
Human rights of refugees and seeking asylum to India

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Abstract

The issue of refugees and asylum seekers has emerged as a critical concern in the global human rights discourse. India despite not being a signatory to the 1951 UN Refugee Convention or its 1967 protocol, hosts a large number of refugees from neighbouring countries such as Tibet, Sri Lanka, Myanmar and Afghanistan. In the absence of uniform refugee law in India and taking into account some political tactics, there is always a possibility of discrimination. Due to India's geographical location, democratic government, religious tolerance it become a top asylum seeker and refugee Country.

With a goal of helping Asylum seekers and refugees, realize their basic human rights and access the legal systems, there is a need to defend the rights of refugees and to better their status in India.

This paper explores human rights situation, critically examine domestic legal frameworks and international obligation. It has highlights the challenges such as lack of legal recognition. Absence of a National refugee law and unequal treatment of refugee groups. The study concludes with recommendation in alignment with India's constitutional values and international human rights standards.

Keywords: Human Rights, Refugees, Asylum Seekers, Human Rights, Non-Refoulement, Refugees, Judicial Intervention, UNHCR, Security vs Humanitarianism, Citizenship Amendment Act (CAA).

Introduction

India has a long history of hosting refugees and asylum seekers from various regions, including Sri Lanka, Myanmar, Afghanistan, and Tibet, despite not being a signatory to the 1951 UN Refugee Convention or its 1967 Protocol 712. The absence of a formal refugee law has led to an ad hoc administrative approach, raising concerns about human rights violations, inconsistent protections, and discriminatory treatment of different refugee groups 710. This research synopsis examines the legal framework, challenges, and human rights concerns faced by refugees and asylum seekers in India, while evaluating potential policy reforms.

Refugees and asylum seekers are among the most vulnerable populations worldwide, facing persecution, displacement, and statelessness. India, by virtue of its geography and political position, has hosted refugees from Tibet, Sri Lanka, Bangladesh, Afghanistan and Myanmar. Despite this humanitarian role, India lacks a comprehensive legal framework to govern the status and rights of refugees. The gap leaves many refugees at the mercy of ad hoc policies and discretionary administrative decisions. Often resulting in human rights violations Statistics of refugee from UNHCR 2024. There were 42.7 million refugees globally at the end of 2024. UNHCR mandated 31 million refugees and 5.9 million other people in need of protection. A further 5.9 million Palestine refugee are supported by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) which was set up in 1949 to care for displaced Palestinians.

International legal framework on refugee rights

The Primary instruments governing international refugee rights are the 1951 United nations convention relating to the status of refugees and its 1967 protocol. These documents define a refugee as someone who has well founded fear of persecution based on race, religion, nationality, political opinion, or membership of a particular social group. They also outline various rights of refugees, including protection from refoulment (that is binding return to a place where they may face danger), the right to access courts, employment, and education, and the principle of non discrimination. Although India is not a party to either the 1951 Convention or the 1967 protocol, it is still bound by other international human rights instruments, such as the Universal declaration of human rights (1948), the International covenant on civil and political rights (ICCPR) and the Convention on rights of child (CRC), which collectively place a moral and legal obligation on the state to safeguard the rights of refugees and asylum seekers residing within its territory.

India's Legal and Constitutional position on refugees

India lacks a codified refugee law and primarily addresses refugee – related matters through the Foreigners act, 1946 which treats all foreigners, including Refugees, as one homogeneous category. This absence of distinction leads to several legal challenges. Refugee entering India without a valid documentation may be treated as illegal immigrants and subjected to arrest, detention or deportation, even if they face life threatening circumstances in their home countries. Moreover, there is no legal guarantee to prevent their deportation, nor do they enjoy assured access to essential services such as Healthcare, education or employment.

Nonetheless, the Indian constitution provides some protection indirectly through fundamental rights such as **Article 14** (equality before law), **Article 21** (right to life and personal liberty) and **Article 51c** (protection of international peace and respect for international law). The Indian judiciary has also played a vital role in upholding the rights of refugees. Several judicial pronouncements have expanded refugee rights under the Indian Constitution. In *Ktaer Abbas Habib Al Qutaifi v. Union of India* (1999), the Gujarat High Court recognized the principle of non-refoulement as implicit in Article 21, holding that refugees cannot be forcibly deported if they face a threat to life or liberty in their country of origin. Similarly, in *Dongh Lian Kham v. Union of India* (2015), the Delhi High Court protected asylum seekers from Myanmar, directing authorities to respect their basic rights despite the absence of a statutory refugee law. More recently, in *Mohd. Salimullah v. Union of India* (2021), the Supreme Court allowed the government to deport Rohingya refugees, citing security concerns. However, the judgment was widely criticized for overlooking humanitarian obligations and India's constitutional morality.

These cases illustrate the uneven protection available to refugees in India. While High Courts have often taken a progressive stance by reading refugee rights into constitutional guarantees, the Supreme Court has vacillated between security-centric and rights-based interpretations. This judicial inconsistency underscores the urgent need for a comprehensive national refugee law to ensure predictability and fairness in asylum adjudication.

In cases like **NHRC v state of Arunachal Pradesh and Malavika Karyekar v. Union of India**, the supreme court recognized the applicability of constitutional rights and the principle of non refoulment to refugees, thereby offering them limited judicial protection

Refugee community hosted by India

India has a history of granting Asylum to refugees, the Jews refugees, from ancient times when Jews found refuge in India after the destruction of their Herod's temple (Jerusalem), this temple was destroyed by the Romans in 70th century during the first Jewish roman war, marking it a significant dispersion of Jews

from their homeland, leading many to seek refugee in various parts of the world including India. One of the most defining refugee movements in South Asia occurred during the Partition of India in 1947. The division of British India into India and Pakistan led to the forced displacement of nearly 14 million people across the newly drawn borders. Hindus, Sikhs, and other minorities migrated into India, while many Muslims crossed into Pakistan. This was not only one of the largest forced migrations in recorded history but also the bloodiest, as communal violence claimed an estimated one million lives. Although the Indian state at that time lacked a formal refugee law, it mobilized large-scale relief operations, setting up transit camps, rehabilitation colonies, and employment schemes. These experiences of Partition continue to shape India's refugee management strategies even today.

A second wave of massive refugee influx came during the Bangladesh Liberation War in 1971, when nearly ten million Bengali refugees, primarily Hindus, entered Indian territory to escape the Pakistan Army's atrocities in East Pakistan. India bore the economic and social strain of this humanitarian crisis almost single-handedly. The 1971 refugee inflow demonstrated both India's willingness to extend asylum and the geopolitical calculations that accompanied such decisions, as India's eventual military intervention led to the birth of Bangladesh. These two historical episodes highlight how refugee movements in India are deeply tied to political, cultural, and security concerns, rather than purely humanitarian commitments.

What past prologue? Nowadays India hosted various refugees each treated differently. Tibetan refugees arriving 1969, enjoys relative autonomy and educational opportunities. Tamil refugees also lives in camps with some integration into society. The chachmas and hangs, initially stateless have gradually gained citizenship. Conversely, Rohingya Muslim from Myanmar treated differently as they face hostility and threat of Refugee from countries like Afghanistan and somalia are primarily managed by UNHCR in urban settings. As UNHCR mandate is limited and domestic policy varies based on geopolitical relation, resulting in unequal protection, Because of that reason india needs a uniform law to tackle this problem.

Human rights challenges faced by refugees in India

Despite India's tradition of offering refugee in the country face substantial human rights challenges. Those without proper documentation are at constant risk of arbitrary detention and deportation. The lack of legal status prevent them from accessing employment opportunities leading them hardship to earn and fulfill their requirements, made them to live in a very poor life of standard. To get proper education remains a challenge for refugees children because of documentation requirements, language barrier etc. Refugees are in large number there camps are overcrowded and even can't provide the basic necessities like, clean water, sanitation and adequate Refugee women's and girls a particularly vulnerable to gender based violence and sexual exploitation, and even not get justice too. One on the Major concern was of growing xenophobia and discrimination, particularly against Muslim Refugees such as the Rohingyas, they often vilified as security threats Although Indian judiciary has upheld the principle of non refoulment in specific areas, its application remains inconsistent, especially in political sensitive contexts. Women and children constitute a disproportionately vulnerable segment of the refugee population in India. Refugee women often face multiple layers of discrimination — as non-citizens, as women in patriarchal societies, and as dependents with limited access to employment opportunities. Reports document instances of sexual harassment, domestic violence, and trafficking within refugee camps, particularly in protracted situations such as those of Sri Lankan Tamils in Tamil Nadu. The lack of gender-sensitive infrastructure — including safe sanitation facilities, maternal healthcare, and legal aid — further compounds their marginalization.

For refugee children, access to education remains a pressing concern. Many are unable to enroll in government schools due to lack of identity documents or face language barriers that hinder effective learning.

While UNHCR and local NGOs have initiated bridge courses and informal schooling programs, the absence of state-guaranteed protection under the Right to Education Act leaves refugee children in a precarious position. The Convention on the Rights of the Child (CRC), to which India is a party, obligates the state to protect all children within its jurisdiction. Yet, without a codified refugee law, India continues to fall short of these commitments.

India asylum policy –

India's refugee policy is largely driven by strategic and political factors, not humanitarian principles for instances Tibet Refugees are welcomed due to India's stance on China, Tamil refugees of Sri Lanka enjoy support due to cultural links. Rohingyas Muslim however face security threat and discrimination. This differential treatment raises concerns about India's commitment to human rights and international norms. It also reflects a lack of Institutional policy and over reliance on political discretion. A central tension in India's asylum approach lies in balancing national security with humanitarian obligations. Refugees are often portrayed as potential security threats, particularly in the case of Rohingya Muslims, who have been accused of links to extremist networks without substantive evidence. Political rhetoric has frequently emphasized the "illegal immigrant" label, conflating refugees with infiltrators, thereby eroding public sympathy. This securitization of refugee issues intensifies during election cycles, where parties mobilize refugee populations as political tools — for instance, in debates over the National Register of Citizens (NRC) in Assam and the Citizenship Amendment Act (CAA) of 2019.

While national security is a legitimate concern for any state, the disproportionate securitization of refugee populations risks undermining India's long-standing humanitarian tradition. A rights-based refugee law could create clear categories and procedures, enabling the state to distinguish between genuine asylum seekers and potential threats, thereby addressing both security and human rights concerns.

Indian Government and non governmental organisations initiative for refugees

The Indian Government despite its noncommittal policies towards refugee, has proposed eight schemes which are directed towards certain Refugee groups like Central assistance for one time settlement of displaced family from Pak occupied Jammu Kashmir, rehabilitation package and upgradation of infrastructure of Bangladeshi enclave and Cooch Berar district after transfer of enclave between India Bangladesh 1971, relief assistance to Sri Lankan Refugees staying in camps in Tamil Nadu, rehabilitation of Bru Rang families from Tripura to Mizoram etc. These schemes were started in 2011 and extended in 2022.

The way forward: Towards a National refugee law

India urgently needs a comprehensive refugee protection law based on constitution values and international standards. Such a law should: Define "refugee" and "Asylum seekers" clearly. Guarantee protection from refoulment. Ensure basic rights: education health housing and livelihood. Create an independent asylum adjudication mechanism. Strengthen coordination with UNHCR. India should also consider signing the 1951 refugee convention and 1967 protocol, or at least formally incorporate key principles into domestic law. Regional cooperation under SAARC or BIMSTEC could further harmonize refugee protection in South Asia. Looking ahead, refugee protection in South Asia cannot be addressed in isolation by individual states. Regional cooperation is essential to create burden-sharing mechanisms, harmonize asylum procedures, and strengthen early-warning systems for refugee flows. SAARC, though politically constrained, could serve as a platform to initiate dialogues on common humanitarian standards. Similarly, BIMSTEC offers a sub-regional mechanism where India, Bangladesh, and Myanmar could coordinate refugee responses, especially concerning the Rohingya crisis.

Moreover, the looming challenge of climate-induced displacement demands urgent attention. Rising sea levels in Bangladesh, recurrent floods in Nepal, and desertification in parts of Afghanistan are likely to create millions of “climate refugees” in the coming decades. Current international law does not recognize climate refugees under the 1951 Refugee Convention, but India can take the lead in shaping regional norms that acknowledge this emerging reality. By integrating refugee protection into its climate diplomacy and disaster management policies, India would not only uphold humanitarian values but also prepare itself for inevitable future flows of displaced populations. India lacks a dedicated refugee law, relying instead on the Foreigners Act (1946), Passport Act (1920), and Citizenship Amendment Act (CAA, 2019), which selectively grants citizenship to persecuted minorities from neighboring countries (excluding Muslims). The Immigration and Foreigners Bill, 2025 aims to modernize immigration controls but does not address refugee protections, focusing instead on national security and deportation mechanisms. The Supreme Court has occasionally extended Article 21 (Right to Life) to refugees, prohibiting *refoulement* (forced return to persecution), but rulings remain inconsistent.

Research Objectives

- To Examine India’s Legal Framework for Refugees and Asylum Seekers
- To Evaluate the Role of UNHCR in Protecting Refugee Rights
- Explore challenges in accessing education, healthcare, and employment faced by refugees (e.g., Tibetan and Sri Lankan refugees) due to lack of legal recognition
- Suggest reforms for a comprehensive national refugee law aligned with international human rights norms

Research Methodology

Qualitative Approach: Analysis of existing literature, legal documents, and case studies.

Juridical-Normative Method: Examination of constitutional provisions, international law applicability, and judicial precedents.

Field Studies (if applicable): Interviews with refugees, NGOs, and government officials (subject to feasibility).

Conclusion

What past prologue? India’s humanitarian tradition of hosting refugees is commendable but inconsistent with international standards and human rights. India stands at a critical juncture where balancing national security, sovereignty and humanitarian obligation is essential. A rights based legally codified framework, rooted in constitutional morality and human dignity is essential for India to fulfill its moral and legal obligations in the modern world.

While India has historically provided refuge to displaced populations, its lack of a formal legal framework leads to arbitrary treatment and human rights abuses. The recent **Immigration and Foreigners Bill (2025)** prioritizes security over protection, highlighting the urgent need for comprehensive refugee legislation. By adopting a rights-based approach, India can uphold its tradition of *Vasudhaiva Kutumbakam* ("the world is one family") while ensuring dignity and safety for asylum seekers.

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