

LEGAL FRAMEWORKS FOR REFUGEE PROTECTION IN INDIA: A FOCUS ON VULNERABLE REFUGEE GROUPS

Abstract

The worldwide refugee population creates multiple difficulties which require both effective and compassionate policy solutions. India maintains its dedication to humanitarian values while protecting refugees within its borders through its long history of refugee asylum provision. One of the biggest numbers of displaced people worldwide have found safety in India. India however has declined to ratify the 1951 Refugee Convention and its 1967 Protocol and has shown little interest in doing so for a number of pragmatic and ideological reasons.

This article explores the multifaceted dynamics of refugee protection in India, analysing the legal frameworks, the current position of various refugee groups in India and also the role of international cooperation and advocacy in strengthening India's capacity to address the needs of refugees effectively and in bringing in legislation protecting them. It highlights how, despite the absence of a uniform law, the Indian judiciary has recognised principles like non-refoulement under Article 21 of the Constitution, thereby extending constitutional guarantees of life and liberty to refugees. The paper further discusses the role of the UNHCR in refugee status determination and welfare, while also underlining the limitations it faces in India due to the lack of a formal legal mandate.

The study emphasizes the vulnerabilities of specific groups such as women, children, and stateless persons, who face severe barriers in access to education, healthcare, and livelihoods. It also examines the selective protection extended under the Citizenship (Amendment) Act, 2019 and its implications on India's secular framework. Ultimately, the paper argues for the necessity of a dedicated refugee protection law that balances security and humanitarian concerns, strengthens institutional mechanisms, and aligns India with international human rights standards.

Keywords: Asylum seekers, Conventions, Human rights, Legal framework, Refugees.

Introduction

A refugee is a person who must leave their birthplace or residence because of political instability or persecution or famine or natural disasters. Refugees are seen as forced migrants who are forced to leave their own country because of unforeseen circumstances. Ever since Rome welcomed the fleeing barbarians, numerous different groups of people who broadly fit this definition of a refugee have been welcomed into state borders. Before 1920, there was minimal concern over defining the boundaries of the term of refugee during a span of more than four centuries¹. Relatively small groups of refugees frequently made the decision to travel to the Americas and other recently discovered regions. Furthermore, the dominance of liberalism, with its emphasis on individualism and respect for individual autonomy, caused the majority of European countries to allow basically unbridled and unfettered immigration².

After World War I, the freedom of travel abroad granted to those who may be considered refugees in general came to an abrupt end. The growth of political and economic nationalism in the Western world was accompanied by the existence of sizable populations of refugees who had been uprooted during the conflict. Governments took a more cautious stance towards immigration in general and refugee movements in particular in response to this changing social environment.

However, this problem of refugees amplified after the World War II, and there was a dire need of a body or statute protecting and governing such refugees. As a result of which the Refugee Status Convention was adopted at a diplomatic conference held in Geneva. The 1951 Convention³ was intended to cover just those escaping inside Europe and actions that happened before to January 1, 1951. The 1967 Protocol⁴ for the status of refugee however made the convention globally applicable by eliminating its time and geographic restrictions.

Who is a refugee?

The 1951 convention for the status of refugee defines a refugee through Article 1(A) as someone who faces persecution because of race, religion, nationality, social group membership or political opinion while being outside their nationality country and unable to

¹Giulia Scalettari, *Refugee Studies and the International Refugee Regime: A Reflection on a Desirable Separation*, 26 REFUGEE STUD. Q. 36, 41–46 (2007).

²James C. Hathaway, *The Evolution of Refugee Status in International Law: 1920–1950*, 33 INT'L & COMP. L.Q. 348 (1984).

³Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954).

⁴UNHCR, *The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, (May 10, 2024, 12:04 PM) <https://www.unhcr.org/home/PUBL/3b5e90ea0.pdf>.

seek protection from that country or being outside their former nationality country and unable to return due to fear.

The 1951 Convention definition of refugee has evolved through various worldwide court decisions which established distinct evaluation criteria for its terms throughout history. This has been done in order to remove any uncertainty over whether or not an individual fits the definition of the term. In *INS v. Cardoza Foucaceli*⁵, for example, it was decided that, with respect to "well-founded fear," it suffices to demonstrate that an objective situation supported by evidence exists; however, it is not sufficient to demonstrate that persecution is a plausible outcome.

However, there are few people who are restricted from the purview of the word refugees, they are defined under Article 1(F) of the 1951 Refugee Convention. They are as follows:

- they have committed a crime against peace, a war crime, or a crime against humanity;
- they have committed a serious non-political crime outside their country of refuge prior to the admission to that country as a refugee; or
- they are guilty of acts contrary to the purposes and principles of the United Nations.

India and Refugees

One of the few liberal democracies without a national framework for refugee protection and without ratification of the 1951 Refugee Convention is India. But attempts have been made to update Indian immigration law to include the necessary provisions. Under the direction of former Chief Justice of the Indian Supreme Court Justice P. N. Bhagwati, a drafting group created a model law on asylum seekers and refugees in 1995 as part of the Regional Consultations on Refugees and Migratory Movements in South Asia Initiative. In 2006, the Public Interest Legal Support and Research Centre significantly revised the model law, renaming it the Refugees and Asylum Seekers (Protection) Bill. To appease the intelligence and security services, many of the rights in Article 13 of the original model law were eliminated, even though the revised bill kept the same definition of a refugee. These rights included the freedom to look for work as well as the rights to proper housing, healthcare, and elementary education. Nevertheless, the security agencies' concerns were not

⁵INS v. Cardoza-Fonseca, 480 U.S. 421 (1987).

addressed by these modifications. In the end, neither bill was approved by the Indian Cabinet and was never brought before Parliament.

And once again steps were taken to implement laws for refugees, as a result of which 'The Asylum Bill, 2015' was introduced in the Lok Sabha by the then MP Shashi Tharoor with the intention of placing India at the forefront of asylum management in the world." The bill however had few flaws because of which it failed to become a law⁶.

But inspite of no proper legislations governing and protecting refugees, more than 46,000 refugees and asylum seekers were registered with UNHCR India as of January 31, 2022. It is anticipated that the number of persons displaced will rise as a result of conflict, poverty, insecurity, a lack of access to essential services, environmental degradation, and catastrophes. In India, most refugees and asylum seekers coexist with host communities in urban areas. 36% of the refugees are minors, while 46% of the refugees are women and girls⁷.

Further, into this paper we'll look into the various refugee groups currently living in India and also about the other legislation governing them.

Refugee groups in India

Most of the refugees that India hosts are either forced to flee their home countries or are because to political persecution, internal or foreign strike, or violations of human rights in their country of origin⁸. India has granted asylum to people requesting it from nations such as:

Tibet: The 1949 Chinese invasion of Tibet, along with the horrors and persecution that followed, caused the Dalai Lama and many other Tibetans to abandon the country. The individuals who ran away to India were granted refugee status. Even though the government has limited the number of Tibetan refugees granted status—more than 1.5 lakh—their situation is nevertheless better than that of many other communities residing in India. They live in harmony with the people and are dispersed throughout many states.

⁶Bhairav Acharya, The Future of Asylum in India: Four Principles to Appraise Recent Legislative Proposals, NUJS L. REV. 173, 174–76 (2016).

⁷UNHCR, India, (May 9, 2024, 3:58 PM)

<https://www.unhcr.org/in/countries/india#:~:text=As%20of%2031%20January%202022,%2C%20and%2036%25%20are%20children.>

⁸Isha Bharadwaj & Nimisha Shaswat, Refugee Protection in India: International Obligations and Need for Legislation, 23 SUPREMO AMICUS (2022).

Nepal and Bhutan: The conflict in Bhutan was solely a matter of culture between the Nepali and Bhutanese populations. Fearing that the number of the latter would increase, the former passed laws granting citizenship to Nepalis, making them temporary unlawful residents. As a result of the expulsions and nationwide protests against them, which were greeted with bombs and raids, many Nepalis were compelled to cross the Indian border through West Bengal and Assam. Since India and Bhutan have a friendship arrangement, the exiled Nepali Bhutanese were not accepted, and they are currently unable to get refugee designation.

Sri Lanka: Numerous people have died and had been displaced as a result of the violence that has been going on in Sri Lanka since 1983 between the Lankan army and the Liberation Tigers of Tamil Eelam (LTTE), who are fighting for the independence of the Tamil minority. The number frequent airstrikes, bombings, landmines close to their homes, as well as ongoing rape and torture by the army had forced people to leave their nation. People were forced to leave their nation due to these hardships. Since the LTTE is an illegal organisation in India, the authorities are asking these persons about their identities after they entered the country by boat and arrived in Tamil Nadu. The majority of Sri Lankans who are considered to be security threats are still protected as refugees. Over one lakh refugees are present in camps in Tamil Nadu for refugees or elsewhere, performing manual labour while receiving medical attention and education.

Myanmar: At the moment, almost 50,000 people have applied for asylum in India from Myanmar. Such Rohingya refugees are primarily Muslims from Myanmar's Rakhine State who fled due to persecution and violence. Many Rohingya refugees have sought shelter in India, particularly in states like Jammu and Kashmir, Telangana, and Delhi. Their legal status in India is precarious because they often lack official refugee status and face the risk of deportation. Rohingya refugees in India encounter significant challenges, including limited access to healthcare, education, and livelihood opportunities.

Bangladesh: The large-scale migration that occurred after the war in 1971 has decreased to 35,000 as a result of refugee repatriations

Afghanistan: The conflict between the Taliban and the government in Afghanistan has prompted a large number of Afghans to leave the nation. The UNHCR provides them with protection and residency cards, but the Indian government does not recognise the Afghans as refugees.

Pakistan: The strained relationship between India and Pakistan and due to the improper or ill treatment given to the Hindus who moved to the country as a result of partition in 1947, a lot of Hindu Pakistanis have fled to the Indian states such as Gujrat and Rajasthan in fear of persecution⁹. The recently amended Citizenship Act has given various protection to this section of people which will be discussed further into this paper.

Legislations for refugees in India

As already discussed, there are no explicit legislations in India addressing the issue of refugees and asylum seekers. Currently, refugees receive the same treatment as non-citizens and are subject to all regulations that apply to non-citizens. In accordance with certain domestic rules pertaining to foreigners and illegal migrants, the Indian judiciary decides the legal status of refugees and asylum seekers. Among those are:

- Passport (Entry into India) Act, 1920¹⁰: This law controls who is allowed to enter and exit the nation and mandates that everyone entering India must have a valid passport. It gives the Central government the authority to create regulations for the same, which it did by employing Passport (Admission into India) Regulations, 1950. It is against the law for anyone without a passport to travel into India. However, because to the "non-refoulement" principle, this law would not apply to refugees. The concept of "non-refoulement" is covered by Article 21 of the Constitution, according to the ruling in the Nandita Haksar v. State of Manipur case. Therefore, in the event that certain travel documents are missing, they cannot be returned to their home country or forbidden from travelling to India in search of safety. The Court further concluded that it is "palpably inhumane" to impose domestic offences on these individuals who require life protection.
- Registration of Foreigners Act, 1939¹¹: This act makes it possible for foreigners to register in India. It gives the Central government the right to enact regulations mandating that all foreign nationals notify the designated authority of their arrival, presence, movements, departure, and identification verification, among other things. Additionally, it mandates that those who interact with foreigners frequently report on their activities. The onus of proving whether or not a person is a foreigner is shifted to

⁹Prachi Raj, Understanding Citizenship and Refugees' Status in India, 23 ECON. & POL. WKLY. 31, 33–34 (2020).

¹⁰The Passport (Entry into India) Act, 1920 (India).

¹¹Registration of Foreigners Act, 1939 (India).

them by Section 4 of the legislation. When it comes to the treatment of refugees and asylum seekers, this is the most problematic part of the legislation. For them, the burden of proof and these documentation requirements usually mean extra difficulties. Hence, the responsibility was on the designated authorities to confirm the applicants' legitimacy, which also includes those of refugees and asylum seekers.

- Foreigners Act, 1946¹²: this is considered one of the primary laws that govern the entry, stay and departures of foreigners in India. This act categorizes refugees as 'foreigners' and are subject to regulations regarding their entry, residence, and movement within India.
- CAA and NRC: The recently passed Citizenship (Amendment) Act (CAA), 2019 modernises the Citizenship Act, 1955¹³, in to grant Indian citizenship to populations of minority people who are being persecuted by their neighbours. Hindus, Parsis, Buddhists, Sikhs, Jains, and Christians from Bangladesh, Afghanistan, and Pakistan are among the groups to whom it aims to grant citizenship. Its clear a reason, as stated in the election manifestos of the current ruling party, is to provide citizenship to Hindus who are fleeing persecution in nearby Muslim-majority nations. This endeavour, though, may be considered a significant Hindutva endeavour, with grave consequences for Muslims living in India as well as those who are immigrants. However, this measure, which transgresses the fundamental ideals and secular principle of the Constitution, has heightened tensions throughout the nation.

Constitutional framework for Refugee Protection

The Indian Constitution upholds the supremacy of law and gives customary and conventional law significant weight in the nation's governance and policy-making processes. Consequently, both the Union government and the courts are under a duty Regarding refugee protection, customary laws and treaty commitments must be given fair consideration by the government and the courts, as required by the constitution¹⁴. Consequently, the rights to equality (Article 14)¹⁵, life and personal liberty (Article 21)¹⁶, protection from arbitrary detention (Article 22)¹⁷, and protection in the event of a conviction for the same rights as

¹²Foreigners Act, 1946 (India).

¹³Citizenship Act, 1955 (India).

¹⁴Rohidad Mundhe, Legal Policy on Rights and Issues of Refugees in India, 2 J. UINS GD 131, 134–35 (2020).

¹⁵India Const. art. 14.

¹⁶India Const. art. 20.

¹⁷India Const. art. 21.

citizens apply to non-citizens, including refugees, including offences (Article 20)¹⁸, freedom of religion (Article 25)¹⁹, and the ability to petition the Supreme Court for the enforcement of fundamental rights (Article 32)²⁰. The Supreme Court has repeatedly ruled that refugees have a right to the protection of their lives and personal freedom and that it is the responsibility of the State to ensure their safety.

However, as the Supreme Court ruled in the *Khudiram Chakma case*²¹, Article 21 does not grant the ability to live and work in the nation since Article 19 grants these rights only to citizens of this nation. Furthermore, it is not possible to get the right to dwell and settle in this nation by using the mechanisms of Article 14. The Supreme Court's decisive action in saving the Chakma refugees demonstrates a liberal and compassionate attitude to the refugee issue.

The Supreme Court reminded the Indian state of Arunachal Pradesh's government of its constitutional obligation to protect the life, health, and welfare of Chakmas living in the state in *NHRC v. State of Arunachal Pradesh*²² without being impeded by regional politics in the state. The Court further concluded that the State Government was depriving the Chakma people of their constitutional and statutory right to be registered as Indian citizens by refusing to send their applications.

United Nations High Commissioner for Refugee (UNHCR) and India

Since the UNHCR opened an office in India in 1981, the organisation has played a major role in the country. Its limited mandate requires it to operate under the Ministry of External Affairs' (MEA) and Ministry of Home Affairs' instructions. Additionally, it maintains a sub-regional/field office in Chennai to handle the integration of the repatriation process with MEA and the Sri Lankan refugees residing in Tamil Nadu. Regretfully, there is no legal guarantee for UNHCR's presence in India. Because of a purely political arrangement between India and the UN, UNHCR continues to operate in India.

UNHCR's primary responsibility in India is to check asylum seekers' documentation and interviews in order to determine their refugee status (RSD). Moreover, it also has the authority to grant temporary residency certificates to those who meet the requirements

¹⁸India Const. art. 22.

¹⁹India Const. art. 25.

²⁰India Const. art. 32.

²¹*Arunachal Pradesh v. Khudiram Chakma*, AIR 1994 SC 1461 (India).

²² *NHRC v. State of Arunachal Pradesh*, AIR 1996 SC 1235 (India).

outlined in the 1951 Refugee Convention. Additionally, the UNHCR and NGOs like Don Bosco Ashalyam collaborate closely in India. This offers daily compensation for job placement in nearby enterprises, language instruction, counselling, and vocational assistance. The Rohingya refugees receive housing materials, legal assistance, and medical facilities from the Zakat Foundation. The Young Men Christian Association (YMCA) frequently visits the refugee camp and surrounding area to evaluate living conditions, offers community healthcare services, and offers psychological help to adolescents and unaccompanied persons.

In addition, the UNHCR in India supports local integration, resettlement in a third country, and the voluntary return of refugees in cooperation with the relevant states. For the refugees from Sri Lanka, it has been extremely important in the process of voluntary repatriation. The UNHCR also defends refugee women and children from sexual assault, exploitation, and harassment. It offers shelter, healthcare, education, security, and financial support in the form of cash when needed.

However, there are number of limitations to the operation of this body like for example it has to treat different groups of refugees differently as there is no uniform laws governing them. For UNHCR in India, the lack of funding and staff to handle the massive refugee population is a major worry²³. It has already voiced serious concerns about the corona virus's emergence. Moreover, The UNHCR can only engage with urban refugees and has a very limited mission as it has very little or no access to refugees living in distant locations. It is also finding it challenging to provide stay areas for the refugees because there isn't enough land in metropolitan areas. Hence, In the absence of a formal agreement or memorandum of understanding with the Indian government, UNHCR maintains its operations under the United Nations Development Programme (UNDP) and lacks formal status in the country.

Roadblocks for implementing Refugee Legislation in India

Opposition to enacting a specific refugee legislation in India arises from various concerns. Policymakers argue that the current ad hoc administrative approach aligns better with bilateral relations and national security interests, as a uniform law might not be practical due to diverse treaties with neighbouring countries. They fear that a refugee law could exacerbate security risks, strain resources, and lead to civil unrest²⁴. Additionally, there are

²³Sanderson, The Role of International Law in Defining the Protection of Refugees in India, WINSOIN INT'L L.J. 55, 46-109 (2015).

²⁴Mahika Khosla, The Geopolitics of India's Refugee Policy, STIMSON (May 9, 2024, 10:04 AM), <https://www.stimson.org/2022/the-geopolitics-of-indias-refugee-policy/>.

concerns about economic migrants exploiting the system, and policymakers assert that existing legal protections and the role of the National Human Rights Commission are adequate. Overall, opposition is rooted in considerations of political convenience, national security, economic and social stability, and perceived adequacy of current legal frameworks.

Conclusion

In conclusion, we saw how there are legislations in India which protects the refugees. However, they are not sufficient. So, implementing a specific law is seen to be important. The controversy in the passage of a particular refugee law in India highlights the intricacies and difficulties involved in providing for the needs and rights of uprooted people. Opponents favor changes in current schemes, contending that security concerns, diplomatic relationships, and whether existing laws are sufficient are the issues at hand. Proponents believe in an overall legal structure based on global norms, one that improves security, and establishes equality and legality for refugees. In spite of resistance to some international agreements, there is a realization that there is a need to develop standardized procedures and adhere to human rights provisions in dealing with refugee flows. In the future, there must be a balance which is both security-oriented and humanitarian-centric, putting forward the idea of dialogue, cooperation, and Indo-centered solutions so that refugees can be protected and assisted within India's borders and good relations can be maintained with other nations.