



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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THE INTERFACE BETWEEN INTERNATIONAL REFUGEE PROTECTION STANDARDS AND DOMESTIC PUBLIC POLICY IN INDIA: A GLOBAL JUSTICE PERSPECTIVE

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ABSTRACT

Protection of refugees is a complicated nexus of international human rights principles, international refugee protection principles, and national public policy considerations. India has a long history of providing shelter to people coming from various persecuted communities, conflicts, or politically unstable countries, despite the country being non-signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. It means that the refugees in India are covered by constitutional laws, policies of the government and the judiciary mainly in terms of immigration laws. Such a fragmented structure leads to ambiguity about refugee status and rights. This research is based on the relationship between international standards for refugees' protection and national public policy in India through a global justice approach, focusing particularly on non-refoulement, minimum standards of treatment, non-discrimination, life, and liberty. It examines the impact of international law on Indian judicial decisions in the absence of ratification of treaties through some case laws like *State of Arunachal Pradesh v. Khudiram Chakma*, *Louis De Raedt v. Union of India*, *Mohammad Salimullah v. Union of India* and *Vishaka v. State of Rajasthan*. The paper highlights the ongoing conflict between humanitarian protection on the one hand and national security and sovereignty on the other. The study recommends a comprehensive domestic refugee law that provides for equal protection while at the same addressing India's national security and sovereign concerns by balancing them with humanitarian values and global justice.

INTRODUCTION

In the modern era of the twenty-first century, the phenomenon of refugees crossing national boundaries has emerged as one of the most important humanitarian and legal concerns. War, religious persecution, ethnic conflict, political instability, displacement due to natural calamities, and human rights violations have led many people to seek protection from outside

their states. Although there is recognition of the need for the protection of refugees through a comprehensive legal framework under international law, its enforcement depends entirely on the domestic legal system. Thus, refugee protection becomes one of the most obvious intersections of international law and domestic policies. The interface is especially complicated for India since it has always received refugees from neighbouring nations, even though it has not ratified the “1951 Convention on the Status of Refugees nor has it ratified the 1967 Protocol to that convention”. In India, there is ambiguity regarding the protection of refugees, as there is no codified legal framework. The country regulates refugees through constitutional interpretations, government policies, immigration laws such as the Foreigners Act, 1946, the Passport (Entry into India) Act, 1920, the Citizenship Act, 1955, and internationally accepted humanitarian principles. Unlike India, other nations have established a dedicated framework for refugees.

Despite India’s historical tradition of welcoming refugees, the absence of a comprehensive legal framework governing refugee status leaves many individuals in vulnerable situations, such as arrests and detentions, and facing difficulties getting access to health facilities, education and employment.¹ The Indian framework governs only the entry, stay, and departure of foreigners from India and fails to recognise refugees as a distinct category of individuals; as a result, they may lose the protection afforded by international standards.

The conflict between humanitarian obligations on the one hand and sovereign choice on the other is the central problem in the governance of refugees in India. The extent of legal recognition and protection provided to refugees varies depending on their nationality, resulting in inconsistent application of humanitarian law. This raises an issue of the equality principle in the context of India’s commitment to global justice.

The present study thus attempts to analyze the impact of international refugee law on domestic public policy in India even in the absence of treaty ratification. The study will analyze the relevant provisions of the constitution, laws, and executive policies concerning the protection of refugees and determine their conformity to the international legal principles. By understanding the interaction between international laws and domestic decision-making in terms of global justice, this research would be able to judge if there is an appropriate balance between humanitarian concerns and issues of sovereignty and national security within the Indian refugee regime.

¹ Marconi Debbarma, ‘Refugees Experience and the Host Communities: Critical Analyses on Absence of Refugee Law in India’ (2025) 60 Journal of Asian and African Studies 3204 available at: <<https://doi.org/10.1177/00219096241228804>> accessed 28 August 2026.

INTERNATIONAL REFUGEE PROTECTION STANDARDS

The international refugee status is based on humanitarian principles. During the post-World War II period, refugee laws were developed to help the displaced European people.² The international obligation regarding refugees may have been derived from customary international law and international treaties such as the United Nations Convention on the Status of Refugees, 1951³ and the Protocol to the Refugee Convention, 1967⁴. Some of these international obligations are those of non-refoulement, non-extradition, non-expulsion, and minimum standards of treatment. United Nations High Commissioner for Refugees (UNHCR) is the United Nations body that is the custodian of the “Refugee Convention 1951 and the 1967 Protocol”. This organization monitors the performance of states in relation to their obligations to the refugees. International migration has now become an integral part of interstate relations because of globalization and economic and social interdependencies. Migrant workers, refugees, and families who migrate contribute to development and international economic relations. Therefore, international migration cannot be controlled or stopped using the measures taken unilaterally by individual states.⁵ It requires international cooperation and shared responsibilities in such a way that state sovereignty and control of its borders do not go against human rights and refugee rights.

The first international instrument that deals with refugees is the “1951 Convention Relating to the Status of Refugees”. The convention establishes standards through definitions and outlines the fundamental rights and protection that states should provide to refugees, which, to some extent, are reflected in the laws and policies of domestic countries all over the world.⁶ A definition of a refugee according to the convention is a person who happens to be outside his country of origin because he has a reasonable fear of being persecuted on account of race, religion, nationality, belonging to a particular social group, or political opinion and cannot avail of the protection of the country.⁷ The most important principle in the Convention is non-refoulement, which is an exceptional limitation on a state's sovereign power to send aliens back

² Erika Feller, ‘The Evolution of the International Refugee Protection Regime’ (2001) 5 Journal of Law & Policy.

³ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

⁴ UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, 606 UNTS 267.

⁵ Guy S Goodwin-gill, ‘The Dynamic of International Refugee Law’ (2014) 25 International Journal of Refugee Law 651 available at: <<https://doi.org/10.1093/ijrl/eeu003>> accessed 30 August 2026.

⁶ Thomas Gammeltoft-Hansen, ‘International Refugee Law and Refugee Policy: The Case of Deterrence Policies’ [2014] Journal of Refugee Studies available at: <<http://dx.doi.org/10.2139/ssrn.2487087>> accessed 26 August 2026.

⁷ Refugee Convention (n 1) art 1A (2).

to the frontiers of their own countries. In addition, the Convention has laid down certain other principles related to non-discrimination, prevention of punishment for illegal entry where justified, international cooperation, and expulsions.⁸ The 1967 Protocol removed the geographical and temporal restrictions consistent with the original Convention and made the concept of refugees more universal in nature.⁹

- **Principle of non-refoulement**

The non-refoulement principle provided in the Refugee Convention under Article 33,¹⁰ does not allow any state to deport, expel, or return the refugee against his will to his home territory where his life, liberty, and freedom are under a possible threat. In order to protect the basic human rights of a refugee, the principle of non-refoulement has been made by the states. The non-refoulement principle is based on two concepts such as “international community” and “common humanity”. Article 7 of the ICCPR which prohibits cruel and torture and inhuman or degrading treatment imposes an obligation on the states not to expose a person to torture or inhuman behavior or punishment through the process of extradition, expulsion or refoulement.¹¹

REFUGEE PROTECTION IN INDIA

India has been a shelter for many refugees over time. The position of India regarding the treatment of refugees in foreign countries becomes controversial because India is not a signatory to the Refugee convention and its protocol. However, several international and regional treaties and conventions, such as the UN Declaration on Territorial Asylum, ICCPR, UDHR have been ratified by India.¹² In addition to this, India is a member of the “Executive Committee” of UNHCR, which manages and approves all the assistance programs of UNHCR materials but not as an endorsement of the work that UNHCR does. In light of this fact, it is quite evident that India upholds international treaties concerning the treatment of individuals living within its territory; however, it prefers to follow its own procedure for handling refugees residing in the country, allowing little scope for the UNHCR to intervene except in emergencies

⁸ David W Kennedy and David Kennedy, ‘International Refugee Protection, 8 Hum’, vol 1 (1986) available at <<http://nrs.harvard.edu/urn-3:HUL.InstRepos:16082842>> accessed 28 August 2026.

⁹ Feller (n 2).

¹⁰ Refugee Convention (n 2) art 33.

¹¹ International Covenant on Civil and Political Rights (ICCPR), art. 7, (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

¹² Arun Sagar and Farrah Ahmed, ‘The Model Law for Refugees: An Important Step Forward?’, vol 17 (2005) available at: <<https://www.jstor.org/stable/44290310>> accessed 28 August 2026.

such as “the displacement of Chakma tribals from Bangladesh and refugees from Afghanistan or the Autonomous Region of Tibet”.

When it comes to implementing laws with regard to refugees, laws that are broadly applicable to "foreigners" come into effect. Presently, there is no statutory law regarding ‘refugees’ per se. Instead, conditions of foreigners are regulated by various important legislative Acts such as, “the Foreigners Act, 1946, The Registration of Foreigners Act, 1939, and the Foreigners Order, 1948”. The Foreigners Act, 1946, is the statute most closely linked to refugees in that it regulates foreigners entering, staying, and leaving India. A foreigner is defined as anyone who is not an Indian citizen under section 2 of the Registration of Foreigners Act, 1939.¹³ Foreigners include other categories of people except refugees. The wide interpretation of ‘foreigners’ in this regard is seen throughout the Act, where much greater emphasis is placed on national security and governmental power than on refugee protection. And further under Seventh Schedule Acts several post-independence laws dealt with specific cases of displacement, but these were case-based or community-based and not a policy framework for refugees as such. The Reason why India is not a signatory to the convention is that historically it has been inclined towards keeping itself flexible in formulating its policies towards refugees especially in view of national security issues.¹⁴

- **National Model Refugee Law**

While India has not ratified refugee Convention nor established an effective domestic refugee protection mechanism, some efforts have been undertaken to modify the immigration law of India to incorporate the necessary provisions. A model law on refugees and asylum seekers was drafted in 1995 under the chairmanship of “Justice P.N. Bhagwati”, former chief justice of the Indian Supreme Court as part of “the Regional Consultations on Refugees and Migratory Movements in South Asia” Initiative.¹⁵ The Public Interest Legal Support and Research Center revised the model law in 2006, naming it the Refugees and Asylum Seekers (Protection) Bill. However, these changes did nothing to address the security establishment's concerns. Ultimately, neither bill was even introduced to the Parliament and did not receive any support from the Indian Cabinet.

¹³ Registration of Foreigners Act 1939, S 2.

¹⁴ Sanjay S Bang, ‘The Status of Refugee in India: Need for a Domestic Legislation for Protection of Their Human Rights’ (2012) 1.

¹⁵ Prabodh Saxena, ‘Creating Legal Space for Refugees in India: The Milestones Crossed and the Roadmap for the Future’ (2007) 19 International Journal of Refugee Law 246 available at: <<https://doi.org/10.1093/ijrl/eem007>> accessed 28 August 2026.

- **Role of UNHR In India**

In refugee protection United Nations High Commission for Refugees (UNHCR) plays a significant role as it helps in refugees and assist in the process of process of protection and resettlement.¹⁶ UNHCR is important in determination of refugee status of certain asylum-seekers in India. The judiciary at all levels usually considers the assessment of UNHCR when making their decisions. This has enabled refugee certification by UNHCR to play a key role in stopping deportation. In addition, there have been instances where the courts have stayed the deportation proceedings and provided interim bail that allows the individual seeking asylum to apply to UNHCR. Thus, the operations of UNHCR in India play a vital role in India's refugee regime as well as in determining the refugee claims in India. However, India has always been hesitant in making any Country Agreement with UNHCR. India adopts a different procedure for different refugee groups. Some groups are directly covered by the policies of the Ministry of Home Affairs and not through UNHCR. If a refugee is covered by any policy of the Indian government, UNHCR cannot decide whether that person is a refugee or not. Nevertheless, despite being recognized by UNHCR, it does not necessarily give them legal protection within the domestic laws of India.¹⁷

INTERFACE BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

Indian judiciary has cast the "shadow of refugee law."¹⁸ The Indian judiciary has expanded the rights of refugees through constitutional provisions in the absence of any legislation on refugees. India had an obligation to adhere to international law under the Constitution of India. This is stated as one of the fundamental principles of governance enumerated in Article 51 in chapter IV of Constitution. Article 51A imposes a duty upon all citizens to exhibit compassion.¹⁹ Although these provisions cannot be enforced, the courts have relied on them extensively to incorporate "international human rights standards" at the domestic level. It is an exception from the conservative approach that international duties and responsibilities are recognised as long as they are incorporated into municipal laws. The Supreme Court in *Vishaka*

¹⁶ '77th Meeting of the Standing Committee - Update on Budgets and Funding (2019, 2020-2021) | UNHCR' available at: <<https://www.unhcr.org/media/77th-meeting-standing-committee-update-budgets-and-funding-2019-2020-2021>> accessed 28 August 2026.

¹⁷ David W Kennedy and David Kennedy, 'International Refugee Protection, 8 Hum', vol 1 (1986) available at: <<http://nrs.harvard.edu/urn-3:HUL.InstRepos:16082842>> accessed 30 August 2026.

¹⁸ Ibid.

¹⁹ The Constitution of India 1950, art 51(A).

& Others v. State of Rajasthan & Others that any international treaty that is not repugnant to the fundamental rights of citizens and is consistent with its spirit of the constitution shall be invoked to broaden their scope and purpose.²⁰ Article 51(c) promotes respect for international law and treaty obligations,²¹ whereas Article 253 gives the power to Parliament to pass any legislation for the implementation of international conventions.²²

In **Tractor Export, Moscow v. M/S Tarapore & Co.** the supreme court held that when there is a legal gap or ambiguity in the domestic legislation, the court should adopt international law; however, international law cannot prevail over the clear intention of the legislature. Therefore, in regard to the protection of refugees, Indian courts could rely on the international conventions on refugees and human rights despite the absence of refugee legislation in India.²³ In **Louis De Raedt v. Union of India**, the Supreme Court has once again clarified that the right to the “protection of life and liberty” under Article 21 of the Indian Constitution is applicable to foreign nationals. In such an event, the logical course of action for the court would be to interpret this provision to mean that it does not allow foreign nationals to be sent into a place where there is a threat to their life and personal liberty.²⁴

In **State of Arunachal Pradesh v. Khudiram Chakma**, the Supreme Court has taken an active stance in the protection of refugees, it gave direction to the State to execute the orders of the court in order to protect “the life and liberty of the Chakma refugees” in Arunachal Pradesh who have been threatened. In this way, both the political and economic problems of the Chakma refugees have been acknowledged. It was further ordered that, during the period when the applications of the refugees for citizenship were being examined, the refugees could not be expelled from Arunachal Pradesh.²⁵ Similarly, in **Dr Malavika Karlekar v Union of India** in 1992, the Supreme Court restrained the deportation of refugees from Myanmar till the time of hearing their application for refugee status by UNHCR.²⁶ Also, in other cases, the court has adopted a supervisory role by stating that refugees should not be deported without notification of the court itself.

In **Mohammad Salimullah v. Union of India** and **Nandita Haksar v. State of Manipur**, both the Supreme Court and a high court issued orders regarding the deportation of Rohingya refugees respectively in the year 2021. In Mohammad Salimullah, the court held that India may

²⁰ *Vishaka & Ors vs State of Rajasthan & Ors*, (1997) 6 SCC 241.

²¹ The Constitution of India 1950, art 51(c).

²² *Ibid* art 253.

²³ *V/O Tractor Export, Moscow v. M/S Tarapore & Co*, 1969 SCC (3) 562.

²⁴ *Mr. Louis De Raedt & Ors vs Union of India and Ors*, 1991 AIR 1886.

²⁵ *State of Arunachal Pradesh v Khudiram Chakma*, AIR 1994 SC 1461

²⁶ *Dr Malavika Karlekar v Union of India*, Writ Petition (Criminal) No 583 of 1992 Supreme Court of India.

deport foreign citizens; however, deportation should be carried out according to the procedure established by law.²⁷ The recent High Court decision with regard to Rohingya refugees has been made by the Manipur High Court in *Nandita Haksar* (2021). This judgement is completely opposed to that of the Supreme Court decision in *Mohammad Salimullah*, where Article 21 (right to life) and Article 14 (right to equality) apply to all and not merely to citizens. The Court held that Myanmar nationals must not be deemed as ordinary illegal immigrants without giving due consideration to the factors which compelled them to leave their country. The Court made a distinction between an ordinary migrant and a refugee. It acknowledged that a refugee is somebody who leaves his own country due to factors like war or persecution. It held that *Salimullah* is an interim order and, therefore, there is no binding ratio in the case under Article 141 of the Constitution. There was also a distinction of facts as the issues of national security involved in the *Salimullah* case were not present in the Manipur case.²⁸

In the case of *Zothansangpui v. State of Manipur*, the Guwahati High Court had made it clear that refugees have the right not to be forcibly removed from India when there is an extreme danger to their lives.²⁹ The courts in the cases of *Nuang Maung Mye Nyant v. Govt. of India*³⁰ and *Shar Aung v. Govt. of India*³¹ stated that even those refugees who had been charged with illegal entry should be issued exit permits so that they may leave the country. In *Syed Ata Mohammadi vs. Union of India*, the Bombay High Court held that “there is no question of deporting the Iranian refugee to Iran, as he has already been recognized as a refugee by the UNHCR. It was also held that the refugee could travel to any other country without any restrictions.”³² Supreme Court of India in the case of *Hans Muller of Nuremburg v. Superintendent*,³³ granted “absolute and unfettered” power to the Government to deport the aliens. In the case of *Ktaer Abbas Habib Al Qutaifi v. Union of India* it was held by the High Court of Gujarat that the principle of non-refoulement protects against deportation of an individual in a situation where life and liberty of a person depend upon his race, religion, nationality or political affiliation.³⁴

Though the courts can play a constructive role, the protection provided by them cannot be a replacement for the comprehensive refugee law. Cases are often decided on an individual basis,

²⁷ *Mohammad Salimullah v Union of India*, AIR 2021 SC (Civil) 1753.

²⁸ *Union of India v Nandita Haksar* Petition(s) for Special Leave to Appeal (Criminal) No(s) 2184/2022.

²⁹ *Zothansangpui v. State of Manipur*, C.R No.981 of 1989.

³⁰ *Nuang Maung Mye Nyant v. Govt. of India*, CWP No. 5120/94.

³¹ *Shar Aung v. Govt. Of India*, GL.WP NO.110 of 1998.

³² *Seyed Ata Mohammadi v. Union of India and Others*, A.D. No. 1458 of 1994

³³ *Hans Muller of Nuremburg v. Superintendent, Presidency*, 1955 SCR (1)1284.

³⁴ *Ktaer Abbas Habib Al Qutaifi v. Union of India*, 1999 CriLJ 919.

which makes it impossible to lay down any principles or guidelines. Judicial intervention may only offer some kind of temporary protection to individual refugees but not a consistent system for the country.³⁵

Therefore, the protection of refugee in india is fragmented. Instead of one legislative statute, different constitutional provisions, legislations, executive decisions, and judicial precedents all together determines the rights of refugees.

INDIA'S REFUGEE POLICY AND THE UNFULFILLED OBJECTIVES OF GLOBAL JUSTICE

The lack of refugee legislation could pose issues relating to the coherence and consistency of India's approach towards protecting and providing assistance to refugees residing in its territory. This is likely to raise concerns about the readiness of India to take its rightful share of global responsibility towards offering refuge to persecuted individuals. The international community is likely to keenly observe how India responds to situations concerning refugees in order to determine the degree of India's dedication to humanitarian ideals and principles. Lack of a specific legal framework for refugees could also affect India's participation in international discourses and cooperation regarding refugee-related matters.³⁶ Other states and international organizations may be more willing to cooperate and establish partnerships with countries that have already developed effective legal framework regarding refugee protection, as it proves a nation's commitment to the maintenance of human rights and provision of assistance for people in need. Therefore, the lack of refugee law in India can make it harder to establish collaboration and partnership with other states and organizations regarding the problem of global refugee crisis and work on finding sustainable solutions for the problem. Moreover, the absence of an appropriate refugee law could put into question India's compliance with international standards and conventions, specifically developed to protect refugees.

In the case of India, it becomes a problem when one must strike a balance between its sovereign right to regulate the entry and stay of foreigners into the country and its obligations towards refugees. Although national security and border control are important issues that cannot be ignored, these still need to be reconciled with principles of international law such as non-

³⁵ Aswathy Madhukumar, 'International Law in India: Analyzing the Legal and Policy Framework Through International and Refugee Laws' (2023) 2 IUS LAW JOURNAL.

³⁶ Ambika Verma and Fellow Jindal Global, 'Global Compact on Refugees: Bridging the Gap Between International and Domestic Refugee Regime in India', available at <<https://ssrn.com/abstract=4450953>> accessed 28 August 2026.

refoulement and respect for the life and liberty of individuals.³⁷ The absence of uniform refugee legislation in India has resulted in inconsistent treatment of different refugees. Hence, a domestic legal regime can balance sovereignty, security, and refugee protection.

CONCLUSION

The nonexistence of comprehensive legislation governing refugees in India brings forth many wide-ranging consequences and difficulties, not just for the refugees themselves but also for the host community and the country as a whole. At international level, India's failure in formulating its own refugee law may draw some criticism from the global community, because the country seems to be ignoring the international standards of dealing with refugees.

The issue of national security becomes a serious concern in the context of lack of a refugee law, as it might unknowingly put the country at risk of being infiltrated by malicious people. The key issue here lies in the ability to balance sovereignty and security with equal protection of persons from persecution, but not in the failure of India to sign the Refugee Convention. Dealing with such security issues requires the implementation of effective screening mechanism as well as formulation of relevant legal provisions to ensure both the safety and security of the host nation as well as uphold the dignity of the refugees. This scenario highlights the urgent necessity for the development of an appropriate legal mechanism that can appropriately address the specific difficulties confronting the refugees. The development of such a refugee law will signify the commitment of India towards the promotion of humanitarian values and its contribution in the international context concerning refugee protection and management. Apart from reflecting the commitment of the nation towards the protection and well-being of the refugees within the territory of India, it will show India's active participation in handling the current challenges posed by the global refugee crisis.

SUGGESTIONS

1. It is necessary to enact a legislation that will enable the formation of a framework for determining the refugee status according to universally recognized "principles of Refugee Status Determination, treatment and Protection".³⁸

³⁷ Aishwarya Birla, 'Evaluating the Indian Refugee Law Regime: How Has the Judiciary Responded to Refugee Claims in Light of International Law Obligations, and How Can It Do Better?' (2023) 35 International Journal of Refugee Law 81, available at <<https://doi.org/10.1093/ijrl/eead013>> accessed 28 August 2026.

³⁸ V Suryanarayan, 'Humanitarian Concerns and Security Needs: Sri Lankan Refugees in Tamil Nadu' in P Chari and others (eds), *Refugees in India* (Manak Publications 2003) 55–56.

2. Other than formulating a domestic law, India should take into account seeking assistance from international sources and extend an open hand to “UNHCR and other NGOs” to oversee refugee groups that will aid in managing mass refugees.
3. There should be a balance between humanitarian protection and national security, where both constitutional principles and sovereign concerns are protected at the same time.
4. If there is a disagreement between two nations, then specific clauses need to be added in their bilateral agreements as regards the treatment and status of refugees so that no kind of dispute may occur. In the absence of such clauses, the treatment of refugees is uncertain in the hands of the Government. In 1991, the Tibetan refugees who are considered as “preferred communities” were subjected to bad treatment during the visit of Chinese Premier Li Peng to New Delhi. This is an example of the flaws of ad hoc governance in relation to refugees in India.
5. Reports have been presented by the NHRC for the amendment of the outmoded Foreigners Act (1946), which is used by the government in terms of refugees and asylum seekers.³⁹ The most important gap in this Act is that it does not mention the word ‘refugee’. In India, the word ‘foreigner’ is the inclusive word for all aliens residing temporarily or permanently in the country.

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³⁹Rajeev Dhavan, On the Model Law for Refugees: A Response to the National Human Rights Commission (2003), available at: <<http://www.pilsarc.org/aow/64.pdf>> accessed 28 August 2026.