

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



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**INTERPLAY BETWEEN NATIONAL  
SOVEREIGNTY AND  
INTERNATIONAL OBLIGATIONS:  
REFUGEE PROTECTION IN INDIA**

BY: ALISHA JAMATIA LLM

## ABSTRACT

The evolution of human civilization and the comprehension of migratory phenomena have historically remained ambiguous. Throughout history nations and individuals have suffered from conflicts and wars which have displaced millions of people from their homes. India, by its nature as a diverse nation, is fundamentally and consistently committed to the principles of a secular and democratic state. Given its geographical location, which includes bordering politically unstable and volatile states such as Myanmar, Pakistan, Bangladesh, Nepal, Bhutan and Afghanistan, India's refugee crisis is intrinsically linked to regional conflicts and geopolitical disagreement. While the nation has a history of welcoming significant refugee populations, its refugee law operates within a distinctive and complex structure, primarily because the country was not a signatory to the *1951 Refugee Convention* or its *1967 protocol*. This has led to the absence of comprehensive national refugee law. Instead, India handled it on an ad hoc and administrative basis, often under domestic legislation. This paper studies India's unique approach to safeguarding refugee in India. It further investigates the crucial role of the judiciary in safeguarding refugees, particularly through the application of constitutional entitlements such as Article 14, Article 20, Article 21, Article 25, Article 32, Article 226, and the principle of non-refoulement.

*“While every refugee's story is different and their anguish personal, they all share a common thread of uncommon courage, the courage not only to survive, but to persevere and rebuild their shattered lives”*

- Antonio Guterres.

*“No one leaves home unless home is the mouth of shark”*

- Warsan Shire

Key Words: Refugee Law, Refugee Convention, Non-refoulement, Judiciary, Constitutional Rights

## INTRODUCTION

A refugee is a person who has crossed international borders and settled in another country without the usual legal documents or procedure. The core legal definition of refugee comes from the Convention Relating to the Status of Refugees, 1951, also referred to as the 1951 Refugee Convention, which defines a refugee as:

*“Someone who is unable to return to their home country due to a well-founded fear of persecution for reasons tied to their race, religion, nationality, belonging to a particular social groups or political views.”<sup>1</sup>*

It is essential to distinguish between refugees and asylum seekers and migrants. Refugees and those seeking asylum are individuals displaced across international boundaries who have a negligible prospect of safe repatriation. In contrast, migrants depart their home country primarily to pursue improved socio-economic conditions and are not subject to persecution upon their return. Unlike most other migrants, refugees request entry into another state not as a matter of choice, but out of necessity.<sup>2</sup> A refugee, having been abandoned by their own state’s protection, requires assistance from the government of a host country and the international community. This is the critical need for international protection.<sup>3</sup> It is clearly understood that granting refuge to asylum seekers is generally a matter of discretion, and the decision to provide it lies with the state and its authorities.

India hosts refugees including religious minorities like Hindus, Sikhs, Buddhists, Parsis, and Christians who sought asylum from Afghanistan, Bangladesh, Pakistan, Myanmar, Bhutan, and Tibet. The arrival of thousands of refugees expands the Government’s legal responsibility to provide care for this population alongside its citizens, which is especially challenging given India’s large population and comparatively limited resources. India is not a signatory to the 1951 Refugee Convention and its Protocol of 1967. Instead, it governs the protection of refugees through the enforcement of human rights within its jurisdiction. Thus, government nonetheless affords protection to refugees despite not being a party state to the 1951 Refugee Convention.

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<sup>1</sup> Convention Relating to the Status of Refugees, 1951 (1951 Refugee Convention) Art. 1A(2).

<sup>2</sup> Tarang Nagar and Arihant Jain, *“Determination of Refugee Status & Asylum Seekers in India- An International Law Perspective”*, in B.P. Singh Seghal, *Issues and Challenge of Public International Law* 448-456 (Universal Law Publication, 2016).

<sup>3</sup> Executive Committee of the High Commissioner’s Programme, *Note on International Protection*, A/AC.96/830, 7 September 1994, available at <https://www.refworld.org/policy/unhcr/1994/en/39142> (visited on 02<sup>nd</sup> October, 2025).

Furthermore, individuals not formally shielded by the government can pursue protection through the UNHRC, functioning within India's de facto system of Refugee Protection.

## REFUGEE STATUS IN INDIA

India's history of hosting displaced persons is immense, beginning with the partition of 1947. After the partition of India and Pakistan, nearly 20 million people were displaced, and around 160 relief camps were set up to support them. Later, in 1959, when the *Dalai Lama* and followers sought asylum, India welcomed them as refugees. Over the years, India has also provided shelter to *Sri Lankan Tamils in 1983* and *Bangladesh nationals in 1986*, and many others. By the end of 1992, India was hosting over 200,000 migrants from different countries. Refugees in India are generally categorized into three distinct groups: **category I** refugees are individuals afforded full protection directly by the Indian government, such as the Tamil refugees originating from Sri Lanka. **Category II** refugees comprise those who have secured refugee status from the UNHCR and are consequently shielded by the fundamental international law principle of non-refoulement, i.e, the prohibition against forcible return, such as Burmese and Afghans nationals. The final classification, **category III** refugees, encompasses individuals who have not been formally recognized by either the Indian government or the UNHCR, yet have entered the country and become integrated within the local populace.<sup>4</sup> Since India is not a signatory of the *1951 Refugee Convention and its 1967 Protocol*, the protection and rehabilitation of refugees have been undertaken primarily through domestic legal and administrative measures.

Today, India continues to host across Asia and Africa, with major groups being *the Sri Lankan Tamils, Tibetans, Afghans, Bangladeshis, and Rohingyas from Myanmar*. As per UNHCR registration records the largest refugee groups in India are the Sri Lankans Tamil by (92,051), Tibetans by (72,291)<sup>5</sup>, and Myanmar nationals by (32,961), followed by Afghans by (9423) and Sudan by (1329)<sup>6</sup>. Thus, around 47,183 refugees and asylum seekers are registered with UNHCRI

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<sup>4</sup> Supra note. 2, at 449-450

<sup>5</sup> The UN Refugee Agency, *report of refugees and asylum seekers as of 31<sup>st</sup> March 2023*, UNHCR Factsheet (March 31<sup>st</sup> 2023).

<sup>6</sup> The UN Refugee Agency, *report of refugees and asylum seekers as of 28<sup>th</sup> February 2025*, UNHCR Factsheet (February 28<sup>th</sup> 2025).

India, and 5,356 are benefitted from educational services which includes remedial and bridge classes, support for enrolment in formal educational structures.<sup>7</sup>

## INDIA'S COMMITMENT TO INTERNATIONAL STANDARDS ON REFUGEE PROTECTION

### ▪ **The 1951 Refugee Convention and India**

The *United Nations Convention Relating to the Status of Refugee, 1951* and the *Protocol Relating to the Status of Refugees, 1967* are the main international instrument dealing with refugee rights and protection. The Convention was adopted in 1951 and came into force on 22<sup>nd</sup> April 1954. Article 35 of the Refugee Convention and Article II of its Protocol are binding provisions that require the High Contracting states to cooperate with the UNHCR in carrying out its functions to protect and assist refugees. India and other South Asian countries have an ambivalent relationship with these instruments, as they have not acceded to the 1951 Refugee Convention or its 1967 protocol. Their rationale is that these instruments are Eurocentric in their design and not adequately adapted to the specific circumstances and context of the South Asian region. Thus, India has not ratified either the convention or the protocol, nor has it enacted a *national refugee law* addressing refugee rights in India. As a result, refugees in India do not fall under a uniform legal framework. Instead, the treatment of refugees varies from case to case and largely depends on administrative decisions leading to an inconsistent approach.

### ▪ **UNIVERSAL DECLARATION OF HUMAN RIGHTS AND INDIA**

The *Universal Declaration of Human Rights (UDHR)* is a landmark international document designed to universally protect the fundamental human rights of every individual. It establishes that “*all human beings are born free and equal in dignity and rights, affirming that everyone is entitled to the right to life, liberty and security of person*”<sup>8</sup>. India, being a state party to major UN human rights treaties like the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, derives certain obligations toward holding the rights of the refugee from these instruments, as well as from the UDHR itself. Furthermore, the principles of the UDHR are practically applied in India because the *Constitution of India, 1950*, incorporates many similar fundamental rights, reinforcing the idea that basic human rights protection

<sup>7</sup> Supra note.6

<sup>8</sup> The Universal Declaration of Human Rights, 1948 (UDHR) Art 1 and Art 3.

should extend to all persons on Indian soil including refugees. Thus, India, despite not being a state party to the Refugee Convention, it protects refugees in its country using fundamental rights principles applying *ad hoc* mechanism.

### ▪ **UNHCR in India**

The office of the United Nations High Commissioner for Refugees (UNHCR), commonly referred to as the UN Refugee Agency, was formally constituted on December 14<sup>th</sup>, 1950. UNHCR performs a comprehensive function in the safeguarding of relocated and expatriated persons. It serves as a specialized United Nations organ, possessing the mandate to protect and support refugees upon the requisition of a sovereign state or the UN itself, and to facilitate their voluntary repatriation and resettlement to a third country. UNHCR India operation is conducted across 11 locations, facilitated by the support of 8 implementing partners. The Government of India grants authorization for refugees under UNHCR's mandate to submit applications for a Long Term Visa (LTV) and employment authorization at a UNHCR office. A duly appointed legal officer is responsible for conducting interviews with such refugees to acquire all required data. Should any discrepancies arise during an interview, they must be addressed with due diligence and caution, taking the refugee's psychological welfare into consideration. The UNHCR office in India engages in close cooperation with the government of India, non-governmental entities, and members of civil societies to ensure that refugees within the Indian Territory are not involuntarily returned to their countries of origin.<sup>9</sup>The Indian government may, on occasion, decline acceptance of the refugee determination made by UNHCR. This circumstance is partially attributed to the limited financial endowment within India, which represents a difficulty in managing the refugee population within the country. Furthermore, refugees assert that the determination procedure is arbitrary, intricate, and plagued by protracted delays. The South Asia Human Rights Documentation Centre (SAHRDC) reports that refugees and the Non-Governmental Organization (NGOs) representing them lack comprehension of UNHCR's criteria for Refugee Status Determination (RSD) and frequently allege unfair treatment during interviews. Additional impediments encountered by refugees include being perceived as alien persons, while the linguistic barriers contribute to societal friction. The Young Men's Christian Association (YMCA) program, implemented with the support of UNHCR, has also faced censure for being irregular and uncooperative.<sup>10</sup>

## **INDIAN LEGAL APPROACH TOWARDS REFUGEES**

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<sup>9</sup> The UN Refugee Agency, UNHCR India, available at <https://www.unhcr.org/in/> ( visited on 4<sup>th</sup> October 2025).

<sup>10</sup> Supra note 2 at pg. 454-455.

Laws are fundamental for the protection of individual human rights. Despite having refugees for decades, India lacks a specific national law governing their status. As a result, refugees in India do not enjoy any defined statutory rights. The country, manages the refugee-related issues mainly at the political and administrative level through *ad hoc* measures. Thus, the framework of refugee protection in India is defined by the blend of constitutional provisions, judicial decisions, and practical responses to changing refugee status in the situation in India.

## ▪ **REFUGEE PROTECTION UNDER THE CONSTITUTION OF INDIA**

India has ratified several International Human Rights Treaties and Conventions that Obligates it to protect refugees on the Humanitarian Grounds. The constitution of India, living with its vision of a welfare state, guarantees certain fundamental rights to all individuals, regardless of nationality, including refugees. These include:

- The right to equality before Law and equal protection of the law.<sup>11</sup>
- The Right to Protection with respect to Conviction for Offences.<sup>12</sup>
- The Right to Life and Personal Liberty.<sup>13</sup>
- Protection against arrest and detention in certain cases.<sup>14</sup>
- Freedom of conscience and free profession, practice, and propagation of religion under Article 25 of the Constitution of India.
- Remedies for enforcement of rights conferred under part III of Constitution of India.
- Power of High to issue Writs under Article 32 and 226.

Moreover, the principle such as the right to seek Asylum from persecution forms a part of customary international law, which is binding on all states, including India.<sup>15</sup> These rights are used as an instrument to protect the rights of refugees in India. The government, therefore, holds the authority to enforce such protection when necessary. It is also important to note that Art.21 of the Constitution of India guaranteed the *right to life and personal liberty* to all persons, including foreigners. It does not extend to the *right to reside and settle in India*, which is specially reserved for Indian citizens under Article 19(1)(e).<sup>16</sup> Furthermore, Art.21 acts as a promise when it comes

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<sup>11</sup> The Constitution of India,1950 Art.14.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> The Universal Declaration of Human Rights, 1948 Art. 14.

<sup>16</sup> Mr. Louis De. Raedt v. Union of India, AIR 1991 SC 1886.

to protecting refugees and asylum seekers in India against refoulement.<sup>17</sup> Indian courts have also affirmed that protecting against non-refoulement is a part of Art. 21.<sup>18</sup> In the judicial pronouncement of *Sarbananda Sonowal v. Union of India*, the Supreme Court established the proceedings in a criminal trial and the subject matter of identifying an alien and his expulsion. This distinction was premised on the fact that, in the latter scenario, there was a deprivation of his life or personal freedom.<sup>19</sup>

## ▪ **LEGISLATIVE PROTECTION**

India lacks a specific law pertaining to refugees; consequently, refugees in the country are treated as foreigners, and thus they are governed by outdated laws primarily designed for all foreigners, such as:

- **The Registration of Foreigners Act, 1939**

The *Registration of Foreigners Act, 1939*, is a Law that requires foreigners who enter, live in, or leave India to register their details with the authorities. The Act allows the Central Government to make rules about how foreigners should announce their presence. The act governs registration rights, and duties as well as liabilities.

- **The Foreigner Act , 1946**

The *Foreigner Act, 1946* is an act that confers certain powers to the central government in respect of all foreigners or any particular foreigners or a class of foreigners. The act regulates and restricts the entry and departure of the foreigners.

- **Passport Act, 1967**

The *Passport Act, 1967*, is an act that deals with the issuance of Passport and travel documents. It regulates the departure from India of Indian citizens and other persons thereto.

- **The Immigration and Foreigners Act, 2025**

The *Immigration and Foreigners Act, 2025*, provides certain powers to the central government to regulate immigration, entry, and stay of foreigners in India. The act came into effect on 1<sup>st</sup> September 2025. The act replaces four laws, i.e. the

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<sup>17</sup> Douglas McDonald-Norman, “A Lifeless Clause: Refugees and Art.21 of the Constitution”, NEWSclick.in, 15<sup>th</sup> August 2024, available at <https://www.newsclick.in/lifeless-clause-refugees-and-art-21-constitution>.

<sup>18</sup> Ktaer Abbas Habib Al Quataifi & Anr v. Union Of India AIR 1999 CRILJ919.

<sup>19</sup> AIR 2005 SC 2920

Passport Act 1920, the Registration of Foreigners Act, 1939, the Foreigner Act, 1946, and the Immigration (Carrier's Liability) Act 2000.

## ▪ **CITIZENSHIP (AMENDMENT) ACT, 2019**

For generations, the legal status of citizenship in India has been understood as a sacred constitutional right, firmly rooted in the principles of *equality, secularism and non-discrimination*. The core tenet was that this right would never be on a person's religion or ethnic background. However, the enactment of the *Citizenship Amendment Act (CAA), 2019*, caused a widespread controversy, as it expedited the path to citizenship exclusively for members of *the Hindu, sikh, Buddhist, Jain, Parsi and Christian communities who migrated from Afghanistan, Bangladesh, and Pakistan* by the end of 2014<sup>20</sup>. By making a claimant's eligibility contingent on their religious affiliation and a country of origin, the CAA is legally criticized for undermining the secular framework of the constitution of India.

Before the CAA, the legal landscape had been tightened by the 2003 amendment to the Citizenship Act, which introduced the category of *illegal migrant*, and all *illegal migrants* were barred from acquiring citizenship through both registration and naturalization regardless of how long they had lived in the country. However, the CAA 2019 directly counteracted this by redefining *illegal migrants*,<sup>21</sup> excluding a specific class of non-Muslim individuals. This exclusion is widely deemed arbitrary, biased, and discriminatory, representing a clear deviation from the nation's foundational commitment to fostering unity and equality among all communities.

## **ROLE OF THE INDIAN JUDICIARY IN PROTECTING REFUGEE RIGHTS**

The Indian judiciary has been instrumental in protecting the rights and dignity of refugees in India. Although India currently lacks specific national legislation governing refugee's status, the courts have consistently interpreted constitutional provisions and India's international commitments to safeguard these individuals. Through a significant plethora of judicial decisions, the Indian Judiciary has established a framework for the protection of refugees, stepping in where dedicated statutory law is absent. In the case of *State of Arunachal Pradesh v. Khudiram Chakma*,<sup>22</sup> the Supreme Court held that Article 21 of the Constitution of India guarantees the fundamental right to life and personal liberty. This right is not limited to Indian citizen; it also protects non-citizens. However, the right to

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<sup>20</sup> The Citizenship (Amendment) Act, 2019 Sec. 1.

<sup>21</sup> Supra note 20.

<sup>22</sup> AIR 1994 SC 1461

reside and settle in India, mentioned under Article 19(1)(c),<sup>23</sup> is available only to the citizen of India and not to foreigners. The Indian judiciary has played a crucial role in protecting the fundamental rights of the refugees. It has ensured that refugees enjoy many of the same basic rights as Indian citizens. Over the years, the Indian Court has stepped in to protect refugees from being deported, expelled, or forcibly sent back to their countries. In the case of *U. Myat Kayew and another v. State of Manipur*,<sup>24</sup> the court relaxed the requirement for providing a surety, allowing the refugees to be released so that they could freely approach the UNHCR for assistance. In the landmark case of *National Human Rights Commission v. State of Arunachal Pradesh*,<sup>25</sup> the Supreme Court acted to protect the fundamental rights of the Chakma refugees. These refugees, who had sought asylum in Assam and Tripura after fleeing East Pakistan (now Bangladesh), were initially unable to be resettled by those state governments. Consequently, some were relocated to Arunachal Pradesh Student Union (AAPSU), which demanded the refugee's expulsion and threatened violence. In response, the National Human Rights Commission petitioned the Supreme Court. The Apex Court then issued a decisive ruling, ordering the state of Arunachal Pradesh to undertake all necessary actions to guarantee the Chakmas life and personal liberty, affirming this as a constitutional obligation. While the Indian Judiciary generally upholds the protection of refugees, certain regional states particularly in the Northeast, criticised the government for failing to differentiate between immigrants and refugees. In the landmark case of *Nandita Haksar v. State of Manipur*,<sup>26</sup> the Manipur High Court invoked the principle of non-Refoulement in light of Article 21 of the Constitution of India. The court then reprimanded for failing to differentiate between immigrants and refugees. This judgment underscored the judiciary's role in maintaining necessary legal requirements and ensuring the protection of refugee rights.

## ▪ THE PRINCIPLE OF NON-REFOULMENT

India observes the *principle of non-refoulement*. This humanitarian principle dictates that a country receiving individuals who have fled their homeland due to genuine fears of *persecution, inhuman treatment, torture, or other serious harm* must not return or refoule them to that home country. Essentially, non-refoulement serves as a guarantee of safety for refugees, ensuring that they are not sent back to a place where their life or freedom would be threatened. The principle of non-refoulement has not been formally incorporated into Indian Domestic Statutes however it has been followed as a matter of state practice and international commitment. In *Zothansangpuii v. State of Manipur and*

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<sup>23</sup> The Constitution of India, 1950, Art 19, cl.1(c)

<sup>24</sup> AIR 1991, C.R. NO. 516/91, Guwahati High Court.

<sup>25</sup> AIR 1996 SC 1234

<sup>26</sup> AIR 2021, W.P.(Crl.)No. 6 of 2021

another, <sup>27</sup>the Guwahati High Court held that the refugees cannot be subjected to refoulement if their lives are threatened in their home countries.

## CHALLENGES OF INDIA'S REFUGEE FRAMEWORK

India's approach to refugee protection is complex, navigating both international norms and the domestic legal framework. However, India's refugee policy encounters several significant challenges, primarily revolving around legal clarity and application, such as:

- **Absence of International Convention adherence** – India is a signatory to the *1951 Refugee Convention or its 1967 Protocol*. Thus India does not have specific national refugee law based on these international agreements. As a result, the government has to deal with refugees using constitutional provisions and other domestic laws which solely does not deal with refugee protection and often become inadequate.
- **Controversial domestic legislation-** The *Citizen (Amendment) Act 2019*, is argued to be discriminatory, as it exclude Muslims from its provision for citizenship for persecuted minorities from neighbouring countries.
- **Conflation between Refugees and Immigrants:** A major policy difficulty is the lack of clear distinction between refugees and immigrants. This confusion hinders the development and consistent application of refugee policy.

## SUGGESTION

Refugees are already victims in their own home countries, and therefore, it is important to ensure that they are able to enjoy proper fundamental rights in their host country. However, a truly effective solution to this massive displacement crisis can't come from just one place. It requires a systematic, global effort that crosses borders and goes beyond what any single agency can handle. Thus, both developed and developing countries need to work cooperatively because this complex crisis affects everyone: the country where the persecution happens and the country that takes people in and all the neighbours around them. Thus, a key step to properly ensure fundamental rights and protection for refugees is:

- To enact a dedicated and comprehensive national law specially addressing their rights and protection in the host country.

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<sup>27</sup> AIR 1989, Civil Rule NO.981 of 1989

- To demonstrate its commitment to upholding global standards for refugee protection, India should reconsider ratifying international treaties on refugees, such as the 1951 refugee convention.
- Align its domestic framework with internationally recognized norms and secure help from the expertise who wants to help including Non-governmental Organisation (NGOs) in the international response.
- Making sure that these measures actually reach people and make different on the ground. Hence, there is need to improve accountability and show genuine commitment to the cause.

## CONCLUSION

When it comes to refugee law, India doesn't have once clear and dedicated law. Instead, it relies on constitutional provisions, judicial decision and various government policies. Even though the government technically classifies refugees as "foreigners", they still have access to the fundamental rights guaranteed by the constitution of India. This lack of a single comprehensive law is why we need a specific law addressing the rights and protection of the refugees. Significantly the judiciary play a proactive role in safeguarding refugee rights, affirming an individual's right to claim refugee status and often preventing expulsion or deportation while asylum claims are pending. Essentially, the judges decisions are powerful actively ensuring that International Human Rights Principles are followed. The recent judicial developments, both in India and across the international sphere, reflect a growing judicial engagement with refugee protection and human rights obligation. In India, cases such as *Mohammad Salimullah v. Union of India (2021)* highlight the judiciary's caution approach, balancing constitutional guarantees with the absence of a dedicated refugee law and India's non-signatory status to the 1951 Refugee Convention. Meanwhile, International Judgments such as the *European Court of Human Rights ruling against Greece (2025)*, underscore a stronger enforcement of the principle of non-refoulment and accountability for state actions against seekers.

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