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# ASYLUM SEEKERS IN INDIA: CONSTITUTIONAL, LEGAL AND POLICY ASPECTS

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## Introduction:

India presents an interesting contradiction in the international system of refugees with one of the largest refugee figures of displaced individuals of neighbouring nations that have not signed the 1951 Refugee Convention or its 1967 Protocol. In the past, India has been a refuge to Tibetan groups, Sri Lanka, Afghanistan, and Myanmar (Rohingyas).<sup>1</sup>

India has no particular national legislation, but employs a dual approach to refugee protection on the basis of administrative discretion. There are also certain groups such as Tibetan and Sri Lankan Tamils refugees' government special arrangements. The majority of asylum seekers are required to enrol with UNHCR that determines their refugee status based on international standards. The absence of a formal asylum legislation brings about legal ambiguity and results in unequal treatment of various refugee groups.<sup>2</sup>

## Legal and Constitutional Framework:

Without the presence of a unique refugee law, the Indian judicial system has frequently interrupted seal the gap in the legislature, acting as an informal law-maker by judicial activism and constitutional interpretation as progressive. The courts have over the years constructed a rudimentary but developing framework of refugee protection, which is based on the Fundamental Rights in the first place ensured by the Constitution.<sup>3</sup>

Three sources of protection are the primary ones of non-citizens, including asylum seekers and refugees. Key provisions of the constitution:

- Article 21 - Right to Life and Personal Liberty: This article is expanded to all persons.

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<sup>1</sup> United Nations High Commissioner for refugees, UNHCR India: Supporting Refugees in India - Achievements 2023 (UNHCR, New Delhi, 2024)

<sup>2</sup> Vaishnavi Yashasvi, Refugee Legal Framework in India, 9 International Journal of Management. Research & Economics 211 (2021). Protection of Refugees in India: An Analysis

<sup>3</sup> Pooja Makhijani, 6 International Journal of Law, Policy and. Social Review 61 (2024)

In Indian land, irrespective of nationality. The judiciary has never failed to give it a very wide and humane interpretation by believing that it protects people against arbitrary detention, inhumane treatment and forcible detention while affirming their right to live with dignity.

- Article 14 - Right to Equality: This guarantees equality before the law to any person. This article averts discriminatory action of the state and provides equal protection of laws to all. Nevertheless, it also permits sensible classifications, especially in situations involving the national security or the order of the people.
- Article 51(c) - Respect to International Law: This is contained in the Directive Principles of State Policy, encourages the State to adhere to its international obligations. Based on cases like *Vishaka v State of Rajasthan*, Indian courts have been inspired to reconcile the domestic law with the international human rights norms, particularly where there is no clear statutory direction.

### **Judicial Safeguards:**

*NHRC v. State of Arunachal Pradesh* (1996): This was a landmark judgment by the Supreme Court pointed out that the State should guarantee life and liberty of all persons, regardless of citizenship. The Court did so to ensure that Chakma refugees are not subjected to forcefully displaced, which demonstrates that even non-citizens in India have constitutional rights.<sup>4</sup>

*Ktaer Abbas Habib Al Qutaifi v. Union of India* (1999): The High Court of Gujarat had an important part to play by connecting the principle of non-refoulement-the prohibition of sending back to peril refugees-to Article 21. The Court also acknowledged it to be a component of the Indian customary international law demonstrating that humanitarian obligations may take effect even the interpretation of the constitution in the absence of particular laws.

*Mohammad Salimullah v. Union of India* (2021): This is a case concerning the potential deportation of Rohingya refugees, demonstrated that India has limited protection of refugees. The Supreme Court acknowledged the concept of non-refoulement but prioritized national security and government discretion, by saying that the right to avoid deportation derives out of

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<sup>4</sup> Padmaja Sharma, *The Legal Pathway to Refugee in India and a Citizen: Asylum Seekers to Citizens*. Critical Analysis of Legislative framework, 5 *International Journal of Advanced legal research* 2 (2024).

Article 19(1)(e)- the right to reside which is limited to citizens. The ruling emphasized the discord between the humanitarian issues and the state security.

**Statutes:**

Foreigners Act (1946): This was a law that was enacted during the colonial period and is the foundation of the Indian law. Non-citizens were put under administrative control granting the government extensive powers to control entry, stay and deportation. Notably, the law is not discriminatory between the average migrants and those who are fleeing persecution, abandoning them vulnerable groups that are subjected to same strict procedures as other foreigners.

Citizenship (Amendment) Act (CAA, 2019): The CAA offers a shorter path to citizenship of some of the non-Muslim minorities-Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians-escaping persecution in Afghanistan, Bangladesh and Pakistan. Nevertheless, it has cast doubts on it by excluding Muslim communities such as the Rohingya equality in article 14 and secularism in India, which causes fairness controversies and inclusiveness.<sup>5</sup>

Immigration and Foreigners Bill (2025): This is a proposed bill that seeks to reform and harmonize the disjointed immigration laws in India, including digital surveillance and efficient administration. While it promises a coordinated approach, critics observe that it nevertheless gives a broad discretionary authority to governments and lacks clear statutory protections of refugees similar to international standards.

**International Law and UNHCR:**

Although India has been accepting millions of refugees, it is not a signatory to the 1951 Refugee Convention, citing the fact that the Convention is highly Eurocentric and fails to consider the possibility of large-scale influx of refugees or international burden sharing mechanisms.<sup>6</sup>

UNHCR Mandate: India lacks a national law on refugees and so the UNHCR has a significant role to play in registering asylum seekers and determining their refugee status as per the

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<sup>5</sup> Atul Alexander, "Critical Analysis of Mohammad Salimullah v. Union of India: Has the Supreme Court of India Acted as Executive?" 3 CMR University Journal of Contemporary Legal Affairs 113 (2021)

<sup>6</sup> NHRC v. State of Arunachal Pradesh, AIR 1996 SC 1234.

international standards. Nonetheless, UNHCR registration is not a guarantee of complete security since these documents are not officially accepted by the Indian government and the security of people is frequently determined by the will of the local authorities.

**Non-Refoulement:** India informally applies the principle of non-refoulement, banning the sending of people back to the country in which they risk losing their life or liberty. The interpretation of this principle by the courts has been into Article 21 i.e. Freedom to Life and Personal Liberty. However, due to the fact that it is not fixed in the laws of the respective countries, its application is uneven and it is open to the executive action.

**Sovereignty Concerns:** India has an unsound approach towards national sovereignty in its approach to refugees. The government is always on its feet on security and administrative privilege on formal rights to non-citizens. The state is allowed to take actions that might be inconsistent with international protection norms under the broad powers provided by the Foreigners Act, 1946, which has been a source of tension in terms of compassion and control.

### **Key Challenges:**

The problems of refugee protection in India are mostly associated with the discrepancy between the constitutional guarantees and the lack of the specific law on the refugee protection. Key issues include:

**Security vs. Humanitarianism:** The management of refugees in India tends to be viewed through the prism of security, and the focus is not on humanitarian responsibilities. This can be seen in the example of Rohingya deportations. The Apex Court was influenced by the government filings that categorized the Rohingya as illegal immigrants and possible security threats *Mohammad Salimullah v. Union of India* in order to restrict protections. The decision underscored the judicial restraint in questioning the executive policies on the basis of security, despite the fact that basic rights may be at stake.

**Political Discourses and Exclusionary Politics:** The treatment of refugees is often informed by political factors, which vary according to electoral concerns and international politics. An example is the Citizenship Amendment Act (2019), which provides expedited citizenship by religious identification, which forms protection hierarchies. This kind of discriminatory

treatment casts doubt on its consistency with the constitutional obligation of secularism and non-discrimination in India.

**Integration and Social Inclusion Problems:** Refugees are not formally recognized legally and thus they may be stateless and experience severe challenges to social and economic inclusion. The employment, education, and access to the public services are usually limited. Their engagement in day-to-day activities is also restricted because essential documents such as AADHAR cards are usually unavailable. The children and women, who are vulnerable groups, face increased vulnerability to exploitation and lack of sufficient protection, which adds to the problem of resettlement and social integration.

### **Gaps in policy and Recommendations:**

The existing system of refugee protection in India is mostly reactive in nature and only acts once the rights have been violated and the case is brought to the higher courts. The use of judicial pronouncements as the major tool of protecting refugees cannot be used to govern them in the long run. The progressive law that is made by a judge cannot replace extensive legislation. This leads to inconsistency in application across regions, uncertainty in procedures and lapses in protection. Attempts to enact specific laws, including the Asylum Bills of 2015 and 2021 by the private member, have been blocked several times because of political reluctance and resistance by security agencies, which place refugees in an uncertain legal status.<sup>7</sup>

In order to establish a strong and reliable asylum regime, India must have an effective national legislation that does not rely on administrative decisions to protect the rights but rather enforces them through the law. Key measures should include:

**Codify Non-Refoulement and RSD:** The principle of non-refoulement should be formally codified in the law to reassure against the placing of refugees back forcibly to life-threatening circumstances. It must also establish clear and transparent criteria of Refugee Status Determination (RSD), which minimizes uncertainty among the applicants and the authorities.

**Create a Statutory Authority:** It should be an independent body or a commission that will

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<sup>7</sup> Shailja Beria, "Realising the Rights of Refugee Children Through the Jurisprudential Lens of Child Rights: Law and Practice in India," 6 *Journal of Rights of the Child*, National Law University Odisha 89 (2025).

review asylum claims with objectivity and efficiency and with international best practices-as seen in other countries such as Canada.

**Operationalize Constitutional Rights:** The social, economic and cultural rights should be extended to the recognized refugees along with the employment, healthcare, and education. This would bring the guarantees of Articles 21 to life and make them meaningful and practical benefits.

**Fairness and Procedural Clarity:** There would be clear guidelines and safeguards that would aid in the reconciliation of security issues with humanitarian requirements. Arbitrary or collective exclusions should be substituted with structured screening and transparent procedures and thereby less bureaucratic discretion should be involved and all applicants should be treated fairly.

Through these reforms, India would be able to change its asylum system into a rights-based, predictable and humane system that would balance national security with constitutional and international requirements.

### **Conclusion:**

The Indian response to asylum seekers points to the fine line between the long-term humanitarianism of the country and the gaps that exist in the absence of a specific law on refugees. Although the Constitution, especially in the form of Article 21, provides valuable safeguards, the system itself is still disjointed, and it is up to the judicial interventions to provide some consistency, instead of a regular legislative system. The introduction of a universal asylum law would bring about transparency, equity and equality in protection of refugees irrespective of their nationality or religion. This reform would reconcile the sovereign power of India with its constitutional obligation to human dignity and justice that would establish a balance in which humanitarian imperatives and national security interests are carefully considered.