

---

# **REFUGEES IN INDIA: A CRITICAL ANALYSIS REGARDING NATIONAL SECURITY AND THE LEGAL LANDSCAPE SURROUNDING THEM**

---

Sanjivani Show, Department of Law, University of Calcutta

## **ABSTRACT**

This comprehensive article explores the multifaceted and complex relationship between India's approach to refugee policy and its implications for national security. Despite not being a signatory to the 1951 United Nations Convention of the Status of Refugees or the 1967 Protocol, India has a rich history of providing refuge to those in need. The article elucidates how India's humanitarian acts have at times influenced its international relations and internal stability. By meticulously examining the legal landscape and the various societal challenges posed by the influx of refugees, including potential threats to internal and external security, the article argues for the need to establish a domestic legal framework. This domestic legislation would effectively differentiate between foreigners, illegal immigrants, and refugees, and would balance India's commitment to human rights and international conventions with the paramount need to ensure national security. The insights provided in this paper call for unified efforts across all branches of government, combined with international cooperation, to build a harmonious future that values dignity and safety for all.

## Introduction:

Refugees form one of the largest groups of people in the entire world, going by various facts and figures.<sup>1</sup> As defined by a key International Convention, a “Refugee” is a person who is outside his or her country of nationality or habitual residence; and has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group, or political opinion; and is unable or unwilling to avail himself or herself of the protection of that country, or to return there, for fear of persecution.<sup>2</sup> Even India believes in a definition very similar to the aforementioned concept as to who a refugee is, although not in its entirety. Moreover, the two major international instruments which deal with the rights of refugees are the United Nations Convention of the Status of Refugees (“the 1951 Convention”) and its 1967 Protocol relating to the Status of Refugees (“The 1967 Protocol”).<sup>3</sup> India is not a signatory to either the 1951 Convention or the 1967 Protocol and therefore, is not bound by them. Despite this, over the years, India has dealt with her refugees very patiently and taken care of them very well, as and when required. This writing shall try to explain the current status of refugees in India, and try to understand at which points of law the human rights of refugees tend to conflict with the National Security of India in particular.

India has had a long history of sheltering refugees since its inception in the year 1947.<sup>4</sup> At the very outset, during the partition of the then British India, numerous refugees came to what was now, the new India. These refugees who came to India automatically became the citizens of this new country and thus, at this juncture of the formation of India, the threat to national security due to these people was out of question.<sup>5</sup> After this, the Dalai Lama and more than 100,000 of his followers came to India, seeking political asylum. India, on humanitarian grounds, did grant asylum to him and his followers. This act of India worsened Sino-Indian relations, which resulted in the Sino-Indian War of 1962.<sup>6</sup> The journey of providing refuge to those in need did not end here.

---

<sup>1</sup>United Nations High Commissioner for Refugees, Figures at a Glance, UNHCR, <https://www.unhcr.org/en-in/figures-at-a-glance.html> (last visited Oct. 13, 2022).

<sup>2</sup>Convention Relating to the Status of Refugees art. 1A(2), July 28, 1951, 189 U.N.T.S. 137.

<sup>3</sup>OHCHR, Human Rights Instruments, <https://www.ohchr.org/en/instruments-listings> (last visited Oct. 13, 2022).

<sup>4</sup>Martand Jha, India’s Refugee Saga, from 1947 to 2017, LIVEMINT (2018), <https://www.livemint.com/Sundayapp/clQnX60MIR2LhCitpMmMWO/Indias-refugee-saga-from-1947-to-2017.html> (last visited Oct. 12, 2022).

<sup>5</sup> Id.

<sup>6</sup> Id.

During Bangladesh's war of Independence, a humongous number of refugees fled to India and many portions of this population still reside in the Indian states near Bangladesh and its border. Later, in 2008, due to racial discrimination and a bloody civil war in Sri Lanka, many Sri Lankan Tamils came to India and settled in her Southern part.<sup>7</sup> Then came the Afghans, the Rohingyas, the Chakmas, and the Hejongs.<sup>8</sup> These actions of India show that despite her having not signed the 1951 Convention, she has discharged most of her duties of that of a responsible State, which respects international laws, regulations, and customs by having provided adequate shelter to refugees and asylum seekers.<sup>9,10</sup> This is indeed an achievement of no small magnitude.

### **Refugees and National Security:**

When it comes to "national security," it does not only refer to securing the territories of a nation-state but also includes taking care of numerous other factors that tend to make the State. In most cases, the biggest obstacle to providing refuge to these illegal migrants is that of potential threats to national security. Some of these hindrances which come in the way of providing refuge have been discussed in the following parts of this writing.

Internal security, which includes providing absolute security to the lives and the property of the citizens of a nation, is the key to the making of a proper welfare state. Sometimes, however, this internal security gets destabilized due to an influx of refugees and illegal immigrants. While there is no denial of the fact that a majority of these refugees and migrants are harmless and pose no threat to their host countries, research of a cross-national, time-series data analysis of more than 154 countries for the years 1970-2007 that countries with many refugees are more likely to both national as well as international acts of terrorism.<sup>11</sup> This is one of the major hindrances that India experiences when it comes to providing shelter to refugees.

Apart from taking care of internal security, the external security of a nation, like that of India, tends to be at stake due to sheltering the people from the mass exodus of some of her neighbours. An

---

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Global Focus, India, <http://reporting.unhcr.org/india> (last visited Oct. 13, 2022).

<sup>10</sup> Global Focus, India Factsheet, <http://reporting.unhcr.org/document/3224> (last visited Oct. 12, 2022).

<sup>11</sup> Seung-Whan Choi & Idean Salehyan, No Good Deed Goes Unpunished: Refugees, Humanitarian Aid, and Terrorism, 30 CONFLICT MGMT. & PEACE SCI. 53 (2013).

example of this is the Sino-Indian War of 1962, where China felt angered and humiliated because of India's act of granting asylum to the Dalai Lama and his followers. This was one of the major contributing causes of the war.<sup>12</sup> The war did have deadly consequences for India in the long run. Using a similar analogy, it can be understood that given India's current economic and other socio-political developments, India cannot risk neutralizing its progress due to wars and external armed conflicts. Moreover, international relations also stand very crucial to India.

Other than these aforementioned problems, some other problems may pose threats to the national security of India. Some of them happen to be, inadequacy in infrastructural facilities, overpopulation, climate crisis, unemployment, and inadequacy of medical<sup>13</sup> and legal facilities to cater to the needs of all those who are on Indian soil.<sup>14</sup> If one overlooks these problems, and the intake of refugees is not controlled accordingly, the national security of India can be in grave danger because of the collapse of the internal as well as structural administration.

### **The Legal Landscape Surrounding the Refugees:**

By virtue of some cases, it has been clarified that the Right against discrimination on the grounds of religion, race, caste, sex or place of birth (Article 15<sup>15</sup>); right to equality of opportunity in matters of public employment (Article 16<sup>16</sup>); freedom of speech and expression, assembly, association, movement, residence and profession (Article 19<sup>17</sup>); cultural and educational rights (Article 29<sup>18</sup> and 30<sup>19</sup>); and the right to vote and become a member of the union and state legislatures are available exclusively to the citizens of India, and therefore, foreign nationals can not benefit from the same.

---

<sup>12</sup>India-China War of 1962: How it Started and What Happened Later, INDIA TODAY (Nov. 21, 2016), <https://www.indiatoday.in/education-today/gk-current-affairs/story/india-china-war-of-1962-839077-2016-11-21> (last visited Oct. 13, 2022).

<sup>13</sup>World Bank, Physicians (per 1,000 people) - India, <https://data.worldbank.org/indicator/SH.MED.PHYS.ZS?locations=IN> (last visited Oct. 13, 2022).

<sup>14</sup>Why India Won't Sign Refugee Treaty, LIVEMINT, <https://www.livemint.com/Opinion/bePZQScFIq1wEWv9Tqt4QO/Why-India-wont-sign-Refugee-Treaty.html> (last visited Oct. 12, 2022).

<sup>15</sup>INDIA CONST. art. 15.

<sup>16</sup>INDIA CONST. art. 16.

<sup>17</sup>INDIA CONST. art. 19.

<sup>18</sup>INDIA CONST. art. 29.

<sup>19</sup>INDIA CONST. art. 30.

There is protection under Articles 14<sup>20</sup> and 21<sup>21</sup>, but none of the basic rights, which are solely granted to Indian nationals, are included.<sup>22</sup>

The Supreme Court of India has affirmed the idea that all people, whether or not they are citizens, have access to the rights protected by Articles 14 and 21. However, under Article 19(1)(e), the right to stay or establish oneself in any area of Indian territory is subsidiary or concurrent with the right not to be deported.<sup>23</sup> Moreover, only Indian nationals are eligible for the basic right under Article 19(1)(e).<sup>24</sup>

While some believe that it is in this view that India should sign the 1951 Convention as well as the 1967 Protocol, many others have the idea that India need not do it.<sup>25</sup> The two reasons that are in India's favour regarding the not signing of the 1951 Convention are: firstly, India is a party to the 1987 Prevention of Torture Convention, where it has been explicitly mentioned that no state party may expulse, return (refouler), or extradite a person to another state if there are good reasons to think the person would face the risk of torture.<sup>26</sup> This is the principle of non-repatriation. This principle happens to be one of the prime objectives of the 1951 convention. Secondly, as scholar B.S. Chimni has argued at a time when the North is disobeying the 1951 treaty both in text and spirit, India shouldn't ratify it. India should make the case that the Western States' non-entrée (no entrance) system, which they had in place for the past 20 years, must be repealed before they can join. The non-entrée regime is made up of several legal and administrative restrictions, such as those on travel documents, carrier fines, interdictions, the third safe country rule, a narrow interpretation of the term "refugee," the denial of social benefits to asylum seekers, and widespread

---

<sup>20</sup>INDIA CONST. art. 14.

<sup>21</sup>INDIA CONST. art. 21.

<sup>22</sup>Monalisha Chowdhury, Rights Of Foreign Nationals Under Article 19(1)(E) Of The Constitution Of India, MONDAQ (date not provided), <https://www.mondaq.com/india/government-measures/988654/rights-of-foreign-nationals-under-article-191e-of-the-constitution-of-india> (last visited Oct. 13, 2022).

<sup>23</sup>LIVELAW NEWS NETWORK, 'Right Not To Be Deported' Is Ancillary To A Fundamental Right Available Only To Indian Citizens: Supreme Court In Rohingyas Case, LIVELAW (2021), <https://www.livelaw.in/top-stories/right-not-to-be-deported-fundamental-right-indian-citizens-supreme-court-rohingyas-case-172323> (last visited Oct. 13, 2022).

<sup>24</sup> Id.

<sup>25</sup>Happymon Jacob, India Does Have a Refugee Problem, THE HINDU (Apr. 9, 2021), <https://www.thehindu.com/opinion/lead/india-does-have-a-refugee-problem/article34285088.ece>

<sup>26</sup>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85.

detention practices.<sup>27</sup>

### **Conclusion:**

Indeed, India might not need to sign the Refugee Convention and its Protocol, but still, whenever India has been confronted with any refugee crisis, it has acted on an ad-hoc and temporary basis thereby, sometimes, making some hasty decisions. And the current legislations are in force in India, namely, the Passport Act, 1967, the Registration of Foreigners Act, 1946 and the Foreigners Order, 1948. The Foreigners Act of 1946, is not very efficient in dealing with the various refugee crises along with the problems of illegal immigrants. These Acts are also not capable of distinguishing between a foreigner, an illegal immigrant, and a refugee. So, while it is true that India may be constrained to a certain extent by signing the 1951 Convention and the 1967 Protocol, there is an equally important need to enact a domestic or a national law which shall be adept at dealing with these problems so that neither the national security of India as a nation is compromised with nor are the human rights of various refugees violated.<sup>28</sup> A domestic law with a fair amount of respect for international conventions and protocols can bring about drastic changes, and help India strike a positive balance between securing India and her citizens a safe and secure life and helping the civilians of other nations live a life of dignity by upholding their human rights. Together, with the unified efforts of the Legislature, the Judiciary, the Executive, and the people of not only India but other nations as well, we can build a haven for everyone for the better in the days to come.

---

<sup>27</sup>Jacob, *supra* note 25.

<sup>28</sup> *Id.*