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STATELESS AND RIGHTLESS: REFUGEE CRISIS, CONSTITUTIONAL MORALITY AND THE GAPS IN INDIA'S LEGAL FRAMEWORK

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ABSTRACT

When a displaced family flees persecution and reaches Indian shores, what law protects them? The honest answer is none specifically does. India, the world's largest democracy and a civilization historically rooted in the philosophy of *Vasudhaiva Kutumbakam* means the world is one family, paradoxically offers no dedicated legal shelter to world's most vulnerable people. Remarkably, India hosts over 2.4 lakh (240,000) UNHCR-registered refugees, yet has no domestic law to protect even one of them. The paper examines the basic paradox: while Articles 14 and 21 of the Indian Constitution guarantee life, dignity, and equality to all people not merely citizens, India's administrative and legislative practice treats refugees as little more than illegal infiltrators under the archaic Foreigners Act, 1946. The colonial relic was designed for an entirely different political reality; however, it continues to govern millions of displaced people today.

Using a doctrinal and comparative legal methodology, this paper analyzes constitutional provisions, judicial precedents, and international frameworks. Through this lens, it examines India's troubling legal trajectory – from the Supreme Court's progressive ruling in *NHRC v. State of Arunachal Pradesh (1996)*, which upheld Article 21 protections for Chakma refugees, to its deeply concerning refusal to halt Rohingya deportations in *Mohammad Salimullah v. Union of India (2017)*, this shift starkly exposes how India's legal system offers no meaningful protection even when a refugee's life and liberty are demonstrably at risk. India's deliberate non-ratification of the 1951 Refugee Convention and its 1967 Protocol further deepen this protection vacuum, leaving refugee rights subject to political convenience rather than legal certainty.

While existing scholarships largely focuses on international refugee law obligation, this paper uniquely examines India's own constitutional framework as an untapped domestic remedy. It ultimately proposes a rights-based Model Refugees Protection Framework for India - One anchored in constitutional morality, the principle of non-refoulement, and a human dignity. The paper argues that a nation cannot fully sustain democratic greatness while leaving the

stateless without rights.

Keywords: Refugees, Constitutional Morality, Non-refoulement, Foreigners Act, Vasudhaiva Kutumbakam.

I. INTRODUCTION

Human displacement is not a new phenomenon. Throughout history, individuals and groups of people have been forced to leave their homes in search of safety from war, persecution, violence, and other form of insecurity. While the experience of displacement is universal, the legal response to people seeking shelter differs significantly from one country to another. For the hundreds of thousands of refugees who have sought asylum in India, the legal system governing their status is still uncertain and largely undeveloped. India presents distinct and frequently contradicting picture in this matter. As the world's largest democracy, the country has traditionally valued tolerance, hospitality, and the Vasudhaiva Kutumbakam ideology, which sees the world as a united family. India's constitution demonstrates a deep commitment toward equality, dignity, and human rights. Despite these constitutional and cultural roots, India lacks a specific legal framework to safeguard refugees. By the end of 2024, over 240,000 refugees and asylum seekers had been registered with UNHCR in India, with the majority fleeing persecution and violence in Myanmar and Afghanistan.¹ Nonetheless, their legal standing is largely dependent on executive discretion rather than clearly defined statutory rights.

In the absence of the specific refugee protection law, India's Foreigners Act of 1946 serves as the primary legal framework for refugees. Originally enacted during colonial period, this legislation was meant to limit foreigners' entry, presence, and departure from British India, rather than deal with the special circumstances of those fleeing persecution.² As a result, law does not make any distinction between refugees seeking protection and other types of foreign nationals. A Rohingya family fleeing systematic violence and persecution can thus be considered in the same way as someone who has just overstayed a visa. Such an approach ignores the unique vulnerabilities involved with forced displacement and exposes a key flaw in the existing system.

At the constitutional level appears different picture. The constitution does not restrict all essential rights of citizen; many protections are granted to every person within the India's

¹ UNHCR, *India*, UNHCR (2024), <https://reporting.unhcr.org/operational/operations/india>.

² The Foreigners Act, No. 31 of 1946 (India).

territory. Article 14 assures equality before the law and equal protection of law for all, but Article 21 provides that no person shall be deprived of life or personal liberty except accordance with legal procedures. The Supreme Court has often stated that these safeguards are applicable to noncitizens as well.³ In *National Human Rights Commission v. State of Arunachal Pradesh*, the Court emphasized that the state had responsibility to protect the life and personal liberty of every individual, regardless of their citizenship.⁴ However, in *Mohammad Salimullah v. Union of India*, the Court declined to stop the repatriation of Rohingya refugees, stating that the right against deportation is subject to Article 19(1)(e), which is only available to citizens.⁵ The conflict between these judicial approaches reflects the greater uncertainty regarding refugee protection in India.

The main focus of this thesis goes beyond the absence of a refugee statute. The more fundamental issue is that India already has constitutional principles that can support real refugee protection, but these values have not been consistently applied for that purpose. India has also declined to join the 1951 Refugee Convention or its 1967 Protocol, raising concerns about sovereignty and national security, which are often connected to the 1971 Bangladesh refugee crisis.⁶ As a result, refugees in India remain uncertain about their legal status and doesn't always have guaranteed access to essential rights such as employment, education, and protection from arbitrary detention or deportation.

Against this backdrop, this study seeks to achieve four main objectives, first, it examines the current legal system regulating refugees in India and identifies its major flaws. Second, it considers the potential of using Article 14 and 21 of the constitution as constitutional foundation for refugee protection. Third, it analyzes the role of judicial activism in protecting refugee rights, emphasizing that the courts can have substantial impact even in the absence of a comprehensive refugee statutory framework. Finally, it suggests a model refugee protection framework based on constitutional morality, human dignity, and the principle of non-refoulement.

According to a review of the existing literature, the majority of research on refugee protection in India focus on international law, especially India's decision not to ratify the Refugee Convention and the legal consequences of that stance.⁷ While these studies provide valuable insights, they frequently overlook the options that already exist inside India's constitutional

³ India Const. art. 14; India Const. art. 21; see also *Louis De Raedt v. Union of India*, (1991) 3 S.C.C. 554 (India).

⁴ *Nat'l Hum. Rts. Comm'n v. State of Arunachal Pradesh*, (1996) 1 S.C.C. 742 (India).

⁵ *Mohammad Salimullah v. Union of India*, A.I.R. 2021 S.C. 1789 (India).

⁶ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

⁷ Aishwarya Birla, *Evaluating the Indian Refugee Law Regime*, 35 Int'l J. Refugee L. 81 (2023).

framework. This study takes a different approach, asserting that refugee protection is based on the constitution, judicial rulings, and the country's evolving human rights law. Addressing this issue is especially crucial because thousands of refugees in India remain without a clear legal status or adequate legal protection.

Methodologically, this paper adopts a doctrinal and comparative approach, it examines relevant constitutional provisions, laws, Supreme Court rulings in India. Furthermore, it refers to UNHCR data and compare India's position with selected South Asia nations in order to gain better understanding of diverse approaches to refugee protection.⁸

II. UNDERSTANDING REFUGEES: DEFINITION, DISTINCTION, AND THE GLOBAL CRISIS

Before delving into the legal framework governing refugees in India, it is important to understand who is considered a refugee under international law. This is not just theoretical question but it has significant practical implications. In India, the refugees are often treated in the same way as illegal migrants, which can lead to denial of protections meant for people fleeing persecution, violence, or conflict. Therefore, understanding difference between various categories of displaced persons is essential for any meaningful discussion on refugee rights and protection.

The International Legal Definition

The most widely accepted definition of refugee is provided in Article 1A(2) of the 1951 Convention Relating to the Status of Refugees. According to this provision, a refugee is someone who has fled their home country due to well-founded fear of persecution because of their race, religion, nationality, membership in a specific social group, or political opinion. As a result of this fear, the individual is either unable or unwilling to seek protection from their home country.⁹ This definition serves as the foundation of modern refugee law and continues to guide refugee status determination around the world. At the same time, the Convention's definition of refugee has faced criticism from scholars and policymakers. It was drafted in the aftermath of World War II and it primarily focuses on people fleeing persecution. As a result, it does not specifically cover individuals displaced by factors such as widespread violence, environmental degradation, climate change, natural disasters, or severe economic hardship,

⁸ Rajeev Dhavan, *Refugee Law and Policy in India*, 24 Refugee Surv. Q. 1 (2005).

⁹ Convention Relating to the Status of Refugees art. 1A(2), July 28, 1951, 189 U.N.T.S. 137.

which are becoming more important cause of displacement today. The 1967 Protocol Relating to the Status of Refugees removed the temporal and geographical limitations which was contained in the original convention, but it did not change the substantive definition of a refugee.¹⁰

One of the most important principles of international refugee law is the non-refoulement. This principle prevents states from returning refugees to their country or territory where their life, liberty, or freedom may be at risk because of persecution.¹¹ Over the years, the non-refoulement has become a cornerstone of international refugee protection system. As discussed in the subsequent analysis, many scholars and international organizations consider it as rule of customary international law, which means it creates obligations even for countries that have not signed the 1951 Refugee Convention or its protocol.

Refugees, Asylum Seekers, and Stateless Persons: Critical Distinctions

In public discussion about migration and displacement often use the terms refugee, asylum seekers and stateless persons as if they mean the same thing. In reality, each of these categories has a distinct legal meaning and related with different rights and protections and failing to recognize these differences can result in serious legal and humanitarian consequences.

Asylum Seeker is a person who has fled their home country and applied for recognition as a refugee, but whose application has yet to be decided. Such people typically allege that if they forced to return their home country, they will risk persecution, violence, or other dire consequences. To be granted refugee status they must prove that their fear of persecution is well-founded.¹² Asylum seekers are often found themselves in a position of legal uncertainty until a final decision is made, as they have not yet been officially recognized as refugee even though they may satisfy all the required conditions.

A Stateless Person on the other hand, someone who is not recognized as a citizen by any country under its laws. The 1954 Convention Relating to the Status of Stateless Persons is the main international instrument, which defines who is considered stateless and sets out certain basic rights and protections for such individuals.¹³ Statelessness can arise for several reasons, including discrimination, changes in state boundaries, conflict between nationality laws, or exclusion of certain group from citizenship.

¹⁰ Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

¹¹ Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137.

¹² UNHCR, *What is a Refugee?*, USA for UNHCR (2024), <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>.

¹³ Convention Relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 117.

Another important category is Internally Displaced People (IDPs). These are people who have been forced to leave their homes because of conflict, violence, persecution, or natural disasters but have remained within the borders of their own country. Since they have not crossed international border, they are not legally considered refugees and continue to fall under the authority of their own state.

These distinctions are especially important in the Indian context because the Foreigners Act, 1946 does not distinguish between refugees, asylum seekers, stateless persons and other nationals. As a result, individuals who have fled persecution and are in need of international protection are often treated in the same manner as those who have entered or remained in the country without valid immigration documents. The absence of such legal distinctions is one of the major weaknesses of India's current approach to refugee protection.

The Scale of the Global Refugee Crisis

The global refugee crisis is one of the most serious humanitarian challenges of the twenty first century. Any discussion of refugee law must be understood in the context of the increasing forced displacement around the world. According to the United Nations High Commission for Refugees (UNHCR), approximately 123.2 million people were forcibly displaced worldwide by the end of 2024 due to conflict, persecution, violences, human rights violation, and other conditions that substantially disrupt public order.¹⁴ This figure includes refugees, asylum seekers, internally displaced people, and other groups in need of international protection. The number of displaced people has risen significantly over the last decade, which reflecting the increased impact of conflict and humanitarian crisis in regions such as the Middle East, Africa, and South Asia. By the end of the 2024, nearly one in every sixty-seven people worldwide had been forced to leave their homes due to conflict, persecution, violence, or other humanitarian crisis. Low- and middle-income countries continued to host the majority of the world's displaced population, providing shelters to more than 73% of refugees and other forcibly displaced people.¹⁵ These figures challenge the widespread assumption that refugee protection is mainly the responsibility of developed nations.

The UNHCR also reports that approximately 4.4 million people worldwide are stateless. Among them, around 1.4 million have been displaced, with many belonging to the Rohingya Community¹⁶ and the large number of Rohingya continue to live in displacement, either within

¹⁴ UNHCR, *Global Trends: Forced Displacement in 2024*, UNHCR (2025), <https://www.unhcr.org/global-trends-report-2024>.

¹⁵ *Id.*

¹⁶ *Id.*

Myanmar or as refugee in neighboring country. Their situation has become one of the most visible examples of how statelessness, persecution, and forced displacement are frequently interconnected.

India in the Global Picture

India holds a unique position in the global refugee scenario, it located in region that has experienced frequent displacement of people and shares borders with countries like Myanmar, Bhutan, Nepal, Pakistan, Afghanistan. As result, India has often seen refugee influxes triggered by political instability, armed conflict, and humanitarian crises in neighboring states. India's experience with large scale displacement is closely linked to its history, the partition of the India led to one of the largest migrations in modern history. In the decades that followed, India witnessed further refugee influxes during the Bangladesh Liberation War, the Sri Lankan civil War, and most recently, the displacement of Rohingya refugees from Myanmar and Afghan nationals fleeing political unrest. Consequently, the movements of refugees have become a recurring feature of India's regional environment rather than isolated events.

Despite the long history of hosting displaced population, India has not enacted a comprehensive law governing refugee protection. Instead, its response to refugee arrivals has been heavily influenced by executive decisions and case-by-case administrative actions. Although India has often provided humanitarian assistance to refugees, this protection is generally based on government policy and discretion rather than legally guaranteed rights. This creates a significant tension within India's legal and constitutional framework. On the one hand, India has always offered asylum to those fleeing conflict and persecution. On the other hand, it has continuing to refused to recognize refugee protection as a legal right. As the following analysis will show, this approach raised serious concerns about India's adherence to constitutional values such as equality, dignity, and the protection of fundamental human rights.

III. INDIA'S LEGAL FRAMEWORK: THE ARCHITECTURE OF EXCLUSION

3.1 A Framework Built for Another Era

For many years, the Foreigner Act of 1946 was the primary legal framework for governing the legal status of refugees in India. The Act was enacted during the final phase of British rule, intended to regulate entry, stay, and departure of foreign nationals in India. It was not designed to meet humanitarian needs of those fleeing persecution, armed conflict, or violence. As a

result, the Act does not distinguish between refugee and other foreign nationals. In the absence of a separate refugee or asylum law, refugees have generally been treated under the same legal framework as all other foreigners, unless the government has granted them special permission to remain in the country.¹⁷ The Act defined a foreigner as “a person who is not a citizen of India”, such definition failed to recognize the unique circumstances and vulnerabilities of displaced people. As so, people fleeing armed conflict, ethnic persecution, or religious discrimination were treated in the same manner as those who had entered or remained in the country without valid permissions. The Supreme Court has also stated that the constitutional right to stay and settle in India is available only to citizens, leaving refugees under the scope of the Foreigners Act exposing them to the possibility of deportation.¹⁸ Consequently, the complex realities of forced displacement were reduced to a matter of citizenship status. Anyone who was not an Indian citizen was treated as a foreigner and remained vulnerable to detention, expulsion, or other immigration related actions. The continued reliance on this framework revealed a significant gap in the India’s legal approach to refugee protection. Even if India hosted several refugee communities over the years, the law governing their presence remained rooted in legislation that was never intended to address contemporary humanitarian issues.

3.2 The Immigration and Foreigners Act, 2025: Continuity Beneath Reform

In 2025, Indian parliament passed the Immigration and Foreigners Act, 2025, as a part of a greater attempt to reform and streamline the country’s immigration laws. The act received a Presidential assent and came into force on 1 September 2025. It replaced and merged four previous laws: the Passport (Entry into India) Act of 1920, the Registration of Foreigners Act of 1939, the Foreigner Act of 1946, and the Immigration (Carriers Liability) Act of 2000. The objective of the said legislation was to establish a single and comprehensive legal framework for immigration and regulation of foreign nationals in India.¹⁹

Although the enactment of a unified statute marked an important legislative reform, it failed to address the long-standing gaps in India’s refugee protection framework. While the new law replaced several colonial era statutes, the basic approach towards non-citizen remained almost

¹⁷ Bhairav Acharya, *The Future of Asylum in India: Four Principles to Appraise Recent Legislative Proposals*, 9 NUJS L. Rev. 173 (2016), <https://nujlawreview.org/wp-content/uploads/2017/01/2016-9-3-4-Bhairav-Acharya-The-Future-of-Asylum-in-India-Four-Principles-to-Appraise-Recent-Legislative-Proposals.pdf>.

¹⁸ Amnesty International, *Stop Unlawful Deportations and Protect Rohingya Refugees in India*, Amnesty International (June 2025), <https://www.amnesty.org/en/latest/news/2025/06/india-stop-unlawful-deportations-and-protect-rohingya-refugees/>.

¹⁹ The Immigration and Foreigners Act, No. 13 of 2025 (India).

unchanged.²⁰ Most importantly, the act does not recognize refugees or asylum seekers separate legal categories. As a result, those fleeing persecution and seeking safety are still treated as ordinary foreigners, despite the extraordinary circumstances that often forced them to cross borders without valid travel credentials.²¹ Concerns have also been raised regarding the enforcement provisions of the Act. The legislation prescribes penalties, including imprisonment of up to five years and substantial monetary fines, for unauthorized entry into India. Since refugees usually flee their countries under urgent and dangerous circumstances, many are unable to comply with standard immigration requirements. Applying such penalties without proper safeguards could put refugees and asylum seekers to criminal prosecution purely because of their mode of entry. Furthermore, Human rights organizations have raised concerns about the Immigration and Foreigners Act, 2025. According to these organizations, the Act allows for the detention and deportation of individuals who do not possess valid travel or identity documents, but without establishing a specific procedure to examine claims of persecution or asylum. Amnesty International has cautioned that such provisions could put refugees and asylum seekers at danger of being returned to countries where they may face persecution, violence, or other serious threats to their safety and freedom. This raises issues regarding India's compliance with the principle of non-refoulement.²²

Therefore, despite being presented as a modernizing reform, the Immigration and Foreigners Act, 2025 fails to resolve the central challenge of refugee protection in India, that is the absence of a legal framework that recognizes refugees as distinct category and differentiates them from other foreign nationals.

3.3 The Citizenship Amendment Act, 2019: Selective Protection and its Limits

The Citizenship Amendment Act, 2019 (CAA) is one of the most significant laws relating to migration and citizenship enacted in recent years. The act provides a faster way to obtain Indian citizenship for individuals belonging to certain religious minority community, namely Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, from Afghanistan, Bangladesh, and Pakistan who entered India on or before 31 December 2014.

²⁰ Jayalakshmi Itla Ragiri, *India's New Immigration Law Leaves Refugees, Especially Rohingyas, in Legal Limbo*, The Wire (Jan. 8, 2026), <https://m.thewire.in/article/rights/indias-new-immigration-law-leaves-refugees-especially-rohingyas-in-legal-limbo>.

²¹ The Peninsula Foundation, *India's Refugee Policy: Implications of an Ambiguous Approach*, The Peninsula (Feb. 15, 2026), <https://thepeninsula.org.in/blog/indias-refugee-policy-implications-of-an-ambiguous-approach>.

²² Amnesty International, *India: Immigration and Foreigners (Exemption) Order Threatens Human Rights*, Amnesty International (Nov. 2025), <https://www.amnesty.org/en/latest/research/2025/11/india-immigration-and-foreigners-exemption-order-threatens-human-rights/>.

Supporters of the Citizenship Amendment Act see it as a humanitarian initiative aimed at providing protection and a pathway to citizenship for persecuted religious minorities from neighboring countries. However, the Act has received significant criticism both within India and internationally. One of the main concerns is the exclusion of Muslims from its scope. The Office of the United Nations High Commission for Human Rights expressed issue that the Act could be discriminatory and incompatible with India's international human rights obligations.²³ Similarly, Human Rights Watch criticized the Act for including religious criteria in the citizenship acquiring procedure.²⁴ From the perspective of refugee protection, the importance of the CAA lies not only in the categories it covers, but also from the issues it ignores. The Act is primarily a citizenship law rather than a refugee protection measure. While it does provide a pathway to citizenship for certain categories of individuals, it does not include a mechanism to determine refugee status, legal safeguards for asylum seekers, or create comprehensive framework for the protection of displaced people. As result, many refugee communities in India, including Rohingya refugee, Afghan tribes not covered by the Act, and Shri Lankan Tamil refugees, continue to remain outside its scope. Instead, it benefits a limited group of individual while leaving major deficiencies in India's refugee protection framework mostly unaddressed.

3.4 The Resulting Legal Vacuum

An analysis of India's legislative Framework reveals a clear gap between the realities of forced displacement and the legal mechanisms available to addressed it. Despite hosting refugee population for many years, India still does not have a comprehensive law specifically governing refugee protection. Currently, Indian law does not provide a universally accepted definition of a refugee, a formal process for determining refugee status, or a dedicated institution to assess asylum claims. It also lacks statutory acknowledgment of principle of non-refoulement and does not provide essential rights such as work, education, healthcare, or long-term residence. Therefore, many refugees continue to live in a state of legal uncertainty, vulnerable to detention, deportation, and decision based largely on administrative discretion.²⁵

In reality, the Office of United Nations High Commission for Refugee (UNHCR) has attempted

²³ D. Ananda, *The Intersection of Indian Citizenship Amendment Act 2019 and Religious Persecution*, 2 Discover Global Soc'y art. 76 (2024), <https://link.springer.com/article/10.1007/s44282-024-00108-x>.

²⁴ Human Rights Watch, *India Activates Discriminatory Citizenship Law*, HRW (Mar. 15, 2024), <https://www.hrw.org/news/2024/03/15/india-activates-discriminatory-citizenship-law>.

²⁵ Suraj Singh, *A Critique of the Foreigners Act, 1946: A Legislation de Jure or de Facto?*, SSRN (2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989060.

to close some of this institutional vacuum by conducting refugee status determination procedures for specific refugee population in India. However, it's role mostly dependent on administrative processes rather than official legal recognition. Refugee status provided by the UNHCR is not based on Indian legislation and lacks a formal statutory basis in the domestic legal system.

Thus, refugee protection in India remains fragmented and uncertain, instead of relying on clearly established legal rights, refugees often depend on executive decisions, judicial intervention, or the support of international organizations. Although these mechanisms may give temporary protection in specific instances, they do not offer the consistency, accountability, and legal certainty that a right-based legal framework should provide. Consequently, the ongoing absence of a comprehensive refugee protection law raises serious concerns about how effectively India's humanitarian responsibilities and constitutional values are reflected in its domestic legal system.

IV. CONSTITUTIONAL MORALITY AND REFUGEE RIGHTS

4.1 The Constitutional Text and Its Promise

Despite the fact that Indian Constitution does not specifically mention refugee, its provisions provide crucial protections to all individuals within the territory of India, regardless of their nationality or citizenship. If critically study the part III of Indian constitution which deals with Fundamental Rights, shows that several constitutional protections are available not only to citizens but to every individual. So, when considering the rights of refugees this distinction is especially significant. Article 14 guarantees equality before the law and equal protection of law to every person, while Article 21 states that no person shall be deprived of life or personal liberty except according to a procedure established by the law. The use of the term "Person" in these provisions reflect the broader commitment of the constitution to human dignity and the protection of fundamental rights. Drafted in the aftermath of partition and the mass displacement that followed, the constitution reflects an understanding that some rights are belong to all human beings. As a result, although refugees are not Indian citizens, they are still entitled to essential constitutional protections while they remain within India.²⁶

The Supreme Court has reaffirmed this interpretation on several instances. In ***National Human Rights Commission v. State of Arunachal Pradesh***, the court stated that the State has a responsibility to protect the life and liberty of every person, regardless of their citizenship

²⁶ India Const. art. 14; India Const. art. 21.

status.²⁷ The case involved Chakma refugees who faced the risk of forcible expulsion, prompting Court to intervene and safeguard their rights. The Court took an approach that it is closely aligned with the principle of non-refoulment and protection granted under Article 21 by holding that the State could no expose individual to threats to their life or personal liberty. This decision remains one of the strongest judicial affirmations that constitutional rights are not confined to citizens alone but extend to all individuals who seeks protection within India's borders.

4.2 The Judicial Contradiction – Promise Deferred

Despite this Constitutional foundation the judicial approach to the refugee rights in India has been inconsistent. Supreme Court decisions reveal an ongoing conflict between two competing principles, first is the protection of fundamental rights for all persons and another is State's power to regulate entry, stay and removal of foreigners. In *Louis De Raedt v. Union of India*, the Supreme Court acknowledged that foreigners are entitled to the protection under Article 21, which guarantees the right to life and personal liberty. At the same time, the Court emphasized that the right to reside and settle in any part of India under Article 19(1)(e) is given only for Indian citizens.²⁸ Although, this distinction is constitutionally justified, it later contributed to uncertainty in cases involving deportation and the protection of refugees. This tension became particularly more evident in *Muhammad Salimullah v. Union of India*, where the Supreme Court declined to halt the deportation of Rohingya refugees. The Court held that the right to reside in India could not be claimed under article 19(1)(e), as that provision is available only to citizens.²⁹ The decision has been widely criticized because in certain circumstances, deportation may directly threaten an individual's right to life and personal liberty under Article 21. When deportation expose a person to persecution, torture, or other serious human right violation, the issue extends beyond the right to reside in India and becomes one of protecting the individual's fundamental rights and human dignity.

Later, a more progressive approach was adopted by Delhi High Court in *Dongh Lian Kham & Anr. v. Union of India & Anr.*, in this case court held that the principle of non-refoulement is an integral part of the protection guaranteed under Article 21, as it is closely connected to the right to life and personal liberty, regardless of nationality.³⁰ By recognizing non-refoulement as a constitutional safeguard, Court showed that refugee protection can be derived directly from

²⁷ *Nat'l Hum. Rts. Comm'n*, supra note 4.

²⁸ *Louis De Raedt*, supra note 3.

²⁹ *Mohammad Salimullah*, supra note 5.

³⁰ *Dongh Lian Kham & Anr. v. Union of India & Anr.*, W.P. (CrI.) No. 1884 of 2015 (Delhi H.C. 2015).

the constitution, even in the absence of a specific refugee law. These differing judicial approaches reflect continuing uncertainty surrounding refugee rights in India. While some courts have adopted a rights-based approach by recognizing the humanitarian consequences of deportation, other have given greater weight to the State's power to regulate the entry and stay of foreigners. As a result, the level of the protection available to refugees has remained inconsistent.

4.3 Constitutional Morality as the Governing Standard

The concept of the constitutional morality provides an important framework for understanding refugee protection under Indian constitutional structure. It refers to the constitution's values and principles, which guide the exercise of State power and ensure that governance adheres to constitutional ideals rather than changing political interests or popular opinion. The Supreme Court further clarified this principle in *Navtej Singh Johar v. Union of India*, observing that the constitutional morality must prevail whenever it comes into conflict with social morality.³¹ The Court emphasized that constitutional rights cannot be made dependent on popular opinion and that the Constitution remains the supreme source of legal and moral authority in a democratic society. When applied to refugee protection, constitutional morality requires that all state action be assessed against the values of dignity, equality, liberty, and the rule of law embodied in the constitution. Although concerns relating to migration, national security, and national identity may influence the public policy, such concerns must be addressed in a manner consistent with the fundamental rights and principles guaranteed by the constitution. Refugees may not be Indian citizens, but they are human beings entitled to dignity and the protection available to every person.

Accordingly, any policy and practice that exposes individuals to persecution, violence, or serious threats of life must be evaluated in light of these constitutional guarantees instead of being treated solely as a matter of immigration control. In this way, constitutional morality provides a strong protection for recognizing refugee protection as an expression of India's commitment to human dignity, equality, and fundamental rights.

4.4 Customary International Law: India Cannot Escape Its Obligations

The case for refugee protection in India rests not only on the Constitution but also on principles of international law that apply independently of treaty ratification.

³¹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

One of the most significant of these principles is non-refoulment, which prohibits States from returning individuals to a country where they face persecution, or serious threats to their life or freedom. This principle is widely recognized as rule of customary international law. Customary International Law develops through consistent and general State Practice, accompanied by the belief that such practice is legally obligation (*opinion juris*). As a result, rules of customary international law may bind States even if they have not formally ratified the treaty in which those rules are codified.³² Therefore, India's decision not to accede to the 1951 Refugee Convention or its 1967 Protocol does not automatically relieve it of obligation to respect the principle of non-refoulement. As the principle has increasingly come to be recognized as a rule of customary international law, States are generally not expected to return individuals to countries where they face persecution, torture, or other serious human rights violation. India's international obligations are further reinforced by its participation in major human rights treaties. India is a signatory to the International Covenant on Civil and Political Rights (ICCPR), which forbids torture and cruel inhuman or degrading treatment. The interpretation of the covenant has increasingly recognized that State may breach these obligations by returning an individual to a country where there is a real risk of such treatment. India has also signed the Convention Against Torture, whose Article 3 reflects the principle that a person should not be transferred to a State where are sufficient reasons to believe they would face torture.³³

India's constitutional framework further strengthened these obligations. Article 51(c) requires the State to encourage respect for international law and treaty obligations in its relations with other nations. Although it forms part of Directive Principles of State Policy and it is not enforceable, it indicates the constitution's commitment to upholding international legal standards. When read with Article 14 and 21, Article 51(c) supports the idea that the constitution promotes compliance with international human rights standards, particularly in matters relating to life, liberty, and human dignity. Accordingly, the legal basis for refugee protection in India does not rest solely on accession to the 1951 Refugee Convention. It is also supported by constitutional safeguards, principles of customary international law, and India's broader human rights commitments under international law.³⁴ Taken together, these sources provide a solid legal foundation for protecting refugees and recognizing the principle of non-

³² Siddeeqa Iram, *Reimagining the Asylum Law in India: A Study on the Duty of Non-Refoulement*, 36 Nat'l L. Sch. India Rev. art. 6 (2025), <https://repository.nls.ac.in/nlsir/vol36/iss1/6>.

³³ International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171; Convention Against Torture art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85.

³⁴ India Const. art. 51, cl. (c); see also Aishwarya Birla, *supra* note 7.

refoulement into India's domestic legal structure.

V. JUDICIAL ACTIVISM: THE UNTAPPED REMEDY

5.1 *India's Tradition of Transformative Judicial Intervention*

The absence of a comprehensive refugee protection law in India does not mean that constitutional remedies are unavailable. India's constitutional history shows that, when legislative action is lacking or insufficient, the judiciary has often stepped in to protect fundamental rights through a broad and progressive interpretation of constitution. The evolution of Public Interest Litigation (PIL) and expansive interpretation of Article 21 illustrate the Supreme Court's willingness to intervene to protect human dignity and ensure that constitutional rights are effective in practice. This tradition of judicial intervention provides a strong constitutional basis for extending protection to refugees, even in the absence of specific legislation. One of the earliest and most influential examples of this approach is *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*,³⁵ this case begun with a newspaper article highlighting the plight of undertrial prisoners who had been in jail for longer than the maximum punishment prescribed for the crimes they were accused of committing. Treating a letter addressed to the Court as a writ petition, the supreme court held that the right to a speedy trial is an integral part of the right to life and personal liberty under Article 21. The judgment resulted in the release of thousands of prisoners who had been unlawfully detained, demonstrating the Court's readiness to expand constitutional protections where legislative action had failed. The significance of *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar* was not limited to the recognizing the right to speedy trial. More importantly, the judgment made it clear that fundamental rights place positive obligations on the State and that Court can enforce those obligations even when the legislature had failed to act. In this way, the decision encourages more expansive understanding of constitutional rights as the role of judiciary in giving them practical effect.

A similar idea can be seen in *Bandhua Mukti Morcha v. Union of India*,³⁶ the issue was brought before the Supreme Court by a non-governmental organization that described the inhuman working conditions of bonded laborers in Faridabad's stone quarries, instated of refusing to act because the complaint did not follow the standard legal procedure, the Court treated a letter as a petition under Article 32. It emphasized that the right to life under Article

³⁵ *Hussainara Khatoon & Ors. v. Home Sec'y, State of Bihar*, (1980) 1 S.C.C. 98 (India).

³⁶ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161 (India).

21 is more than just survival; it also encompasses the right to live with dignity, as well as essential rights like health, human working condition, and freedom from exploitation. The Court also directed the authorities to identify, release, and rehabilitate the bounded laborers, making it clear that fundamental rights must be protected via actual action rather than merely legal statements.

These decisions reveal a persistent feature of Indian constitutional law. Faced with situations where existing legal mechanisms failed to protect those on the margins of society, the Supreme Court chose interpret the constitution in manner that made its provisions meaningful. Rather waiting for legislative reform, it used the powers already available under the Constitution to ensure that fundamental rights could be enforced in a meaningful and effective manner.

5.2 *The Logical Extension to Refugees*

The principles developed through Public Interest Litigation naturally extend to the issue of refugee protection. Over the years, Article 21 has evolved far beyond its original understanding, allowing the Court to safeguard the rights of prisoners, bonded labors, pavement dwellers, and many other vulnerable groups. Once the right to life came to be understood in this broader sense, it became difficult to deny similar protection to refugees whose life or personal liberty may be placed at risk through deportation or other coercive actions by State. This reasoning is already evident in *Dongh Lian Kham v. Union of India*,³⁷ in that case, the Delhi Hight Court treated the principle of non-refoulement as an integral part of the protection guaranteed by Article 21, making it clear that the safeguard is available regardless of nationality. The ruling highlights a crucial constitutional idea: where deportation expose a person to persecution or other substantial harm, the issue is no longer confined to immigration policy. It becomes a question of protecting the right to life and personal liberty. Despites these developments, the Supreme Court's position on refugee protection has not always been consistent. In *National Human Rights Commission v. State of Arunachal Pradesh*, the Court underlined the State's responsibility to protect refugees' lives and liberty. However, in *Mohammad Salimullah v. Union of India*, it took a more restrictive approach in the context of deportation.³⁸ These rulings reflect an unsolved tension in Indian constitutional law and have left the scope of refugee protection uncertain.

Even so, the broader development of Article 21 indicates a different direction. Over the years, the Supreme Court has interpreted the right to life in a way that addresses new form of

³⁷ *Dongh Lian Kham*. supra note 30.

³⁸ *Nat'l Hum. Rts. Comm'n.*, supra note 4; see also *Mohammad Salimullah*, supra note 5.

vulnerability and provides meaningful protection to those whose rights are at risk. Recognizing refugee safeguards does not constitute the creation of a new constitutional provision. It would simply apply the same values of dignity, liberty, and equality that the Court has previously used to protect other vulnerable groups. For refugees who face persecution or serious harm if returned to their home country, extending the protection of Article 21 would be a natural continuation of the Supreme Court's approach to interpreting fundamental rights.

5.3 A Proposed PIL Framework for Immediate Judicial Relief

In the absence of a comprehensive refugee law, Public Interest Litigation (PIL) offers a practical way of strengthening refugee protection in India through constitutional remedies. Building on the principles contained in Article 14, 21, and 51(c), a PIL could ask the Supreme Court to recognize basic procedural and substantive safeguards for refugees until Parliament enacted a comprehensive legislative framework.

One of primary requests would be that no refugee or asylum seeker should be deported without an individual examination of their protection claim based on the principles of natural justice. The petition could also request that the Court consider refugee status certificates produced by the office of the United Nations High Commissioner for Refugee (UNHCR) as prima facie evidence of refugee status, while allowing competent authorities to verify their authenticity where is needed. Another important request could be the establishment of an independent body, such as a Refugee Protection Authority or a Refugee Rights Commissioner, to monitor detention conditions, ensure procedural fairness, and address complaints about the treatment of refugees and asylum seekers. Finally, the petition could urge that the Court, in accordance with its established constitutional role, issue appropriate directions encouraging the Union Government to enact comprehensive refugee protection legislation within a reasonable timeframe.³⁹

These measures would not amount to judicial legislation, instead they fit firmly within the Supreme Court's recognized function of protecting fundamental rights when legislative gaps prevent individuals from receiving effective legal protection. The constitutional experience of India shows that judicial intervention frequently results in significant legislative and institutional reforms. While the judiciary cannot perform the functions of Parliament or establish a permanent legislative framework, it can intervene when immediate action is required to avoid violation of fundamental rights. In the context of the refugee protection, such

³⁹ Siddeeqa Iram, supra note 32

intervention would be consistent with the constitutional values of equality, dignity, and rule of law that have shaped the Supreme Court's interpretation of Part III of Constitution. It will also strengthen an idea that Fundamental Rights are intended to protect everyone within India's jurisdiction, especially those who are most vulnerable and unable to defend themselves.

VI. A PROPOSED MODEL REFUGEE PROTECTION FRAMEWORK FOR INDIA

6.1 The Case for Domestic Legislation

The preceding analyses have shown that one of the most major gaps in India's legal system is the absence of a dedicated law governing refugees. The constitutional and judicial decisions have provided important safeguards in individual circumstances, but they have not established a clear and consistent legal framework. In the lack of the legislation, decisions affecting refugees often depend on executive discretion, resulting in uncertainty and uneven outcome. The legal scholars have consistently pointed the necessity of dedicated domestic refugee law. Despite this longstanding recognition, India still has no legislation specifically dealing with asylum or refugee protection. While courts have interpreted constitutional provisions to extend certain safeguards to refugees and asylum seekers, those safeguards are applied on case-by-case basis and cannot substitute for a statutory framework that clearly defines rights, obligations, and procedures.⁴⁰ Consequently, the treatment of refugees continues to depend heavily on administrative practice and judicial intervention rather than on a uniform legal regime.

Against this background, this dissertation argues that India should enact a comprehensive refugee protection law based on its own constitutional values and such legislation does not require India to accede to the 1951 Convention on the Status of Refugees. Instead, it can draw its legitimacy from the principles of equality, dignity, liberty, and the rule of law while also addressing the practical realities of forced displacement in the Indian context.⁴¹

6.2 Core Principles of the Proposed Framework

The proposed model Refugee Protection Framework is based on four guiding principles that

⁴⁰ Fazal Abdali, *A Comparative Analysis of the Global Compact on Refugees and the Constitution of India*, in *The Global Compact on Refugees: Indian Perspectives and Experiences* 108, 108–09 (Jessica Field & Srinivas Burra eds., 2020); see also Marconi Debbarma, *Refugees Experience and the Host Communities: Critical Analyses on Absence of Refugee Law in India*, J. Asian Afr. Stud. (2025), <https://journals.sagepub.com/doi/10.1177/00219096241228804>.

⁴¹ Birla, supra note 7; Acharya, supra note 17.

aim to assure both constitutional legitimacy and effective implementation.

The first principle is that legislation should derive power from the constitution, particularly Article 14, 21, and 51(c). Refugee protection based on constitutional values, rather than treaty obligations, will also firmly embed the law inside the India's domestic legal system while remaining consistent with international human rights standards.⁴²

A second guiding principle is the adoption of right-based approach to refugee protection. Refugees should not have to rely only on executive discretion or temporary government policies to secure their rights. Rather, the legislation should expressly recognize a specific set of rights that may be enforced through established judicial and administrative mechanisms.

The proposed law should also adopt broader understanding of who qualifies as a refugee. Although the definition contained in the 1951 Refugee Convention remains an important starting point, the cause of displacement today extends beyond the persecution to include armed conflict, widespread human rights violations, generalized violence, climate related disasters, and statelessness. Recognizing these realities will help the law to respond more effectively to contemporary humanitarian challenges while staying attentive to India's regional circumstances.

Finally, it is important to establish an independent, transparent, and accountable institutional structure, also refugee status should be determined by specialized authority with the necessary expertise and procedural safeguards to ensure fairness, consistency, and independence from political and administrative influence.

6.3 Key Provisions

To ensure that the proposed legislation is fair, effective, and capable of addressing contemporary challenges, it should incorporate a number of essential provisions.

First, is a clear statutory definition of a refugee that extend beyond the traditional definition found in the 1951 Refugee Convention and along with person fleeing persecution, the law should protect those displaced by generalized violence, armed conflict, widespread human rights violation, climate related disasters, and statelessness. Adopting a broader definition would better reflect the realities of modern forced displacement and ensure that people in need of international protection are not excluded only because their circumstances fall outside the convention's limited scope.

The legislation should also officially incorporate the principle of non-refoulement. No refugee

⁴² India Const. art. 14; India Const. art. 21; India Const. art. 51, cl. (c).

or asylum seeker should be returned to a country where there is genuine risk of persecution, torture, or other serious human rights violations. Where national security concerns arise, any decision to deport a person must be accompanied by proper procedural safeguards and subject to independent judicial review, this would reduce the risk of arbitrary or unlawful deportation. Another essential provision is a transparent Refugee Status Determination (RSD) process overseen by India's independent Refugee Protection Authority. The Authority's decision makers should be legally qualified, follow clearly defined procedures, and respond to applications in a reasonable time. Where an application is rejected, the applicant should have right to appeal to an independent appellate body, followed by judicial review before the High Court.

Lastly, the proposed legislation should also require the issue of an official Refugee Identity Document within a specified time after refugee status has been granted. This document would enable refugees to reside lawfully in India and access essential public services, including healthcare, primary and secondary education for children, and the opportunity to seek employment after a reasonable period. These measures do not confer special privileges but would rather secure the minimum conditions necessary for a dignified life, consistent with the guarantees of equality and personal liberty under article 14 and 21.⁴³

6.4 Why This Framework is Achievable

The idea for a comprehensive refugee protection law may raise concerns about administrative feasibility, financial implications, and political acceptance but these issues do not diminish the need for a clear and consistent legal framework.

From an administrative perspective, India already hosts a substantial refugee population, many of whom have been recognized through procedures carried out by the Office of United Nations High Commissioner for Refugees (UNHCR). In practice, refugee status determination and related support mechanisms already exist, although in limited form. Introducing domestic legislation would therefore not require the creation of an entirely new system but instead, it would provide statutory recognition, procedural certainty, and institutional accountability to mechanisms that currently operate without a comprehensive legal foundation.⁴⁴ Similarly, the lack of immediate political consensus should not prevent the recognition of basic legal protections. Fundamental rights cannot depend on changing political agendas or executive discretion, where the constitution guarantees equality, dignity, and personal liberty, the State

⁴³ Iram, supra note 32; Birla, supra note 7.

⁴⁴ UNHCR, supra note 1.

has a continuing responsibility to ensure that these values are meaningfully protected. Additionally, enacting special refugee law would strengthen, rather than weaken, India's constitutional democracy. It would provide greater certainty for both refugees and public authorities, reduce reliance on ad hoc administrative decisions, and make domestic practice more in line with constitutional principles and international human rights commitments. At the same time, it would uphold India's long-standing humanitarian tradition by ensuring that displaced people are protected through clear legal rights instead of executive discretion alone. Ultimately, such legislation would do more than simply fill a gap in the existing legal framework. It would turn the constitutional ideals of equality, dignity, and the rule of law into practical safeguards for refugees, while reaffirming India's commitment to protecting some of the world's most vulnerable people.

VII. CONCLUSION

This paper begun with a simple but crucial question that is when persons escaping persecution and seeks refuge in India, what legal framework safeguards them? The analysis in the present paper has revealed that, despite India's long history of hosting displaced population, the country still lacks a dedicated legal framework for refuge protection. As a result, refugees continue to be governed by a fragmented system that depends on constitutional interpretation, executive discretion, and judicial intervention rather than a comprehensive statutory regime. Although Article 14 and 21 provide important constitutional protections to every individual, the absence of clear statutory framework leads to significant uncertainty regarding refugee status, legal recognition, and procedural rights. Judiciary has on several occasions affirmed that the right to life and personal liberty are available to refugees as well as citizens, but diverse judicial approaches have also shown the limits of relying solely on constitutional interpretation. The study further demonstrates that India's responsibility towards refugees is supported not only by the Constitution but also by the principle of non-refoulement, customary international law, Article 51(c), and the country's broader international human rights commitments. It also indicates that India need not accede to 1951 Refugee Convention before enacting a domestic refugee law, as such gain its legitimacy from the Constitution while remaining consistent with established international legal principles.

The dissertation therefore proposed a Model Refugee Protection Framework that provides for a transparent refugee status determination process, incorporation of the principle of non-refoulement into domestic law, recognition of basic socio-economic rights, and the establishment of the independent Refugee Protection Authority. A comprehensive refugee law

would improve the clarity and uniformity of India's refugee protection mechanism by replacing uncertainty with clear legal standards and reducing reliance on executive discretion. It would also give more clarity for refugees, courts, and public authorities while putting constitutional principles such as equality, dignity, justice, and the rule of law into practice. India already has the constitutional principles, judicial experiences, and international legal foundations needed to enact a comprehensive refugee protection law. Enacting such legislation would reinforce India's existing legal framework and ensure that refugee protection is based clear legal principles, constitutional values, respect for human dignity, and the humanitarian ideal of *Vasudhaiva Kutumbakam*.

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