

Refugee Protection in India: An Analysis of International Obligations and Domestic Practice in Contemporary Periods

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Abstract: India hosts one of the largest refugee populations in South Asia, yet remains conspicuously absent from the 1951 Refugee Convention and its 1967 Protocol. In the absence of dedicated domestic legislation, refugees in India are governed by a patchwork of colonial-era statutes designed for foreigners, leaving them vulnerable to arbitrary detention, deportation, and systemic denial of basic rights. This article critically examines the international legal obligations India bears toward refugees, the constitutional and judicial protections that have partially filled the legislative vacuum, the structural inadequacies of existing domestic law, and the role of international and national human rights bodies. It further analyses the contemporary challenges posed by the Rohingya crisis and the Citizenship Amendment Act, 2019 (CAA), arguing that India's ad hoc approach is no longer tenable. The article concludes by advocating for the enactment of a dedicated national refugee law and the development of a South Asian regional refugee framework.

Keywords: Refugee, Non-refoulement, UNHCR, NHRC, Article 21, Foreigners Act, CAA 2019, Rohingya, Domestic Refugee Law

I. INTRODUCTION

Under international law, a refugee is someone who is outside of their home country and cannot or will not seek protection there because they are afraid for their life because of their race, religion, nationality, membership in a social group, or political beliefs. Foreign refugee legislation is based on this term, which is part of the 1951 Refugee Convention. Unfortunately, its narrow focus means it doesn't include those displaced by things like natural disasters, environmental catastrophes, internal armed conflicts, or persecution based on gender identity or sexual orientation.

The strange position that India, the biggest democracy in the world, holds inside the international refugee framework is not surprising. First, India is bound implicitly to safeguard

refugees' rights under a number of international human rights conventions that it has ratified. Contrarily, it has not accepted the 1951 Convention or its 1967 Protocol, and it has not passed any domestic laws that address the rights, status, and rehabilitation of refugees adequately. Despite this legal vacuum, India continues to host one of the largest refugee populations in South Asia.

The problem is multi-dimensional. First, India's existing legal framework primarily colonial-era statutes makes no distinction between a refugee and a foreigner, exposing genuine refugees to the risk of arbitrary detention and deportation. Second, the government's approach has been entirely ad hoc, determined by diplomatic considerations and political expediency rather than legal principle. Third, contemporary developments most notably the Rohingya crisis and the Citizenship (Amendment) Act, 2019 have introduced a troubling religion-based dimension into India's refugee practice, raising grave constitutional and human rights concerns.

This article analyses these issues systematically. After establishing the interplay between international refugee law, human rights law, and humanitarian law, it examines India's reasons for non-ratification of the 1951 Convention, the constitutional and judicial protections available to refugees, the inadequacy of domestic legislation, and the role of the UNHCR and NHRC. It concludes with concrete recommendations for legislative and institutional reform.

2. OBJECTIVES OF THE STUDY

- To examine India's international obligations towards refugees.
- To analyse constitutional and judicial protection available to refugees.
- To evaluate contemporary challenges in refugee protection.
- To suggest legal and policy reforms.

3. RESEARCH METHODOLOGY

The present study adopts a doctrinal research methodology. The study is primarily based on secondary sources including international conventions, statutes, judicial decisions, reports of international organisations, academic articles, books and government documents. An analytical and descriptive approach has been employed to evaluate India's international obligations and domestic refugee protection framework.

4. HISTORICAL CONTEXT: INDIA'S ENCOUNTER WITH REFUGEE CRISES

Even before the current international refugee system came into existence, India was involved in the displacement of significant numbers of people. Roughly twenty million displaced people crossed the newly formed boundaries between Pakistan and India after the 1947 partition of British India caused the greatest forced migration in history. The government's initial response was through the Rehabilitation Financial Administration Act, 1948, though this legislation addressed administrative rehabilitation rather than legal status.

Another wave of refugees arrived in the decades that followed. By granting political sanctuary to the Dalai Lama and some 80,000 Tibetan exiles in 1959, India was acting on humanitarian grounds. The Bangladesh Liberation War, which began in 1971 and culminated in the exodus of around ten million people from East Pakistan into India, was a catastrophe of unprecedented scale that put India to the test. Tamil Nadu saw a flood of Sri Lankan migrants in 1983 and 1986, while the northeastern regions became home to Chakma people from Bangladesh. More recently, over forty thousand Rohingya Muslims from Myanmar have sought refuge in India, becoming the most contentious refugee issue in contemporary Indian politics.

This history underscores a consistent pattern: India has responded to refugee crises politically and diplomatically rather than through a principled legal framework. Each group of refugees has been treated differently depending upon the geopolitical relationship between India and the country of origin, with Tibetan refugees enjoying the most favourable treatment and groups such as the Chakmas and Rohingyas facing severe restrictions or deportation threats.

5. INDIA AND THE 1951 REFUGEE CONVENTION: NON-RATIFICATION AND ITS IMPLICATIONS

India's decision not to ratify the 1951 Convention has attracted sustained criticism from the international community and refugee rights scholars. Several official and scholarly justifications have been advanced for this position.

First, India regards the Convention as fundamentally Eurocentric a product of post-Second World War European experience that does not adequately address the mass influx situations characteristic of South Asian displacement. The Convention's individual determination procedure, designed for case-by-case adjudication, is ill-suited to situations of mass exodus. Second, India contends that ratification would constrain its sovereignty and diplomatic

flexibility, particularly regarding its relationship with China and its neighbours especially sensitive given the presence of Tibetan refugees and the Dalai Lama's government-in-exile on Indian soil.

Third, there exists a genuine apprehension that ratification would blur the distinction between economic migrants and genuine refugees, intensifying the problem of infiltration that India has experienced particularly from Bangladesh and Myanmar. The assassination of Prime Minister Rajiv Gandhi by a Sri Lankan national who had entered India as a refugee is frequently cited in this context as evidence of the national security dimension of refugee admission. Fourth, there is what may be described as a 'fear of the unknown' uncertainty about the precise obligations that ratification would impose and the consequences of non-compliance in terms of India's international standing.

Indian courts have held that the Convention's non-refoulement principle (Article 33) and other sections constitute customary international law and are therefore enforceable on India regardless of whether or not the treaty is ratified. In practice, India applies many of the Convention's substantive articles: it does not penalise illegal entry, guarantees freedom of religion, provides access to courts, and upholds non-refoulement in its judicial decisions. The gap, however, lies in the absence of a systematic and enforceable legal framework.

6. THE PRINCIPLE OF NON-REFOULEMENT: APPLICATION IN INDIAN LAW

At its core, international refugee law rests on the principle of non-refoulement, which states categorically that no one may remove a refugee from a country where they fear for their life or freedom. All governments are bound by it, regardless of whether they have ratified the Refugee Convention or not, since it is now generally recognised as a standard of customary international law. Although not explicitly stated in law, this notion has been upheld by the Indian judiciary and the constitution.

Supreme Court of India v. Ktaer Abbas Habib Al Qutaifi was a watershed moment in, The Gujarat High Court ruled that Article 21's guarantees of life and personal liberty include the norm of non-refoulement. The court ruled that two Iraqi nationals should be put in the care of UNHCR India rather than deported as long as they were in danger to their lives and freedom. Similarly, in Malvika Karlekar v Union of India, the Supreme Court granted a stay on the deportation of Burmese refugees, allowing them to apply to UNHCR for refugee status determination a decision grounded expressly in non-refoulement.

Notwithstanding these judicial affirmations, the principle is frequently violated in practice. India has carried out deportations of Rohingya refugees in circumstances where credible threats to their lives existed, and state governments have forcibly repatriated refugees citing national security and public order grounds. The absence of a statutory embodiment of non-refoulement means that its application remains contingent on judicial intervention, which is neither systematic nor universally accessible to vulnerable refugee populations.

7. CONSTITUTIONAL PROTECTION: RIGHTS AVAILABLE TO REFUGEES IN INDIA

The Indian Constitution provides certain fundamental rights to all 'persons' not merely to citizens and this distinction has been the primary basis upon which courts have extended protection to refugees. In *Visakha v State of Rajasthan*, the Supreme Court affirmed that international conventions consistent with fundamental rights must be read harmoniously with Part III of the Constitution, thereby incorporating international human rights norms into domestic constitutional interpretation.

The most significant constitutional provisions applicable to refugees are: Article 14, guaranteeing equality before the law and equal protection of laws; Article 21, protecting the right to life and personal liberty; Article 22, providing safeguards against arbitrary arrest and detention; and Articles 25–28, securing freedom of religion. In *Louis De Raedt v Union of India*, the Supreme Court unequivocally held that even non-citizens possess the fundamental right to life, liberty, and dignity under Article 21.

Judicial intervention has extended this constitutional protection in practical ways. In *Majid Ahmed Abdul Majid Mohd Jad Al-Hak v Union of India*, the Delhi High Court directed that food and medical care be provided to detained refugees as minimum essentials of survival. In cases involving Burmese refugees detained in Manipur, the Guwahati High Court granted interim bail without insisting on local sureties a practically sensitive decision given the refugees' lack of social networks in India.

However, the constitutional protection available to refugees is qualified and uneven. Article 19, which guarantees rights such as freedom of movement and the right to reside anywhere in India, is available only to citizens, meaning that refugees have no enforceable right to freedom of movement. Refugees are not entitled to work permits or self-employment. Tibetan refugees enjoy significantly greater privileges including land grants, access to education, and valid

travel documents compared to refugees from Myanmar, Sri Lanka, or Bangladesh, creating a constitutionally troubling disparity.

8. DOMESTIC LEGISLATION AND ITS STRUCTURAL INADEQUACIES

India's domestic legal framework governing refugees is largely constituted by legislation designed for foreigners generally, with no provisions specifically addressing the unique vulnerability of refugees. The principal enactments are the Foreigners Act, 1946; the Foreigners Order, 1948; the Passport (Entry into India) Act, 1920; the Passport Act, 1967; and the Registration of Foreigners Act, 1939.

The Foreigners Act, 1946 the most consequential of these statutes vests sweeping powers in the central government to detain, arrest, and deport 'foreigners', with no procedural distinction drawn between a refugee fleeing persecution and an economic migrant. Section 3 of the Act grants the government virtually unlimited discretionary authority, subject to minimal judicial oversight. The Passport (Entry into India) Act, 1920 and the Passport Act, 1967 similarly make no accommodation for refugees who, by the nature of their flight, are unlikely to possess valid travel documents. Under these statutes, the absence of a passport renders a refugee liable to arrest and deportation the precise threat they are fleeing.

The Foreigners Order, 1948 grants state authorities powers to refuse entry to foreigners on broad and loosely defined grounds including 'loathsome disease' and 'public safety' terms left undefined by the statute and therefore susceptible to arbitrary application. Refugees intercepted in transit areas such as airports and seaports are treated as not having legally entered Indian territory, limiting them to administrative rather than judicial remedies and placing their fate in the hands of customs and immigration officials who may lack any training in refugee protection.

The Indian Penal Code applies equally to refugees, exposing them to prosecution for offences such as forgery and fabrication of documents despite the compelling circumstances that typically deprive refugees of genuine travel papers. The cumulative effect of this legislative framework is that refugees in India exist in a permanent state of legal precarity, dependent on administrative discretion rather than legal entitlement for whatever protection they receive.

The absence of a dedicated refugee law also means there is no standardised procedure for refugee status determination at the domestic level. UNHCR conducts refugee status

determination (RSD) in India, but only for refugees who are not from South Asia — the very region from which India receives the largest numbers of displaced persons. This geographic limitation in UNHCR's mandate in India is a significant structural gap.

9. ROLE OF THE UNHCR AND NHRC

The United Nations High Commissioner for Refugees (UNHCR) has maintained a significant presence in India since India joined its executive committee in 1995. UNHCR conducts legal interviews for refugee status determination, provides legal aid, arranges medical care, supports NGO-delivered vocational training and primary education, and facilitates travel documentation. Refugees recognised under the UNHCR mandate enjoy substantially better protection than those without such recognition illustrating both the importance of UNHCR's role and the inadequacy of state provision.

However, UNHCR's capacity in India is structurally constrained. Its mandate excludes South Asian refugees, its access to refugee camps is frequently denied by state governments, and its very presence in India is contingent upon the goodwill of the central government rather than any treaty-based right. UNHCR funding primarily from international organisations and NGOs is insufficient for the scale of refugee presence in India, and there have been documented instances of arbitrary denial of subsistence allowances.

NHRC, established under the Protection of Human Rights Act, 1993, has played an important albeit limited role. Its most significant intervention was the landmark case of National Human Rights Commission v State of Arunachal Pradesh, in which the Supreme Court intervened to protect Chakma refugees from violent intimidation by local organisations and held that the state government was obligated to protect their life and liberty under Article 21.

In 2000, the NHRC under the chairmanship of Justice P.N. Bhagwati proposed a model national refugee law a comprehensive draft that defined refugee rights and obligations and established a clear framework for protection. This proposal, however, has not been enacted into legislation to date. The NHRC also directed the Tamil Nadu government in 1994 to provide immediate medical care to Sri Lankan refugees in camps an order whose implementation remained partial.

10. CONTEMPORARY CHALLENGES: THE ROHINGYA CRISIS AND THE CAA 2019

The Rohingya Muslims of Myanmar represent perhaps the most pressing contemporary refugee challenge for India. Described by the United Nations as among the most persecuted minorities in the world, Rohingyas began fleeing systematic ethnic and religious violence in Myanmar's Rakhine State in large numbers from 2012 onwards. According to government estimates, approximately forty thousand Rohingyas reside in India, of whom more than fourteen thousand are UNHCR-registered refugees.

The Indian government has adopted a position characterising all Rohingyas as 'illegal immigrants' under the Foreigners Act, 1946, and has proceeded with deportations despite credible evidence of the genocidal conditions they would face upon return to Myanmar including an International Court of Justice order in 2020 recognising that Rohingyas faced serious risks of genocide. In *Mohammad Salimullah v Union of India*, the Supreme Court has repeatedly declined to stay deportation orders, holding that the right against deportation under Article 19(1)(e) is available only to citizens, notwithstanding the right to life under Article 21 which applies to all persons. The court's failure to engage substantively with India's customary international law obligations under non-refoulement has been widely criticised.

The Citizenship Amendment Act, 2019 (CAA), implemented through Citizenship (Amendment) Rules, 2024 notified in March 2024, represents a structurally different but equally significant development. The CAA fast-tracks citizenship for persecuted religious minorities Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan who arrived in India before 31 December 2014, while explicitly excluding Muslims. By creating a religion-based citizenship pathway, the CAA introduces for the first time a discriminatory criterion into India's refugee and citizenship framework, directly conflicting with the equality guarantee of Article 14 of the Constitution and India's obligations under international human rights conventions.

Amnesty International, Human Rights Watch, and numerous international legal scholars have characterised the CAA as inconsistent with India's constitutional values of secularism and equality, and incompatible with its international human rights obligations. The exclusion of groups such as Rohingya Muslims, Sri Lankan Tamils, Bhutanese Nepali-Hindus

(Lhotshampas), and Hazara Shias from Afghanistan all of whom face credible persecution underscores the arbitrary and politically motivated nature of the legislation.

11. INDIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

While India has not ratified the 1951 Refugee Convention, it has ratified a significant number of international human rights instruments that create overlapping obligations relevant to refugee protection. These include the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (ICCPR, 1966), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the Convention Against Torture (CAT, 1984), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), and the Convention on the Rights of the Child (CRC, 1989).

The Convention Against Torture is of particular significance, as its Article 3 absolutely prohibits the return of any person to a state where there are substantial grounds for believing they would face torture a prohibition that applies directly to deportation and non-refoulement. India's deportation of Rohingya refugees in the face of well-documented evidence of torture, killings, and genocide in Myanmar constitutes a prima facie violation of its obligations under CAT.

The ICCPR's Article 13 provides procedural protections against the expulsion of aliens, requiring that expulsion decisions be reviewable by competent authority. India's practice of deporting refugees without independent judicial review and without adequate opportunity to challenge deportation orders falls short of this standard. Article 51(c) of the Indian Constitution itself mandates that the state shall endeavour to foster respect for international law and treaty obligations a directive principle that courts have used to incorporate international norms into constitutional interpretation.

12. CONCLUSION

India finds itself at a critical juncture in its approach to refugee protection. The historical generosity that marked India's response to Tibetan, Bangladeshi, and Sri Lankan refugees has given way to an increasingly restrictive and politically motivated policy. The absence of a domestic refugee law, combined with the extension of the Foreigners Act to refugees, has created a regime of legal precarity in which the rights of some of the world's most vulnerable

people depend on judicial benevolence and administrative discretion rather than enforceable legal entitlement.

The contemporary challenges posed by the Rohingya crisis and the CAA 2019 reveal the urgent need for systemic reform. The Supreme Court's unwillingness to engage with India's customary international law obligations in the Rohingya deportation cases, and the legislature's enactment of a religion-based citizenship statute, suggest a troubling retreat from the constitutional values of equality, human dignity, and the rule of law.

The solution does not necessarily require ratification of the 1951 Convention India's objections, while debatable, have some legitimate basis. What is non-negotiable, however, is the enactment of a domestic refugee law that provides a clear, fair, non-discriminatory, and enforceable framework for refugee protection. Supplemented by a South Asian regional convention and institutional strengthening, such a law would allow India to fulfil both its international human rights obligations and its historic role as a country of refuge, while addressing its legitimate security and sovereignty concerns through transparent legal mechanisms rather than arbitrary executive discretion.

Without such reform, refugees in India will continue to possess rights only on paper — privileges granted and revoked at the will of the state, rather than entitlements protected by law.

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