
THE ROLE OF THE JUDICIARY IN UPHOLDING MIGRANTS' RIGHTS: A COMPARATIVE STUDY OF INDIA AND SELECTED WESTERN JURISDICTIONS

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ABSTRACT

Across the globe, courts have become critical sites where the rights of migrants are vindicated and, at times, curtailed. This article compares the approaches of the Supreme Court of India with those of key Western jurisdictions—the United Kingdom, the European human-rights system, the United States and Canada—to identify convergences, divergences and emerging trends in judicial protection of migrants. It argues that, although constitutional architecture and statutory frameworks differ markedly, courts share three core functions: (1) guarding minimum standards of dignity, (2) mediating between executive power and international obligations, and (3) progressively clarifying the scope of non-citizens' rights. The paper concludes that robust protection is more likely when courts combine purposive constitutional interpretation with close scrutiny of executive immigration policy, but that judicial victories remain vulnerable to legislative override and political backlash. Policy recommendations are offered to strengthen migrants' access to justice and to foster cross-jurisdictional learning among judiciaries.

Keywords: Judicial review; migrant workers; asylum seekers; Supreme Court of India; UK Supreme Court; ECtHR; CJEU; U.S. Supreme Court; Supreme Court of Canada.

1. Introduction

Mass migration—whether for work, safety or climate resilience—has intensified judicial engagement with human rights across continents. While international instruments such as the 1951 Refugee Convention and the International Covenant on Civil and Political Rights set baseline norms, their domestic enforceability turns largely on national courts. This article undertakes a doctrinal and comparative analysis of leading judgments from India and four Western jurisdictions to assess how judiciaries have shaped—and been shaped by—the politics of migration.

The comparison is structured around three questions:

1. **What constitutional or statutory hooks have courts employed to extend protection to non-citizens?**
2. **How have courts balanced state prerogatives over borders with migrants' fundamental rights?**
3. **What remedial techniques have proven most effective in securing compliance?**

Methodologically, the paper relies on primary judgments, official documents and peer-reviewed commentary, supplemented by recent case-law databases and news reports.

2. Normative Foundations of Judicial Protection

Two normative pillars recur across jurisdictions: the principle of **non-discrimination** (often grounded in equality clauses) and the **non-refoulement** obligation embedded in international refugee law. Courts have interpreted these pillars through national lenses. In India, Articles 14 and 21 of the Constitution—extending equality and life-with-dignity to “persons” rather than “citizens”—have furnished a broad basis for migrant rights litigation. In Western systems, written constitutions (USA, Canada), convention-incorporation statutes (UK Human Rights Act 1998) and supra-national treaties (ECHR, EU Charter) perform analogous roles.

3. India: Rights Through Constitutional Elasticity

3.1 Early Expansions

Indian jurisprudence on non-citizens dates back to *Hans Muller of Nuremberg v Superintendent, Presidency Jail* (1955) and *NHRC v State of Arunachal Pradesh* (1996), where the Supreme Court upheld equality before the law for refugees.

3.2 Migrant Workers and the Covid-19 Crisis

The Court's most sustained recent intervention came in the suo-motu matter **In Re: Problems and Miseries of Migrant Labourers**, W.P. (C) 6/2020. Confronted with harrowing images of stranded workers during the 2020 lockdown, the Bench ordered Union and State governments to ensure free transport, food and shelter, and later mandated implementation of the "One Nation-One Ration" scheme.

While criticised for initial passivity, the Court ultimately fashioned structural remedies—deadlines, progress affidavits and a centralised worker database—that echo its public-interest jurisprudence in socio-economic rights. Yet enforcement has faltered where administrative capacity is weak and inter-governmental coordination poor.

3.3 Foreigners and National Security

In matters involving illegal entrants—most controversially the deportation of Rohingya refugees—the Court has oscillated, granting interim protection in some cases but deferring to executive assessments of "national security" in others. This tension illustrates the limits of constitutional elasticity absent comprehensive refugee legislation.

4. Western Jurisdictions

4.1 United Kingdom—Judicial Dialogue Post-Brexit

The UK Supreme Court's decision in **R (AAA) v Secretary of State for the Home Department** [2023] UKSC 42 struck down the Government's plan to offshore asylum processing to Rwanda, holding that systemic deficiencies risked *refoulement* contrary to Article 3 ECHR.

Notably, the Court relied on international materials (UNHCR evidence) and comparative practice, signalling a continued openness to trans-national standards despite Brexit. The ruling reaffirmed proportionality review under the Human Rights Act, yet its future impact is

uncertain: Parliament's subsequent **Safety of Rwanda Act 2024** seeks to reverse key factual findings, underscoring the fragility of judicially crafted safeguards.

4.2 European Court of Human Rights and Court of Justice of the EU

The ECtHR's landmark cases **M.S.S. v Belgium and Greece** (2011) and **Hirsi Jamaa v Italy** (2012) established that inhuman reception conditions and push-backs at sea violate Articles 3 and 13 ECHR.

Complementing this, the CJEU has issued a steady stream of preliminary rulings clarifying family-reunification, detention standards and Dublin-transfer safeguards, thereby constraining domestic discretion through EU law supremacy.

4.3 United States—Chevron Retreat and the Fate of Dreamers

In **DHS v Regents of the University of California** (2020) the U.S. Supreme Court invalidated the rescission of DACA on Administrative Procedure Act grounds, emphasising reason-giving rather than substantive rights. The judgment illustrates a proceduralist approach: courts require agencies to justify policy shifts but rarely pronounce on migrants' constitutional personhood after *Plyler v Doe* (1982). The Court's 2024 decision overruling *Chevron* further empowers lower courts to scrutinise immigration regulations, potentially opening new avenues for rights-based challenges.

4.4 Canada—Charter Universalism

Canada's **Singh v Minister of Employment and Immigration** [1985] 1 SCR 177 interpreted the word "everyone" in s 7 of the Charter to include asylum-seekers, guaranteeing a fair oral hearing and entrenching non-refoulement as a constitutional norm. Subsequent jurisprudence (*Baker v Canada* 1999; *Kanthasamy* 2015) has built on *Singh* to inject proportionality and humanitarian discretion into administrative decision-making.

5. Comparative Analysis

Dimension	India	UK	ECtHR/EU	USA	Canada
Constitutional hook	Arts 14 & 21 (persons)	HRA 1998, ECHR	ECHR, EU Charter	Art I §8, Fifth & Fourteenth Amend.	Charter ss 7, 15
Leading 21st-c. case	<i>In Re Migrant Labourers</i> (2020-21)	<i>AAA</i> (2023)	<i>M.S.S.</i> (2011)	<i>DHS v Regents</i> (2020)	<i>Kanthasamy</i> (2015)
Review intensity	Substantive & structural	Proportionality	Systemic benchmark	Procedural (APA)	Proportionality & fairness
Remedy style	Continuing mandamus	Quashing + declaratory	Damages + guidance	Vacatur & remand	Declaratory + interpretive
Political pushback	Medium (executive delay)	High (Safety of Rwanda Act)	Variable (state compliance)	High (policy cycling)	Low-medium

6. Challenges and Future Trajectories

- **Populist Politics and Legislative Override:** Majoritarian sentiment can swiftly erode hard-won judicial gains, underscoring the need for constitutional entrenchment of minimum standards.
- **Resource Constraints:** Courts can mandate welfare measures, but implementation hinges on fiscal capacity—particularly acute in India’s federal system.
- **Trans-national Cooperation:** Mutual citation of foreign judgments—evident in *AAA*—augurs a cosmopolitan judicial dialogue that can raise the floor of rights protection.
- **Digitalisation and Access to Justice:** Online hearings (adopted during Covid-19) may reduce barriers for migrants but raise concerns over language access and due process.

7. Conclusion

Judiciaries are neither panaceas nor passive referees. Their ability to uphold migrants' rights depends on constitutional design, interpretive philosophy and the broader political ecosystem. Comparative analysis shows that courts can serve as critical counter-weights to exclusionary policy, but sustained protection requires:

1. **Codification of fair-process guarantees** in migration statutes;
2. **Institutionalised follow-up mechanisms** (e.g., court-appointed committees) to monitor compliance;
3. **Cross-jurisdictional judicial training** on international refugee and human-rights law;
4. **Civil-society partnership** to ensure that litigation translates into ground-level relief.

A rights-affirming jurisprudence must, therefore, be complemented by legislative will and administrative competence if the promise of dignity for migrants is to move from courtrooms into everyday reality.

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