SAFEKEEPING OR GATEKEEPING: A NEED FOR REFORMS IN THE INDIAN REFUGEE GOVERNANCE

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At Crossroads: In Between Hospitality And Hostility

At times of extensive migration and displacements, India emerged as both a safekeeper and a gatekeeper. For decades, India has been a safe haven for those displaced from their home country. A person is a refugee not because they want to, they are made prone to circumstances beyond their control. Article 1 of the 1951 United Nations Convention defines a 'refugee' to be an individual who left with no option, flees their country of origin due to fear of being oppressed based on race, religion and political opinion, and hence deterring them from seeking protection in their country.[1] On the other hand, an immigrant is an individual who, not due to threat but as a matter of choice, moves permanently to another country to make it their new home.[2] This thin line of distinction is the basis of India's binary role of being a safe haven and a gatekeeper.

India has age-old history of hosting refugees, dating back to the 18th-century Paris community. The Jewish community considers India as its fatherland, granting it unconditional protection. In 1947, the partition of British India marked the largest refugee movement by displacing around 15 million people.[3] The Indian government has introduced schemes and allotted lands to ensure the resettlement of the refugees.[4] Currently, India is host to Sri Lankan Tamils, Afghans, Tibetans and people from Myanmar. The significant reasons refugees came to India is because of its location, religious tolerance, cultural diversity and a longstanding tradition of hospitality and goodwill.

Despite this long-standing tradition of moral and humanitarian standing, India does not have a

[1] Convention Relating to the Status of Refugees, 1951, art.1.
[2] International Organization for Migration, Key Migration Terms, available at: https://www.iom.int/key-migration-terms (last visited on 2, Nov.2025).
[3] National Human Rights Commission, "Refugees in India" p.no. 16 (July, 2024).
[4] *ibid*

comprehensive framework to regulate and determine the status of immigrants and refugees. This absence leaves their fates contingent upon the country's piecemeal decision-making. This paper seeks to analyse the drawbacks of the current approach to the refugees and attempts to suggest reforms.

Revisiting India's Reasons for Refusal

Despite the influx of refugees, India does not have a national refugee law, neither is it a signatory to the international framework protecting refugees (the 1951 UN Refugee Convention and the 1967 Protocol). At the core of these frameworks lies the principle of 'non-refoulment', which forbids any nation from expelling or returning refugees to a territory where they would be exposed to threat or persecution.[5] India's primary concern is that if it accedes to the convention, it will impose binding legal obligations to grant a wider range of rights and entitlements to refugees, hindering its freedom to make decisions based on domestic priorities, security needs and regional diplomacy, which helps in preserving the sovereign authority in the determination of the refugee status and their duration of stay. Secondly, given India's vast population and complex security landscape, it would be difficult to manage. Thirdly, the convention was evidently '*Eurocentric*' as it was enacted for European refugees after World War II, and therefore is not adequately equipped for dealing with issues faced by the developing countries, such as poverty and security concerns, as in the case of India.[6] Fourthly, the convention defines refugees as individuals who are personally targeted, unlike the scenario in South Asia, where people flee due to wars and disasters. India faced mass refugee crises during the partition and Bangladesh war, where individual screening as mandated by the UN convention was almost impractical, and thereby India chose to treat the masses as *'prima facie'* refugees.[7] Fifthly, the UN convention does not address the situation of 'mixed migration' where refugees, immigrants and economic migrants travel together.[8] From the above-stated reasons, it is clear that India's refusal stems not from indifference but rather is driven by

[5] Nils Coleman, 'Non-Refoulment revised renewed review of the Status of the Principle of non-refoulment as customary international law' 5 *European Journal of Migration and Law* 23 (2003).
[6] Emma Haddad, "How Eurocentric is the 1951 UN Refugee Convention and Why Does it Matter?" *Refugee History,* Jan.14, 2021, available at: http://refugeehistory.org/blog/2021/1/14/how-eurocentric-is-the-1951-un-refugeeconventionand-why-does-it-matter (last visited on Nov.15,2025).
[7] Rosa Da Costa, 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations, 12 Legal & Protection Policy Series (UNHCR, June 2006).
[8] Maja Janmyr, 'The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda**,** 33 *International Journal of Refugee Law* 188-213 (June 2019).

practical realities.

Borders Through a Geopolitical Lens

From a broader outlook, the refusal seems to hold a geopolitical aspect. India is a country prone to conflicts as it is surrounded by neighbours like Pakistan, Afghanistan, Bangladesh, Sri Lanka and Myanmar with whom India has delicate diplomatic and military ties. Accepting or rejecting refugee groups carries consequences; for example, granting asylum to Tibet's strained ties with China, hosting Sri Lankan Tamils impacts Tamil Nadu politics and Rohingya groups' concerns of national security and terrorism. Henceforth, the refusal of the UN convention is India's calculated geopolitical strategy.

The De Facto Laws of The Refugees

Since India doesn't have a refugee law, the refugees, immigrants, and asylum seekers are all treated as foreigners and are therefore governed mainly under the Foreigners Act 1946, Passport Act 1967 and Citizenship Act, placing refugees on the same footing as any foreigners. It must be able noted that India has ratified several human rights treaties that indirectly grant protection to refugees, like the UDHR, ICCPR, Convention against torture and became a member of UNHCR's (EXCOM), indicating that India handles refugee issues by making political and administrative decisions and not through a fixed law, so if refugees face abuse or discrimination, there is no law granting them a remedy; rather, the government policy makes decisions.[9]

Although the Indian Constitution does not specifically mention refugees, the Indian judiciary has adjudicated on it in multiple instances. In the case of *Louis De Raedt v. UOI* court said non-citizens are also guaranteed certain fundamental rights.[10] The *NHRC v. State of AP* case expanded on what the guaranteed rights were. Chakma refugees were given protection under Articles 14 and 21 of the Indian Constitution.[11] Non-refoulment has become a 'jus cogens', meaning it is a norm binding all nations as it is a part of customary international law.[12] The principle was reinforced by the *Ktaer Abbas v. UOI* case, wherein the Court iterated that non-

[9] National Human Rights Commission, "Refugees in India" p.no. 16-18 (July,2024).
[10] *Louis De Raedt vs Union of India* 1991 SCR (3) 149.
[11] *NHRC v. State of Arunachal Pradesh* 1996 AIR 1234.
[12] A. Suganthini & Ambika Kumari, 'Challenges Faced by Refugees in India and Their Position in India', 5 Indian J.L. & legal research 1 (2023).

refoulement is a part of Article 21 of the Indian Constitution.[13] India's De facto humanitarian ideology depicts how, without treaty obligations, it provides equivalent protections to refugees through compassionate action rather than legal compulsion.[14]

A Step Towards Objective Adjudication

While India's autonomous standing to manage refugees mirrors strategic pragmatism, not having a national refugee law brings profound limitations and consequences. These limitations highlight the need of profound reforms in the refugee governance mechanism, which are both objective and predictable.

To begin with, the lack of convection or a domestic statute strips India of an objective and uniform system, which causes varied treatment to the refugees. Here, the geopolitical aspects are influencing the status of refugees, as in the case of the Sri Lankan Tamils and the Rohingya community, reflecting selective humanitarianism. To tackle this issue, an objective procedure must be incorporated to determine the status of the refugees, outlining the criteria, eligibility and rights of the refugees. In addition, the refugees and foreigners are not distinguished in the eyes of the law, making them subject to stricter enforcement, such as arrest, for mere lack of a passport, which is usually not possible to obtain during a situation like genocide. Henceforth, it is important to distinguish refugees as a separate legal category that is in need of stronger safeguards. Here, legislative reforms are required to define refugees and their status, ensuring objective treatment across the country.

Furthermore, the absence gives rise to inconsistent judicial decisions, leading to refugees being safeguarded in certain jurisdictions and deported in others. The Supreme Court in Mohammad Salimullah deported Rohingyas by placing reliance on Article 19(1) (e), which gives only 'citizens' the right to settle anywhere, as they are 'foreigners', they aren't protected by ignoring Article 21, which applies to everyone and conditions in Myanmar the court violated the principle of non-refoulment. In contrast, the Manipur High Court in Nandita Haksar court explicitly recognised foreigners as 'distinct groups', applied Article 14 and 21 equally to refugees, as non-refoulment is embedded within them. Rejected unverified claims of national security. Administrative fragmentations worsen the situation. With no central refugee board,

[13] *Ktaer Abbas Habib Al Qutaifi and Another v. Union of India and Others* (1997) 3 SCC 433.
[14] Indira Boutier, 'The Non-Ratification of the 1951 *Convention on Refugees*: An Indian Paradoxical Approach to Human Rights' *Revue Québécoise de droit international* p.no.115-135 (2021).

decisions are made by state governments and local police who lack sensitisation in refugee law.[15] UNHCR "blue card" or refugee certificates are not legally recognised; as a consequence, refugees go underground without access to housing and employment. A practical solution would be to establish a centralized refugee Board to standardize admission, admit UNHCR blue cards and ensure uniform protection across all jurisdictions.

Moreover, India's diplomatic standing might be at stake for not formalising the refugee safeguards. Although India evidently conducts humanitarian drives across the globe, it casts a negative light on India for not aligning with the accepted global stance. The outcomes of this ad-hoc model are notable in the Assam Accord (1985) and Section 6A of the Citizenship Act, wherein the refugees are governed without a concrete legal framework. Drawing from the instances of the Rohingya community and the Assam experience, a fragmented approach is evident, which is eroding India's credibility. In light of these reasons, a comprehensive and unified refugee law must be enacted to uphold the natural and constitutional rights of an individual. The ethical dilemma between national security and humanitarian protection must be balanced. A true refugee law must reflect the nations commitment to justice, dignity and humanity for all.

[15] Aishwarya Birla, 'Evaluating the Indian Refugee Law Regime: How Has the Judiciary Responded to Refugee Claims in Light of International Law Obligations, and How Can It Do Better?' 35 *International Journal of Refugee Law* p.no. 81-100 (2023).