



## Protection of refugees in India: An analysis

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### Abstract

India, the biggest democracy in the world, has not ratified the 1951 Refugee Convention and does not currently have any specific domestic laws protecting refugees. India asserts that it upholds the internationally acknowledged and firmly established principle of non-refoulement and offers refugee protection under Article 21 of the Constitution. Despite this, India remains the nation hosting the greatest number of refugees in South East Asia. India has implemented an administrative policy that is ad hoc in order to standardise refugee protection since 1947. Due to problems with discrimination against refugees, human rights violations, and a lack of basic amenities, the country has a bad reputation abroad. Therefore, the researcher looks into how the UNHCR, the Union Legislature, and the courts protect the rights of refugees and makes recommendations for how to improve the situation by enacting particular laws.

There are no unified policies or clear legal requirements for the diverse range of refugees that call India home. India has not ratified the 1951 Refugee Conference or the 1967 Protocol on the Status of Refugees. Therefore, the safety of refugees is restricted to temporary measures carried out with the help of Indian authorities, providing them with minimal legal protection for their well-being and safety in addition to minimal protection for their civil and political rights. It is vital to defend their rights and enhance their circumstances in India in order to assist refugees, asylum seekers, and other displaced populations in realising their fundamental human rights and having access to the legal system.

**Keywords:** Refugee, UNHCR, NHRC, Article 21, refugee law, non-refoulement

### Introduction

Any individual whose life is constantly in danger or whose living circumstances are unsuitable for his healthy survival and who flees to any other country in search of safety is considered a refugee. Despite having a de jure national status, he should be treated differently from a stateless person. However, the exact definition is any person who "is outside the United States of America of his nationality and is unable or unwilling to avail protection of that United States of America as a result of well-founded fear of being persecuted for motives of race, religion, nationality, club of a selected social organisation, or political opinion." The criteria used to assess a person's refugee reputation are derived from their nation of origin and are bolstered by objective variables. This definition has gaps because it no longer covers the most recent developments in refugee protection. The definition does not include individuals seeking refuge from natural disasters, internally displaced people as a result of hostilities, internal unrest, and civil wars, or individuals who identify as LGBTI.

Global family members and global borders are under the special jurisdiction of the union government, while law and order is a state concern under the Indian constitution. As a result, a number of significant businesses as well as the kingdom governments now have to deal with issues related to law enforcement and refugees. Furthermore, the union government establishes all rules pertaining to refugees; however, the management of the kingdom must bear the brunt of the problems associated with refugees, if not all of them.

### History of Refugee

As previously stated, India is among the few countries to have experienced a refugee crisis in the last fifty years. The

large-scale migration of people from distinct countries has made Indian history visible.

India's first 25 years after independence were devoted to taking in and caring for 20 million refugees. This resulted from India and Pakistan's partition. Consequently, India was forced to take on a task by providing relief to the displaced people from West Pakistan. "In the initial phase, one hundred and sixty relief camps were established, with an approximate cost of Rs. 60 crore." The Indian authorities implemented numerous measures to address the refugee crisis. The Rehabilitation Monetary Administration Act of 1948 was the most significant step that the government overreached. The biggest question raised by this act is what will become of these displaced people legally when the definition of "displaced man or woman" changed. A 1951 convention pertaining to the status of refugees defines the term "refugee." It is evident from observing the conditions of displaced men and women from India to Pakistan and vice versa that they are no longer in a different situation than refugees. When the Dalai Lama and his adherents fled and arrived in India in 1959, the country had to deal with yet another wave of refugees. The Indian government granted political asylum to the Dalai Lama and his followers. Ten million refugees fled from East Pakistan to India in 1971, creating another refugee crisis that the United States of America had to deal with. India was obliged by its humanitarian obligation to provide the refugees with a safe haven in exchange for this asylum. After a while, in 1983 and 1986, the flood of refugees from Bangladesh and Sri Lanka affects India once more. According to the Arena Refugee Report, India took in about 400,000 refugees in addition to at least 2,000,000 and a few hundred thousand internally displaced people.

Asylum seekers have existed since the very beginning. Primitive men would travel in search of food, shelter, and

other resources. King Ethelbert of Kent codified in law the right to apply for asylum in a church or other house of worship. In mediaeval Europe, many such laws were put into effect circa 600 AD. However, the 18th century saw the beginning of the end of these kinds of laws; at that time, many nations required identity documents in order for citizens to cross borders. Civil wars and conflicts between neighbouring countries were the main causes of migration. Almost 80,000 people were displaced and forced to seek refuge in Greece during the Balkan Wars. The major human displacement that occurred between the 19th and 20th centuries was caused by civil wars in nations like the USA, Spain, and Russia. The world witnessed its worst refugee crisis during World Wars I and II. People had no choice but to seek safety at designated locations throughout Europe in order to avoid certain death. After leaving Belgium for the Netherlands, nearly a billion refugees eventually scattered throughout Europe. The worst of the crisis occurred during World War II. Up until 1959, almost 900,000 refugees were dispersed throughout several European nations, the US, and over half a million other nations took in 461,000 of them.

### Refugees in India

The nation has consistently embraced and welcomed immigrants and refugees. Around the time of India's independence, a significant influx began. At the time of Indian independence, nearly 20 million people were displaced by crossing the borders between India and Pakistan. In order to handle the refugee crisis at the time, India passed the Rehabilitation Financial Administration Act 1948. During the 1971 war, about a million refugees fled East Pakistan and arrived in India. After 1959, the Dalai Lama and 80,000 Tibetan refugees sought safety in the nation, and India granted them political asylum while they were housed in various regions of the nation. The population of Tibetans is now a part of Indian society. While Chakmas have made their home in Tripura, Arunachal Pradesh, Assam, and other North Eastern states, other groups granted refugee status in India include Nepalese, Afghans, Bhutanese, Sri Lankan Tamils, and residents of small islands like the Maldives. Currently, over 200,000 refugees from all over the world call India home. However, the Rohingyas of Myanmar have emerged as the most contentious issue pertaining to migrants and internally displaced people. There is some unrest among the populace and political parties as a result of their arrival.

### India and 1951 Convention

The benefits of a historical advancement in the perception of refugees can be seen in the 1951 United Nations Refugee Conference. It was given in the aftermath of World War II's refugee movements in Europe. The 1951 Convention, which was best implemented for European nations, defined a refugee's status entirely in terms of their "well-founded fear of being persecuted." One definition of persecution is the persistent and deliberate violation of human rights resulting from the kingdom's inability to provide its citizens with safety. Therefore, it was most effective for people who had become refugees as a result of events that occurred before the adoption of the refugee convention.

The protocol pertaining to the status of refugees on January 31, 1967, eliminated this temporal issue when it was stated in the preamble that "new refugee situations have arisen because convention turned into followed." The reasons

behind the refugee's departure from their country of origin were no longer taken into account in the pre-convention definition. States started to get involved gradually, culminating in the definition of "refugee". The 1967 protocol is generally useful when managing refugees.

India believes that the 1951 convention is outdated and unsuited for countries in South Asia. This convention has no bearing on the innovative issues that are gaining traction in India. India continues to apply the subsequent positive articles of the 1951 Convention even though it has not signed it anymore.

- Article 7 as India presents refugees the identical treatment as all aliens.
- Article three as India applies a policy of non-discrimination.
- Article 3a as no penalty is imposed on illegal access.
- Article 4 where spiritual freedom is guaranteed.
- Article 16 as unfastened get admission to the courts is supplied.
- Article 21 lets in freedom of housing and refugees need not stay in camps.
- Article 27 and 28 provides identity and journey cards to refugees.
- Article 33 gives the precept of non refoulement.

The 1951 Conference is a crucial international instrument for human rights that, for the most part, focuses on the principle of non-refoulement, which states that a refugee cannot be forced to return to a place where his life is at risk. A refugee may not be expelled for any reason other than maintaining public order and national security, according to the convention.

The 1951 Refugee Convention, which was adopted in 1951 and went into effect on April 22, 1954, is the document that governs refugee matters. It defines the term "refugee," the rights of those who have been displaced, and the duties of States to protect them. It has been ratified by 145 countries. India is not a party to the agreement. India did not formally give a justification for refusing to sign the convention. The scholars presented a number of arguments, including a danger to national sovereignty, the Convention's narrow definition of "refugee," the nation's current social, economic, and political circumstances, etc. India, the world's biggest democracy, boasts a multi-party system along with a diverse range of cultures and traditions. As a result, the Statesmen never want outside interference in their internal affairs. Political parties use refugees as vote banks, which has an impact on the political stability of the country. Since each nation has the right to preserve its sovereignty, no state should raise objections when a state refuses to abide by international laws pertaining to internal affairs. India would be burdened and its security would be impacted if it complied with the convention and became a signatory. India is a developing country. India feels that it offers refugees minimum needs even if it is not a signatory.

### Protection under Constitution

India is required to protect refugees on humanitarian grounds by a number of international human rights treaties and conventions that it has ratified. A few fundamental tenets of customary international law, such as the "right to seek asylum from persecution," are applicable to all states, including India, and may be enforced by the government through the enactment of special legislation. The court in

Visakha v. State of Rajasthan affirmed the harmonious interpretation of both domestic and international law when it aligns with the fundamental rights outlined in Part III of the Constitution. The government offers refugees short-term protection. The Constitution also grants non-citizens certain fundamental rights. The most important provision is the ability to petition courts for the issuance of writs in cases where fundamental rights are violated. This is typically accomplished by filing PILs to guarantee the enforcement of refugee rights. The Constitution's Articles 14, 21, 22, 25–28, 32, and 226 grant some of the rights. The equality of law and equal protection under the law, which ensures equitable and just treatment for all refugees, is the most significant of them all. However, this is subject to comprehensible differentiation that distinguishes between citizens and refugees, as well as reasonable classification. Additionally, refugees have the right to life<sup>9</sup> and dignity, which does not equate to labour or living like animals.

Foreign nationals have a limited right to constitutional safety. These include the protection of equality under article 14 and the preservation of life and liberty under article 21 of the Indian Constitution. Furthermore, as stipulated in Articles 20, 22, 25, 28, and 32, they are entitled to the protection of proper acknowledgement. Both residents and non-residents can benefit from reading many of these articles. Article 14 ensures equal protection under the law and the same level of safety. The executive treats foreigners differently based solely on understandable differences that are related to the item and makes distinctions based on their wishes.

- The protection of private liberty and life is provided by Article 21. The state motion is denied by the magnificent court's interpretation of Article 21, which now includes a substantial due process law.
- The right against double jeopardy, the right against self-incrimination, and the ex post facto regulation are provided by Article 20. Article 22 provides appropriate resistance to apprehension and imprisonment.
- Articles 25 through 28 grant the freedom to freely exercise and spread one's faith as well as the right to judge what is right and wrong.
- The right to transport to the most suitable courtroom for the enforcement of the aforementioned fundamental rights is granted by Article 32.
- The Indian Charter's Article 51(c) states that the state must work to promote respect for international law and treaty obligations in the interactions between organised peoples.
- The Indian parliament has the authority to enact regulations for the entirety or any portion of India's territory in accordance with Article 253 of the charter, in order to enforce any treaties, agreements, or conferences with other USA members as well as any decisions made at international conventions, associations, or bodies.

### Legislative Protection

India has a federal system since it is a Union of States. The Parliament, which is the Union legislature, has jurisdiction over matters pertaining to citizenship, naturalisation, immigrants, refugees, and aliens. There is no specific legislation in India that addresses refugee issues and governs their entry and status. For their own gain, the political elite has managed the situation.

In India, there is no clear legislation pertaining to refugees. The Foreigners Act of 1946 (No. 31 of 1946), which distinguishes between aliens and refugees and intensifies persecution of the latter, is the primary legislation addressing the matter. Unless a special provision is made, the refugees are treated under the same laws that apply to foreigners in India.

The other enactments related to refugees are:

- India Penal Code Act, 1860 (No.45 of 1860)
- Passport (Entry into India) Act, 1920 (No.34 of 1920)
- Citizenship Act, 1955 (No.57 of 1955)
- Extradition Act, 1962 (No. 34 of 1962)
- Passport Act, 1967 (No.15 of 1967)
- Illegal Migrant (Determination by Tribunals) Act, 1983 (No.39 of 1983)
- Protection of Human Rights Act, 1993 (No.10 of 1994)
- Foreigners Act, 1946.
- Foreigners Order, 1948

Genuine refugees and other foreigners such as financial migrants, tourists, and college students are treated equally under the Passport (Entry into India) Act of 1920 and the Passport Act of 1967. Consequently, in the event that they do not have a valid passport, the refugees face an enormous risk of being detained by immigration authorities and expelled without legal means. Since refugees will be fleeing conflict and will not have time to obtain a passport, penalties should not be applied to them. Accessing passport offices is often impossible in foreign locations because of infrastructure deficiencies and distance. As long as the public interest requirements are met, refugees who successfully enter Indian territory will be issued valid passports and identity cards. Still, the best Tibetan refugees received valid passports up until this point. Their non-secular chief and political leadership both reside in India, and their parliament is housed there, which explains why they are granted a "privileged remedy." Because it undermines India's sovereignty, some students are critical. It might be argued that in order to protect national interests, no refugee is granted the fundamental right to freedom of movement or an identity card. In addition, the lack of identification makes it difficult for refugees to obtain ration cards, open bank accounts, or rent housing. It is paradoxical in that the administration may also grant this right based on a case-by-case analysis and the implementation of reasonable regulations, even though the constitution does not guarantee freedom of movement. Since all refugees should receive the same treatment while in India, this clearly breaches the equality precept.

In Indian legal terminology, "alien" also refers to "refugee." Section 83 of the Code of Civil Procedure, Section 3(2)(b) of the Indian Citizenship Act, 1955, and Article 22 of the Indian Constitution (Article 22, Paragraph 3 and Entry 17, List I, Schedule 7) are the primary sources that address the term "alien." Complications increase with the number of laws. The authority for officials to detain or arrest any foreign national on the mere suspicion of breaking the law is granted by the Foreigners Act, 1946.

Indian legislation protecting refugees is inadequate and does not meet international norms. To safeguard its citizens, the nation requires more laws. One established international principle that needs to be incorporated into the national legislative framework is the Principle of Non-Refoulement, which states that "no country shall deport, expel, or

forcefully return the refugee back to his original territory against his will or if there is a reasonable threat to his life, liberty, and freedom."

### **Analysis of the Role of UNHCR in India**

Human rights are the basic freedoms accorded to all people equally and without discrimination. It is regarded as one of the behaviours that is widely accepted. The kingdom's transgression of those norms results in a circumstance that generates refugees. By definition, refugees are the people who have had their human rights violated.

Although it has not ratified the 1967 Protocol or the 1951 Convention on the Status of Refugees, India has ratified several international human rights conventions that require it to protect refugees primarily on humanitarian grounds. The UN's 1967 territorial asylum announcement, the 1948 Everyday Statement of Human Rights, the international conference on civil and political rights, the convention on the abolition of discrimination against girls, the international convention on economic, social, and cultural rights, and the prohibition against torture and cruel, inhuman, or degrading punishment are a few examples.

In India, human rights devices play a crucial role in defending the rights of refugees. In order to ensure the safety of its refugees, India has not complied with any national or international refugee regulations. The Human Rights Act of 1933 established the National Human Rights Commission and gave it considerable authority, providing a positive step in the expansion of refugee safety in Indian territories. The act establishes human proper courts on the kingdom stage to provide prompt trials and justice for violations of human rights. The UN and other organisations, particularly NGOs, are helping member states reduce the number of refugees by employing human rights devices in their immediate vicinity in an effort to save your flight.

### **Judicial Protection**

The judiciary, as opposed to the legislature, has been essential in safeguarding refugees. It has rendered historic decisions about refugee protection in numerous cases. By putting Social Action Litigation and Public Interest Litigation into practice, the judiciary has brought relief.

In *Digbijay Mote v. Union of India*, 10 an NGO operated a school for Sri Lankan refugees, and when operating the school presented challenges, a PIL was filed. It was mandated that the Ministry of Women and Social Welfare give the school money so that refugees could attend. In *Majid Ahmed Abdul Majid Mohd Jad Al Hak v. Union of India*, the High Court affirmed that since food and medical attention are the bare necessities for survival, they should be given to detainees (refugees).

The Supreme Court granted a stay of the deportation order against 21 Burmese refugees in *Malvika Karlekar v. Union of India*, allowing them to apply for UNHCR refugee status on the grounds of non-refoulement.

The court determined that everyone has the fundamental right to life, liberty, and dignity in *Louis De Raedt v. Union of India*. In line with this right to life is the prohibition against arrest and detention (Article 22). In one instance, the Guwahati High Court granted temporary bail to detained Burmese refugees, showing consideration for their situation by omitting the requirement for local sureties. In detention cases, the courts have similarly granted a liberal

interpretation to enable the UNHCR to ascertain the refugee's status.

However, in a number of cases, the courts have taken a lenient stance when it comes to the punishments meted out for illegal entry or activities committed by refugees in India. Additionally, refugees continue to face the risk of being apprehended, detained, and prosecuted for violating the Foreigners Act of 1946 and the Foreigners Order of 1948, even though these actions are postponed and deferred until their refugee status is determined.

### **Issues Faced by Way of Refugees in India**

Many countries protect their refugees by passing laws pertaining to them that are based on universally accepted principles. The nations that have ratified the conference have a procedure in place for identifying refugees and dealing with issues related to their protection.

Even though India has not yet signed the conference, it is still providing protection for the refugees. Because there is no central framework that addresses refugees, India lacks a consistent system for gauging the popularity of refugees. There are still a lot of holes in the system for overseeing refugee policy after all these years. This is because the government no longer has regulations for refugees due to the various problems encountered when using them, and since no appropriate regulation has yet been surpassed, the reputation of refugees in prison is appalling.

The Indian judiciary has played a pivotal role in providing refugee protection. Tens of millions of refugees who fled their home country and crossed a globally recognised border are now residing in Indian territory thanks to certain court decisions made by multiple high courts and the preferred court docket. The constitutional provision safeguarding the rights of refugees has been invoked by the courts.

### **Conclusion**

Adopting a model national law is the first step towards ensuring refugee safety in India. The only resources available to protect refugees are the judiciary and human rights units; however, these measures are only effective in certain situations and become problematic when there is a large-scale migration of refugees from particular states. Therefore, it is extremely important to draft legislation on refugees in order to create a uniform legal framework that will allow people to understand their rights. The UNHCR and domestic NGOs complement one another well. The UNHCR's most basic task is to assist refugees under its mandate. When the Indian government refuses to allow the UNHCR and other international humanitarian organisations entry, local NGOs assume a critical role in offering "protection" to the refugees. Domestic law can be used to distinguish refugees from idps and provide them with additional protection. As a result, India is no longer required to notify the 1951 conference because it already has protection from the Indian judiciary and charter. It is past time to consider passing specific legislation on refugees that would allow future refugees to enter India without violating any human rights. It is imperative that this aspect receives adequate attention in the event that the USA enacts a separate "refugee law." It is imperative that law enforcement and protection personnel do not overlook the legal aspects of the "refugee" situation, nor the underlying human aspects thereof.

Despite numerous laws and conventions protecting them, refugees continue to face difficulties. The lack of a national refugee law in a nation the size of India is the main reason why the refugees are not adequately protected. Collaboration between UNHCR and government agencies will lead to significant advancements in the field of refugee law. India must undoubtedly enact legislation pertaining to refugees since, for a variety of reasons, there may be a lot more problems in the years to come. India could use domestic law to guarantee that every refugee receives the bare minimum of protection. Without it, refugee rights are merely privileges granted by the administrative authorities rather than rights in the true sense. It is possible to guarantee refugees a suitable place to live and work in exchange for their independence. To enhance their living conditions, civil society organisations ought to cooperate with the government and the UNHCR. It is important to make special provisions that guarantee the safety of women and children.

NGOs need to do more to support refugees whenever UNHCR tries to take action. Even though the Constitution offers protection to refugees under several provisions, there should be a uniform that grants each refugee equal rights. Given the security concerns that prevent India from joining the 1951 Convention, it should also take into account the fact that those who come seeking assistance do not abuse or misuse the refugee law. Numerous rulings from Indian courts have sided with the refugees. India has made incredible progress in helping refugees, but much more work remains. Support is being provided to a large number of Rohingya refugees in India; however, the government intends to return them to their homeland. The government did not reply to a report that the NHRC previously submitted regarding the need for a refugee law. There might be a solution if UNHCR and NHRC work together to take similar action. Many nations have signed the 1951 and 1967 Protocols, as well as the Refugee Convention, which has garnered international attention. They tell us what rights and other provisions they should have and take into account most of the reasons why people become refugees. India has not yet embraced them or included them into its local laws, though. As a democratic republic, India is in dire need of its own refugee laws to regulate refugees entering the country.

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