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Refugees Problems in India: A Critical Analysis

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Abstract

India has a long history of hosting refugees, having provided asylum to groups from Tibet, Sri Lanka, Afghanistan, Myanmar, and Bangladesh. Despite its humanitarian tradition, India lacks a formal legal framework for refugee protection, leading to inconsistent treatment across different communities. This paper critically analyzes the refugee issue in India, focusing on legal, political, and socio-economic dimensions.

Keywords: Refugee, Asylum seeker, Stateless person, Internally Displaced Person (IDP), Persecution, Human rights.

India's been taking in people escaping trouble in nearby countries for a long time. Even though India didn't sign the big international refugee agreements, it still takes in lots of refugees from places like Tibet, Sri Lanka, Bangladesh, Afghanistan, Myanmar, and more. But, since there's no specific law about refugees here, things can be pretty random and not always fair.

Refugee is a person who is forced to leave their home country due to war, persecution, violence, or a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. Unlike migrants who move voluntarily (often for economic reasons), refugees flee for survival and protection.

As per the 1951 United Nations Convention Relating to the Status of Refugees:

"A refugee is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."¹

India does not have a legal definition of "refugee" in domestic law, as it is not a party to the 1951 Convention or its 1967 Protocol. Refugees in India are treated under laws such as: Foreigners Act, 1946 and Citizenship Act, 1955. Because there is no specific definition of Refugees in these two Acts.

The phenomenon of people fleeing conflict, persecution, or disaster is as old as human civilization. However, the legal and institutional recognition of refugees as a distinct group needing protection is a relatively recent development, primarily shaped by the events of the 20th century.

According to Oxford Dictionary Definition

"A person who has been forced to leave their country in order to escape war, persecution, or natural disaster."²

Historical Background of Refugees

The phenomenon of people fleeing conflict, persecution, or disaster is as old as human civilization. However, the legal and institutional

recognition of refugees as a distinct group needing protection is a relatively recent development, primarily shaped by the events of the 20th century.

In Ancient Egypt and Mesopotamia: People fled invasions and famine, often taking shelter in neighboring kingdoms. *Religious Persecution:* Jews, early Christians, and others often sought refuge in foreign lands due to oppression (e.g., Jewish exile to Babylon). *Medieval Period:* During the Crusades and inquisitions, religious and ethnic minorities frequently sought refuge across regions.

16th–17th Century saw the persecution when Protestant Huguenots fled Catholic persecution in France. 19th Century: Persecution of ethnic and religious minorities (e.g., Armenians in the Ottoman Empire) led to mass displacement. These movements were largely managed by sovereign rulers based on political convenience or humanitarian goodwill — no formal international protection mechanisms existed.

The First World War (1914–1918) and subsequent political upheavals created unprecedented refugee flows: when Collapse of empires (Ottoman, Austro-Hungarian, Russian) led to ethnic expulsions and displacement. The League of Nations appointed Fridtjof Nansen as High Commissioner for Refugees. The Nansen Passport was introduced for stateless refugees, an early attempt at international refugee documentation.³

The Second World War (1939–1945) displaced over 60 million people, including:

- Holocaust survivors
- War prisoners
- Stateless persons in post-war Europe

This crisis led to the establishment of a formal refugee protection framework: United Nations Relief and Rehabilitation Administration (UNRRA) – temporary support. International Refugee Organization (IRO) – established in 1946. United Nations High Commissioner for Refugees (UNHCR) – created in 1950 to oversee long-term refugee protection.

The 1951 Refugee Convention

The most important legal milestone came with the 1951 UN Convention Relating to the Status of Refugees, defining "refugee" and laying out states' obligations. Originally limited to European refugees from World War 2, it was broadened by the 1967

¹ United Nations High Commissioner for Refugees (UNHCR). 1951 Refugee Convention. Available at: <https://www.unhcr.org>

² <https://www.oxfordreference.com>

³ Loescher, G. (2001). *The UNHCR and World Politics: A Perilous Path*. Oxford University Press.

Protocol, which removed geographic and temporal limits, making it globally applicable.

Post-Colonial and Cold War Refugees

Decolonization in Asia and Africa triggered mass displacements.⁴ Cold War politics created both asylum opportunities.⁵

Contemporary Period

Refugee crises expanded to include civil wars, ethnic cleansing, terrorism, and climate change. Notable crises: Syria, Afghanistan, South Sudan, Rohingya exodus, and Ukraine. The global refugee population reached over 100 million forcibly displaced persons by 2023, according to the UNHCR.⁶

Historical Background of Refugees in India

India has a rich and complex history of hosting refugees, shaped by its geopolitical location, religious diversity, and tradition of asylum. From ancient times to the present day, India has provided shelter to people fleeing persecution and violence across South Asia and beyond, even though it lacks a formal refugee law.

Legal Framework for Refugees in India

India does **not have a specific or comprehensive refugee law**, nor is it a party to the **1951 UN Refugee Convention** or its **1967 Protocol**. Nevertheless, India has hosted a large number of refugees from neighboring countries over the years. The treatment and status of refugees in India are governed by a **combination of general laws, executive policies, judicial pronouncements, and ad hoc administrative measures**.

India's Position on the 1951 Refugee Convention

India has **not ratified** the 1951 Convention or the 1967 Protocol, mainly due to: **Concerns about national security and sovereignty** The **burden of refugee influxes**, particularly in the Northeast and border states. The **absence of burden-sharing mechanisms** in the Convention. Despite this, India is bound by other **international obligations** (e.g., under the Universal Declaration of Human Rights and the

Convention Against Torture) which influence its approach to refugee protection.

Domestic Legal Provisions Affecting Refugees

India's domestic legal system **does not distinguish between refugees, asylum seekers, and other foreigners**. Refugees are treated under general laws that govern **foreigners and immigration**, including:

a. **Foreigners Act, 1946**

Provides the central government with wide powers to **deport, detain, or restrict the movement** of foreigners. Does **not recognize "refugees" as a separate legal category**, leaving them vulnerable to being treated as illegal immigrants.

b. **Passport (Entry into India) Act, 1920**

Penalizes entry without valid documents, even if the person is a refugee.

c. **Citizenship Act, 1955**

Governs acquisition and termination of Indian citizenship. Refugees may become eligible for **naturalization** under certain conditions but there is **no special provision** for them.

Administrative Practice and Executive Discretion

Without proper laws, the government makes most refugee decisions. For example, Tibetan refugees get special passes and places to live. Tamil refugees from Sri Lanka stay in camps run by the government in Tamil Nadu. Sometimes, Hindu refugees from Bangladesh even get citizenship thanks to political plans. But Rohingya Muslims? They're usually seen as illegal immigrants and might get arrested or sent back. This uneven way of dealing with things means people are treated differently because of where they're from, what they believe, or political stuff.

Role of UNHCR in India

The **United Nations High Commissioner for Refugees (UNHCR)** operates in India through an **agreement with the Ministry of External Affairs (MEA)**. In **Delhi**, UNHCR registers refugees (mainly from Afghanistan, Myanmar, Somalia, etc.), issues ID cards, and conducts refugee status determination (RSD). Refugees under UNHCR protection do not enjoy the same access to rights as those recognized directly by the Indian government.

⁴ e.g., *India-Pakistan partition in 1947, Vietnam War, Rwandan civil war*

⁵ e.g., *for defectors from the Soviet bloc) and proxy wars that displaced millions.*

⁶ *UNHCR. Global Trends: Forced Displacement in 2023. <https://www.unhcr.org/statistics>*

Judicial Interpretation and Constitutional Safeguards

Indian courts have played a **progressive role** in recognizing refugee rights under the **Constitution**, especially Articles 14 (equality), 21 (right to life), and 32 (constitutional remedies):

Judicial Decisions:

NHRC v. State of Arunachal Pradesh (1996)

The Supreme Court restrained the state government from evicting Chakma refugees, affirming their **right to life and liberty** under Article 21.⁷

Ktaer Abbas Habib Al Qutaifi v. Union of India (1999)⁸

The Gujarat High Court held that the principle of **non-refoulement** is part of Article 21 of the Constitution.

State of Arunachal Pradesh v. Khudiram Chakma (1994)⁹

The Supreme Court emphasized that **refugees are entitled to basic human rights** and protection against forced repatriation.

These rulings show that **constitutional rights apply to all persons**, not just citizens, providing some protection to refugees even without specific legislation.

Conclusion

India's always been cool with giving shelter to people running from trouble in nearby countries and even farther away. Even though India didn't sign those refugee agreements back in the day, it's still taken in tons of refugees over the years – Tibetans, Sri Lankan Tamils, Bangladeshis, Afghans, Rohingya Muslims, you name it.

Thing is, India doesn't have a go-to set of rules for refugees. So, how things are handled can be all over the place. Refugees are usually seen the same as anyone else who's not a citizen, so things aren't always fair. What happens to a refugee here can depend on politics, their religion, or where they're from, instead of clear rules.

Even though the courts have tried to help by saying refugees have some basic rights, not having actual refugee laws on the books still makes things fuzzy,

and can lead to people being treated unfairly. Plus, that new law about citizenship isn't helping either, 'cause it seems to pick and choose who gets help based on religion, and that's got people worried about fairness.

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⁷ *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742.

⁸ <https://indiankanoon.org>

⁹ <https://partitiondisplacements.com>