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LOST CHILDHOODS ACROSS BORDERS: LEGAL FRAMEWORKS FOR THE PROTECTION OF REFUGEE CHILDREN IN INDIA AND BEYOND

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ABSTRACT

The refugee crisis has emerged as one of the most pressing humanitarian challenges of the 21st century, with children constituting a substantial and highly vulnerable segment of displaced populations. The loss of a stable and protected childhood due to forced migration, conflict, and statelessness places refugee children at heightened risk of exploitation, abuse, neglect, and legal invisibility. This research paper, titled "Lost Childhoods Across Borders: Legal Frameworks for the Protection of Refugee Children in India and Beyond," undertakes a comprehensive analysis of the legal and policy mechanisms designed to safeguard the rights of refugee children at both international and Indian levels. The study explores key international instruments such as the 1951 Refugee Convention, its 1967 Protocol, and the United Nations Convention on the Rights of the Child (CRC), highlighting their significance, scope, and implementation challenges. It examines India's legal and institutional responses to refugee children, despite its non-signatory status to the Refugee Convention, through constitutional guarantees, domestic statutes, and judicial pronouncements. The paper also analyses how India's treatment of refugee children, particularly the Rohingya population, compares with global standards. Furthermore, the research identifies systemic gaps in access to education, healthcare, legal aid, and child-specific asylum procedures, and critiques the lack of a unified national refugee law in India. By employing case studies and comparative legal analysis, the paper aims to bridge normative commitments and practical realities. In conclusion, this study underscores the urgent need for child-centric refugee policies, enhanced legal protections, and international cooperation to prevent the continued erosion of refugee children's rights and ensure their safety, dignity, and future.

Keywords: *Refugee Children, Statelessness, Child Rights, Indian Legal Framework, International Refugee Law*

1. INTRODUCTION

The 21st century has witnessed an alarming surge in the displacement of populations due to wars, ethnic conflicts, political persecution, environmental disasters, and economic breakdowns. In this global refugee crisis¹, children represent one of the most vulnerable groups, accounting for nearly half of the world's refugee population. According to the United Nations High Commissioner for Refugees (UNHCR), children—many of them unaccompanied or separated from their families—face unique and devastating consequences when forced to flee their homes.² Their displacement often entails the loss of not only a physical dwelling but also a sense of safety, identity, education, and access to basic human rights. This grim reality is best captured by the phrase “lost childhoods,” which speaks to the emotional, developmental, and legal void refugee children often find themselves in across borders. Children who are refugees encounter a range of compounded vulnerabilities. They are frequently exposed to hunger, disease, exploitation, sexual and gender-based violence, child labour, trafficking, and even recruitment into armed groups. Their access to schooling, healthcare, psychological support, and legal assistance is severely limited or entirely absent. Moreover, many refugee children are stateless—lacking legal recognition from any country—which further complicates their access to rights and protections. In such precarious circumstances, the role of legal frameworks becomes vital. Yet, the protections available under international law are often inconsistently applied, poorly implemented, or completely ignored, leaving refugee children in a state of protracted uncertainty. International law offers several mechanisms to safeguard the rights of refugee children. The 1951 Refugee Convention and its 1967 Protocol form the foundation of global refugee protection, establishing the legal status of refugees and outlining the obligations of states. However, the Convention does not specifically address the needs of children. It was the United Nations Convention on the Rights of the Child (CRC), adopted in 1989, that brought child-specific concerns into the international legal discourse.³ The CRC affirms the right of every child—irrespective of nationality or legal status—to protection, education, health care, and a standard of living adequate for their development. Article 22 of the CRC is particularly relevant, requiring states to take appropriate measures to ensure that children seeking refugee status receive protection and humanitarian assistance. Despite these international commitments, the situation on the ground remains far from ideal. Refugee children continue to

¹ Bhatt, Anita. "Refugee crisis: A new era of global conflict." *Education and Society* 46 (2022): 53-57.

² Cantan, Helen. "United Nations high Commissioner for refugees—UNHCR." *The Europa Directory of International Organizations 2021*. Routledge, 2021. 215-234.

³ Assembly, UN General. "Convention on the Rights of the Child." *United nations, treaty series 1577.3* (1989): 1-23.

face systemic exclusion and institutional neglect. Challenges persist in ensuring that child asylum claims are handled with due sensitivity and in securing access to basic services. Many host countries resort to practices such as immigration detention of children, a measure widely criticized for its psychological and emotional harm. Family reunification processes are often delayed or denied, and legal guardianship arrangements are rarely adequate. Furthermore, host states may implement restrictive immigration policies or resort to arbitrary deportations, further endangering the lives of refugee children. India presents a particularly complex case in this context. Though it hosts thousands of refugees from neighbouring countries—such as Sri Lanka, Myanmar, Afghanistan, and Tibet—it is not a signatory to the 1951 Refugee Convention or the 1967 Protocol.⁴ This legal vacuum has led to an ad hoc and inconsistent refugee policy, heavily reliant on political discretion rather than rule of law. While certain protections are extended to refugees through constitutional guarantees like Articles 14 and 21 (right to equality and life)⁵, and through the judiciary's interpretation in landmark cases, there is no dedicated legislation governing refugee rights, much less specific provisions for refugee children. This absence of a formal legal framework has often resulted in arbitrary treatment, lack of legal identity, and limited access to essential services for refugee children in India. The situation of Rohingya refugee children in India exemplifies these concerns. Subjected to xenophobic narratives, denied access to formal education and healthcare, and frequently threatened with deportation, these children live in conditions that starkly contrast with India's constitutional ideals and international human rights obligations. Meanwhile, other countries too struggle with similar or more severe issues—ranging from refugee detention centres in Australia to migration enforcement at the U.S.-Mexico border⁶—illustrating the global nature of this humanitarian and legal crisis. This research paper, titled *“Lost Childhoods Across Borders: Legal Frameworks for the Protection of Refugee Children in India and Beyond”*, undertakes a comparative legal study of the national and international regimes meant to protect refugee children. It explores the theoretical underpinnings, normative commitments, and practical challenges in enforcing these protections. By analysing statutes, treaties, court rulings, and case studies, the paper aims to critically evaluate whether existing legal instruments are sufficient and effectively implemented. Special attention is given to how India's policy (or lack thereof) aligns with international norms and what can be done to bridge the gap between law and reality.

⁴ Partha, S. *Migrants, refugees and the stateless in South Asia*. MANOHAR PUBLISHERS, 2024.

⁵ Lambert, Hélène. "The European Convention on Human Rights and the protection of refugees: limits and opportunities." *Refugee Survey Quarterly* 24.2 (2005): 39-55.

⁶ Sinha, Anita. "Transnational Migration Deterrence." *BCL Rev.* 63 (2022): 1295.

In conclusion, the protection of refugee children is not merely a legal obligation but a moral and humanitarian necessity. These children, who have already suffered the trauma of displacement, deserve a childhood imbued with dignity, safety, and opportunity. Through robust legal protections and empathetic policymaking, states can transform lost childhoods into futures full of promise and security.

2. International Legal Frameworks for the Protection of Refugee Children

The international community has established several legal instruments and institutional mechanisms to protect the rights of refugees, with specific relevance to refugee children. Although refugee children face unique vulnerabilities due to their age, separation from families, and displacement across hostile or indifferent borders, legal protections for them have traditionally been embedded within broader refugee and human rights frameworks. Over time, however, a more child-focused approach has emerged, led by both legal instruments and international organizations, most notably the United Nations High Commissioner for Refugees (UNHCR).⁷

1951 Refugee Convention and 1967 Protocol

The cornerstone of international refugee law is the 1951 Convention Relating to the Status of Refugees, and its 1967 Protocol.⁸ These instruments define who qualifies as a refugee and outline the rights and protections afforded to them, including non-refoulement (Article 33), access to courts, education, and employment. However, they do not include any specific provisions addressing the unique needs of children. Refugee children are thus treated under a general refugee framework, often overlooking their developmental and protective needs. While the Convention ensures basic rights, its implementation for children largely depends on whether signatory states incorporate child-sensitive procedures in asylum processing and reception.

Convention on the Rights of the Child (CRC)

Adopted in 1989, the United Nations Convention on the Rights of the Child (CRC) is the most comprehensive international treaty focused exclusively on children's rights. Ratified by nearly

⁷ Tanveer, Fizza. "The United Nations Convention on the Rights of the Child (UNCRC): Examining the Tenets, Practices, and Related Studies." *Library of Progress-Library Science, Information Technology & Computer* 44.3 (2024).

⁸ Zimmermann, Andreas, Jonas Dörschner, and Felix Machts, eds. *The 1951 Convention relating to the status of refugees and its 1967 protocol: A commentary*. Oxford University Press, USA, 2011.

every country in the world (excluding the United States), the CRC is legally binding and provides a child-centric lens to refugee protection. Article 22 of the CRC explicitly obligates States Parties to ensure that children seeking refugee status receive appropriate protection and humanitarian assistance, whether accompanied or not. Additionally, it reinforces children's rights to education (Article 28), health care (Article 24), family reunification (Article 10), and protection from exploitation (Article 32–36). The CRC requires that the “best interests of the child” be a primary consideration in all actions concerning them (Article 3), thereby mandating child-friendly asylum procedures and rehabilitation support.⁹

Other Instruments: UDHR, ICCPR, and Regional Frameworks

Beyond the Refugee Convention and CRC, a broad set of international human rights instruments provides additional protections for refugee children. The Universal Declaration of Human Rights (UDHR, 1948) affirms the right to seek asylum from persecution (Article 14) and the right to a standard of living adequate for health and well-being, including for children (Article 25). The International Covenant on Civil and Political Rights (ICCPR, 1966) guarantees the right to life, protection from arbitrary detention, and fair trial rights to all individuals, including refugee children. Article 24 of the ICCPR specifically mandates protection for every child, without discrimination.¹⁰

Regional charters also play a significant role. The **European Convention on Human Rights (ECHR)** and **Charter of Fundamental Rights of the European Union** mandate protections including non-return of minors to inhuman or degrading conditions. Similarly, the **African Charter on the Rights and Welfare of the Child (1990)** contains explicit provisions on refugee and internally displaced children (Article 23), requiring state action to trace families and ensure basic welfare. In Latin America, the **Cartagena Declaration (1984)**, though non-binding, has been instrumental in broadening refugee definitions and encouraging regional cooperation for displaced children.

Role of UNHCR and Guidelines

The UNHCR plays a central role in the protection of refugee children. It issues detailed guidelines and handbooks to help states adopt child-sensitive procedures. These include the

⁹ CRC, UN. "Convention on the Rights of the Child." *CRC becomes incorporated in Swedish law* (1989).

¹⁰ Puri, Jyoti. "INTERNATIONAL HUMAN RIGHTS INSTRUMENTS: GLOBAL JUSTICE AND EQUALITY FRAMEWORKS." *HANDBOOK OF HUMAN RIGHTS*: 8.

UNHCR Guidelines on Determining the Best Interests of the Child (2008)¹¹ and the *Guidelines on Refugee Children* (1994). The UNHCR also promotes alternatives to child detention, the appointment of guardians for unaccompanied minors, and access to education and psychosocial support. It partners with national governments, NGOs, and other UN bodies to enhance refugee child protection systems globally.

In sum, while a robust legal and institutional framework exists for the protection of refugee children at the international level, its success depends on the political will and practical implementation by states. Without coordinated efforts and child-centred approaches, these legal promises risk remaining aspirational rather than transformative.

3. Refugee Child Protection in India: Legal and Policy Framework

India, despite hosting a substantial refugee population from countries such as Myanmar, Afghanistan, Sri Lanka, and Tibet, is notably **not a signatory** to the 1951 Refugee Convention or its 1967 Protocol.¹² This absence of formal accession has led to the absence of a codified legal framework specifically governing refugee rights, including the rights of refugee children. As a result, refugee protection in India has evolved through a combination of **constitutional safeguards, statutory provisions, judicial activism, and interventions by civil society and international organisations**. However, this fragmented approach has resulted in inconsistencies and vulnerabilities, particularly for refugee children.

India's Non-Signatory Status to the 1951 Convention

India has chosen not to accede to the 1951 Convention, citing concerns about its applicability in the South Asian context, the burden on national resources, and the potential loss of discretionary control over migration and border policies. Consequently, there is no comprehensive domestic refugee law. Refugees in India are treated either under the general **Foreigners Act, 1946**, or through **executive and administrative discretion**,¹³ with no distinction between refugees and illegal immigrants. This legal vacuum leaves refugee children vulnerable to arbitrary treatment, lack of legal identity, and inconsistent access to protection.

¹¹ Puri, Jyoti. "INTERNATIONAL HUMAN RIGHTS INSTRUMENTS: GLOBAL JUSTICE AND EQUALITY FRAMEWORKS." *HANDBOOK OF HUMAN RIGHTS*: 8.

¹² Sami, Bernard D. "The Refugee Convention of 1951: India's persisting dilemma." *The Routledge Handbook of Refugees in India*. Routledge India, 2022. 192-201.

¹³ Sarker, P. Shuvro. *Refugee Law in India*. Palgrave Macmillan, 2017.

Constitutional and Statutory Protections

Despite the lack of a refugee-specific statute, refugee children in India benefit from general constitutional protections. **Article 14** guarantees equality before the law, and **Article 21** ensures the right to life and personal liberty, which includes access to shelter, health, and education. The **Supreme Court of India** has interpreted these rights expansively to include non-citizens, including refugees. Additionally, the **Juvenile Justice (Care and Protection of Children) Act, 2015**¹⁴ applies to all children in need of care and protection, regardless of nationality, thereby covering refugee children within its ambit. It mandates the establishment of Child Welfare Committees (CWCs) and provides for shelter, education, and rehabilitation for all vulnerable children, including unaccompanied minors.¹⁵

Judicial Approach and Relevant Case Laws

The Indian judiciary has played a vital role in extending human rights protections to refugees. In **National Human Rights Commission v. State of Arunachal Pradesh**¹⁶, the Supreme Court directed the state to protect the life and liberty of Chakma refugees, emphasizing that Article 21 applies to all persons, not just citizens. In **Louis De Raedt v. Union of India**¹⁷, the Court acknowledged the right of non-citizens to constitutional protections, subject to reasonable restrictions. Though the courts have not pronounced specifically on refugee children's rights in a detailed manner, these rulings lay a broad foundation for their protection. In recent years, the Supreme Court's approach in **Mohd. Salimullah & Anr. v. Union of India**¹⁸, which allowed the deportation of Rohingya refugees, attracted criticism for undermining the non-refoulement principle and showed the limits of judicial protection in the absence of legislative backing.

Role of NHRC, Civil Society, and International Organisations

The **National Human Rights Commission (NHRC)** has intervened in multiple instances to protect refugee rights, including those of children. It has issued notices to state governments on detention conditions, access to education, and illegal deportation of refugees. Civil society organisations such as the **Bosco Refugee Assistance Programme, Refugee Rights**

¹⁴ Yadav, Utkarsh. "Article 21: A Comprehensive Journey of Right to Life and Personal Liberty." *Indian J. Integrated Rsch. L.* 1 (2021): 1.

¹⁵ Sanfelici, Mara, Barry Wellman, and Silvana Mordeglia. "Unaccompanied minors' needs and the child welfare response." *Journal of Social Work* 21.6 (2021): 1533-1552.

¹⁶ (1996) 1 SCC 742.

¹⁷ (1991) 3 SCC 554.

¹⁸ (2021) 10 SCC 1.

Initiative¹⁹, and **Save the Children India** work at the grassroots level to provide refugee children with access to schooling, health care, legal aid, and counselling services.

The **United Nations High Commissioner for Refugees (UNHCR)** maintains a limited but crucial presence in India. It registers and documents asylum seekers (primarily from Afghanistan and Myanmar), facilitates access to basic services, and partners with NGOs to provide protection to unaccompanied and separated children. However, its role is largely advisory and non-binding in India's sovereign legal framework.

In conclusion, while India lacks a dedicated refugee law, the constitutional framework, judicial interpretations, and civil society interventions offer a patchwork of protections. However, refugee children remain inadequately safeguarded due to policy inconsistency and the absence of a structured legal regime. A comprehensive refugee policy or legislation is essential to ensure coherent, rights-based protection for these vulnerable children.

4. Challenges in Protecting Refugee Children in India

India, despite its constitutional commitments to equality and justice, faces significant challenges in ensuring the protection of refugee children. These challenges stem from a combination of **legal vacuum**, **statelessness**, and **practical barriers** to essential services, which collectively result in the marginalisation of this vulnerable group. The plight of **Rohingya refugee children** exemplifies the multifaceted nature of these challenges.

Legal Vacuum and Policy Inconsistency

India's decision to remain a non-signatory to the 1951 Refugee Convention and its 1967 Protocol has led to an absence of a codified national asylum framework. Refugees are administratively handled under the **Foreigners Act, 1946**, which provides wide discretionary powers to the executive without distinguishing between refugees²⁰, asylum seekers, and illegal immigrants. Consequently, refugee children are deprived of a systematic legal identity and uniform rights, making their protection contingent on inconsistent government policies. While some refugee groups, like Tibetans and Sri Lankan Tamils, receive structured support through

¹⁹ Martin, David A. "Strategies for a Resistant World: Human Rights Initiatives and the Need for Alternatives to Refugee Interdiction." *Cornell Int'l LJ* 26 (1993): 753.

²⁰ Ahmad, Nafees. "Refugee Constitutionalism in India: Measuring Supremacy of Judicial Sovereignty Against Global Human Rights Standards." *Religion and Law Review* 23.2 (2014): 37-118.

government-run camps and education schemes, others, such as the Rohingyas, face hostility, exclusion, and arbitrary detention.

Statelessness and Lack of Documentation

One of the gravest issues refugee children face is **statelessness**. Many are born in India but are unable to obtain any legal documentation due to the lack of nationality recognition by their country of origin or the host state. This leaves them legally “invisible” and exposes them to a lifetime of exclusion. Stateless refugee children often face difficulty accessing public services, and are vulnerable to trafficking, exploitation, and abuse. In the absence of birth registration or identity documents, these children are often denied admission to schools or entry into child welfare systems.²¹

Barriers to Education, Healthcare, and Legal Aid

Access to basic rights such as **education, healthcare, and legal aid** remains severely restricted for most refugee children in India. Public schools often require identity proof or residence documents, which many refugee families cannot provide. While the Right to Education (RTE) Act extends to all children in theory, implementation is inconsistent and dependent on state-level discretion.²² Healthcare facilities, though technically accessible, are limited by cost, language barriers, and discriminatory attitudes. Legal aid services rarely reach refugee communities, and children remain unaware of their rights or the procedures to claim them. The absence of trained child protection personnel familiar with refugee issues further hampers their integration and safety.

Rohingya Refugee Case Study

The **Rohingya crisis** starkly illustrates these challenges. Over 40,000 Rohingya Muslims, fleeing persecution in Myanmar, have sought refuge in India.²³ A significant proportion are children living in makeshift settlements without sanitation, formal education, or medical care. Despite UNHCR registration, they face threats of deportation, police harassment, and

²¹ Godsoe, Cynthia. "Caught between two systems: How exceptional children in out-of-home care are denied equality in education." *Yale L. & Pol'y Rev.* 19 (2000): 81.

²² Meshram, Tanojkumar Damaji. *Why Is There a Gap between Policy, Implementation, and Intended Outcomes? A Comparative Case Study of Implementation of Right to Education Act in Two School Districts in India.* Brandeis University, The Heller School for Social Policy and Management, 2022.

²³ Chaudhary, Hansa. "Refugee Crisis in India vis-à-vis National Security: A Study of Rohingya." (2022): 69-86.

xenophobic rhetoric.²⁴ In 2021, India deported several Rohingya detainees, including children, drawing international condemnation for violating the principle of **non-refoulement**. These actions highlight the urgent need for legal clarity and child-sensitive refugee policies that prioritize protection over political expediency.

Overall, the situation of refugee children in India reflects deep systemic gaps that demand legislative and policy reform to uphold their fundamental rights and human dignity.

5. Comparative Analysis: India vs International Standards

The protection of refugee children is a global concern addressed through international legal frameworks, yet India's approach reflects a complex interaction of alignment and divergence with these standards. Examining this relationship reveals significant gaps alongside areas where Indian practices resonate with international norms.

Alignment and Gaps Between Indian and International Norms

India's constitutional protections under Articles 14 and 21 provide a broad foundation for safeguarding the rights of all individuals, including refugee children, echoing the principles of non-discrimination and the right to life enshrined in international instruments such as the **1951 Refugee Convention** and the **Convention on the Rights of the Child (CRC)**.²⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015, also extends child protection irrespective of nationality, paralleling international mandates for the welfare of vulnerable children.

However, a critical **gap** remains due to India's non-signatory status to the Refugee Convention and the absence of a dedicated refugee law. This legal vacuum leads to inconsistent policies and leaves refugee children without guaranteed procedural safeguards during asylum determination or protection from refoulement. Unlike the **CRC's** explicit recognition of refugee children's rights under Article 22, India's protections are indirect and reliant on judicial interpretations and administrative discretion. The lack of a systematic registration and documentation framework exacerbates statelessness and marginalisation, contradicting international standards for legal identity and access to education and healthcare.

²⁴ Scheel, Stephan, and Philipp Ratfisch. "Refugee protection meets migration management: UNHCR as a global police of populations." *International Organisations and the Politics of Migration*. Routledge, 2017. 60-77.

²⁵ CRC, UN. "Convention on the Rights of the Child." *CRC becomes incorporated in Swedish law* (1989).

Best Practices from Other Countries

Several countries have adopted robust legal frameworks and policies that India could emulate to strengthen refugee child protection. For example, **Canada** incorporates refugee rights within its Charter of Rights and Freedoms and offers unaccompanied minors legal guardianship, education, and healthcare access. The **European Union** mandates child-sensitive asylum procedures and prohibits detention of refugee children except as a last resort. African countries, through the **African Charter on the Rights and Welfare of the Child**²⁶, prioritize family reunification and psychosocial support, often supported by regional cooperation. These examples illustrate the benefits of codified rights, clear procedural safeguards, and integrated social support systems tailored to refugee children's needs.

India's Obligations Under Customary International Law

Despite not signing the Refugee Convention, India remains bound by **customary international law** principles, particularly **non-refoulement**, which prohibits returning refugees to countries where they face persecution. This principle is widely recognized as customary and thus binding on all states regardless of treaty status. Furthermore, India's ratification of the CRC imposes binding obligations to protect all children within its jurisdiction, including refugees, and uphold their rights to protection, education, and family unity. Failure to fully implement these norms risks international criticism and undermines India's commitment to global human rights standards.

In conclusion, while India aligns partially with international norms through constitutional protections and child welfare laws, significant legal and policy gaps persist. Drawing on best practices globally and honoring customary international obligations could enable India to better safeguard the rights and dignity of refugee children within its borders.

6. Case Studies

Examining the lived realities of refugee children through case studies reveals both the challenges and responses at national and international levels. This section focuses on **Rohingya refugees in India**, **Syrian refugee children in Europe**, and **Australia's offshore detention of refugee children**, illustrating diverse approaches and outcomes in refugee child protection.

²⁶ Ntui, Mireille Blanche Ma-Agbor. *Child-friendly justice under the european convention of human rights*. Diss. Vilniaus universitetas., 2024.

Rohingya Refugees in India

The Rohingya, a Muslim minority fleeing persecution in Myanmar, have sought refuge in India over the past decades. Estimates suggest that over 40,000 Rohingya refugees currently reside in India, many of whom are children living in informal settlements, mainly in Jammu, Hyderabad, and Delhi. India's non-signatory status to the 1951 Refugee Convention means Rohingya refugees lack formal legal protection, resulting in precarious living conditions. The children face barriers to education, healthcare, and legal identity due to lack of documentation and fears of detention or deportation.²⁷

Despite UNHCR registration efforts, Rohingya refugees experience frequent police raids and arbitrary detentions. In 2021, India deported some Rohingya, including children, sparking international condemnation for breaching the non-refoulement principle. The case highlights the absence of a coherent policy framework and the political sensitivity around refugee protection in India. Civil society groups and UNHCR strive to provide basic services, but without government recognition, refugee children remain vulnerable to exploitation and marginalization.²⁸

Syrian Refugee Children in Europe

The Syrian civil war, beginning in 2011, displaced millions, leading to a major refugee crisis in Europe. Syrian refugee children, many unaccompanied or separated from families, faced perilous journeys across the Mediterranean and through transit countries. European countries implemented various policies to address their needs, often emphasizing child protection.²⁹

Countries like Germany and Sweden granted asylum to Syrian refugees and integrated children into public education and healthcare systems. The **European Union's Reception Conditions Directive** and **Dublin Regulation** include provisions for child welfare, requiring child-sensitive asylum procedures and guardianship systems. However, challenges remain, including overcrowded camps, delays in family reunification, and occasional xenophobic backlash. Nonetheless, European frameworks prioritize the **best interests of the child** and aim to uphold

²⁷ Abbas, Tehmina, and Ravi Hemadri. "Rohingya refugees in India." *The Routledge Handbook of Refugees in India*. Routledge India, 2022. 357-368.

²⁸ Sridhar Patnaik, Dabiru, and Nizamuddin Ahmad Siddiqui. "Problems of refugee protection in international law: An assessment through the Rohingya refugee crisis in India." *Socio-Legal Rev.* 14 (2018): 1.

²⁹ Sirin, Selcuk R., and Lauren Rogers-Sirin. *The educational and mental health needs of Syrian refugee children*. Washington, DC: Migration Policy Institute, 2015.

the CRC principles, showing a relatively progressive approach compared to many parts of the world.

Australia's Offshore Detention of Refugee Children

Australia's policy of offshore detention, implemented from 2001 and intensified after 2013, involves sending asylum seekers, including children, to remote facilities on Manus Island (Papua New Guinea) and Nauru for processing and detention. This approach has attracted severe criticism from international human rights bodies and NGOs due to the harsh conditions and prolonged detention experienced by children.³⁰

Numerous reports document mental health deterioration, physical abuse, and lack of adequate medical and educational facilities for refugee children in detention. The **United Nations Committee on the Rights of the Child** condemned Australia for violating the CRC, particularly Articles 22 (refugee protection) and 37 (protection from torture and detention). Despite domestic court rulings urging reforms, offshore detention continues, highlighting the tension between national border control policies and international child protection standards.

7. Recommendations and Way Forward

The protection of refugee children in India requires urgent and comprehensive reforms to address the existing legal and policy gaps. Foremost among these is the **need for a dedicated national refugee law**. Such legislation would provide a clear, uniform framework to recognize and protect refugees, including children, ensuring consistent access to rights such as education, healthcare, and legal identity. A national law aligned with international standards, particularly the principles enshrined in the 1951 Refugee Convention and the Convention on the Rights of the Child (CRC), would reduce ambiguity and protect refugee children from arbitrary detention and statelessness. Implementing **child-centric asylum procedures** is another critical step. Refugee children, especially unaccompanied or separated minors, require specially tailored processes that prioritize their best interests and safeguard their dignity. This includes expedited and sensitive refugee status determination, psychological support, and protection from detention. Training for immigration and social workers on child rights and trauma-informed care should be mandatory to ensure appropriate handling of vulnerable children. To support these processes, India must establish **legal aid and guardianship support systems** for refugee

³⁰ Amarasena, Lahiru, et al. "Offshore detention: cross-sectional analysis of the health of children and young people seeking asylum in Australia." *Archives of disease in childhood* 108.3 (2023): 185-191.

children. Legal aid services should be accessible and well-publicized to refugee communities, empowering children and their families to understand and assert their rights. Additionally, appointing legal guardians or child advocates can provide essential guidance and protection, ensuring that children's voices are heard in administrative and judicial proceedings. Strengthening **India's cooperation with international agencies**, such as the United Nations High Commissioner for Refugees (UNHCR) and relevant NGOs, is vital to improve service delivery and policy implementation. Collaborative efforts can enhance registration systems, facilitate access to education and health services, and monitor the welfare of refugee children. Regular engagement with international human rights mechanisms will also encourage compliance with global standards and foster a more humanitarian approach.

Together, these recommendations provide a roadmap toward a rights-based, child-sensitive refugee protection regime in India. Establishing clear legal frameworks, prioritizing the welfare of refugee children, and fostering international cooperation are essential to uphold India's humanitarian responsibilities and ensure that refugee children can rebuild their lives with dignity and security.

8. Conclusion

This research underscores the precarious situation of refugee children in India, where the absence of a formal refugee law and inconsistent policies leave many vulnerable to statelessness, exclusion, and exploitation. While India's constitutional guarantees and child protection laws offer some safeguards, they are insufficient without a dedicated legal framework aligned with international norms. Comparative analysis with other countries reveals that structured, child-centric asylum procedures and robust legal aid systems are crucial for effective protection. The case studies of Rohingya children in India, Syrian refugee children in Europe, and Australia's offshore detention policies highlight the diverse challenges and responses to refugee child protection globally. They emphasize the importance of prioritizing children's rights and well-being over political and administrative convenience. Ultimately, India must reaffirm its commitment to humanitarian principles by adopting comprehensive legal reforms that protect refugee children's rights and dignity. Strengthening cooperation with international organizations and civil society, alongside child-sensitive policies, will help transform India's refugee protection regime from one of ambiguity and exclusion to one of compassion and inclusion. The future of refugee children depends on such decisive and humane action.

9. Bibliography

Books

1. Abbas, Tehmina, and Ravi Hemadri, "*Rohingya Refugees in India*", in *The Routledge Handbook of Refugees in India*, Routledge India, 2022, pp. 357–368.
2. Partha, S., "*Migrants, Refugees and the Stateless in South Asia*", Manohar Publishers, 2024.
3. Puri, Jyoti, "*International Human Rights Instruments: Global Justice and Equality Frameworks*", *Handbook of Human Rights*, pp. 8.
4. Sami, Bernard D., "*The Refugee Convention of 1951: India's Persisting Dilemma*", in *The Routledge Handbook of Refugees in India*, Routledge India, 2022, pp. 192–201.
5. Sarker, P. Shuvro, "*Refugee Law in India*", Palgrave Macmillan, 2017.
6. Sridhar Patnaik, Dabiru, and Nizamuddin Ahmad Siddiqui, "*Problems of Refugee Protection in International Law: An Assessment through the Rohingya Refugee Crisis in India*", *Socio-Legal Review* 14 (2018): 1.
7. Zimmermann, Andreas, Jonas Dörschner, and Felix Machts (Eds.), "*The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*", Oxford University Press, USA, 2011.

Journal Articles and Dissertations

8. Ahmad, Nafees, "*Refugee Constitutionalism in India: Measuring Supremacy of Judicial Sovereignty Against Global Human Rights Standards*", *Religion and Law Review* 23.2 (2014): 37–118.
9. Amarasena, Lahiru, et al., "*Offshore Detention: Cross-Sectional Analysis of the Health of Children and Young People Seeking Asylum in Australia*", *Archives of Disease in Childhood* 108.3 (2023): 185–191.
10. Bhatt, Anita, "*Refugee Crisis: A New Era of Global Conflict*", *Education and Society* 46 (2022): 53–57.
11. Chaudhary, Hansa, "*Refugee Crisis in India vis-à-vis National Security: A Study of Rohingya*", (2022): 69–86.
12. Godsoe, Cynthia, "*Caught Between Two Systems: How Exceptional Children in Out-of-Home Care Are Denied Equality in Education*", *Yale L. & Pol'y Rev.* 19 (2000): 81.
13. Lambert, Hélène, "*The European Convention on Human Rights and the Protection of Refugees: Limits and Opportunities*", *Refugee Survey Quarterly* 24.2 (2005): 39–55.

14. Martin, David A., "*Strategies for a Resistant World: Human Rights Initiatives and the Need for Alternatives to Refugee Interdiction*", *Cornell Int'l LJ* 26 (1993): 753.
15. Meshram, Tanojkumar Damaji, "*Why Is There a Gap Between Policy, Implementation, and Intended Outcomes? A Comparative Case Study of Implementation of Right to Education Act in Two School Districts in India*", Brandeis University, The Heller School for Social Policy and Management, 2022.
16. Ntui, Mireille Blanche Ma-Agbor, "*Child-Friendly Justice Under the European Convention of Human Rights*", Diss. Vilnius Universitetas, 2024.
17. Sanfelici, Mara, Barry Wellman, and Silvana Mordeglia, "*Unaccompanied Minors' Needs and the Child Welfare Response*", *Journal of Social Work* 21.6 (2021): 1533–1552.
18. Sinha, Anita, "*Transnational Migration Deterrence*", *BCL Rev.* 63 (2022): 1295.
19. Tanveer, Fizza, "*The United Nations Convention on the Rights of the Child (UNCRC): Examining the Tenets, Practices, and Related Studies*", *Library of Progress - Library Science, Information Technology & Computer* 44.3 (2024).
20. Yadav, Utkarsh, "*Article 21: A Comprehensive Journey of Right to Life and Personal Liberty*", *Indian J. Integrated Rsch. L.* 1 (2021): 1.

Legal Instruments and Institutional Reports

21. Assembly, UN General, "*Convention on the Rights of the Child*", *United Nations, Treaty Series* 1577.3 (1989): 1–23.
22. Canton, Helen, "*United Nations High Commissioner for Refugees—UNHCR*", *The Europa Directory of International Organizations 2021*, Routledge, 2021, pp. 215–234.
23. CRC, UN, "*Convention on the Rights of the Child*", incorporated in Swedish Law (1989).
24. Scheel, Stephan, and Philipp Ratfisch, "*Refugee Protection Meets Migration Management: UNHCR as a Global Police of Populations*", in *International Organisations and the Politics of Migration*, Routledge, 2017, pp. 60–77.

Case Laws (India)

25. *Louis De Raedt v. Union of India*, (1991) 3 SCC 554.
26. *Mohd. Salimullah & Anr. v. Union of India*, (2021) 10 SCC 1.
27. *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742.