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LEGAL ASPECTS OF REFUGEE RIGHTS IN INDIA

~ *Pia Chopra*

India- a land of diverse cultures, religions, regions and aspects has come out to me one of the most liberal nations when it comes to refugee rights. The country itself has a culture of welcoming people from various sects and regions with open arms. Yet, when it comes to the legality of refugee rights, its stance on refugees becomes a study in paradoxes, like a house guest that is welcomed with a cup of tea but is left standing on the veranda in the rain, protected by vague hospitality, and yet, denied the warmth of full accommodation.

This article unpacks the complex Indian laws around refugee rights, which comes out to be an intricate dance between humanitarian openness and sovereign caution and how recent reforms and controversies have actually shaped the debate in October 2025.

INDIA'S LEGAL FRAMEWORK: THE CURIOUS CASE OF REGULATION WITHOUT LEGISLATION

While the international community wields the 1951 Refugee Convention like a universal umbrella for refugee rights all around the world, India itself has charted its own legal pathways for the same. India has not signed the 1951 Convention or even the 1967 Protocol, and there is no domestic refugee law. Most of the times, refugees are shoehorned into the legal category of “foreigners,” bundled together with tourists and expatriates under the Foreigners Act of 1946, the Passports Act of 1967 and other statutes.

This “one size fits all” approach means that India gets to maintain absolute discretion over who stays and who is shown the door. The Foreigners Act vests the central government with the power to admit, regulate, expel or even detain any non-citizen. It's a legal bundle

designed more by the executive than codified by human rights, thus, its applicative freedom depends on the executive and its major aspects may or may come into force whenever applicable.

JUDICIAL BAND-AIDS AND CONSTITUTIONAL GAPS

If laws are meant to be the bones of the body, then constitutional principles are the marrow. Without both, India would fail in its bodily governance. It is rich in offering Article 21- the right to life and liberty and Article 14- the right to equality to “all persons,” not just its citizens. The Supreme Court has, at times, stretched these rights to offer protection, however minimal to some select people, but again, that has been a legal rarity. Article 21, theoretically covers the rights of refugees against arbitrary expulsion (non-refoulment), dereliction, or discrimination, however, still, judges themselves note, protections for refugees often melt in the heat of political urgency or national security.

An example of the same is the case of Mohammad Salimullah v. Union of India (2017), which challenged the Indian government’s order to deport Rohingya refugees, arguing that such deportation would violate the very principle of non-refoulment under Article 21 of the Indian Constitution. While the courts acknowledged this protection under Article 21, even for non-citizens, they had inserted a caveat: if the presence of refugees was considered to be prejudicial to national security, protection could very well be denied. Thus, even fundamental rights like non-refoulment can “melt” under the heat of major concerns like the national security of the country.

Still, the gap between these constitutional ideals and realpolitik is wide. While rights exist in principle, they lack a consistent legal definition of “refugee” since it leaves their practical application as quite uncertain- much like a well-oiled machinery malfunctioning due to a rusted engine.

THE POLICY FRAMEWORK: SELECTIVE INCLUSION AND THE GHOST OF CAA

India’s policy toward refugees resembles that of a half-stitched quilt, some parts of it are war and inclusive, while others are threadbare and full of holes. A major line of stitches appeared in 2015 which was reinforced with the Citizenship (Amendment) Act (CAA) of 2019. In

simple words, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians that were feeling countries like Afghanistan, Bangladesh or Pakistan could enter and eventually stay, even without papers while Muslims who were fleeing identical or worse persecution found this escape hatch to be slammed shut for them.

The Immigration and Foreigners (Exemption) Order, 2025, consolidates these exceptions into a formal legal scaffold. It expands certain kinds of protections while also setting up explicit, state-mandated detention centres for those who are deemed “illegal.” Sri Lankan Tamils, Tibetan refugees and specific religious minorities receive bespoke waivers. However, we see the apparent bias when it comes to Rohingyas, Rohingya Muslims and most Afghan or Chinese dissidents, who are subjects of selective hospitality, welcomed in principle, surveilled in practice and yet, remain vulnerable to deportation.

RECENT DEVELOPMENTS: IMMIGRATION AND FOREIGNERS (EXEMPTION) ORDER, 2025

India’s latest legislative embroidery which is called the Immigration and Foreigners (Exemption) Order, 2025, is both a good gain as well as a bad one. It does streamline exemptions for protected categories but formalises the detention for others, thereby, making the process less arbitrary yet more rigid. For the first time, every Indian state and union territory is tasked to open dedicated holding centres, thus, formalizing what was previously an ad-hoc and often opaque exercise.

Even though the Sri Lankan Tamil refugees in Tamil Nadu are now protected from forced repatriation, their eligibility for citizenship or Long-Term Visas (LTVs) remains stymied due to bureaucratic hurdles. Thus, policy makers have recommended a more liberalized criteria and modelling after the Tibetan certificate of identity, thereby emphasizing integration over indefinite limbo.

INTERNATIONAL LAW: DANCING WITH AND SOMETIMES, DODGING THE UN CONVENTION

India’s case for sovereignty is somewhat crouched in its refusal to sign the UN Refugee convention, arguing that it is Euro-centric and unsuited to local realities. Instead, India votes for the Universal Declaration of Human Rights (UDHR) and joins various international

human rights treaties, but positions the principle of non-refoulment as a matter of constitutional interpretation rather than a binding treaty law.

This means that India can help the person it likes while politely declining the binding commitments for everyone. As a result, the legal status of “refugee cards” issued by the UNHCR is tenuous, useful as an entry pass but rejected by the Supreme Court at times as a bureaucratic oddity.

UNHCR: A FRIEND OR A FOE IN INDIA’S REFUGEE HISTORY?

UNHCR attempts to mostly fill the legal vacuum by registering asylum seekers and issuing refugee cards. However, a recent tongue-in-cheek critique by Justice Surya Kant likened this to the UNHCR “opening a showroom,” handing out valuables without adequate government license, thereby, highlighting the inherent tension between international protection and national control.

Some executive agencies and police forces also regard these documents with a lens of suspicion, claiming it as a diplomatic voucher that is only as good as a government’s willingness to honour it. This dynamic explains why sometimes, even registered refugees, like the Rohingya, are sometimes deported on the grounds of “security,” with the Supreme Court upholding these actions by citing state discretion.

THE HUMANITARIAN IMPERATIVE: ADVOCACY FOR A NATIONAL REFUGEE LAW

The choral refrain among the rights activists and the UN agencies is clear: adopt an integrated national refugee law that is aligned with the international standards. India alone houses nearly 2,13,000 refugees from Sri Lanka, Afghanistan, Tibet and Myanmar and yet, it still stands at a crossroad. Ad-hoc generosity is no match for binding procedures in granting, denying or rescinding asylum.

A comprehensive law would grant defined protections, prevent “accidents” of justice and even ensure fair process where a refugee’s fate swings on the political mood or local discretion. Sections on children’s rights in proposed asylum bills exemplify how targeted

legal guarantees such as healthcare, education, protection of exploitation could actually transform the legal landscape for those who are the most vulnerable.

SOVEREIGNTY AND SECURITY: THE PARADOX

Like every other nation, even India fears that excessive hospitality might invite wolves in sheep's clothing. Hence, there have been arguments for stricter controls, detention centres and even selective acceptance that invoke concerns over terrorism, demographic anxiety and the finite nature of resources. "Sovereignty is not a doormat"- several officials remind, echoing the view that open-minded refugee flow could trample upon national cohesion and security.

However, critics also argue that the best defence of sovereignty is not that of a fortress bristling with suspicion, rather, it is a resilient house with clearly drawn rules of engagement, the kind that is best codified by the law itself. As history shows, ambiguity breeds abuse and undermines both the safety and reputation.

THE DEMOGRAPHIC DILEMMA: INTERNATIONAL REPUTATION AND SOFT POWER

India's carefully curated international image as a "democratic, pluralist champion" now hangs in the balance. Inconsistent policy and charges of selective exclusion of refugees belonging to communities like those of Muslim and some ethnic minorities risk chipping away at its global standing and inviting criticism on several platforms spanning from Geneva to New Delhi.

Conversely, a principled and objectively applied refugee law could strengthen India's "soft power," proving that compassion does not need to be hostage to security and that order thrives when rules are clear. Ambiguity in such cases invites anxiety and more often than not, violence, thus, pitting communities against one another.

THE OPEN DOOR OR THE LOCKED GATE?

Navigating refugee policy is a high-wire act, lean too far into open-armed humanitarianism and risk destabilizing influence, err towards rigid exclusion, and compromise on international good faith. India's debate, thus, remains as that of balance between dharmic tradition and pragmatic constraint, national anxiety and constitutional aspiration.

However, both sides agree on one thing: the current system, rife with discretion, ambiguity and selective compassion leaves everyone, refugees and nationals alike, in a perpetual state of human and legal insecurity. The time is ripe for clarity, courage and fairness that shall ensure the making and establishment of a new, unified law that welcomes with dignity while guarding the door with reason.

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