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THE REFUGEES IN INDIA: JUSTICE, POLICY FAILURES, AND LEGAL BARRIERS

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ABSTRACT

India's refugee population is one of the most diverse in South Asia, comprising over 200,000 people from Myanmar, Sri Lanka, Afghanistan, and Tibet. In spite of this, the country has no formal legal system in place for the safeguarding of refugees. India, for instance, does not endorse the 1951 Refugee Convention or the 1967 Protocol, which results in an inconsistent approach to the fragmented and vacuous system that is in place regarding legal rights and protection for refugees. India believes these conventions are not in line with south Asian context. This article analyses the lack of attention and legal structure accompanied by the institutional neglect that India has faced which has led to the problem of refugees being sidelined. From protest to demands and to actual work done for the refugees, this article tells in detail about the actual situation refugees in India are facing.

The analysis emphasizes the lack of inclusivity of legal aid pertaining to various refugee groups, many of whom are not recognized and thus have no access to aid and are excluded from government relief programs. It also examines the increasingly politicized nature of refugee policies with focus on the controversial Citizenship Amendment Act (CAA) of 2019 which applies a discriminatory religious basis to offering protection. The article also focuses on the inequality faced by certain groups of refugee while other enjoy certain benefits over them. While some protective measures, albeit through civil society efforts, minimal judicial oversight, and the UNHCR, do exist, these actions remain inadequate and ineffective.

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The argument put forth in this article supports the claim stating that there is an urgent need for action to be taken.

THE REFUGEES IN INDIA: JUSTICE, POLICY FAILURES AND LEGAL BARRIERS

The 21st century has seen many forced and voluntary displacements all over the world. The subcontinent of India is also home to a very diverse refugee population, which includes Rohingyas, Afghans, Sri Lankan Tamils and Tibetans. The refugee population is estimated at over 2,00,000 and is increasing with growing tensions in neighbouring countries. India's 1951 refugee convention and 1967 protocol are yet to be ratified, even after all these years. The Indian subcontinent relies on judicial judgments, executive orders and administrative policies to manage refugee issues. This causes an absence of a legal framework, due to which justice is often conditional on the nationality or religion of the individual.

In the absence of such a framework, questions surrounding legal status, rights to non-refoulement, detention, deportation, and access to court remain vague. This article seeks to explore the procedural and structural barriers faced by refugees in India and establish how important legal reform is for them.

HISTORY OF REFUGEES IN INDIA

In 1989 when Myanmar's authorities suppressed the pro-democratic movement in their country then more than 3000 nationals came to India as refugees. The Indian government responded in compliance with the international laws and ensured that no genuine refugee will be sent back. Similarly, Tamil refugees who crossed international waters and came from Sri Lanka have been allowed to stay in India despite lacking travel documents. Refugee are considered as creatures of circumstance, and they are dependent on the host country for protection and rights. The real question that arises is "are we doing enough?"

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INDIA AND THE 1951 CONVENTION

The famous 1951 United Nations Refugee Convention[1] defined a refugee as someone with a "well-founded fear of being persecuted." Initially, it focused only on European refugees from World War II. The 1967 Protocol removed the temporal limitations, acknowledging that new refugee situations had arisen. Despite not being a signatory, India still applies several articles from the 1951 Convention:

- **Article 3 – Non-Discrimination policy[2]:**

Under this article it is the responsibility of the host country to treat the refugees without discriminating them over the issues of caste, religion, or origin.

- **Article 3a – No penalty for illegal entry[3]:**

The host country is not allowed to penalize refugees for unauthorised entry, if they provide with valid reasons supporting their case.

- **Article 4 – Religious freedom guaranteed[4]:**

There should be freedom to practice or follow one's religion.

- **Article 7 – Treatment similar to aliens[5]:**

Refugees should be granted the same rights and responsibilities as other foreign nationals, such as tourists, students, etc in the host country. This includes rights related to employment, education, property, and social services.

- **Article 16 – Free access to courts[6]:**

Refugees must have free access to courts. They should be able to seek justice, defend themselves in court, and access legal remedies just like citizens of their host country.

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[1] The Refugee Convention, 1951
[2] The Refugee Convention, 1951, art. 3
[3] The Refugee Convention, 1951, art. 3a
[4] The Refugee Convention, 1951, art. 4
[5] The Refugee Convention, 1951, art. 7
[6] The Refugee Convention, 1951, art. 16

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- **Article 21 – Freedom of housing:**

Refugees should not be forced to live in camps rather they should have freedom to reside wherever they want.

- **Articles 27 and 28 – Identity and travel documents[7]:**

Refugees must have travel documents which confirm their legal status. If someone is not able to procure a passport from their home country then it's the responsibility of the host country to provide them with travel documents that allow them to travel internationally.

- **Article 33 – Principle of non-refoulement[8]:**

The one of the most critical and important principles in the convention is the principle of non-refoulement. It prohibits the host country to expel refugee to a country where their life or freedom would be in danger due to persecution. This article is a relief for refugees as it makes sure that a refugee is not sent back to the country where their life is in danger.

India believes that the 1951 Convention is outdated and unsuited for South Asian contexts. It is more valid for western nations and their refugee problem. While it hasn't formally justified its refusal to sign, scholars cite concerns such as:

- Threat to national sovereignty
- Narrow definition of "refugee"
- India's social, economic, and political circumstances

ROLE OF CIVIL SOCIETY AND UNHCR

In the absence of any statutory body, UNHCR and civil society organisations have provided their support in issues faced by refugees in India. They have done this by providing education,

[7] The Refugee Convention, 1951, art. 27 and 28
[8] The Refugee Convention, 1951, art. 33

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livelihood support and legal aid. Their operations are often very limited due to high demands, lack of finances and access to deportation centres.

Another prominent and very concerning issue is that UNHCR often helps urban refugees, hence this excludes Sri Lankan Tamils and Tibetans. This fragmented structure further complicates legal access to refugees.

INDIAN LAWS AND REFUGEES

The constitution of India guarantees certain fundamental rights to not only citizens but the refugee population also has access to it. These include Article 14[9] (equality before law), Article 21[10](protection of life and personal liberty), and Article 22[11] (protection against arbitrary arrest). These articles form the basis for judicial interventions in refugee matters. The real problem is that these provisions are insufficient until and unless a dedicated refugee law is formulated.

India has signed the International Covenant on Civil and Political Rights (ICCPR)[12] and the Convention on the Rights of the Child (CRC)[13], which are international human rights instruments, but it still does not recognize refugees as a separate legal category. Due to this, the Foreigners Act,1946[14] which doesn't distinguish between asylum seekers, refugees and other foreigners, also regulates refugees' status in India. This can lead to arbitrary detention and deportation, which violates the principle of non-refoulement, which prohibits a state from returning an individual to a country where they face a risk of torture or any other harm.

Refugee population in India - An ultimate blend:

India is home to many refugee groups that include:

- Sri Lankan Tamil refugees who are settled in Tamil Nadu since the 1980s. They are recognised by the state and receive support but remain in camps without full legal status.
- The other refugee group is of Tibetan refugees, who are around 1,00,000 in number and enjoy residence and education rights in India.

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9 The Constitution of India, art. 14

10 The Constitution of India, art. 21

11 The Constitution of India, art. 22

12 International Covenant on Civil and Political Rights, 1976

13 Convention on the Rights of the Child, 1990

14 The Foreigners Act,1946 (Act No. 31 OF 1946)

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- Chin and Rohingya refugees from Myanmar face very serious challenges, such as the threat of deportation.
- Afghan refugees are urban refugees who are residing in Delhi. They are supported by UNHCR and other prominent NGOs.

All the refugee groups are treated differently and hence it calls for a need of a uniform legal framework.

RIGHTS, LAW AND PROTECTION

It is the host country's responsibility to guarantee refugee rights outlined in international treaties. The core right is non-refoulement—refugees should not be returned to a place of risk.
Protection means restoring dignity through:

- **Reparation:** It refers to measures taken to acknowledge and address the harm suffered by individuals or communities. It aims to provide justice and healing by recognizing the violation of rights and offering compensation or support.
- **Restitution**: It means restoring a person to the situation they were in before the harm or displacement occurred as much as possible. It is about returning what was lost.
- **Rehabilitation:** It involves providing the support necessary for refugees or displaced persons to rebuild their lives physically, mentally, and socially.

Legislative Protection:

India is a federal union, and the Parliament governs issues of citizenship, immigration, and refugee status. However, there is no specific law addressing refugees in the Indian Constitution.
Instead, several general laws apply:

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- **Passport (Entry into India) Act, 1920**[15]

  Refugees and other foreigners such as migrants, tourists, students, etc are treated equally under this act. The Tibetan refugees are often seen enjoying benefits that other refugee groups do not enjoy. The Tibetan non-secular head and political leadership both reside in India. This is the prime reason that Tibetan refugees are more privileged than their counterparts. Since all refugees must be treated equally hence this special treatment breaches the equality precept in India.

- **Citizenship Act, 1955**[16]

  This act doesn't explicitly mention the term refugees, but it outlines the acquisition, determination, and termination of Indian citizenship.

- **Illegal Migrants (Determination by Tribunals) Act, 1983**[17]

  It was a law enacted by the Indira Gandhi government to establish tribunals which could determine whether a person was an illegal migrant. This act was later struck down by India's apex court in 2005.

- **Protection of Human Rights Act, 1993**[18]

  This act established the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs). They were established to protect and promote human rights.

- **Foreigners Act, 1946**

  This act gave the central government power to regulate the entry and departure of foreigners in India.

These laws fail to provide specific protections or distinctions for refugees.

[15] Passport (Entry into India) Act, 1920 (Act 34 of 1920)
[16] The Citizenship Act, 1955 (Act No. 57 of 1955)
[17] Illegal Migrants (Determination by Tribunals) Act, 1983 (Act No. 39 of 1983)
[18] Protection of Human Rights Act, 1993 (Act No. 10 of 1994)

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BARRIERS TO ACCESSING JUSTICE

There are many reasons why justice is not served to these indigenous groups of refugees. If we talk about humanitarian grounds, these are the people who have already lost their land, home and their identity and have come to another country for refuge. If we don't make laws and provide them with justice, then this will not solve their purpose of displacement. Barriers to accessing justice are as follows:

a) Absence of legal procedures:

There is an absence of formal legal procedure to recognise refugee, due to which their dependency on UNHCR for documentation increases. The real problem is that only select nationalities have access to it, and it is also not recognised by all state authorities. This results in limited access to essential services, which leaves refugees vulnerable to arbitrary detention or harassment.

b) Detention and Deportation without fair play:

This issue is often witnessed with Rohingya refugees. In March 2021, the apex court of India allowed the deportation of Rohingyas from Jammu despite the risk of persecution in Myanmar, these actions raised concerns about the principle of non-refoulement.

c) Lack of legal representation

Even though articles 14 (equality before law), 21(protection of life and personal liberty), and 22 (protection against arbitrary arrest) are for all people, including refugees, access to legal aid is extremely limited for them. To compensate for the lack of legal representation, many NGOs and legal aid centres offer assistance, but their capacity is insufficient to meet the demand. Refugees without any proper legal counsel are often unable to challenge detention orders or the denial of refugee status.

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d) Language and documentation barriers:

In India, most of the legal proceedings are conducted in regional languages or in English and interpreters are rarely provided. Many refugees also lack identity documents, which makes it difficult for them to file complaints, register cases or even open bank accounts.

All the groups of refugees in India face these challenges and many more in accessing justice. Apart from the above-mentioned, India's inconsistency with international conventions further creates an obstacle for refugees. Incompetency is not a concern, so why are the rights of refugees still in question?

POLITICIZATION OF REFUGEE PROTECTION

When we talk about India, we should not forget that policies are often politics-driven. Such is the case with the refugee protection policy that India offers. Refugee issues in India have been increasingly politicized, with decisions influenced by religious or strategic considerations rather than humanitarian principles. The Citizenship Amendment Act (CAA) 2019 is a very good example for this reference. The CAA offers citizenship only to non-Muslim refugees from neighbouring countries, which illustrates communalization of refugee policy and undermines India's secular constitutional ethos. The point that should be noted here is that two of India's neighbours are Muslim nations. This communal bias in refugee policy constrains the path of justice for existing refugees in India. This communal bias from a secular nation establishes a very wrong example for the world, as it may be interpreted negatively by various nations and organisations.

INDIAN CASE LAWS ON THE PROTECTION OF REFUGEES

- **National Human Rights Commission v. State of Arunachal Pradesh[19] (1996):** The apex court in this landmark judgment held that the state had a duty to protect the life and liberty

[19] *National Human Rights Commission v. State of Arunachal Pradesh* (1996) SCC (1) 742

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of Chakma refugees. Herein, Chamkas were a displaced tribe from East Pakistan (Now Bangladesh) who took shelter in Assam and Tripura due to the mismanagement of a hydro power plant in 1964. The refugees sought citizenship under the ambit of Section 5 of the Citizenship Act[20], as they felt being a citizen of India would protect them from any forced expulsion from the state of Andhra Pradesh. The apex court in this case ruled that the only applicable law that governs the grant of citizenship is through the legalities of the Citizenship Act and that no state legal impositions will defy that.

- **People's Union of Civil Liberties vs Union of India (1996):**[21] In this landmark judgment, headed by Justice Kuldeep Singh, the Supreme Court ruled that the right to food is a fundamental right under the umbrella of right to life and personal liberty as enshrined in Article 21 of the Constitution. Now, given that fundamental rights such as the right to life and personal liberty are extended to refugees as well, it comes with a necessity that a right to food will be granted to the incoming refugees. Thereby, it becomes a mandatory duty of the state to adopt and implement policies to grant access to food and sanitation requirements. This also means that the implementation of subsidized rations and other food-based benefits by the government can be amended to incorporate such grants to the refugees.
- **Saidur Rahman v. Union of India (2022)[22]:** In this case, ten refugees from Myanmar were initially convicted under Section 14A (b) of the Foreigners Act, 1946[23], which provides for a minimum imprisonment of 2 years for entering Indian territory without any valid documents, and Rule 6 of Passport (Entry into India) Rules, 1950[24], which provides for a minimum imprisonment for 3 months for not having a valid passport or presenting a forged version. Post the completion of their 2 years of sentence, the petitioners wanted to seek the refugee status granted by the UNHCR till the time they feel that their rights will be protected in Myanmar. In this case, the Guahati High Court ruled that these petitioners

[20] The Citizenship Act, 1955 (Act No. 57 of 1955), s. 5
[21] *People'S Union Of Civil Liberties vs Union of India* (1996) AIR 1997 SC 568
[22] *Saidur Rahman v. Union of India* (2022) WP(C)/983/2022
[23] The Foreigners Act,1946 (Act No. 31 OF 1946), s. 14A (b)
[24] Passport (Entry into India) Act, 1920 (Act 34 of 1920), Rule 6

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should be granted access to avail the UNHCR refugee status, and since they had completed their sentence, there was no reason for any other criminal charge to be put upon them.

However, despite such extraordinary rulings, courts have often deferred to the executive order in deportation cases, especially in the context of national security. This often reflects a lack of legal foundation and the government's discretionary approach.

LEGAL REFORMS AND RECOMMENDATIONS

India is in urgent need of a national refugee law that codifies:

- The definition of "refugee" is in line with international standards as India doesn't distinguish between refugee or foreigners.
- Fair and transparent refugee status
- Protection against arbitrary detention and deportation
- Rights to legal representation, education, employment and healthcare
- Ratification of laws

The basis of such law should be at par with India's constitutional values and its commitment to asylum, also keeping in mind India's security concerns and balancing it with humanitarian obligations.

India feels that despite not signing, it provides minimal refuge and support to all the people seeking refuge from India. India often fails to acknowledge certain refuge concerns because of not a single law dedicated to refugees in the Indian Constitution.

Following are some of the recommendations that the author feels if implemented can lead to better protection of refugees in India:

- A proper refugee protection act should be drafted that ensures uniform treatment for all refugee groups present in India.

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- Barriers to legal aid services should be reduced, like language interpreters should be provided, documentation problems should be solved.
- Law enforcement officers should be trained in a way that they recognise and respect refugee documentation, including that issued by UNHCR.
- Refugee law education should be incorporated in judicial and legal training.
- Establish an independent asylum tribunal to review refugee status claims and deportation orders.

CONCLUSION

If we talk about the status of India on refugee policies, it stands at a crossroads. India has demonstrated generosity in hosting displaced populations, but the absence of a legal framework and clarity undermines the very essence of justice for refugees in India. The forceful deportation of Rohingya from Jammu to Myanmar is one of the examples of how India is dealing with the security concerns are their objective. The threat of terrorism to India is known to all, and in such times, India is hesitant to provide refuge by compromising its safety. The protection of refugees is a matter of concern due to its humanitarian vows, but this cannot be achieved by compromising national security. India must adopt a rights-based, inclusive legal framework that protects the dignity, liberty and security of all those seeking refuge within its borders.