

REFUGEE PROTECTION IN INDIA: A SOCIO-LEGAL VACUUM

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Abstract

India has historically provided shelter to people fleeing persecution, violence, and political upheaval in neighbouring regions. Yet, despite this long-standing humanitarian role, the country does not possess a comprehensive legal framework specifically designed to protect refugees. India is not a party to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, and consequently relies on a fragmented mix of immigration laws, executive discretion, and occasional judicial intervention to regulate refugee presence. This legal absence has created a socio-legal vacuum in which refugees are often viewed and treated as foreigners or irregular migrants, rather than as individuals entitled to international protection. This article examines the implications of this legal gap for refugee rights and state responsibility in India. It analyzes how existing legal instruments, including the Foreigners Act, 1946 and the Citizenship Act, 1955, are ill-suited to address the unique vulnerabilities of refugees, frequently exposing them to risks of detention, deportation, and denial of essential services. The study also explores the role of constitutional safeguards, particularly Articles 14 and 21 of the Indian Constitution, and evaluates how courts have attempted to extend protections through principles of equality, due process, and the right to life. While judicial interventions have offered limited relief, they remain inconsistent and cannot replace the need for legislative clarity. Further, the article assesses India's international human rights commitments and the relevance of customary international law principles such as non-refoulement. It argues that selective and ad hoc approaches to refugee protection, shaped by political and security considerations, weaken both the rule of law and humanitarian values. The article concludes by emphasizing the urgent need for a comprehensive national refugee law that ensures consistent protection, procedural fairness, and alignment with constitutional principles and international norms.

Key Words: *Refugee Protection, Non-Refoulement, Indian Constitutional Law, Human Rights, Socio-Legal Vacuum*

INTRODUCTION

The displacement of people across borders due to persecution, conflict, and political instability represents one of the most pressing humanitarian challenges of the contemporary

world. International law recognizes the unique vulnerability of such displaced persons through the legal category of *refugees*. Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, a refugee is a person who, owing to a well-founded fear of persecution on grounds such as race, religion, nationality, political opinion, or membership of a particular social group, is outside their country of origin and unable or unwilling to seek its protection.¹

India has historically been a destination for refugees fleeing persecution from Tibet, Sri Lanka, Afghanistan, Bangladesh, and Myanmar. Despite this long humanitarian tradition, India is not a signatory to the Refugee Convention or its Protocol. More significantly, it lacks a comprehensive domestic legal framework governing refugee protection. The absence of statutory recognition has created a socio-legal vacuum, wherein refugees are regulated through general immigration laws, discretionary executive action, and limited judicial oversight. As a result, refugees are frequently treated as *foreigners* or *illegal migrants*, rather than as a distinct class requiring international protection.

This article critically examines India's refugee protection regime, highlighting the consequences of legislative silence, the role of constitutional and judicial safeguards, and the broader socio-political implications. It argues that the current framework is inadequate and inconsistent, and that meaningful reform is necessary to align India's practices with humanitarian principles and constitutional values.

INDIA'S ABSENCE OF A DEDICATED REFUGEE LAW

A. Non-Accession to the Refugee Convention

India's decision not to accede to the 1951 Refugee Convention or the 1967 Protocol is central to understanding its fragmented refugee protection system. While accession is not a prerequisite for humane treatment of refugees, the Convention provides an internationally accepted framework defining refugee status, outlining state obligations, and codifying the principle of *non-refoulement*—the prohibition on returning refugees to territories where their life or freedom would be threatened.²

India's non-party status means that it is not formally bound to adopt standardized refugee status determination procedures or confer specific rights upon refugees. Consequently, the term "refugee" finds no statutory definition in Indian law. Legal scholars have repeatedly emphasized that this absence has contributed directly to uncertainty, arbitrariness, and inconsistent treatment of displaced persons across the country.³

B. Immigration Law and the Foreigners Framework

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

² Id. art. 33.

³ B.S. Chimni, *The Legal Condition of Refugees in India*, 7 J. Refugee Stud. 378 (1994).

In the absence of refugee-specific legislation, India regulates refugees through general laws governing foreigners and immigration. Chief among these is the Foreigners Act, 1946, which grants the executive broad discretionary powers over the entry, presence, and expulsion of non-citizens. The Act makes no distinction between refugees, asylum seekers, and other migrants.⁴

Similarly, the Registration of Foreigners Act, 1939 and the Passport (Entry into India) Act, 1920 focus solely on documentation and border control. The Citizenship Act, 1955, particularly following the enactment of the Citizenship (Amendment) Act, 2019, introduces selective pathways to citizenship for certain persecuted minorities from neighbouring countries while excluding others, thereby raising concerns of religious discrimination.⁵

None of these statutes were designed to address refugee protection. Instead, they prioritize sovereignty and border regulation, often enabling detention and deportation without individualized assessment of persecution risks.

C. Ad Hoc and Administrative Responses

India's refugee policy has largely evolved through executive discretion rather than legislative design. Different refugee groups have been treated differently based on political, strategic, and diplomatic considerations. Tibetan refugees, for instance, have been allowed to settle, establish educational institutions, and maintain cultural autonomy. In contrast, Rohingya refugees from Myanmar have faced detention, restricted movement, and deportation proceedings.⁶

Some refugee populations receive recognition directly from the Indian government, others are recognized solely by the UNHCR, while many remain undocumented altogether. This fragmented approach highlights the absence of uniform legal standards and underscores the vulnerability of refugees whose protection depends largely on shifting political priorities.

CONSEQUENCES OF THE LEGAL VACUUM

A. Statelessness and Insecurity

The lack of a statutory refugee definition has left many displaced persons in India effectively stateless. Without legal recognition, refugees often lack identity documents, lawful residence permits, or access to formal employment. This insecurity is particularly acute for Rohingya refugees, whose UNHCR documentation is frequently not recognized by Indian authorities.⁷

As a result, refugees live in constant fear of arrest or deportation, often confined to informal settlements with limited access to healthcare, education, or social welfare.

⁴ The Foreigners Act, No. 31 of 1946, INDIA CODE.

⁵ The Citizenship (Amendment) Act, No. 47 of 2019, INDIA CODE.

⁶ Pratik Datta, India's Refugee Policy and the Rohingya Crisis, STIMSON CTR. (2022).

⁷ International Institute for Strategic & Policy Research, Rohingya Crisis and India's Legal Vacuum (2021).

B. Detention and Deportation Risks

Refugees in India are frequently processed under immigration detention regimes that do not distinguish between voluntary migrants and forced displacement. The absence of procedural safeguards allows for prolonged detention and summary deportation.

In Mohammad Salimullah case, Rohingya refugees challenged their proposed deportation, arguing that they faced a real risk of persecution in Myanmar.⁸ The case highlights the inability of existing laws to incorporate the principle of non-refoulement or require individualized risk assessments prior to removal.

C. Barriers to Fundamental Rights

Without lawful status, refugees encounter serious obstacles in accessing basic rights. Employment restrictions push many into informal and exploitative labour. Children often face difficulties accessing higher education, while healthcare access remains inconsistent and discretionary. The absence of enforceable rights exposes refugees to systemic discrimination and administrative arbitrariness.⁹

D. Socio-Legal Inequality

The selective application of refugee protection has resulted in unequal treatment among refugee communities. Certain groups benefit from political sympathy or legislative inclusion, while others face exclusion and hostility. This disparity undermines the rule of law and erodes the humanitarian principles that traditionally guide refugee protection.¹⁰

CONSTITUTIONAL AND INTERNATIONAL FRAMEWORKS

A. Constitutional Protections

Despite the absence of refugee legislation, refugees in India are entitled to certain constitutional protections. Articles 14 and 21 of the Indian Constitution extend the rights to equality before law and protection of life and personal liberty to *all persons*, irrespective of citizenship.¹¹

Indian courts have interpreted Article 21 expansively to require due process before deprivation of liberty, including in cases involving deportation. However, constitutional protections remain reactive rather than comprehensive and do not substitute for a structured asylum system.

B. International Human Rights Obligations

⁸ Mohammad Salimullah v. Union of India, W.P. (C) No. 793 of 2017 (India).

⁹ The Law Institute, India's Refugee Protection Challenges (2020).

¹⁰ Reuters, India Grants Citizenship Under CAA (May 15, 2024).

¹¹ INDIA CONST. arts. 14, 21.

India is a party to several international human rights treaties, including the ICCPR. These instruments prohibit torture, arbitrary detention, and inhuman treatment, indirectly reinforcing the principle of non-refoulement as part of customary international law.¹²

Thus, even without accession to the Refugee Convention, India bears international obligations that support humanitarian protection for refugees.

IV. Judicial Engagement and Refugee Rights

Indian courts have occasionally intervened to prevent arbitrary deportation and protect refugees' basic rights. Through public interest litigation, courts have reaffirmed that executive power over foreigners is not absolute and must conform to constitutional principles.¹³

However, judicial intervention remains limited and case-specific. Courts have consistently acknowledged that the creation of a comprehensive refugee regime lies within the legislative domain.

V. Socio-Political Dimensions of Refugee Protection

India's refugee policy is deeply intertwined with national security concerns, demographic anxieties, and regional geopolitics. The treatment of Rohingya refugees reflects fears of cross-border terrorism and illegal immigration, often overshadowing humanitarian considerations.¹⁴

Public discourse surrounding refugee protection has also become increasingly polarized, particularly following the enactment of the CAA. These debates raise fundamental questions about secularism, equality, and the moral foundations of citizenship.

POLICY AND LEGAL REFORM PROPOSALS

A. Enacting a National Refugee Law

There is an urgent need for comprehensive refugee legislation in India. Such a law should define refugee status, establish fair and transparent asylum procedures, and guarantee basic rights consistent with constitutional values and international norms.¹⁵

B. Refugee Status Determination Mechanism

An independent refugee status determination authority would ensure consistency, due process, and accountability, reducing reliance on ad hoc executive discretion.

¹² International Covenant on Civil and Political Rights arts. 6–7, Dec. 16, 1966, 999 U.N.T.S. 171.

¹³ NHRC v. State of Arunachal Pradesh, (1996) 1 SCC 742 (India).

¹⁴ IISPPR, National Security and Refugee Policy in India (2021).

¹⁵ International Journal of Law, Management & Humanities, Need for Refugee Law in India (2020).

C. Alignment with Constitutional Values

Any refugee law must explicitly prohibit discrimination and uphold the principles of dignity, equality, and liberty enshrined in the Constitution.

CONCLUSION

Refugee protection in India remains marked by legislative silence, administrative inconsistency, and socio-legal vulnerability. While constitutional safeguards and judicial interventions offer limited relief, they cannot replace a coherent legal framework. The experiences of refugee communities across India reveal the human cost of policy ambiguity and selective protection.

A comprehensive refugee law would not only fill this socio-legal vacuum but also reaffirm India's commitment to humanitarian values, constitutional morality, and global responsibility.