
THE LEGAL STATUS OF REFUGEES IN INDIA: CONSTITUTIONAL RIGHTS, JUDICIAL TRENDS AND POLICY CHALLENGES

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ABSTRACT

India has no specific legislation in place for refugee protection, despite being a long-term host for refugees escaping persecution. This paper discusses the legal status of refugees in India under the constitutional rights enjoyed by non-citizens, India's international commitments, judicial rulings on the doctrine of non-refoulement, and the current refugee legislation and policy. It outlines the difference between the rights enjoyed by everyone on the basis of Articles 14 and 21 of the Constitution and those enjoyed by a particular group of persons (refugees) on the basis of Article 19, and the importance of judicial interpretation in protecting refugees from the arbitrary actions of the State. The paper further explores the different judicial perspectives being showcased by the cases of National Human Rights Commission v. State of Arunachal Pradesh and Mohd. A case in doubt concerning protection against refoulement is Salimullah v. Union of India. In addition, it looks at the differential treatment of Tibetan, Sri Lankan Tamil, Afghan and Rohingya refugees, the narrow definitions of the Citizenship (Amendment) Act, 2019 and the consequences of the Immigration and Foreigners Act, 2025. Judicial decisions and executive policies are partial protections, which are not an alternative to a comprehensive statutory framework, writes the paper. It finds that a rights-based approach to refugee protection through refugee definition and refugee determination based on equitable procedures, refugee protection against 'refoulement', and appropriate procedural protection is needed to ensure consistency, accountability, and legal certainty in refugee protection in India.

Keywords: Refugee protection, Article 21, Immigration and Foreigners Act, 2025, Non-refoulement and Constitutional Rights.

I. INTRODUCTION

No other part of public law in India is as important as refugee law, yet it is so little statutory in nature. India has hosted several groups of people who have sought refuge due to persecution, including Tibetans in 1959, Chakmas from Chittagong Hill Tracts, Sri Lankan Tamils during the civil war, Afghans, and recently Rohingya from Myanmar; in 2021 UNHCR registered 208,065 refugees and asylum-seekers in the country.¹ But the term “refugee” is not used as a legal term in any Indian law.² A person who crosses the border to save his life is, in law, the same as a person who crosses it to find work, a “foreigner”, who is not a citizen of India.³

The impact is tangible. Tibetan and Sri Lankan Tamil refugees have been acknowledged *prima facie* and dealt with through executive policy, with documentation of residence and, to varying extents, schools, jobs and welfare.⁴ No other groups have such a status as refugees. They rely on UNHCR registration, which Indian authorities have acknowledged only partially, and they are vulnerable to prosecution for illegal entry, and detention and deportation as any other foreigner.⁵

This fragile situation came to light in April 2021 when the Supreme Court, on appeal of the Rohingya detained in Jammu, refused to order their release from detention, nor did it prohibit their deportation, but insisted that only as per the procedure laid down in the law.⁶ The order is at odds with earlier orders when Indian courts refused to prevent the deportation of refugees and with High Court rulings which interpreted non-refoulement as a part of Article 21.⁷ That's not an exception to protective and restrictive precedent. That's what you'll get if your rights are left to the interpretation of a judge and not a statute.

¹ Radhika Nair, *Refugee Protection in India in the Absence of Specific Legislation: An Overview 3* (Soc. & Pol. Rsch. Found., Curated Voices, Oct. 22, 2021), <https://sprf.in/refugee-protection-in-india-in-the-absence-of-specific-legislation/>; Mahima Yadav, Satish Chandra & Mukund Kumar Yadav, *The Legal Status of Refugees in India: An Analysis with Special Reference to Human Rights Perspectives*, 14 Int'l J. Multidiscip. Educ. Res. 33 (Apr. 2025); Saurabh Bhattacharjee, *India Needs a Refugee Law*, 43 Econ. & Pol. Wkly. 71, 73 (2008) (discussing Chakmas).

² Bhattacharjee, *supra* note 1, at 71, 73–74; Nair, *supra* note 1, at 6.

³ *Foreigners Act*, No. 31 of 1946, § 2(a) (India) (repealed 2025); Pradip Kumar Das & Tanmoy Roy, *Legal Position & Status of Refugees in India: A Critical Analysis*, 3 Int'l J. Legal Sci. & Innov. 75, 82 (2021).

⁴ Nair, *supra* note 1, at 7–8; Bhattacharjee, *supra* note 1, at 74; Yadav et al., *supra* note 1, at 37–38.

⁵ Nair, *supra* note 1, at 7, 9–10; Bhattacharjee, *supra* note 1, at 73–74; Yadav et al., *supra* note 1, at 40.

⁶ *Mohd. Salimullah v. Union of India*, 2021 SCC OnLine SC 296 (India) (order of Apr. 8, 2021); Sara Maheshwari & Amritanshu Pushkar, *Need for Democratising Refugee Laws in India: A Turn Towards Refugee Protection or the Return to Eurocentrism*, 3 HPNLU L.J. 1, 9 (2022).

⁷ Bhattacharjee, *supra* note 1, at 72–74; Nair, *supra* note 1, at 8–9; Maheshwari & Pushkar, *supra* note 6, at 17–18.

This paper will suggest that the refugee law in India is a law of exception, and then the exception is structurally unstable. There are three characteristics that account for this. One, the Constitution lays a bottom line: Articles 14, 21 and 22 talk about persons, not citizens, and Article 21 is read to mean that there has to be 'fair procedure' before the liberty is taken away. Secondly, the floor doesn't get to status. The distinction between the right of the citizens to reside and settle as guaranteed by Article 19(1)(e) of the Constitution, and the right to life and liberty which citizens do not have but aliens do, under Article 21 and the broad powers of the executive over aliens have been emphasized time and again by the Supreme Court. Third, the institutions that would assign a definition, a decision-maker, an appeal, and a documentation system would be non-statutory and would be given by executive grace. Protection is a function of the nationality of refugees and the forum and the climate of a particular day. This was an opportunity to rectify this, as the Immigration and Foreigners Act, 2025 (as reported), which was a consolidation and an abrogation of colonial-era laws on foreigners, concentrates on entry and residence and reporting requirements and consequences, and does not focus on refugee status.⁸

II. INTERNATIONAL OBLIGATIONS

A. Non-Accession to the Refugee Convention

The Convention Relating to the Status of Refugees, with the 1967 Protocol, states that a refugee is a person who is outside her own country of nationality as a result of a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group, political opinion, or other reasons.⁹ It prohibits the return of a refugee to a territory where her life or freedom would be endangered (except where she poses a threat to the security of the host State or has been convicted of an especially serious crime)¹⁰ it bars any penalties on those who enter illegally from a territory where their life or freedom is endangered and present themselves without delay and with good cause.¹¹ Neither instrument is signed by India.

The reasons for India are cumulative. At the drafting table, its delegates doubted whether a

⁸ Immigration and Foreigners Act, 2025, No. 13 of 2025, India Code; Immigration and Foreigners Act, 2025, Drishti IAS (Sept. 5, 2025), <https://www.drishtias.com/daily-updates/daily-news-analysis/immigration-and-foreigners-act%2C-2025>.

⁹ Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention]; Protocol Relating to the Status of Refugees art. I, Jan. 31, 1967, 606 U.N.T.S. 267.

¹⁰ Refugee Convention, *supra* note 9, art. 33.

¹¹ *Id.* art. 31(1).

complex international organisation for the protection of refugees was necessary. Subsequent challenges to the Convention described it as a 'Cold War' document, a 'Eurocentric' document, and a document that was unhelpful to mass flows and mixed flows over porous borders with the UNHCR as an institution working in the interests of Western countries. The Convention does not distinguish between political refugees and economic migrants, does not reconcile the responsibility of receiving and source States and does not outline burden-sharing, a statement of the Ministry of External Affairs from 1999 said. Security, demographic shift in border areas and the ability of a developing economy are reiterated throughout.

These concerns do not relate to legislation, but to accession. A State may refuse to accept a treaty that places burdens upon it which it does not agree to and adopt home-grown provisions that are more reflective of its own priorities: home-grown definitions, home-grown thinking about mass influx, home-grown thinking on security exclusions.

B. Obligation under International Law

Non-accession does not mean that India is not bound by any international obligations. India has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and acceded to the Convention on the Rights of the Child (CRC).¹² According to Article 7 of the ICCPR, the prohibition on torture and cruel, inhuman or degrading treatment extends to the return to torture or such treatment.¹³ The text of Article 13 only allows the expulsion of aliens lawfully in the territory, and does not refer to those who, like many refugees, entered without authorisation; this distinction is also expressed in its second sentence.¹⁴ Children refugees and asylum-seekers are entitled to appropriate protection and humanitarian assistance according to Article 22 of the CRC.¹⁵ India has ratified the Convention against Torture, which provides that a person may not be returned to a State if there are substantial grounds for believing that they would be in danger of torture, but has not ratified it as of this writing.¹⁶ The Universal Declaration of Human Rights states

¹² International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; Bhattacharjee, *supra* note 1, at 72; Maheshwari & Pushkar, *supra* note 6, at 17.

¹³ ICCPR, *supra* note 12, art. 7; Nair, *supra* note 1, at 6.

¹⁴ ICCPR, *supra* note 12, art. 13.

¹⁵ CRC, *supra* note 12, art. 22.

¹⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85; Status of Treaties, U.N. Treaty Collection, https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-9&src=treaty (last visited

that everyone has the right to seek and enjoy asylum, however, not the right to be granted asylum.¹⁷

Custom is the strongest bond of obligation. As a peremptory norm, or as part of customary international law, with reservations as to scope, the prohibition on return to persecution has been recognised. The latter is subject to debate and is not an issue here. The customary nature of non-refoulement has already been recognised and Article 51(c) of the Constitution mandates the State to make every effort towards the promotion of respect for international law and treaty obligations.¹⁸

C. Domestic Application of International Law

International law is a dualist system that has entered Indian law. The Parliament has the power to make laws under Article 253 for the purpose of implementing treaties, and treaties themselves do not create rights that are enforceable in Indian courts.¹⁹ Parliament, however, does not have to pass a law for each and every treaty, and courts are allowed to incorporate international norms into municipal law provided they do not conflict with them.²⁰ In *Vishaka v. State of Rajasthan*,²¹ the Court gave flesh and bones to the fundamental rights, where domestic laws were lacking, by reference to international conventions. This has become an avenue for refugee litigation: Article 21 has been interpreted in the context of non-refoulement, and courts have read India's human rights obligations into its meaning.²²

III. THE CONSTITUTIONAL FRAMEWORK

A. Rights of Non-Citizens

In the Constitution, there is a distinction between guarantees given to anybody and guarantees given to citizens, in Part III. Article 14 guarantees equality before the law and equal protection of the laws to any person on the territory of India. Article 21 guarantees the right to life and

Oct. 14, 2026).

¹⁷ Universal Declaration of Human Rights art. 14(1), G.A. Res. 217 (III) A (Dec. 10, 1948); Das & Roy, *supra* note 3, at 77–78.

¹⁸ India Const. art. 51(c)

¹⁹ India Const. art. 253

²⁰ *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 S.C.C. 534 (India); *Maganbhai Ishwarbhai Patel v. Union of India*, A.I.R. 1969 S.C. 783 (India); Nair, *supra* note 1, at 8.

²¹ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

²² *Nat'l Hum. Rts. Comm'n v. State of Arunachal Pradesh*, (1996) 1 S.C.C. 742 (India); Nair, *supra* note 1, at 9.

personal liberty to all. Article 22 provides for protection of people arrested and detained (information on grounds, consultation with a legal practitioner, appearance before a magistrate within 24 hours), except for enemy aliens. Article 25 guarantees freedom of conscience and the right to freely profess and practise or propagate any religion or belief, provided the same is not prejudicial to the public order, morality or health, and Article 32 provides that any person whose fundamental rights are violated can approach the Supreme Court.²³ The rights guaranteed in Article 19(1), such as freedom of movement in India and freedom of abode and settling anywhere in India, are only for citizens.²⁴

The line between person and citizen allocates what a court can do for a refugee. There is protection against arbitrary State action and against deprivation of life and liberty; there is no positive right to remain. Nor is the right of non-citizens beyond the reach of restrictions: the Supreme Court has noted that Part III rights of non-citizens are also not free from restrictions which have been placed in the interest of State security or other important considerations.²⁵

B. Article 21 and Fair Procedure

Until 1978, Article 21 was interpreted as protection against executive action without law. In *Maneka Gandhi V. Union of India*, that was turned upside down; it was established that the way in which one is taken away from his life and liberty must ensure that such a taking is 'just, fair and reasonable'.²⁶ The question of review of detention or deportation is no longer whether the executive was in compliance with the Foreigners Act, it is whether the procedure was fair. In the case of *Louis De Raedt*²⁷ and *Khudiram Chakma*²⁸, the Supreme Court clarified that foreigners can invoke Article 21, but not Article 19(1)(e), which provides the right to reside and settle for citizens. The Court had already ruled in the same vein in *Hans Muller of Nuremberg v Superintendent, Presidency Jail, Calcutta*, earlier.²⁹ The Article 21 line has weakened that power but not taken it away.

²³ India Const. arts. 14, 21, 22(1)–(3), 25(1), 32; Bhattacharjee, supra note 1, at 72; Tamal Gupta et al., Constitutional Ramifications and Judicial Trends Towards Protecting the Rights of Refugees in India: An Analysis, 11 Int'l J. Env't Scis. 1127, 1131–33 (2025).

²⁴ India Const. art. 19(1)(d)–(e); *Louis De Raedt v. Union of India*, (1991) 3 S.C.C. 554 (India); *State of Arunachal Pradesh v. Khudiram Chakma*, 1994 Supp. (1) S.C.C. 615 (India).

²⁵ *Chairman, Railway Board v. Chandrima Das*, (2000) 2 SCC 465; Gupta et al., supra note 24, at 1133.

²⁶ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India)

²⁷ *Louis De Raedt*, (1991) 3 S.C.C. 554

²⁸ *Khudiram Chakma*, 1994 Supp. (1) S.C.C. 615

²⁹ *Hans Muller of Nuremberg v. Superintendent, Presidency Jail, Calcutta*, A.I.R. 1955 S.C. 367 (India)

C. Non-Refoulement under Article 21

Non-refoulement has been given content, mainly in the High Courts. The Gauhati High Court has decided that even illegal immigrants would be allowed to approach the UNHCR in India for refugee status.³⁰ Sri Lankan refugees in Tamil Nadu had to give the assurance that they wouldn't be deported to Sri Lanka, and the Bombay High Court refused deportation of an Iranian refugee who had UNHCR refugee status.³¹ The Gujarat High Court, in *Ktaer Abbas Habib Al Qutaifi v. Union of India*, ruled that expulsion to a country where the life or liberty of the person is at stake would infringe Article 21, provided the presence of the person is not detrimental to national security.³²

There are two aspects of this case law that should be highlighted. First, the protection is conditional; and second, in several respects, its impact was to keep the UNHCR recognition alive, not to create a status. Second, the doctrinal support is challenged. Another challenge is that the Article 21 decisions did not afford substantive protection to aliens and are based on the assumption that aliens may have their rights taken away if there is a “compelling State interest”.³³

IV. JUDICIAL TRENDS: FROM PROTECTION TO RETREAT

A. The Protective Approach

The Chakma litigation is a good example of the protective line at its best. Under Article 32, the National Human Rights Commission filed a petition in the Supreme Court regarding the Chakma refugees in the Chittagong Hill Tracts, with the local groups in Arunachal Pradesh calling for the removal of the Chakma refugees from the Chittagong Hill Tracts. The Court in *National Human Rights Commission v. State of Arunachal Pradesh* pointed out that the State had to ensure the life and liberty of all human persons, irrespective of whether they were citizens of the State or not, and that the quit notices and ultimatum issued by other groups be addressed in accordance with the law, and that their pending applications for citizenship be considered.³⁴

³⁰ *U Myat Kayew v. State of Manipur*, Civ. R. No. 516 of 1991 (Gauhati H.C. 1991) (India)

³¹ *P. Nedumaran v. Union of India* (Madras H.C. 1992) (India); *Syed Ata Mohammadi v. Union of India*, Crim. Writ Pet. No. 7504 of 1994 (Bombay H.C.) (India); Bhattacharjee, supra note 1, at 73 & n.15; Nair, supra note 1, at 9 n.6; Maheshwari & Pushkar, supra note 6, at 18.

³² *Ktaer Abbas Habib Al Qutaifi v. Union of India*, 1999 Cri. L.J. 919 (Guj.) (India)

³³ Chandrima Das, (2000) 2 S.C.C. 465; Omar N. Chaudhary, Turning Back: An Assessment of Non-Refoulement Under Indian Law, 39 Econ. & Pol. Wkly. 3257 (2004)

³⁴ Nat'l Hum. Rts. Comm'n, (1996) 1 S.C.C. 742

There are three features highlighted here. It was not the refugees but an institution that petitioned, avoiding some of the practical difficulties of petitioning on behalf of a displaced population, and NGOs have been admitted as petitioners as well. The argument is based on the rule of law, rather than on any particular refugee norm. Moreover, the protection was community-wide, which is rare in a jurisprudence that was largely based on individual petitions. Courts have also confirmed the refugee's right to depart, issuing permits for refugees charged with illegal entry to enable them to resettle in a third country.

B. The Restrictive Approach

Mohammad Salimullah v. Union of India brought this out. Rohingya in Jammu urged not to be deported to Myanmar on the grounds of Article 14 (non-refoulement) and Article 21 (risk of grave harm on return), and the Union appealed to the illegality of their entry and to national security. In April 2021, the Supreme Court rejected requests to release them or to halt deportation. As reported, the Court held that the right not to be deported was ancillary to the right to reside and settle under Article 19(1)(e), which applies only to citizens and that India is not a signatory to the 1951 Convention, and that any deportation must be carried out in accordance with the procedures laid down in the law.³⁵

That is not a line of logic that's easy to follow from the previous cases. The non-citizen was safeguarded from eviction by the NHRC on the basis that the State is responsible for guaranteeing everyone's safety on its territory, and the High Court rulings also considered an eviction into danger to be a violation of Article 21. Salimullah moved the withdrawal clause from the right to removal to a citizen-specific clause, rendering Article 21 mostly procedural. In contrast, a judgment delivered by the Manipur High Court shows that the understanding of non-refoulement is akin to Article 21 and the lack of distinction between refugees and immigrants is a fault.³⁶

V. THE LEGAL FRAMEWORK

A. The Foreigners Regime

Till September 2025, refugees were liable to the Foreigners Act, 1946, the Registration of Foreigners Act, 1939, the Passport (Entry into India) Act, 1920, the Passports Act, 1967 and the Extradition Act, 1962 and citizenship under the Citizenship Act, 1955.³⁷ There was no one

³⁵ Mohd. Salimullah, 2021 SCC OnLine SC 296.

³⁶ Nandita Haksar v. State of Manipur, 2021 SCC OnLine Mani 176 (India)

³⁷ Foreigners Act, No. 31 of 1946 (India) (repealed 2025); Registration of Foreigners Act, No. 16 of 1939 (India)

who could tell the difference between a refugee and a foreigner. The Foreigners Act allowed the Central Government to control the entry, presence and departure of foreigners, and any failure to provide documents was a criminal offence (s.14) without exception for those who were unable to get documents because they were running away.³⁸ The Convention, on the other hand, considers the entry of people who come directly from a place of threat and present themselves immediately as behaviour that should not be sanctioned.³⁹ As the literature shows, the real-life implications were that refugees were subject to prosecution; prosecution processes for refugees without papers were identical to those established for other illegal entrants, and decisions regarding refugee treatment were based on political factors and not legal ones.

B. Differentiated Treatment of Refugees

No statute, and status has been reliant upon who the group is. The Government has accorded Tibetans and Sri Lankan Tamils a *prima facie* basis, meaning right from the start, protection and assistance through specific policies and giving residence permits based on individual cases. Tibetans have been issued with registration certificates, which are valid for five years, and identity certificates for travel; Sri Lankan Tamils have been taken up in State-run camps in Tamil Nadu, and provided with State welfare assistance, but their legal status is unclear. Chakma and Jumma refugees, at least nominally, have been treated in a special manner, but in the case of Chakma, the treatment has been contentious. Other refugees, such as Afghans and Burmese, are under the mandate of UNHCR, which will determine refugee status and issue its own certificates, and for whom the Government will issue temporary residence permits, until durable solutions are found. Others like the Chin in Mizoram have not even been recognised, and the UNHCR has not been allowed to access border areas, from where many people are seeking refuge.

The Standard Operating Procedure (2011), amended in 2019, instructs law enforcement agencies on their activities in cases involving foreign nationals who allege to be refugees and long-term visas (LTV) granted for employment and study. It was the first attempt by the Indian administration to recognise the Convention-based criteria for refugee identification. Yet it is an executive instrument, and the literature still documents the lack of an official procedure for

(repealed 2025); Passport (Entry into India) Act, No. 34 of 1920 (India) (repealed 2025); Immigration (Carriers' Liability) Act, No. 52 of 2000 (India) (repealed 2025); Passports Act, No. 15 of 1967 (India); Extradition Act, No. 34 of 1962 (India); Citizenship Act, No. 57 of 1955 (India).

³⁸ Foreigners Act, No. 31 of 1946, §§ 3, 14 (India) (repealed 2025).

³⁹ Refugee Convention, *supra* note 9, art. 31(1).

determining status. The distribution of LTVs, from highest for Tibetans to lowest for Afghans, with Hindu and Sikh Afghans progressing more quickly through the process than other Afghans, indicates that discretion has gone before need, rather than need.

The Rohingya are at the end of this spectrum. Many Rohingya with UNHCR cards have been detained and subjected to deportation proceedings under the foreigners statute, despite this being illegal; the policy has been argued under national security, and they have not been given any assistance by the State, unlike the Tibetans and Tamils. In August 2022, the Union Minister for Housing and Urban Affairs announced his efforts to move the Rohingya refugees to Delhi, but in a few hours the Ministry of Home Affairs declared them to be illegal foreigners. Both in terms of political context and in terms of what it reveals of the nature of executive discretion in the absence of legislation, the episode illustrates what it means to have discretion. The consequences of these for daily life are shown in the sources: government-recognised refugees have had access to the local school, hospital and job market; UNHCR refugees have had problems accessing accommodation and have not received any documentation support; others have reported not having received work permits, access to the informal economy, emergency treatment only under the national health scheme and problems opening bank accounts or renting housing.

C. The Citizenship (Amendment) Act of 2019

To be fair, the most obvious among the measures taken by the Parliament in recent times in regard to the displaced population is the Citizenship (Amendment) Act of 2019. It modified the Citizenship Act, 1955 to remove the illegal migrants status for Christians, Jains, Parsis, Sikhs and Buddhists from Afghanistan, Bangladesh and Pakistan who had arrived in India by 31 Dec 2014 and brought down the 11-year residence requirement to five years for their naturalisation.⁴⁰ Implementation has been done through executive orders like a notification dated 28 May 2021, for applications for citizenship to be submitted by the minority communities of the 13 districts of five States.

Three observations follow. First, the Act is a citizenship act; it's a path to citizenship for a particular class. It does not define the term refugee, has no refugee status determination process and no protection against refoulement for those who are not in the class. Second, its criteria are

⁴⁰ Citizenship (Amendment) Act, 2019, No. 47 of 2019, India Code; Maheshwari & Pushkar, *supra* note 6, at 10, 14–15.

religion and country of origin and not need: refugees from other countries, including Sri Lanka and Myanmar, and persecution on other grounds, such as political opinion, are not covered by it. Third, it has been challenged as to its validity on Article 14 and the secular nature of the Constitution, and it has been argued that it was a humanitarian gesture for religious persecution, and, on the contrary, a mechanism was already in place in the 2011 procedure without religion.

D. The Immigration and Foreigners Act, 2025

This Immigration and Foreigners Act 2025 was passed by the Parliament on 4th April 2025 and came into force on 1st September 2025. It superseded the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act, 1939, the Foreigners Act, 1946 and the Immigration (Carriers' Liability) Act, 2000 and gives statutory powers to the Bureau of Immigration.⁴¹ Much of the above case law has been superseded by the consolidation, which eliminates the colonial statutes that it relied upon. But its reported focus is on entry and stay, reporting requirements and penalties. How it will play out with the constitutional doctrine explored here is still to be litigated, and until Parliament passes legislation specifically for refugees, the issue of status remains.

VI. CONCLUSION

India's refugee protection system has been a constant balancing act between the rights of individuals and the ability of the State to control immigration and ensure national security. Despite its rich refugee past, the country has never had a refugee-specific law and refugee protection has been highly variable, depending on changing refugee conditions, executive decisions and judicial rulings. This has left some doubt about the law of the land for refugees and the level of protection they can receive.

Articles 14 and 21 of the Constitution offer critical protections to non-citizens, and judicial rulings have helped shape the concept of non-refoulement as a bar against return to situations where the life or liberty of individuals may be at risk. *S. V. Ramamoorthy vs. State of Tamil Nadu* have left the Supreme Court with contradictory duties. The Supreme Court is, however, faced with conflicting obligations in the case of *National Human Rights Commission v. State of Arunachal Pradesh* and *Mohd. S.V. Ramamoorthy vs. State of Tamil Nadu*. The lack of a

⁴¹ Immigration and Foreigners Act, 2025, No. 13 of 2025, India Code; Immigration and Foreigners Act, 2025, *supra* note 8.

coherent and uniform system of protection is further reflected in the different treatment of refugees. The Immigration and Foreigners Act, 2025 is an Act that groups the laws that regulate immigration and foreigners and does not answer the fundamental question of refugee status.

Hence, India requires a dedicated refugee law which clearly defines refugee status, an equitable determination process and provisions to prevent arbitrary detention and deportation. Legislation should strike a balance between national security concerns and principles of the Constitution and also humanitarian obligations. Refugee protection should not be based on the discretion of the executive branch or the vagaries of the judiciary. An all-encompassing and effective legal and policy regime would help reinforce the rule of law, hold leaders accountable and ensure a more uniform application of the dignity and basic rights of people seeking refuge in India.