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REFUGEE PROTECTION IN INDIA: CONSTITUTIONAL GUARANTEES, LEGAL DEVELOPMENTS AND POLICY PERSPECTIVES

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ABSTRACT

The issue of refugee protection in India is a complex one involving a host of constitutional considerations, international obligations, and national security and State sovereignty concerns. Despite being a home to various refugee groups like Tibetans, Sri Lankan Tamils, Chakmas, Afghans, and Rohingya, India has not ratified the 1951 Refugee Convention and its 1967 Protocol, nor has it adopted a comprehensive refugee law. Thus, the protection of refugees continues to rely on judicial rulings, executive policies and administrative discretion, and constitutional protections. The paper attempts to shed light on the international refugee regime and the position of India without a Convention, and the implications of international human rights obligations for refugee protection. It explores the provisions of Article 14 and Article 21 of the Constitution, the development of the judiciary and the cases of Chakma refugees and non-refoulement. It also explores institutional and legal tools, including the Immigration and Foreigners Act, 2025, executive tools to recognise and practice of the United Nations High Commissioner for Refugees (UNHCR) and citizenship-related articles. The paper contends that the current system is not uniform, has no procedural fairness, and does not have enforceable safeguards. It demands comprehensive refugee legislation based on the principle of rights, a fair refugee determination process, protection from return, access to basic services and accountability of institutions, and the ability to address the legitimate concern of national security and the realities of the region in India.

Keywords: Refugee Protection, Constitutional Rights, Non-Refoulement, Immigration and Foreigners Act, 2025, Refugee Law Reform.

I. INTRODUCTION

In international law, refugee protection is a major issue, which lies at the crossroads of human rights, national security and state sovereignty. As the number of individuals seeking refugee status due to persecution, armed conflict, political violence and other forms of violence has grown, the importance of legally protecting displaced persons has been underscored. International law affords protection to refugees through the Convention Relating to the Status of Refugees of 1951 and the 1967 Protocol, but neither of these has been ratified by India. Moreover, India lacks a comprehensive domestic law for the identification, recognition and protection of refugees. Thus, the protection of refugees in the country is very much dependent on constitutional protection, decisions, executive policies and administrative discretion.¹

India has been a country of refuge for neighbours and other parts of the world where political and social turmoil rages. The Tibetan refugees, Sri Lankan Tamils, Chakmas and Hajongs, Afghans, Chin refugees and Rohingya have come for protection in India in different circumstances. Treatment of these communities, however, has not been consistent under the law. Some groups have been offered special administrative arrangements and rehabilitation, while others have faced questions about their legal standing and their rights to services and protection from deportation.²

Important protection of the rights of refugees in India is based on the Constitution of India. It has been held that the right to equality before the law and the right to equal protection of the laws is guaranteed by Article 14, while the right to life and to personal liberty is guaranteed by Article 21.³ These provisions would apply regardless of whether or not the person is a citizen, and within the limits of the Constitution. The Supreme Court has, in a few cases, intervened to protect the life and liberty of Chakma refugees and to prevent their forced eviction through illegal methods, thus playing an important role in the resolution of these problems. However, refugee status alone, without more, does not automatically create a refugee status determination system, provide access to legal aid or protection from return to the place of origin where an individual may be subject to persecution or serious harm.

Changes in the law and policy also highlight the complexity of India's approach. The Citizenship (Amendment) Act, 2019 envisioned a specific path for citizenship to those who

¹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; Radhika Nair, Refugee Protection in India in the Absence of Specific Legislation: An Overview 3–4 (Soc. & Pol. Rsch. Found., Curated Voices No. 10.21, Oct. 2021).

² Saurabh Bhattacharjee, India Needs a Refugee Law, Econ. & Pol. Wkly., Mar. 1, 2008, at 71, 74; Manoj Kumar Sinha, Historicising Refugee Protection in India: Legal Framework and Future Possibilities, 29 Int'l J. on Minority & Grp. Rts. 747, 758 (2022).

³ INDIA CONST. arts. 14, 21.

were eligible for migrants from Afghanistan, Bangladesh and Pakistan of a specific religious community on specific conditions.⁴ These laws are pertinent to citizenship and immigration, but they are not a complete refugee protection regime which applies to all refugees seeking asylum. Therefore, it is important to consider whether the existing legal frameworks adequately protect the vulnerability of refugees.

In this context, the present paper analyses refugee protection in India through the constitutional aspects, judicial interpretation, the legislative amendment and government policies. It examines the shortcomings of the current framework, including the lack of a common approach to refugee determination and differential refugee protection, and has recommended the establishment of an expanded refugee framework that would be more uniform, flexible and equitable. It includes an analysis of the gaps in the current framework, such as a lack of uniformity in refugee determination procedures, uneven refugee protection, and the need for an expanded refugee framework that is more uniform, flexible, and equitable.

II. THE INTERNATIONAL REFUGEE REGIME AND INDIA

A. India's Non-Accession to the Refugee Convention

In fact, India's non-accession is a stance taken since the Convention was drawn up and is being explained and defended. In 1950, India opposed a refugee definition that she considered “Eurocentric” at the United Nations, and in a subsequent development, Indian officials rejected a partitioning of the world between “free” and “non-free” regions on which the Convention was believed to have been based.⁵ The Convention was designed for the individual refugees of the post-war Europe, and is ill-fitted to mass and mixed migration flows over fluid borders; it guarantees rights to refugees but puts no obligations on the states of origin; it largely ignores the security of the receiving state, and the Indian delegate to the UNHCR Executive Committee has suggested that accession would not strengthen the protection currently afforded to refugees in India.⁶

These objections point to valid design constraints. The Convention is based on a 'well-founded

⁴ Citizenship (Amendment) Act, No. 47 of 2019, INDIA CODE (2019); Immigration and Foreigners Act, No. 13 of 2025, INDIA CODE (2025).

⁵ Sinha, *supra* note 2, at 756.

⁶ Brian Gorlick & Sumbul Rizvi Khan, *Refugee Protection as Human Rights Protection: International Principles and Practice in India*, 16 *Refuge* 39, 43–44 n.10 (1997) (reproducing the statement of India’s Permanent Representative); Pradip Kumar Das & Tanmoy Roy, *Legal Position & Status of Refugees in India: A Critical Analysis*, 3 *Int’l J. Legal Sci. & Innovation* 75, 78–80 (2021)

fear of persecution' on 5 grounds, and it is European in origin.⁷ But they say, at most, why India has not been a part of the treaty. They offer no reasoned answer to this question of why it has failed to establish an indigenous regime. A statute does not have to meet the definition of a "convention." African and Latin American instruments did provide for protection for those who had fled persecution by foreign powers, occupation, generalised violence or mass violations of human rights; and India had the opportunity to use and develop such a definition for its own region.⁸

B. Obligations Surviving Non-Accession

Non-accession does not mean India is not under international law. In 1979, it ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights and is a signatory to the conventions on the rights of the child, racial discrimination, and discrimination against women.⁹ These instruments have jurisdiction over persons regardless of their nationality. Article 13 of the ICCPR applies to the expulsion of aliens who are lawfully present, and Article 22 of the Convention on the Rights of the Child provides for the protection of refugee children.¹⁰ India has also signed, but not ratified, the Convention against Torture, which prohibits return "to a state in which substantial grounds exist for believing that the person will be at risk of torture."¹¹ The right to seek asylum and the right to enjoy asylum, however, as guaranteed in the Universal Declaration, is not a right to be granted asylum.¹²

Non-refoulement is the most significant obligation. The prohibition on return to persecution is a customary international rule binding only upon the parties to the Refugee Convention, but UNHCR and the International Committee of the Red Cross consider it as such, and the position enjoys broad support. The Government has argued in the Supreme Court that a non-party is not subject to the principle. This is an untenable position for the states, who, as UNHCR has

⁷ Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

⁸ Convention Governing the Specific Aspects of Refugee Problems in Africa art. I(2), Sept. 10, 1969, 1001 U.N.T.S. 45; Cartagena Declaration on Refugees, conclusion III(3), Nov. 22, 1984; see Bhattacharjee, *supra* note 2, at 75 n.2.

⁹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁰ International Covenant on Civil and Political Rights, *supra* note 9, art. 13; Convention on the Rights of the Child art. 22, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3(1), Dec. 10, 1984, 1465 U.N.T.S. 85; Law Commission Report Summary: Implementation of the United Nations Convention Against Torture, PRS Legis. Rsch. (Nov. 29, 2017).

¹² Universal Declaration of Human Rights art. 14(1), G.A. Res. 217 (III) A (Dec. 10, 1948); Das & Roy, *supra* note 6, at 77.

noted, have not asserted a general right of return to persecution.

Incorporated treaty rights are not enforceable in India, but unincorporated ones do not. The UN Human Rights Committee reaffirmed this in 1997, when it pointed out that treaties are not binding in India, recommended incorporation of the ICCPR, and expressed concern at reports of forcible repatriation of asylum seekers. Parliament has the ability to pass laws on the obligations arising from treaties through Article 253, while Article 51(c) requires the State to promote respect for international law and treaty obligations.¹³ However, the Supreme Court has ruled that international conventions may be considered part of municipal law if they do not contradict it.¹⁴ One former Chief Justice stated that "where there exists no national refugee legislation, the provisions of the Convention might be invoked where such legislation was in conflict. Norms are then introduced into Indian law, primarily as guides to interpretation of the fundamental rights, particularly Article 21.

III. THE CONSTITUTIONAL PRINCIPLES AND JUDICIAL DEVELOPMENTS

A. Fundamental Rights of Non-Citizens

The text of the Constitution makes a clear difference between citizens and persons. Persons are covered by Articles 14, 20, 21, 22 and the right to freedom of conscience under Article 25, while the rights of citizens are guaranteed under Article 19, such as the right to reside and settle in any part of India under Article 19(1)(e).¹⁵ Under Articles 32 and 226, a person whose fundamental rights are violated can directly approach the Supreme Court and High Court. The difference between the two is crucial to refugees: they are guaranteed protection from arbitrary arrest and detention and from the deprivation of life, but they do not have a right to remain.

The essence of Article 21 shifted after *Maneka Gandhi v. Union of India* when the court concluded that the "procedure established by law" must also be right, just and fair, on the basis of which it cannot be arbitrary, fanciful or oppressive.¹⁶ Prior to that, a Court on reviewing a deportation would have taken cognisance of the mere question of compliance with the Foreigners Act, but since then it would be fair, just and reasonable. The change is significant because the power to expel foreigners was long considered licentious. In *Hans Muller of*

¹³ India Const. arts. 51(c), 253.

¹⁴ *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 S.C.C. 534 (India); *Maganbhai Ishwarbhai Patel v. Union of India*, A.I.R. 1969 S.C. 783 (India)

¹⁵ India Const. arts. 14, 19(1)(e), 20–22, 25

¹⁶ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India)

Nuremberg v. Superintendent, Presidency Jail, the Supreme Court upheld the Foreigners Act and said that the Executive power of expulsion would not be limited constitutionally in the absence of such a restriction.¹⁷ Later decisions have invoked the case to uphold the challenge by a refugee to section 3(2)(c) of the Foreigners Act, which differentiates expulsion from extradition and does not involve a person who is being sought out on return rather than when he was driven away.

B. The Chakma Cases and Article 21

There are three decisions that determine the scope of Article 21 to non-citizens. The scope of Article 21 to non-citizens is determined by three decisions. In *Louis De Raedt v. Union of India*, the Supreme Court ruled that foreigners are entitled to the protection of Article 21, but not to the right to reside or settle that is granted to citizens under Article 19(1)(e), although the case was on naturalisation and not refugee status.¹⁸ That principle was invoked by the Court in *State of Arunachal Pradesh v. Khudiram Chakma* in the context of the refugees from the Chittagong Hill Tracts, and the Court remarked that under Article 14 of the Universal Declaration, a state that has granted asylum should not, after the fact, return the person to the country from which he fled.¹⁹

The crucial case was *National Human Rights Commission v. State of Arunachal Pradesh*. The case resulted from intimidation, looting and violence against Chakma and Hajong settlers and from demands for their expulsion, and it was brought to the National Human Rights Commission by a civil-liberties organisation, but was not followed up by the State, so the NHRC went to the Supreme Court.²⁰ Interim orders were issued in November 1995 forbidding coercive eviction, and the Court's judgment of January 1996 stated that the State would safeguard the life and personal liberty of each human being, citizen or otherwise, in its territory, that any attempt to oust the Chakmas would be repelled, if necessary, by means of a paramilitary or police force, and that the pending citizenship applications would be recorded and passed on for consideration. The decision has since been cited in High Courts and lower courts for the argument that refugees, in any sense of the word, have the right to some legal protection. It also provided an example of an institutional means of protection: a national human rights body which gave the standing and fact-finding the refugees lacked. The

¹⁷ Hans Muller of Nuremberg v. Superintendent, Presidency Jail, A.I.R. 1955 S.C. 367 (India)

¹⁸ Louis De Raedt v. Union of India, (1991) 3 S.C.C. 554 (India)

¹⁹ State of Arunachal Pradesh v. Khudiram Chakma, 1994 Supp. (1) S.C.C. 615 (India)

²⁰ Nat'l Hum. Rts. Comm'n v. State of Arunachal Pradesh, (1996) 1 S.C.C. 742 (India)

boundaries should be marked. The Court guaranteed life and liberty and did not permit the unwarranted removal of anyone, but had little to say about the substance of the rights of the refugees, and did not acknowledge any status.

C. Non-Refoulement under Article 21

High Courts have coined a protection against return which amounts to non-refoulement in all but name, from Article 21. In *Ktaer Abbas Habib Al Qutaifi v. Union of India*, the Gujarat High Court inter alia had issued a restraint on deportation of two Iraqi minors tied up in Bhuj, while also reading Article 33 of the Refugee Convention together with Article 21, and directed the UNHCR to be served with a copy of the judgment, which was based on the condition that the presence of the refugees does not prejudice national security.²¹ In a previous order, the Gauhati High Court had granted Burmese asylum seekers accused of illegal entry the liberty to go to New Delhi to seek the assistance of UNHCR and in certain cases had set them free for the purpose.²² The Madras High Court asked the Union and the State governments to provide undertakings that the Sri Lankan refugees would not be forcibly returned, and the Bombay High Court allowed a challenge to the deportation of an Iranian refugee recognised by the UNHCR to be dismissed after the Government assured the Court that it would not deport the Iranian refugee.²³ In 2011, a Delhi magistrate refused to deport a Sri Lankan Tamil refugee, to avoid being a party to persecution and to acknowledge that protection against refoulement extends to a member of a group against which a pattern of persecution exists.²⁴

IV. THE STATUTORY AND ADMINISTRATIVE FRAMEWORK

A. Earlier Framework: Refugees as Foreigners

The legal provisions that existed till September 2025 were the Passport (Entry into India) Act, 1920, Registration of Foreigners Act, 1939, Foreigners Act, 1946 and Foreigners Order, 1948.²⁵ No one mentioned the term “refugee.” The Foreigners Act meant that “foreigners” were those who were not citizens of India, and the Central Government had the power to prohibit, restrict or regulate the entry, presence and departure of foreigners and to direct that a

²¹ *Ktaer Abbas Habib Al Qutaifi v. Union of India*, 1999 Cri. L.J. 919 (Guj.) (India)

²² *Zothansangpuui v. State of Manipur*, Civil Rule No. 981 of 1989 (Gauhati High Ct., Imphal Bench, Sept. 20, 1989) (India); *Bogyi v. Union of India*, Civil Rule No. 1847 of 1989 (Gauhati High Ct. Sept. 17, 1989)

²³ *P. Nedumaran v. Union of India*, W.P. Nos. 12298 & 12313 of 1992 (Madras High Ct. 1992) (India); *Syed Ata Mohammadi v. Union of India*, Crim. W.P. No. 7504 of 1994 (Bombay High Ct.) (India)

²⁴ *State v. Chandra Kumar*, FIR No. 78/10 (Metro. Magistrate, Dwarka Courts, New Delhi Sept. 20, 2011) (India)

²⁵ *Manoj Kumar Sinha*, supra note 2, at 759–61; *Devki Sejjpal*, *Refugee Crisis in India and the Violation of Human Rights*, 4 Int’l J.L. Mgmt. & Humanities 1268, 1286–87 (2021).

foreigner shall "not stay" in India or that he shall be detained, in accordance with section 3 of the Foreigners Act. Unauthorised entry to the country without a valid passport and visa was an offence under the Passport (Entry into India) Act and the Foreigners Act, which carries a maximum penalty of five years' imprisonment each.²⁶ An illegal alien who flew across a border without any papers was a criminal by law.

The result was a merging. A refugee was an economic migrant, a tourist, a refugee and a fugitive they all had the same definition and the same penal code: one fledged by fear of persecution and the other was fleeing for a better life. Conflation allowed for the detention and deportation of a person with minimal due process. The Government started to make exceptions for certain minorities of Bangladesh and Pakistan; persons belonging to the six minority communities, who had crossed the borders before December 31, 2014, due to religious persecution or fear of persecution, were exempted from the requirement of a visa and passport.

B. The Immigration and Foreigners Act, 2025

The Immigration and Foreigners Act 2025 was passed in April 2025 and implemented on 1st September 2025. Repeals the Passport (Entry into India) Act, the Registration of Foreigners Act, the Foreigners Act and the Immigration (Carriers' Liability) Act, 2000,²⁷ and provides that the actions taken, and the rules and orders made under the aforesaid laws shall be deemed to have been made under the corresponding provisions of the new Act until the contrary is proved. Requires a valid passport or travel document and visa for foreigners for entry and exit, establishes a statutory Bureau of Immigration and puts registration or reporting obligations on foreigners and on accommodation-keepers, educational institutions and hospitals. A companion Immigration and Foreigners (Exemption) Order, 2025, under section 33, exempts from the passport and visa requirements (among others) registered Tibetans, registered Sri Lankan Tamils who came across to India till January 9, 2015 and the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who entered the country on or before December 31, 2024 due to religious persecution or fear thereof.²⁸

Three aspects of the new regime are of concern to refugee protection. First: it maintains the architecture of the old: a general regime of control in which a refugee is a foreigner unless

²⁶ Foreigners Act, 1946, No. 31 of 1946, §§ 2(a), 3 (India) (repealed 2025)

²⁷ Immigration and Foreigners Act, No. 13 of 2025 (India); Immigration and Foreigners Bill, 2025, PRS Legislative Research, <https://prsindia.org/billtrack/the-immigration-and-foreigners-bill-2025> (last visited Oct. 16, 2026).

²⁸ Immigration and Foreigners (Exemption) Order, 2025 (India); India's New Immigration Order 2025: Consolidation or Continuity of Exclusion?, Citizens for Just. & Peace, <https://cjp.org.in/indias-new-immigration-order-2025-consolidation-or-continuity-of-exclusion/> (last visited Oct. 16, 2026).

excused. There is no procedure provided for determination of refugee status and no explicit ban on return to persecution in the published accounts consulted. Second, the Exemption Order consolidates all of its executive orders into one document, which provides clarity but also reinforces the group-based logic: relief is given based on nationality, registration and date of entry, and for one group of beneficiaries by religion, not on conditions of flight. Those from the same communities that arrive after the cut-off dates, and refugees from all other communities, are excluded from it. Third, the Order is said to allow for the registration of illegal entrants in "holding centres" while awaiting deportation without a mechanism for determining their status, thereby endangering those who are entitled to protection.²⁹

C. Executive Recognition, UNHCR and the Citizenship Channels

Protection is provided, in addition to statute, through executive recognition. The Government assumes Tibetan and Sri Lankan refugees on a prima facie basis and supports the refugees directly, while UNHCR carries out status determination for the others and provides some documents recognised by Indian authorities, and it has limited access to potential refugees in border areas. Some of the refugees from neighbouring states have been granted political asylum, typically without a full status determination and with political considerations. A Standard Operating Procedure issued by the Ministry of Home Affairs (MHA) in 2011 and revised in 2019 provides for the issuance of long-term visas (for work and study) to foreign nationals who claim to be refugees and meet the criteria of the Convention, albeit in an executive manner and without conferring an enforceable right.³⁰

There is a specific section in the Citizenship Act, 1955 that deals with citizenship. The 2003 amendment included a provision defining the term 'illegal migrants' and prohibited them from becoming citizens either by registration or naturalisation, while the 2019 amendment exempted the Hindus, Sikhs, Buddhists, Jains, Parsis and the Christians from Afghanistan, Bangladesh and Pakistan from being defined as 'illegal migrants' or being denied the right to become citizens and reduced the 11-year requirement for naturalisation to five. A 2024 notification implemented the scheme through an online application system and committees at the district level and invited applications from minorities from thirteen districts of five states.³¹ Issues

²⁹ India's New Immigration Order 2025, supra note 28.

³⁰ Sara Maheshwari & Amritanshu Pushkar, Need for Democratising Refugee Laws in India: A Turn Towards Refugee Protection or the Return to Eurocentrism, 3 HPNLU L.J. 1, 16–17 (2022).

³¹ Indian Union Muslim League Moves SC Seeking Stay on Citizenship (Amendment) Act Implementation, Scroll.in (Mar. 12, 2024), <https://scroll.in/latest/1065082/indian-union-muslim-league-moves-sc-seeking-stay-on-citizenship-amendment-act-implementation>

relating to the violation of Article 14 and the violation of secularism were pending before the Supreme Court, which refused to stay the Rules in 2024.³²

V. REFUGEE PROTECTION IN PRACTICE

The impact of classification protection is most clearly seen in relation to documentation, detention and access to basic services. Often refugees are not accompanied by identification or travel documents. Refugees face inconsistencies in the recognition of their UNHCR documents, and without them, they have little chance of opening bank accounts, renting houses, enrolling children in school or moving around without being detained.³³ Recognised groups fare better. The government recognises refugees in refugee camps, which provide access to local schools, hospitals and the job market; refugees only registered with UNHCR also have problems finding places to stay and are subjected to a high level of scrutiny, but have no guaranteed political rights. Favoured groups have not been safe, either: In January 1992, Sri Lankan Tamil arrivals were subjected to police screening, and after 1991, the movement of returnees was limited, and in some cases, return itself was not free but was deemed to be involuntary before it became safe in Sri Lanka. The biggest disparity is in employment. Refugees typically do not have work permits and are compelled to enter into the informal sector where they are vulnerable to exploitation; also, access to health care is not equally enjoyed by refugees, while access to schooling is uneven.

The protection gap is widest for the Rohingya. As illegal foreigners, the Union has been saying, the Union has just said they are, on security grounds, and they have said in the affidavits that India is not even a party to the Convention, and therefore is not bound by non-refoulement. In October 2018, seven Rohingya were deported to Myanmar after the Supreme Court refused to intervene; however, no United Nations official was allowed to confirm that their deportation was voluntary, and in January 2019, a family of five was deported to Myanmar. From May 2025, Indian forces detained and forcibly deported hundreds of Rohingya, even those carrying UNHCR cards, to Bangladesh and Myanmar, and in May 2025, the Supreme Court rejected the Rohingyas' plea to stop the deportations while stating it would "evaluate" if the Rohingya are migrants or refugees. In December 2025, the Chief Justice reportedly questioned, in a Habeas Corpus case relating to five Rohingya who disappeared from custody, where the Government's

³² Citizenship Amendment Act | Supreme Court Refuses to Stay the CAA Rules; Directs Union to File Responses to Interim Stay Applications, Sup. Ct. Observer, <https://www.scobserver.in/reports/citizenship-amendment-act-supreme-court-refuses-to-stay-the-cao-rules-directs-union-to-file-responses-to-interim-stay-applications>

³³ Sachin Sheoran & Neha Mishra, Refugees in Legal Limbo: The Need for a Comprehensive Refugee Protection Framework in India, 9 Int'l J.L. Mgmt. & Humanities 2573, 2587–88 (2026)

refugee declaration was, and noted that there was no legal bar to deportation without the refugee declaration.³⁴ The question then assumes the non-existent statute. Absence of recognition is the basis for absence of protection because there is no legal machinery to recognise refugees.

Much of this is due to security issues. They are not illegitimate, and from time to time, the Supreme Court has regarded large-scale illegal migration as an external aggression. But a lack of a registration and screening system makes it easier to identify fake refugees, not easier to identify genuine security threats; a system of registration, biometric documentation and screening is a protection measure as well as a security one. The danger of terrorists being accepted as refugees may be addressed with exclusion clauses and the threat of an uncontrolled influx addressed by a fair, rapid and rigorous determination procedure that distinguishes refugees from migrants.

VI. POLICY PERSPECTIVES

It is important to have a comprehensive refugee statute in India, since the absence of a predictable and enforceable legal framework is a concern. India does not have to repeat the 1951 Refugee Convention. It is important to note that, with its concerns about the scope of the Convention and its challenges in the context of migration at the national level in South Asia, a national law could provide for the protection of standards for which there is international recognition, but would address South Asian realities. The African regional refugee framework and the Cartagena Declaration are meant to be taken as models for comparison since they broaden the traditional refugee definition based on persecution to include situations of external aggression and generalised violence.³⁵

Firstly, the statute ought to include an all-encompassing definition of who constitutes a refugee. The definition should include the essential right to fear persecution in the Convention, as well as people fleeing generalised violence, external aggression, or serious and widespread violations of human rights, provided these violations are observable and clearly specified. This would allow the authorities to respond to forced displacement in many ways, without being constrained by nationality or religious or political allegiances.

Second, refugee status determination should be based on a fair and transparent process. Applications should be considered by an independent or appropriately competent body in

³⁴ The Rohingya Question Before the Supreme Court of India, The Leaflet, <https://theleaflet.in/governance-and-policy/law-and-citizenship/the-rohingya-question-before-the-supreme-court-of-india> (last visited Oct. 16, 2026).

³⁵ Radhika Nair, Refugee Protection in India in the Absence of Specific Legislation: An Overview 9–10 (Soc. & Pol. Rsch. Found., Curated Voices No. 10.21, Oct. 2021); Sheoran & Mishra, *supra* note 33, at 2594.

accordance with the law and be accompanied by written reasons for the application, and should provide access to interpretation and legal assistance when necessary. Applicants should have an effective appeal and judicial review. Where there is a large exodus, it should also make the assumption that if there are groups, it is impractical to evaluate individual elements. The protection of these would lead to consistency, accountability and timely decision-making.

Third, the statute should make an explicit mention of the principle of non-refoulement. No person should be returned, transferred or sent to an area where there are significant grounds for believing that he or she would be exposed to a risk of being subjected to any of the following: persecution, torture, or other serious threat to life or freedom. Statutory exemptions, if any, have to be strictly drawn and in line with legal requirements and examined independently. Protection should be afforded during the evaluation of the existence of a credible claim, or else the right to seek protection would be rendered meaningless.

VII. CONCLUSION

In India, the refugee protection situation is still marked by a long-standing 'gap between protection principles and the lack of an overarching legal system'. The rights of non-citizens are also protected by articles 14 and 21, which are also important, but at present the courts deal with individual cases and do not have a uniform process for recognising and protecting refugees. The judgments made by the judiciary in the Chakma refugee case illustrate how the judiciary can safeguard life and liberty, and the Rohingya case highlights the constraints on a system based on the discretion of the executive and security.

The rights and duties under the Constitution of India do not exclude refugees, and India's international human rights commitments do either. The Immigration and Foreigners Act 2025 combines the regulation of foreign nationals without specifying a detailed procedure to determine refugee status nor offering any guarantees of refugee status. Likewise, citizenship-related measures and group-specific exemptions are not a substitute for a comprehensive system which addresses the specific vulnerabilities and needs of refugees. This creates inconsistencies in the documentation, detention, access to education and health care, job opportunities, and deportation protection.

A specific refugee statute would offer a clearer, more accountable and transparent process. It should define a refugee in a non-discriminatory manner and set up procedures for determining refugee status, which are equitable, effective and transparent; set up a mechanism for reviewing refugee status; define safeguards against refoulement; and provide access to basic services.

Humanitarian protection and legitimate State interests could be reinforced by institutional coordination, by having the necessary documentation and by defining security-related exclusions. Finally, refugee protection does not necessitate that India forgo its sovereign rights on immigration. Instead, a well-designed legal system can meet both the interests of national security and the rights of people to live in dignity, to enjoy constitutional equality and personal freedom.

