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Protection Of Refugees In India

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Abstract

India, a nation facing challenges of overpopulation and extensive poverty, has nevertheless provided shelter to displaced persons from neighboring nations for many years. Although India accommodates various refugee communities, such as Tibetans, Sri Lankan Tamils, and Rohingyas, there is no consistent legal structure or unified policy in place to protect their rights. The 1951 Refugee Convention along with its 1967 Protocol, which identifies refugees and sets international standards for their safeguarding, form the foundation of global refugee law. Nonetheless, India has opted not to adopt these international agreements, resulting in refugee protection being largely reliant on improvised government actions. A refugee, according to Article 1 of the 1951 Convention, is an individual who crosses an international border because of a legitimate fear of persecution based on factors such as race, religion, nationality, affiliation with a particular social group, or political beliefs. In India, refugees encounter varying policies, restricted access to civil and political rights, and insufficient legal protections for their safety and well-being. This study thoroughly analyzes the shortcomings in India's refugee protection system and emphasizes the pressing necessity for a robust legislative framework to tackle these issues. It examines India's historical reaction to refugee crises, the involvement of international entities such as the UNHCR, and judicial actions that seek to fill the legal gap. Additionally, it highlights the importance of establishing a rights-based framework for refugee protection to guarantee their access to fundamental human rights and the justice system, while also balancing humanitarian duties with national interests.

Keywords: Asylum Seeker, UN High Commissioner for Refugees, 1951 Refugee Accord, India, Safeguarding, Human Dignity

1.1 Introduction

A refugee is someone who looks for refuge in another country, escaping their native land because of life-threatening circumstances or conditions that render survival impossible. Although they retain their nationality officially, their displacement arises from a legitimate fear of persecution due to race, religion, nationality, affiliation with a specific social group, or political views, as outlined in the 1951 Refugee Convention. Though it holds foundational significance, this definition does not capture the current realities of displacement, which include causes like environmental disasters, internal strife, civil wars, or discrimination due to sexual orientation.¹In India, the protection of refugees is closely linked to the constitutional distribution of authority between the central and state governments. Although international boundaries and global relations are solely under the authority of the central government, maintaining law and order is a responsibility of the states. This duality leads to several agencies, such as central and state governments, struggling with issues related to refugees, especially those associated with law enforcement. Border security agents, immigration officials, and state law enforcement are assigned a dual role: upholding national security while safeguarding the human rights of refugees. India's strategy regarding refugees is largely inconsistent, primarily influenced by central government policies, which results in refugees facing variable protections among different states. Although the humanitarian dimensions of refugee protection are crucial, concerns regarding national security frequently eclipse the necessity to maintain the dignity and rights of those who are displaced. The lack of a strong legal framework worsens the difficulties, causing enforcement gaps and inconsistency in how refugees are treated.²

1.2 Hypothesis

Here are the shortened points for your hypothesis:

- Inadequate Legal Framework: The lack of a specific refugee law in India results in inconsistent protection, leading to exploitation and discrimination.
- Socio-Economic Impact: Without dedicated refugee laws, refugees face limited socio-economic protections, hindering their integration.
- International Standards: Aligning with global standards and learning from other countries can improve refugee welfare and protection in India.

1.3 Literature Review

¹ Woxsen Law Review, *A Descriptive Study of Refugees and Their Status in India*, Woxsen University, <https://woxsen.edu.in/woxsen-law-review/wlr-papers/a-descriptive-study-of-refugees-and-their-status-in-india/> accessed 31 May 2025.

² Raghunandan Sriram, 'Understanding the Indian Refugee Law Framework' *Nyaaya Guest Blog* (NALSAR University of Law, 2023) <https://nyaaya.org/guest-blog/understanding-the-indian-refugee-law-framework/> accessed 31 May 2025.

➤ **Books:**

1. Refugee Protection in International Law by Erika Feller, Volker Turk, and Frances Nicholson.
2. The Rights of Refugees under International Law by James C. Hathaway.
3. India and International Refugee Law by B.S. Chimni.

➤ **Journals and Articles:**

1. "Refugee Protection in India: A Critical Appraisal" – Economic and Political Weekly.
2. "Legal Framework for Refugee Protection in India: Challenges and Opportunities" – Indian Journal of International Law.

➤ **Case Laws:**

1. NHRC v. State of Arunachal Pradesh (Chakma refugees' case).
2. Ktaer Abbas Habib Al Qutaifi v. Union of India – Principles of non-refoulement.
3. Hans Muller of Nuremburg v. Superintendent, Presidency Jail – Addressing foreigners' rights under Article 21.

➤ **Reports and Publications:**

1. UNHCR annual reports on refugee status and protection.
2. NHRC guidelines for refugee protection.
3. Government publications on the Foreigners Act, 1946.

1.4 Statement of Problem

The problem addressed in this research is the lack of a comprehensive and dedicated legal framework for refugees in India, which results in inconsistent and inadequate protection of their rights. This legal gap leads to various challenges, including exploitation, discrimination, limited access to socio-economic opportunities, and difficulties in integrating refugees into society. While India is not a signatory to the 1951 Refugee Convention, its current policies and the decentralized approach to refugee protection further exacerbate these issues. The absence of standardized and enforceable laws hampers effective humanitarian aid and national security considerations, leaving refugees vulnerable in an uncertain legal and social landscape. This research seeks to examine these challenges and advocate for the formulation of a robust refugee law in India that ensures the protection, welfare, and integration of refugees.³

³ Arjun Nair, *National Refugee Policy for India: Suggestions for a Legal Framework* (Observer Research Foundation, Occasional Paper No. 11, 2007) <https://www.files.ethz.ch/isn/129030/RP11-ArjunNair.pdf> accessed 31 May 2025.

1.5 Research Methodology

The study on the safeguarding of refugees in India employs a diverse methodology that includes doctrinal, analytical, and comparative techniques to deliver a comprehensive examination of India's legal system, the obstacles encountered by refugees, and possible avenues for reform.

➤ **Doctrinal Approach** The doctrinal approach will be utilized to analyze the current legal framework related to refugee protection in India. This includes utilizing both primary and secondary sources to create a comprehensive grasp of the legal context pertaining to refugees.

➤ **Primary Sources** The examination will concentrate on pertinent laws like the Indian Constitution, which ensures fundamental rights, along with additional statutes that could indirectly influence refugees. While India lacks a dedicated refugee law, applicable sections in the Foreigners Act, Passport Act, and Citizenship Act will be examined. These laws, along with the Supreme Court's rulings on refugees (like the Nandini Sundar case), will be examined for their application and understanding. **Global Agreements:** India has not signed the 1951 Refugee Convention or its 1967 Protocol; however, it has ratified various international human rights treaties that provide protections for refugees, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). These agreements and accords will be examined to comprehend the global responsibilities India has concerning refugees and their rights.

Secondary Resources:

Academic Articles: A thorough examination of scholarly research will assist in contextualizing the legal structure. This encompasses the examination of legal articles, books, and various academic works on refugee rights and human rights. **Legal Analysis:** Legal analyses will be examined to elucidate the subtleties of applicable laws and court rulings, offering perspectives on the shortcomings and inconsistencies in India's refugee protection framework. **International Organization Reports:** Documents from entities like the UNHCR and Amnesty International will offer further insights into the situation of refugees in India and the deficiencies in the existing legal and protection frameworks. **Government Publications:** Reports, policies, and official statements from the government concerning refugee protection will be examined to comprehend the official position and strategies implemented by the Indian government.

➤ **Analytical Method** The analytical method will evaluate the existing legal and policy structures' effectiveness in safeguarding refugee rights and guaranteeing their socio-economic welfare. This will entail recognizing deficiencies in the legal execution and availability of rights for refugees.

Effectiveness of the Present Legal Framework: This part of the study will investigate if current

laws and policies adequately safeguard the rights of refugees, encompassing their right to life, dignity, and non-refoulement (the principle preventing the return of refugees to countries where they are at risk). The emphasis will be on evaluating if India's decentralized method of refugee protection where both central and state governments have distinct responsibilities leads to unequal protections among states.

Obstacles to Accessing Socio-Economic Rights: The study will thoroughly investigate the challenges that refugees encounter in obtaining fundamental socio-economic rights like education, healthcare, employment, and housing. This involves examining how legal limitations, societal discrimination, and absence of paperwork impede refugees from completely assimilating into Indian society. The research will evaluate the success of current welfare initiatives designed for refugees and pinpoint the deficiencies in the delivery of these services.

Implementation Discrepancies: A major concern is the implementation discrepancy the gap between what is legally guaranteed and what is truly delivered. This encompasses delays in legal procedures, the lack of enforcement measures, and the challenges refugees encounter in acquiring documentation or achieving permanent residency. The study will explore how these disparities affect refugees' lives and if substantial legal reforms or institutional adjustments are required to address these gaps.

➤ **Comparative Assessment⁴**

A crucial aspect of the research methodology will involve comparing refugee protection laws and policies in different jurisdictions to pinpoint best practices and extract lessons for India. This will entail analyzing the refugee protection systems in nations that have implemented legal structures and exploring how their policies might be modified or enhanced in the Indian scenario.

Global Best Practices: Analyzing countries such as Germany, Canada, and Sweden, known for their robust refugee protection laws and integration initiatives, will help to comprehend their approaches to handling refugee arrivals and ensuring socio-economic rights. The examination will focus on their legal systems, asylum processes, refugee accommodations, healthcare services, educational opportunities, and job programs.

Insights for India: The comparative study will emphasize discovering effective models that can be tailored to India's distinct socio-political environment. For instance, the German Refugee Protection Law provides strong social benefits and legal integration for refugees, whereas Canada's policies supply settlement assistance and routes to citizenship. The research will assess

⁴ B S Chimni, 'The Law, Policy and Practice of Refugee Protection in India' (2004) 17 *Refugee Survey Quarterly* 1 https://www.researchgate.net/publication/256016766_The_Law_Policy_and_Practice_of_Refugee_Protection_in_India accessed 31 May 2025.

how comparable approaches might be tailored to fit India's federal system and its socio-political context.

1.6 Limitations of the Research

- **Restricted Availability of Core Data:** The study primarily depends on secondary sources such as reports, legal analyses, and publications. The lack of fieldwork or personal engagement with refugees' limits understanding of their lived experiences, including discrimination or procedural difficulties.
- **Limited Concentration on Legal Structures:** The research mainly focuses on the legal and policy facets of refugee protection in India, with minor investigation into social, cultural, and psychological aspects.
- **Comparative Evaluation Limitations:** The study examines refugee laws in several nations; however, variations in socio-political and economic situations might restrict the relevance of these results to India.
- **Evolving Character of Policies:** Refugee policies and frameworks are continuously changing. Any modifications during or post the research phase could affect the significance of results and suggestions.
- **Regional Scope and Security Concerns:** Although the study covers India in general, it does not provide a detailed regional analysis of states with large refugee populations, like Tamil Nadu or Assam. Furthermore, security issues are addressed solely through publicly accessible information.
- **Limitations of Time and Resources:** The lack of comprehensive surveys, interviews, or in-depth qualitative studies is a result of constraints in time and resources.

1.7 Research Scope and Objectives

Objectives

- **To Examine the Existing Legal Structure:** Review the current laws, regulations, and court rulings related to refugee protection in India.
- **To Recognize Principal Obstacles:** Emphasize the shortcomings due to the lack of a specialized
 - refugee law and how they affect the rights and socio-economic status of refugees.
- **To evaluate adherence to global standards:** Assess India's conformity with global treaties, conventions, and principles concerning the protection of refugees.

- To Perform a Comparative Analysis: Analyze India's methods for refugee protection alongside
- those of other countries to pinpoint effective practices and viable solutions.
- To Propose Legal and Policy Changes: Suggest practical measures for establishing a strong and
- all-encompassing legal system to safeguard refugees in India.

Scope

This research paper examines the safeguarding of refugees in India, investigating the legal and policy structures that regulate their rights and well-being. It examines how the lack of specific refugee legislation affects refugees' ability to obtain vital socio-economic rights like education, healthcare, and job opportunities.

The research evaluates India's adherence to international norms, including the principles of the 1951 Refugee Convention and various global human rights agreements, even though India is not a signatory to the convention. Additionally, the study features a comparative examination of refugee protection frameworks in different nations to pinpoint transferable best practices. Although the main emphasis is on legal and institutional factors, the paper additionally discusses the wider socio-economic and humanitarian issues encountered by refugees in India. The primary objective is to deliver practical insights and suggestions for legal and policy changes to create a thorough framework for refugee protection in India.

HISTORY ON REFUGEE LAW IN INDIA

Refugees are individuals compelled to leave their country because of persecution, military conflict, or natural calamities. Even though the worldwide refugee crisis has resulted in the establishment of international legal frameworks such as the 1951 Refugee Convention and its 1967 Protocol, India has opted not to ratify them. Notwithstanding this, India has historically served as a refuge for displaced people, illustrating its dedication to humanitarian values. Nevertheless, without a formal legal framework, the rights and well-being of refugees in India frequently stay uncertain. This chapter explores the historical progression of refugee policies and the advancement of refugee law in India, laying the groundwork for examining its present challenges.⁵

2.1 Refugee Movements Before Independence

India's geographical position has historically rendered it a natural refuge for displaced individuals.

⁵ B S Chimni, 'Protection of Refugees in India: A Critical Analysis' (2000) *Indian Journal of International Law* https://www.researchgate.net/publication/256046841_Protection_of_Refugees_in_India_A_Critical_Analysis accessed 31 May 2025.

Migration paths like the Hindukush Mountains in the west and the Patkoi Range in the east have enabled the relocation of groups escaping oppression or pursuing economic prospects. Even though the label "refugee" was not present then, historical evidence indicates that the arrival of different ethnic and cultural communities influenced India's population and diversity. Nonetheless, during this time, there was no official legal structure to meet the needs or rights of these migrants.⁶

2.2 Partition of India and the Refugee Crisis After Independence (1947)

The division of India in 1947 represented the greatest displacement in contemporary history, displacing more than 20 million individuals due to the separation of British India into India and Pakistan. Religious and community conflicts compelled individuals to abandon their residences, with Hindus and Sikhs relocating to India and Muslims shifting to Pakistan. The Indian government faced an extraordinary challenge in rehabilitating millions of displaced individuals.

In reply, the government set up relief camps¹⁶⁰ camps to host the arrivals and allocated around ₹60 crore for their administration. The Rehabilitation Financial Administration Act of 1948 was passed to provide financial support and rehabilitation for individuals who were displaced. Although the act offered short-term assistance, it did not resolve questions regarding the legal status of these individuals and did not clarify their rights and protections for the long term. This crisis exposed the necessity for a thorough legal structure to tackle the refugee situation.

2.3 Significant Refugee Surges After Independence

1959 Tibetan Exiles: The initial significant wave of refugees after independence happened in 1959 when the Dalai Lama and many of his supporters escaped Tibet due to the Chinese invasion. India provided political refuge to the Dalai Lama and his supporters. Camps were set up in Dharamshala and various other places, offering shelter, food, and assistance. While this action demonstrated India's dedication to humanitarian principles, it was missing a formal legal framework.

1971 Bangladesh Freedom War: In the Bangladesh Liberation War, more than 10 million refugees entered India, escaping violence and oppression in East Pakistan (now Bangladesh). The government initiated extensive measures to deliver relief, such as establishing camps and offering humanitarian assistance. Nonetheless, this substantial wave stressed India's resources and underscored the lack of a lasting legal or policy structure for managing refugees.

Sri Lankan Refugees (1983 and 1986): Civil turmoil in Sri Lanka throughout the 1980s resulted in a notable surge of Tamil refugees arriving in Tamil Nadu. India reacted by setting up refugee camps and providing temporary shelter. Nevertheless, political factors frequently shaped the policies regarding these refugees, highlighting the constraints of a makeshift approach.

⁶ S K Shanker and V Vijayaraghavan, 'Legal Status of Refugees in India: A Need for Statutory Measures' (2021) *Forced Migration Review* <https://www.fmreview.org/recognising-refugees/shanker-vijayaraghavan/> accessed 31 May 2025.

Additional Refugee Groups: India has hosted refugees from Bhutan, Afghanistan, and Myanmar as well. The World Refugee Report indicates that India has provided shelter for approximately 400,000 refugees, which encompasses at least 2 million internally displaced individuals. Even with its humanitarian initiatives, the absence of a formal refugee law has resulted in many refugees being without reliable safeguards.⁷

2.3 Advancement of Refugee Regulations and Guidelines in India

India's strategy for managing refugees is primarily influenced by constitutional laws, administrative actions, and judicial rulings:

Constitutional Regulations: Articles 14 and 21 of the Indian Constitution ensure that all individuals, including refugees, have equality before the law and the right to life and liberty. Nonetheless, these rights are frequently understood in a limited way. Refugees continue to be left out of socio-economic safeguards such as education, job opportunities, and healthcare services.

Administrative Measures: India has taken a case-by-case strategy for refugees, depending on administrative rulings instead of established laws. Long-term visas and various temporary solutions are available, yet they are inconsistent and expose refugees to the risk of exploitation.

Judicial Actions: The courts have been crucial in defending the rights of refugees. For instance, in *NHRC v. State of Arunachal Pradesh* (1996), the Supreme Court highlighted the principle of non-refoulement, which forbids sending refugees back to a nation where they encounter persecution. Nevertheless, judicial interventions have a restricted scope and cannot replace a complete legal framework.⁸

LAWS GOVERNING REFUGEES IN INDIA

3.1 Passport (Entry into India) Act, 1920

This legislation regulates the entry of foreign nationals into India, yet it does not make a distinction between refugees and other categories of foreigners like economic migrants, tourists, or students. This absence of differentiation creates major difficulties for refugees, who frequently lack essential travel documents such as passports. Consequently, refugees' risk being arrested and deported by immigration officials, despite possibly escaping persecution or warfare. Refugees frequently lack the time, means, or chance to acquire passports or appropriate documentation because of their situations. Moreover, refugees might struggle to reach passport offices, whether because of geographic remoteness or insufficient infrastructure in their native countries. Considering this

⁷ Drishti IAS, 'India and Refugee Policy' (Daily News Analysis, 2023) <https://www.drishtiias.com/daily-updates/daily-news-analysis/india-and-refugee-policy> accessed 31 May 2025.

⁸ Drishti IAS, 'Legislation for Refugees' (2024) <https://www.drishtiias.com/daily-updates/daily-news-analysis/legislation-for-refugees> accessed 31 May 2025.

scenario, penalizing refugees for not having the correct documents is unfair and problematic. Numerous people contend that refugees ought not to be punished for lacking a passport, since their failure to obtain one is frequently out of their hands.⁹

3.2 Passport Act, 1967

The Passport Act of 1967 also does not acknowledge refugees as a separate category. The law governs the issuance of passports for foreign individuals, yet it equates refugees with other non-urgent foreign entrants into India. The absence of explicit legal acknowledgment makes it even more challenging for refugees to understand Indian law. Like the Passport (Entry into India) Act, the Passport Act lacks a straightforward method for refugees to obtain identification or legal status, resulting in challenges in accessing essential services such as banking, housing, or employment, which necessitate valid identification. Although the government offers specific services to refugees on humanitarian grounds, the overall legal system does not recognize their distinct status.¹⁰

3.3 Registration of Foreigners Act, 1939

This legislation aims to oversee the registration of foreign nationals in India. Nevertheless, it is also utilized for refugees indiscriminately, imposing the same conditions as those for tourists or other foreign individuals. The Act requires that foreigners notify the authorities of their presence in India and comply with specific legal obligations. Refugees lacking the required identification documents encounter practical difficulties in adhering to these regulations. This system frequently renders refugees susceptible to detention and deportation, since they are labeled merely as "foreigners."¹¹

3.4 Foreigners Act, 1946

The Foreigners Act of 1946 grants the government authority to manage and oversee the entry, residence, and departure of foreign individuals. While India has a history of accepting refugees, the legislation does not make a distinction between refugees and other foreign individuals. Consequently, refugees are at risk of being labeled as undocumented immigrants. The legislation provides the government extensive authority to detain and expel foreigners, posing challenges for refugees lacking the required documents to verify their refugee status. A primary issue addressed by this Act is the absence of legal acknowledgment for the needs of refugees. Consequently, refugees encounter obstacles in obtaining essential services and are frequently vulnerable to unjust

⁹ Editorial Column, 'The Need for Refugee Law in India—for Indian Citizens' Bar & Bench (2023) <https://www.barandbench.com/columns/the-need-for-refugee-law-in-india-for-indian-citizens> accessed 31 May 2025.

¹⁰ Martand Jha, 'India's Refugee Saga, from 1947 to 2017' *LiveMint* (9 January 2018) <https://www.livemint.com/Sundayapp/clQnX60MIR2LhCitpMmMWO/Indias-refugee-saga-from-1947-to-2017.html> accessed 31 May 2025.

¹¹ Saniya Samtani, 'Deporting Rohingya Refugees: Indian Supreme Court Violates the Principle of Non-refoulement' *Oxford Human Rights Hub* (18 October 2018) <https://ohrh.law.ox.ac.uk/deporting-rohingya-refugees-indian-supreme-court-violates-principle-of-non-refoulement/> accessed 31 May 2025.

detention and removal. This emphasizes the necessity for a legal framework that specifically tackles the rights and status of refugees in India.

3.5 Foreigners Order, 1948

The Foreigners Order, 1948, comprises a framework of administrative rules established under the Foreigners Act, 1946, that governs the presence of foreign nationals in India. Once more, refugees are regarded as foreign nationals under this legislation, and they do not receive special protections. This legislation provides the government with considerable power to remove foreigners from India; however, it overlooks the distinct circumstances of refugees escaping persecution or conflict. Consequently, refugees confront the risk of being regarded as ordinary immigrants, lacking any unique protections or rights.¹²

REFUGEE PROTECTION AND LEGAL FRAMEWORK IN INDIA

4.1 The Foreigners Act, 1946:

Regulatory Overview Powers Under the Foreigners Act:

The Foreigners Act of 1946 regulates the arrival, residence, and exit of foreign nationals from India. Although this law does not directly focus on refugees, it establishes the structure within which all foreign individuals, refugees included, are classified and governed. As per Section 2(a), a foreigner refers to anyone who isn't a citizen of India, thereby including refugees within this wide definition. Under Section 3, the government has the authority to issue orders regulating the movement, residence, and identification of foreign nationals, which encompasses the power to expel or deport those who do not satisfy entry requirements. Section 7 requires foreigners to submit information about their time in India, highlighting the importance of oversight and monitoring.¹³

Shortcomings in Addressing Refugee Needs: While the Foreigners Act provides the government with extensive authority to regulate foreigners, it fails to consider the particular needs and vulnerabilities of refugees. Without a specific refugee law, the existing framework fails to differentiate between refugees and other foreign nationals, creating a risk that refugees could be detained or deported simply for not having the correct documentation. Furthermore, the legislation lacks a definitive procedure for awarding refugee status or protection, putting refugees in a

¹² Rajeev Dhavan, 'India Needs a Proper Refugee Law, Not a CAA Suffused with Discriminatory Intent' The Wire (20 December 2019) <https://thewire.in/law/india-needs-a-proper-refugee-law-not-a-caa-suffused-with-discriminatory-intent> accessed 31 May 2025.

¹³ NHRC, *Human Rights and Refugees in India – Group 4 Report*, (National Human Rights Commission, 2020) <https://nhrc.nic.in/sites/default/files/Group%204%20June.pdf> accessed 31 May 2025.

vulnerable legal situation.

4.2 Constitutional Protections for Refugees

Fundamental Rights Applicable to Refugees:

Although India does not have laws for refugees, its Constitution guarantees several basic rights that apply to all people present in its territory, including refugees. The most significant of these are:

Article 14: Ensures equality under the law, guaranteeing that refugees do not face discrimination based on their nationality.

❖ Article 21: Safeguards the right to life and personal freedom, which encompasses the right to live with dignity. The Supreme Court has broadened this right to encompass refugees, stressing the safeguarding of their fundamental human rights.

❖ Article 20: Protects individuals from ex post facto laws, double jeopardy, and self-incrimination.

❖ Article 22: Offers safeguards against unjust arrest and detention, which is especially vital for refugees facing the threat of deportation.

❖ Articles 25-28: Safeguards the right to freedom of conscience, as well as the ability to practice, profess, and advocate one's religion, which is essential for refugees escaping religious persecution.

❖ Article 32: Grants the ability to approach the Supreme Court for the safeguarding of fundamental rights.

4.3 India and the 1951 Refugee Convention

India's Stance on the Convention:

India has not signed the 1951 Refugee Convention or its 1967 Protocol, which offers a global legal framework for refugee protection. The Convention, which outlines the rights and status of refugees, was mainly established as a reaction to the refugee crisis in Europe after World War II. India's stance is primarily rooted in worries that the Convention's articles are focused on Europe and fail to sufficiently meet the requirements of South Asian nations, which face various refugee crises, such as those caused by armed conflict, ethnic tensions, and environmental issues.

Principles India Adheres to Despite Non-Signatory Status¹⁴:

Although not obligated by the 1951 Convention, India has willingly adopted some principles found within it:

Article 7: India treats refugees like other foreigners, guaranteeing that they face no discrimination due to their status.

Article 3: India practices a non-discriminatory approach in providing rights to refugees.

Article 3a: Refugees who enter the country illegally are not subjected to any penalties.

Article 4: Refugees are assured of their religious freedom.

Article 16: Refugees have complimentary access to courts in India.

Article 21: Refugees have the right to reside outside of camps and can select their own living location.

Articles 27 and 28: Refugees receive identity and travel documentation.

Article 33: India follows the principle of non-refoulement, guaranteeing that refugees are not sent back to a nation where their life or freedom may be in danger.

4.4 Role of UNHCR in India

UNHCR's Role in Refugee Protection: Although India is not a signatory to the 1951 Refugee Convention, it collaborates with the United Nations High Commissioner for Refugees (UNHCR) to safeguard the rights of refugees. The UNHCR functions in India to support refugees and asylum seekers from different nations, such as Afghanistan, Myanmar, and Sri Lanka. The UNHCR is responsible for offering registration, documentation, and support in obtaining essential services like healthcare, education, and job opportunities. The UNHCR collaborates with the Indian government to locate refugees and assist their integration into Indian society when feasible. It additionally aids refugees in navigating legal paths to apply for asylum and guarantees they are not sent back or returned to perilous conditions.¹⁵

India's Cooperation with UNHCR:

India's partnership with the UNHCR has been essential in offering refugee status determination (RSD) to individuals in search of asylum. This collaboration enables a more organized method for

¹⁴ T Ananthachari, 'Refugees in India: Legal Framework, Law Enforcement and Security' (2001) *ISIL Year Book of International Humanitarian and Refugee Law* <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html> accessed 31 May 2025.

¹⁵ Ipsita Chakravarty and Vijayta Lalwani, 'No Law for Refugees in India—And the Citizenship Bill Does Not Fill the Gap' *Scroll.in* (9 December 2019) <https://scroll.in/article/946220/no-law-for-refugees-in-india-and-the-citizenship-bill-does-not-fill-the-gap> accessed 31 May 2025.

recognizing refugees, despite India not having a national refugee law. The UNHCR's involvement has also contributed to alleviating some of the challenges refugees encounter in India, including restricted access to essential services and legal acknowledgment.¹⁶

ISSUES FACED BY REFUGEES IN INDIA

5.1 Lack of a Uniform Refugee Law

India, although it offers shelter to a substantial number of refugees, lacks a thorough national refugee law. The lack of legal framework has led to discrepancies in the procedure for establishing refugee status. In contrast to nations that ratified the 1951 Refugee Convention, which established global standards for refugee safeguarding, India does not possess a structured system that provides consistent protection for refugees. Although judicial rulings have sometimes offered a degree of protection, refugees in India still face vulnerability because of the lack of a defined and organized legal system. The absence of a standardized method for determining refugee status has resulted in the process frequently being unpredictable. The lack of a national organization dedicated solely to managing refugee matters adds to the complexity of the situation. As a result, refugees in India encounter various difficulties, such as ambiguous legal standing, insufficient access to essential services, and anxiety about deportation.¹⁷

5.2 Gaps in Refugee Protection Mechanisms

India's current legal system for foreigners, including the Foreigners Act of 1946 and the Passport Act, fails to sufficiently meet the distinct needs and rights of refugees. Consequently, refugees are frequently categorized as outsiders, and their requests for protection are handled without the essential awareness of their specific situations. Due to the absence of a specific refugee law in India, the legal position of refugees remains uncertain. They encounter numerous challenges, such as issues with obtaining healthcare, education, and jobs, along with the persistent danger of deportation. The absence of legal protection diminishes their capacity to exist with dignity and safety.¹⁸

5.3 Judicial Role in Refugee Protection

The judiciary in India has been instrumental in bridging the legal void by utilizing constitutional provisions to safeguard refugees. Numerous rulings from the Supreme Court and High Courts have

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granted a range of rights to refugees who have escaped their home countries and entered Indian land. These court rulings are vital as they guarantee that refugees' rights are protected, even in the lack of official refugee legislation. For instance, the Supreme Court has depended on Articles 14 (Right to Equality), 21 (Right to Life and Personal Liberty), along with other fundamental rights to safeguard refugees' access to essential services and deter arbitrary deportation. While these safeguards are essential, they frequently lack consistency and fail to deliver the long-term legal assurance that a specific refugee law would supply.

SUGGESTIONS AND RECOMMENDATIONS FOR IMPROVING REFUGEE PROTECTION IN INDIA

6.1 Need for a Domestic Refugee Law

A national refugee law is crucial to guarantee that refugees in India obtain the protection and rights they are entitled to. In the absence of such legislation, refugees are effectively at the whim of the administration, where their rights are regarded as privileges instead of enforceable rights. A dedicated law would establish the safeguarding of refugees, developing a clear and uniform framework for acknowledging and responding to their requirements. This legislation would not only define refugees but might also extend its reach to cover "internally displaced persons" (IDPs), including Kashmiris uprooted by conflict. A federal law would offer legal clarity, streamlining the process of granting refugee status to be simpler, more transparent, and less subject to arbitrary decisions.

6.2 Legal Framework for Refugee Protection

Creating a refugee law would enable India to override current legislation, like the Foreigners Act and the Passport Act, which do not adequately cover the complexities of refugee protection. These regulations frequently regard refugees as if they were foreigners, imposing the same administrative obstacles on them, failing to acknowledge their requirement for specific protection. A law tailored for refugees would simplify the procedure for obtaining refugee status and ensure uniform legal protections for refugees nationwide. Moreover, a thorough refugee law would guarantee that every refugee receives equal treatment, irrespective of their nationality. It would also tackle the biased practices that presently exist in the treatment of various groups of refugees.

6.3 Addressing the Needs of Vulnerable Groups

A major challenge in the acceptance of electronic evidence is the concern regarding privacy and data protection. India and the UK share worries regarding the possibility of overreach during the collection of digital evidence, particularly in criminal cases that may involve personal data. In India, the swift advancement of surveillance technology and data gathering provokes worries regarding individual privacy rights, as the government persistently broadens its implementation of digital monitoring systems. In the UK, the implementation of mass surveillance initiatives, especially under the Investigatory Powers Act 2016, has ignited discussions regarding the equilibrium between national security and personal privacy. This segment explores these issues, examining the measures and legal safeguards established to guarantee that electronic evidence respects individual privacy rights, as well as how these matters are approached in India and the UK.

6.4 Housing and Employment for Refugees

An essential element of refugee protection is making sure that refugees can sustain themselves and live with respect. Refugee legislation must tackle housing and job concerns, allowing refugees to achieve self-sufficiency. Refugees must be granted access to housing and job opportunities free from discrimination or exploitation. The government ought to collaborate with civil society groups to enhance the living conditions of refugees. These organizations offer essential assistance in fields like education, healthcare, and job training, facilitating a smoother integration of refugees into Indian society.

SUMMARY AND FUTURE PATHS

7.1 Development of a Comprehensive Refugee Law in India

Research should concentrate on developing a particular national refugee law that clearly defines the rights and protections afforded to refugees. The legislation ought to streamline the procedure for granting refugee status, thoroughly outline what constitutes a refugee, and ensure protections that encompass housing, healthcare, and job opportunities.

7.2 Human Rights and Refugee Protection

Future research should explore ways to better incorporate human rights into protections for refugees. This would involve making certain that the rights of women, children, and other at-risk groups are given priority. Studies could additionally investigate the ways in which India's commitments under international human rights treaties align with national legal practices.

7.3 The Role of Civil Society Organizations

Future studies might investigate ways in which CSOs can partner with the government to meet the urgent needs of refugees and facilitate their long-term integration. Research could evaluate how CSOs operate on the ground, the obstacles they encounter, and possible collaboration frameworks with the government that can aid refugees.

7.4 Refugee Integration and Self-sufficiency

Studies ought to explore how refugees can be assimilated into Indian society in a manner that encourages self-reliance. This might involve emphasizing vocational education, job opportunities in the legal sector, and availability of housing. Examining how refugees can add value to the local economy while still obtaining assistance from the government is a significant field of study.

7.5 Regional and International Cooperation

Studies can examine how India might work together with neighboring nations and global organizations to tackle the refugee crisis more efficiently. This involves examining how India's policies might align with regional and global frameworks for protecting refugees and exploring ways to strengthen cross-border collaboration to assist them.

CONCLUSION

The topic of refugee protection in India continues to be a complicated and insufficiently addressed field of law and policy. Although India has yet to ratify the 1951 Refugee Convention, the judiciary in the country has been pivotal in defending the rights of refugees, frequently referencing constitutional clauses to uphold their basic rights. Nonetheless, this safeguard is scattered and irregular, primarily because of the lack of a formal refugee statute. In India, refugees encounter many difficulties due to the absence of a specific legal framework, such as undefined legal status, susceptibility to exploitation, and restricted access to vital services. The current legal framework, dependent on a mix of different laws, does not effectively or fairly tackle these problems. Specifically, refugees of various nationalities experience unequal treatment, and women and children encounter specific vulnerabilities that existing protections fail to sufficiently address. Consequently, there is an urgent need for the establishment of a national refugee law to create a clear, consistent, and comprehensive system for safeguarding refugees. This legislation ought to encompass measures

for determining refugee status, ensuring equal treatment for all nationalities, and offering targeted protections for at-risk groups including women and children. Additionally, cooperation between civil society organizations and the government will be essential in addressing refugees' urgent needs and ensuring their path towards self-sufficiency and societal integration. In summary, although the judiciary's role in safeguarding refugees in India is praiseworthy, it is crucial for the government to implement a dedicated refugee law to formalize these safeguards and rectify the several deficiencies in the existing framework. The creation of a national refugee law would not only reinforce India's dedication to human rights but also guarantee that refugees receive dignity, equality, and justice.

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