugee law, has been largely guided by humanitarian concerns and shaped by constitutional provisions, judicial decisions, and policies. But it lacks a dedicated legal framework. While the Country has demonstrated generosity in hosting refugees, the absence of a structured refugee policy results in inconsistencies and hardships for asylum seekers. A well-defined legal framework should ensure both national security and the protection of vulnerable refugee community reinforcing India's humanitarian commitment. Despite refugees being classified as foreigners, they enjoy fundamental rights under the Indian Constitution. The judiciary emphasizes specific rights crucial for refugee protection, recognizing an individual's entitlement to refugee status and opposing expulsion or deportation during asylum seeking. This judicial stance surpasses legislative and executive efforts, actively integrating international law principles.

Way Forward :

- **Comprehensive Refugee Legislation:** India should enact dedicated and comprehensive legislation specifically addressing the rights and protection of refugees. This legislation should incorporate international human rights standards to ensure that refugees have clear legal status and entitlements.
- **Ratification of International Treaties:** India should consider ratifying relevant international treaties related to refugees, such as the 1951 Refugee Convention and its 1967 Protocol. This would demonstrate a commitment to upholding global standards for refugee protection and ensure a consistent legal framework.

⁹ Civil Rule No. 516 of 1991

¹⁰ K. A. Habib v. Union of India, 1999, CriLJ 919, Gujarat High Court.

- **Balancing Security and Humanitarian Concerns:** While addressing security threats, India must uphold its tradition of asylum and protection.
- **Employment Opportunities:** Create pathways for refugees to access legal employment opportunities. This could involve easing work permit restrictions, recognizing foreign qualifications, and promoting vocational training programs to enhance refugees' self-reliance. **Non-Refoulement Principle:** Explicitly adopt the principle of non-refoulement into domestic law, ensuring that refugees are not forcibly returned to a country where they face persecution or danger.
- **Legal Aid and Access to Justice:** Facilitate access to legal aid and ensure that refugees have the right to a fair and impartial hearing in legal proceedings. This includes providing interpreters and culturally sensitive legal assistance.
- **Public Awareness and Sensitization:** The Govt. of India must conduct awareness campaigns to foster understanding and acceptance of refugees within local communities. Promoting a culture of empathy and inclusion can help reduce discrimination and improve the overall integration of refugees.
- **Monitoring Mechanisms:** Establish robust monitoring mechanisms to assess the implementation of refugee rights and address any violations promptly. Regular reporting and evaluation will help identify gaps and improve the effectiveness of protection measures.