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LEGAL FRAMEWORK GOVERNING REFUGEE PROTECTION IN INDIA: EXISTING MECHANISMS AND CHALLENGES

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INTRODUCTION

India has historically provided asylum to diverse displaced communities despite not having a domestic refugee law. From Tibetan refugees in 1959 to Sri Lankan Tamils in the 1980s, India has demonstrated humanitarian principles embedded in its constitutional and civilizational traditions.¹ This tradition can also be traced to the ancient concept of “Vasudhaiva Kutumbakam”, which has also become a core of India’s soft diplomacy in recent years.² Yet, India has no dedicated statute for refugee protection which has resulted in several legal and institutional challenges.³

This article explores the international as well as domestic legal framework surrounding refugee status and protection in India, its practical application, the existing challenges, and possible reforms.

INTERNATIONAL REFUGEE PROTECTION FRAMEWORK

The 1951 Refugee Convention stands as the cornerstone of international refugee protection today. It defines a “refugee” as someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.⁴ Later, the 1967

¹ Nikhil S. Dongre, *Refugee Protection in India in the Absence of Specific Legislation: Legal Analysis* (May 1, 2026), <https://doi.org/10.2139/ssrn.6733964>.

² Ministry of External Affairs, G-20 and India's Presidency, Press Information Bureau (Dec. 10, 2022), <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1882356®=48&lang=2>

³ Dongre, *supra* note 1.

⁴ Convention Relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S. 137.

Protocol expanded its scope by removing geographical and temporal limits from the 1951 Convention.⁵

The Convention aims to codify refugee rights with certain fundamental principles of non-discrimination, non-penalisation, and non-refoulement. Among these, the principle of non-refoulement (Article 33) provides protection to refugees from expulsion or deportation against their will to a territory where they fear threats to life or freedom.⁶ Non-refoulement has become embedded into the customary international law. Legal scholars argue that it has achieved the status of a *jus cogens* (peremptory) norm, making it non-derogable for all states, including non-signatories.⁷

Moreover, it provides the refugee with basic minimum standards for treatment in the country that they have sought asylum in. These include: access to courts, primary education, right to work, and provisions for documentation.⁸

It is fundamentally based on Article 14 of the Universal Declaration of Human Rights which states that “everyone has the right to seek and to enjoy asylum in other countries from persecution.”⁹ International Covenant on Civil and Political Rights (ICCPR), to which India is also a signatory, creates an implicit obligation on States to not return individuals to a place where they face a “real risk of irreplaceable harm” (Articles 6 and 7).¹⁰ India has also been a member of the UNHCR Executive Committee (ExCom) since 1995 and in 1996 India joined a consensus statement that states that the principle of non-refoulement is not subject to derogation.¹¹

The following section examines how India has sought to protect refugees through its domestic legal framework despite the absence of dedicated refugee legislation.

INDIA'S EXISTING LEGAL FRAMEWORK

⁵ Protocol Relating to the Status of Refugees art. 1, Jan. 31, 1967, 606 U.N.T.S. 267.

⁶ Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137.

⁷ Mike Sanderson, *The Role of International Law in Defining the Protection of Refugees in India*, 33 Wis. Int'l L.J. 46 (2015).

⁸ Convention Relating to the Status of Refugees arts. 20-24, July 28, 1951, 189 U.N.T.S. 137.

⁹ Universal Declaration of Human Rights art. 14, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹⁰ International Covenant on Civil and Political Rights arts. 6-7, Dec. 16, 1966, 999 U.N.T.S. 171.

¹¹ U.N. High Comm'r for Refugees, *Executive Committee Members and Standing Committee Observers for the Period October 2024-October 2025* (Oct. 2024), <https://www.unhcr.org/sites/default/files/2024-10/excom-members-and-standing-committee-observers-english.pdf>.

India is not a signatory of the International Convention of 1951 or the 1967 Protocol. It does not even have a standalone domestic statute for the status of refugees. Even so, India has managed to provide asylum to a diverse refugee population across timelines and borders. According to UNHCR, India has registered 48,342 refugees and asylum seekers with UNHCR as of February 2026. However, the actual refugee population far exceeds this figure as the major portion of the whole is administered directly by the Government of India. This has been possible because refugee protection in India is provided through a combination of immigration statutes, judicial protection, executive action, and international obligations.¹²

One such source of protection is the Indian Constitution as it is considered highly compatible with modern humanitarian principles. Article 14 guarantees equality before the law and equal protection of laws, while Article 21 guarantees protection of life and personal liberty.¹³ Since these rights apply to non-citizens as well, it has allowed the courts to extend basic human rights protection to refugees. It has been evident in cases such as the *NHRC v. State of Arunachal Pradesh* (1996) where the court protected the Chakma refugees against deportation.¹⁴ Moreover, in case of absence of domestic legislation, Indian Judiciary has held that courts may rely upon the international norms and obligations under Article 51(c).¹⁵ This means that unless the international law contradicts with the constitution, it can be applied in times of need. Since a standalone domestic legislation does not exist for refugee protection in India, in times of need, the international norms may be applied where they do not conflict with domestic law.

India follows a dual refugee protection system where some refugee groups are directly administered by the central government and the rest are registered with UNHCR. The Central Government draws its authority from the Immigration and Foreigners Act, 2025¹⁶, according to which “foreigner” is a person who is not a citizen of India. This includes refugees, asylum seekers, and other foreign nationals as well. Through this act, the central government can regulate the entry, stay, movement, and removal of foreigners. The other statutes that offer support are the Passports Act, 1967 and the Citizenship (Amendment) Act (CAA), 2019. While the Passports Act handles the issuance of travel documents, the CAA provides a faster

¹² U.N. High Comm'r for Refugees, *India Fact Sheet: January-February 2026* (2026).

¹³ INDIA CONST. arts. 14, 21.

¹⁴ *Nat'l Hum. Rts. Comm'n v. State of Arunachal Pradesh*, (1996) 1 S.C.C. 742.

¹⁵ INDIA CONST. art. 51(c).

¹⁶ Immigration and Foreigners Act, No. 13 of 2025, INDIA CODE (2025).

way to attain citizenship for persecuted religious minorities from Afghanistan, Bangladesh, and Pakistan.¹⁷

EXISTING INSTITUTIONAL MECHANISMS

The refugee protection under the central government is handled by the Ministry of Home Affairs. It is the lead agency for the recognised refugee groups such as Tibetans and Sri Lankan Tamils. The refugee status is granted on a case-by-case basis. The ministry oversees and issues the Registration Certificates and Identity Certificates (RCs and ICs) which provide access to state-funded welfare. The Central Government holds the absolute discretion over the entry, stay, and expulsion of all non-citizens.¹⁸

The UNHCR India, by the consent of Government of India, handles the refugee groups that are unrecognised by the state apparatus. It plays an important role in conducting Refugee Status Determination (RSD) and issuing “Blue” mandate identity documents. The blue document indicates that the refugee status is under consideration. The UNHCR also provides legal aid, education, voluntary repatriation, and third-country resettlement. Since its physical operations are largely restricted to New Delhi, it has launched the “Digital Gateway” platform in December 2025. The Digital Gateway is a self-service platform that updates data and reports vital life events such as births or deaths digitally. It has the potential to address the challenge of a legal vacuum due to unavailability of official government identity documents.¹⁹

Finally, the National Human Rights Commission (NHRC) acts as a crucial public defender for refugees under the Protection of Human Rights Act. It is prominent for filing PILs to enforce Article 21 protections, most notably in the *NHRC v. Arunachal Pradesh*²⁰, where it successfully protected the Chakma refugees from being expelled. The NHRC also conducts national surveys to determine systematic gaps in implementation. These survey reports are later issued as policy advisories to the government.²¹

Therefore, Refugee Protection in India is implemented through a combination of multiple institutions. While this approach has allowed India to protect diverse refugee groups, it also

¹⁷ The Passports Act, No. 15 of 1967, INDIA CODE (1967); The Citizenship (Amendment) Act, No. 47 of 2019, INDIA CODE (2019).

¹⁸ Immigration and Foreigners Act, *supra* note 16.

¹⁹ UNHCR, *supra* note 12.

²⁰ Nat'l Hum. Rts. Comm'n v. State of Arunachal Pradesh, *supra* note 14.

²¹ Nat'l Hum. Rts. Comm'n, *Refugees in India: A National Survey of Refugee Communities' Access to Education, Healthcare and Livelihoods* (July 2024).

points to overlapping responsibilities and non-uniform standards of protection. Hence, the differentiated treatment as discussed in the previous section persists.

CHALLENGES AND THE WAY FORWARD

Regardless of the statutes, constitutional backing, and judicial protection, the demands for a dedicated refugee law have not withered away. It is due to the ad-hoc approach that these dispersed initiatives present. Scholars argue that a lack of legislative action on this issue has created differences in treatment of different refugee groups depending on their ethnicity, religion, and the country of origin. Since refugees are legally indistinguishable from tourists, students, or “illegal migrants”. This results in a “strategic ambiguity” where the state retains maximum flexibility to treat different groups according to shifting political and security considerations rather than statutory rights.²²

For example, the Tibetan refugee group has received significant support from the government and through policies such as the Tibetan Rehabilitation Policy (2014) it continues to do so. However, the other groups from Somalia, Afghanistan, and Myanmar have received less or even negligible support from the government. Thus, these unrecognised groups often have to rely solely on UNHCR.²³ The Mohammad Salimullah v. Union of India (2021)²⁴ case is also evidence to this differentiated treatment where the Supreme Court decided to deport the Rohingya refugees citing concerns over national security.

The recent Citizenship (Amendment) Act, 2019, can also be considered one of the examples of this differentiated treatment. It provides an expedited pathway to citizenship for persecuted religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians) from Afghanistan, Bangladesh, and Pakistan who arrived before December 31, 2024. However, it excludes Muslims as well as refugees from other nations such as Myanmar.²⁵

As Sanderson notes, without a statutory framework, the refugees have to live under a “regime of charity” and that charity could turn its back on them anytime as it is dependent on the executive whim.²⁶ Every person, according to Article 14 of the UDHR, has the right to seek

²² B.S. Chimni, *Status of Refugees in India: Strategic Ambiguity*, in *Refugees and the State: Practices of Asylum and Care in India, 1947-2000* 443, 444 (Ranabir Samaddar ed., Sage Publ'ns 2003).

²³ NHRC, *supra* note 21.

²⁴ Mohammad Salimullah v. Union of India, AIR 2021 SC 1789.

²⁵ Citizenship (Amendment) Act, *supra* note 17.

²⁶ Sanderson, *supra* note 7.

asylum and under Article 25 right to adequate standard of living.²⁷ A regime of rights is what every human deserves, including refugees, rather than a regime of charity.

Therefore, the biggest and most foundational challenge is having no uniformity in refugee status as well as treatment due to the absence of a dedicated refugee law. No existing statute provides a proper definition of who a refugee is, which has led to them being treated as equals of foreigners under the Immigration and Foreigners Act, 2025.²⁸ This creates uncertainty in the legal framework for the protection of refugees. Therefore, a National Refugee Law should be enacted that clearly defines a refugee, establishes a proper mechanism for Refugee Status Determination, and enforces legal rights for them. This would significantly decrease the ad-hoc approach discussed earlier in this article.

The major reason for not creating such a statute has been cited in the national security concerns.²⁹ These concerns deserve to be respected; however, the refugee protection also needs to be ensured. This paradox has created the biggest obstacle in the path towards establishing a uniform refugee protection law, which has led to the previously mentioned differential treatment of refugee groups. Therefore, robust mechanisms for identity verification and border management should be developed for determining the specific individuals who need to be expelled, for which a dedicated Central Refugee Commission shall be established. The Commission shall also work with UNHCR to integrate the data from the UNHCR Digital Gateway platform with national systems to address the legal vacuum.

India is already obliged by the principle of non-refoulement as a non-derogable norm due to its obligation under the ICCPR treaty and its commitments as a UNHCR ExCom member.³⁰ Hence, a domestic law would only formalize these already existing international obligations.

CONCLUSION

Despite not being a party to the 1951 Convention or the 1967 Protocol that followed it, India has largely succeeded in refugee protection, being considerate of both the national security and the humanitarian principles. However, as discussed in this article, the existing mechanisms have also led to an inconsistent and fragmented way of treating refugee groups,

²⁷ Universal Declaration of Human Rights arts. 14, 25, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

²⁸ Immigration and Foreigners Act, *supra* note 16.

²⁹ Col. Subodh Verma & K. B. Asthana, *An Analytical Study of India Signing the United Nations Convention on Refugees: Legal, Political, and Humanitarian Dimensions* (Sept. 3, 2025), <https://doi.org/10.21203/rs.3.rs-7499396/v1>.

³⁰ ICCPR, *supra* note 10; UNHCR, *supra* note 11.

often subject to the discretion of the central government. This has led to uncertainty and has limited the realization of refugee rights. Although the constitution and judiciary support refugees through interpretation of Articles 14 and 21, these alone are not sufficient as a consistency is lacking in such jurisprudence.

Ultimately, the enactment of a National Refugee Law is recommended to address these challenges. Such a statute would not weaken national security; instead, it would create a transparent, uniform, and more efficient system supporting the humanitarian aid that refugees need and deserve. It would further elevate India's status in the South Asian region and globally as a humanitarian nation.