

# Promoting Effective Refugee Protection in India: Balancing National Interests and International Obligations

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*This paper explores the situation of refugees in India, particularly Sri Lankan and Rohingya refugees who are seeking asylum in India and face the issue of statelessness due to the lack of a concrete refugee law in India. The Foreigners Act 1946 of India defines foreigners as individuals who are not Indian citizens and requires non-citizens to possess government-issued documentation. Failure to possess such documents exposes individuals to penalties outlined in section 14 of the Act, including potential imprisonment and fines. The Act also grants the government the authority to detain and deport foreign nationals residing unlawfully in India. Furthermore, the Citizenship Amendment Act, 2019 (“CAA”) addresses the plight of religious minorities, excluding Sri Lankan, Rohingya and other refugees, as it only applies to refugees from Afghanistan, Bangladesh, and Pakistan. The CAA allows eligible Hindu refugees who entered India before December 31, 2014, to obtain Indian citizenship. The absence of a concrete refugee law in India, coupled with concerns over the potential impact of the CAA on India’s secular constitutional fabric, has raised international apprehension. It is important to note that India is not a party to the Convention Relating to the Status of Refugees, 1951, and its 1967 protocol, limiting its refugee protection obligations. By analysing relevant legal sources, judicial decisions and international standards, this paper aims to provide a comprehensive understanding of the legal complexities surrounding refugee protection in India and the implications of the CAA within the context of India’s international obligations.*

**Keywords:** *Refugee; International Law; India; Secularism; Domestic Law.*

## Introduction

The refugee crisis is not a new problem in the world. It has been in place since the evolution of civilised society and the concept of state, sovereign authority, and borders. In 1951, United Nations took the initiative to build a safe harbour for refugees and create obligations on nations for the accommodation of refugees through the United Nations Convention on Status of Refugees, 1951 (“Refugee Convention”) and its Protocol, 1967. The Refugee Convention currently has 146 signatories. India along with some other South-Asian states like

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Bangladesh, Pakistan, Sri Lanka, Malaysia, and Indonesia has not signed the Refugee Convention.<sup>1</sup>

Despite not being a signatory to the conventions and protocols on refugees, India has a long-standing history of hosting refugees. Starting with the aftermath of the partition of India and Pakistan in 1947 to the more recent influx of Rohingya Muslims from Myanmar, India has opened its doors to people fleeing persecution, conflict, and other forms of violence in neighbouring countries. This generous approach, however, has come with its challenges. The complex refugee crisis in India has triggered social, economic, and political tensions, particularly in Indian states like Assam, Tripura, and Manipur, where clashes between local communities and refugees have led to unfortunate incidents of violence. This situation has raised pertinent questions about social integration, humanitarian obligations, and the delicate balance between protecting national interests and upholding international human rights standards. Exploring the nuances of India's refugee crisis provides valuable insights into the complexities of managing large-scale displacement within a diverse and densely populated nation.

This paper explores the situation of refugees in India, particularly Sri Lankan and Rohingya refugees who are seeking asylum in India and face the issue of statelessness due to the lack of a concrete refugee law in India. The Foreigners Act 1946 of India defines foreigners as individuals who are not Indian citizens and requires non-citizens to possess government-issued documentation. Failure to possess such documents exposes individuals to penalties outlined in section 14 of the Act, including potential imprisonment and fines. The Act also grants the government the authority to detain and deport foreign nationals residing unlawfully in India. Furthermore, the Citizenship Amendment Act, 2019 ("CAA") addresses the plight of religious minorities, excluding Sri Lankan, Rohingya and other refugees, as it only applies to refugees from Afghanistan, Bangladesh, and Pakistan. The CAA allows eligible Hindu refugees who entered India before December 31, 2014, to obtain Indian citizenship. The absence of a concrete refugee law in India, coupled with concerns over the potential impact of the CAA on India's secular constitutional fabric, has raised international apprehension. It is important to note that India is not a party to the Convention Relating to the Status of Refugees, 1951, and its 1967 protocol, limiting its refugee protection obligations. By analysing relevant legal sources, judicial decisions and international standards, this paper aims to provide a comprehensive understanding of the legal complexities surrounding refugee protection in India and the implications of the CAA within the context of India's international obligations.

### **Defining Refugees: A Closer Look at Those in Exile**

Simply put, a refugee means any person who has fled to another country due to some reason which made it difficult for them to stay in their country of origin. Legally, the more universal definition of a refugee is provided Article 1(A)(2) of

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<sup>1</sup>Janmyr (2021).

the Refugee Convention, as amended by its 1967 Protocol, defining a refugee as someone who:

*“owing to 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; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it [...] In the case of a person who has more than one nationality, the term ‘the country of his nationality’ shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”*

It is very important to note that the refugee definition is declaratory, i.e., a person is a refugee as soon as s/he fulfils the criteria contained in the definition even before the formal determination of her/his refugee status. There is a presumption that anyone who has stepped out of their home country and crossed the border to escape a risk of serious harm in their country of origin are refugees and should be treated as such. The cause of migration of people to take refuge in another country can be due to many reasons, but the most prevalent reasons are war, internal conflicts, lynching, human trafficking, dislocation due to environmental hazards, natural disasters, etc. India has witnessed such a crisis during the war in Bangladesh and other neighbouring countries.

### **Trajectory of Refugee Policy in India**

Migration and particularly refugee movement is the most underlying concern globally today. It could be due to various factors including economic, social, political, etc. United Nations High Commission for Refugees has estimated displacement or statelessness of about 117.7 million people in 2023.<sup>2</sup> Currently, India has no specific law governing refugees. It also is not a party of the Refugee Convention of 1951 or its protocol of 1967, thus India is not obliged to play a host country for the refugees. But refugees are treated as foreigners and the governing laws for them are The Passport Act, 1967 (India), the Registration of Foreigners Act, 1946 (India), and the Foreigners Order, 1948 (India) Under the Foreigners Act, 1946. The migrants entering India without permission or staying beyond the date of permission are illegal migrants. Indian law clearly distinguishes between a refugee and an illegal migrant. However, the government holds the power to declare any set of refugees as illegal immigrants.<sup>3</sup>

The reason behind India not being a signatory to the Convention could be multi-fold which included its own economic, social, political, and financial

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<sup>2</sup>UNHCR (2023).

<sup>3</sup>Subramanian (2021).

interests. India is a populous country already, it became the most populous country in the world by surpassing China in April 2023.<sup>4</sup> The total population of India in 2022 was recorded at 1,417,173,173, out of which 242,835,00 are refugees.<sup>5</sup> The increasing number of refugees impacts the economy adversely. It creates a more densely area of population with no job or economic support. The signing of the convention was feared to bring unnecessary intervention in the internal matters of the country with the close interlinked borders of India with its neighbors.

However, it is known that India has a rich history of providing refuge to people from various countries, even though it is not bound by any formal international agreements to do so. This tradition dates back to the partition between India and Pakistan and continues to the present day. The partition, in particular, led to a massive wave of refugees, prompting the construction of the entire city of Faridabad to accommodate them.<sup>6</sup> Another significant event that resulted in a substantial inflow of refugees occurred in 1959 when the Dalai Lama, along with over 100,000 of his followers, sought asylum in India after fleeing Tibet. This influx placed a significant economic burden on India. Furthermore, subsequent major events, such as the Bangladesh War, the Afghanistan crisis, Pakistan refugees, and the arrival of Sri Lankan Tamil refugees, as well as similar occurrences in neighbouring countries, have compelled India to provide refuge to millions of people, thereby straining its economy.

According to a report of India Today, “More than 1.34 lakh Sri Lankan Tamils crossed the Palk Strait to India between 1983 and 1987 during the first in flow. In three more phases, many more refugees entered India. The war-torn Sri Lankans sought refuge in Southern India with more than 60,000 refugees currently staying in 109 camps in Tamil Nadu alone.”<sup>7</sup> A person can attain the status of refugee in India by applying for verification with all the valid documents in support of the grounds of persecution or fear of persecution due to which the person has fled from their mother country. The documents must validly show a genuine claim for determination of its refugee status.<sup>8</sup> United Nations High Commissioner for Refugees plays an important role in the determination of the status of refugees and further, it helps in verifying the details of the persons. Deciding who is a refugee and who is not is a peculiar task supported by the relevant documents one can provide of its “well-founded fear” of persecution. Interpreting the status of refugees in 1986, the Supreme Court of the United States in the case of *INC v. Cardoza Fouseca*<sup>9</sup> remarked that the “well-founded fear” scale would be applicable

“so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is not enough that persecution is a reasonable possibility[...].”

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<sup>4</sup>United Nations (2023).

<sup>5</sup>Macrotrends (2023).

<sup>6</sup>Jha (2018).

<sup>7</sup>Jha (2018).

<sup>8</sup>Pooja (2023).

<sup>9</sup>480 U.S. 421 at page 21.

being a non-signatory to the relevant conventions, is not obligated to adhere to the principles of refoulement. Refoulement involves the return of refugees to their home countries when the risk of persecution persists there. While international law prohibits refoulement, India's lack of formal agreements means it is not legally bound by these conventions. Although India is still bound by on the humanitarian ground and under the customary international law obligation. The Indian Supreme Court has at a time in different cases such as *Gramophone Co of India Ltd v. Birendra Bhadur Pandey*<sup>10</sup>, held that Customary International law forms part of the law of the land unless it is explicitly ousted by the Municipal law. But in the recent case of *Mohammed Salimullah v. Union of India*<sup>11</sup> the Supreme Court ordered the deportation of Rohingya Refugees on the ground of threat to national security. This shows that India stands at the shaded region of obligation and non-obligation towards the Refugee crisis.

The refugee influx in India is mostly through the North-Eastern Corridor, thus creating most problems for the North-Eastern states. Whether it be the Myanmar Coup, or the Bangladesh War north-eastern states have suffered it all. The States of Manipur, Mizoram, Tripura, and Assam have continuously faced this problem over the years. The continuous influx of refugees' incoming has ignited insecurity among these states. The ongoing struggle between local communities and Bangladeshi refugees frequently erupts in violence, tragically resulting in loss of life. The most intense conflicts are concentrated in several northeastern states like Assam, Tripura, and Manipur. Local communities and tribal groups assert that the influx of refugees from Bangladesh and the continuous stream of undocumented immigrants have brought about a significant shift in the social composition of these areas. As a result, they feel that they have become a minority in their own homeland. This demographic change was a major factor contributing to the Kokrajhar riots in Assam in 2012, which claimed the lives of over 80 people.<sup>12</sup> Thus, the refugee crisis is a huge problem for India. It although smartly did not bound itself by any convention on refugees or made a refugee framework to support the refugees. But still is serving them over the years. The moral obligation of India and the geopolitical pressure force it to open its doors to a large population of refugees. An absence of law on the subject has marked even more problems and therefore, it is usually suggested that India reconsider making a specific law on the subject.

In fact, the Standing Committee on External Affairs presented its report on 'India and International Law including extradition treaties with foreign countries, asylum issues, international cyber security and issues of financial crimes' on September 10, 2021 where it pointed out that asylum is granted on case to case basis and that, "Ministry of External Affairs steadfastly advocate India's stand on the concept of shared responsibility of all Sovereign countries in refugee crises developing anywhere in the world, making a strong case for review of the 1951 UN Convention and its 1967 Protocol. After that India can reconsider and revisit

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<sup>10</sup>(1984) 2 SCC 534.

<sup>11</sup>(2021) SCC Online SC 296.

<sup>12</sup>Bhuyan (2018).

the 1951 Convention and 1967 Protocol.”<sup>13</sup> Further that, Domestic Protocol on status of refugees and asylum seekers with specific responsibilities assigned to specific agencies could be created. In response the 18<sup>th</sup> report of the Committee on External Affairs of December 2022 said that, “The existing system is sufficient to handle the refugee situation at this point of time. However, as recommended by the Committee a proposal for preparing and notifying new Domestic Protocol on status of refugee and asylum seekers with specific responsibilities assigned to specific agencies could be considered in consultation with all stakeholders.”<sup>14</sup>

Thus, India would rely on domestic protocols and not sign the international instruments till they align with the idea of shared responsibility.

### **UNHCR’s Empowerment Programs for Displaced Communities in India**

UNHCR has been operational in India since 1981 to provide limited assistance to the Indian government in plans to support refugees and asylum-seekers. It works in collaboration with the government, non-governmental organisations, and other civil societies to provide the refugees and other ousted people with health, education, legal aid services, and other required needs. The policy and plans for granting asylum and other facilities are under the domain of the Indian Government, UNHCR is just a helping body to assist in hassle-free support. However, it is crucial to recognise that any choice made by the Indian government regarding granting refugee or asylum status cannot be divorced from its global obligations, which stem from international agreements such as the Universal Declaration of Human Rights, the Convention on the Reduction of Statelessness, 1961 and the Convention on the Rights of the Child, 1989. India has ratified these conventions, committing itself to certain principles and standards. When combined with the directives outlined in the Indian Constitution, these international frameworks compel India to establish a refugee policy that is inclusive and does not discriminate based on factors such as nationality, religion, gender, or place of birth.

### **Citizenship and Identity: The Dilemmas of Belonging and Exclusion**

Article 5-11 of the Constitution of India lays down the broad norms of who shall be a citizen of India and who would not. It excludes certain people from its ambit who after partition went back to Pakistan or who have wilfully taken citizenship of any other country. The Citizenship Act, 1955 lays down a few methods by which a non-citizen can acquire citizenship in India. It includes by naturalisation (section 6), by birth (section 5), by registration (section 5), by descent (section 4), and incorporation of territory (section 7). The Citizenship (Amendment) Act of 2019, known as CAA, was approved by the Indian

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<sup>13</sup>Ministry Of External Affairs (2021).

<sup>14</sup>Ministry Of External Affairs (2022).

Parliament on December 11, 2019. This act brought about changes to the Citizenship Act of 1955, enabling individuals from specific religious minorities, namely Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, who had fled from Pakistan, Bangladesh, and Afghanistan before December 2014 due to religious persecution or the fear thereof, to attain Indian citizenship. It is important to note that Muslims were excluded from the provisions of this act. According to the 2019 CAA amendment, migrants who had entered India by December 31, 2014, and had experienced religious persecution in their home countries were eligible for expedited Indian citizenship through this new law. These eligible migrants could obtain Indian citizenship in six years, and the amendment also reduced the residency requirement for their naturalisation from eleven years to five. The arrival of refugees from Bangladesh into Assam sparked protests in the region. In response to this situation, the Assam Accord was established in 1985, which resulted in the addition of a new Section 6A in the CAA. Under this provision, the first cut-off date for granting citizenship was set at January 1, 1966, and individuals who were considered ordinary residents in Assam from that date were eligible for citizenship. Those who entered Assam between January 1, 1966, and March 25, 1971, were entitled to citizenship after a waiting period of ten years. However, the process was criticised for being too slow. The setting up of the Foreigners Tribunal was proposed but the same was struck down by the Supreme Court.<sup>15</sup>

In the Northeast region of India, there were concerns regarding undocumented migrants, primarily stemming from two main issues: the potential threat to the region's cultural identity and the impact on its electoral balance. These concerns were even acknowledged by the Supreme Court, which characterised the situation as a form of invasion. To address these concerns, there was an effort to expedite the process by establishing a National Register of Citizens (NRC). CAA sparked a controversy nationwide due to it allegedly being biased towards particular communities. CAA came along with the National Population Register (NPR), and the NRC which were specific to Assam. It was feared that the simultaneous enforcement of this revised Act in conjunction with the NPR and the NRC would have detrimental consequences for the underprivileged, marginalised, migrant, female, transgender, and indigenous populations. The primary concern is that they will be categorized as “suspicious voters” and consequently forfeit their right to vote. In essence, they will find themselves without a recognised nationality and a say in matters affecting them.<sup>16</sup> The Rohingya migrants were also to be put up in detention centres till deportation. But one must keep in mind that all these are only those migrants who entered the country after December 2014. India with its CAA did not do injustice toward the refugees who were afraid of persecution but merely acted against its increasing population which was even increased by the influx of migrants and illegal migrants. Although India is a hospitable nation, but it also has to see its self-interest before providing for

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<sup>15</sup>Dhavan (2023).

<sup>16</sup>Kumar & Damle (2020).

others. Accepting millions of migrants every year has putting negative impact on its economy and resources. Though India is obliged on humanitarian grounds to provide them shrine, every country seeks their municipal interest before international charity. It must be highlighted that on 11<sup>th</sup> March 2024, the Indian government has notified the Citizenship (Amendment) Rules, 2024 for its implementation.

### **Harmonising Humanity: Challenges, Reforms, and Paths to Effective Refugee Integration**

As discussed, India has a long history of hosting refugees from various regions and for different reasons. However, the legal framework and issues surrounding refugees in India are complex, posing significant challenges. One of the central challenges in India's refugee law is the absence of a clear and comprehensive definition of the term 'refugee'. This lack of definition has resulted in ambiguity regarding the legal status of refugees in the country. As a result, refugees often face difficulties accessing basic rights and protections, including access to education, healthcare, and employment.

India has encountered a significant influx of refugees due to its geographical proximity to conflict zones and neighbouring countries. For instance, Rohingya refugees from Myanmar and Tibetan refugees escaping China have sought refuge in India. However, the Indian government has often classified these refugees as 'migrants' or 'illegal immigrants,' denying them the legal status of refugees and, consequently, the associated rights and protections. The living conditions of refugees in India is another pressing concern. Refugee camps are often overcrowded, lacking proper sanitation and access to clean water. Basic needs like food, shelter, and healthcare can be difficult to come by for many refugees. Moreover, economic opportunities for refugees are limited, leaving them vulnerable to poverty and exploitation. To address these challenges, there is a need for significant reforms in India's refugee law. Addressing these multifaceted challenges necessitates significant reforms within India's refugee law framework. A precise and inclusive definition of refugees aligned with international standards is imperative. Consideration of ratifying the 1951 Refugee Convention and its 1967 Protocol could provide a structured legal framework for refugee protection.

Additionally, enhancing living conditions in refugee camps, facilitating access to education and healthcare, and fostering economic opportunities for refugees are essential steps. Legalising refugee employment would not only alleviate their financial burdens but also contribute to the local economy. This can help prevent refugees from becoming a burden on the state. collaborative efforts with neighbouring countries and international organisations are crucial in addressing root causes of displacement, promoting safe repatriation, and developing response plans for sudden refugee influxes. Pursuing durable solutions tailored to individual preferences and prevailing conditions, including voluntary repatriation, local integration, and resettlement, is paramount. In conclusion, while India's history of hosting refugees underscores its



humanitarian ethos, the complexity of its refugee law and associated challenges cannot be understated. Addressing these challenges through legal reforms and enhanced support mechanisms is imperative to ensure the well-being and protection of refugees within the country's borders.

## **Conclusion**

In conclusion, India's approach to its refugee policy should prioritise humanitarian values while also taking into consideration the nation's economic and political interests. Regardless of religious, political, or communal factors, a well-rounded refugee policy can serve India's broader objectives by addressing the refugee crisis in a neutral and balanced manner. India's vast economic potential can be harnessed through inclusive refugee policies. By allowing refugees to legally work and contribute to the local economy, the nation can tap into a pool of skilled and unskilled labour, potentially boosting economic growth and development. This approach aligns with India's aspirations for economic prosperity.

Moreover, a humane refugee policy can enhance India's standing on the international stage. By adhering to international norms and standards, India can strengthen its diplomatic relationships and garner support for its interests, including potential global cooperation on security issues, trade agreements, and climate change initiatives. Furthermore, a well-structured refugee policy can help maintain regional stability. Collaborative efforts with neighbouring countries and international organisations can address the root causes of displacement and reduce the risk of conflicts spilling over borders. India's political interests are also safeguarded through a balanced refugee policy. Upholding the principle of non-refoulement and respecting international agreements can demonstrate India's commitment to the rule of law and human rights. This can foster trust and goodwill among nations and positively influence their strategic alliances.

A refugee policy that remains neutral and impartial, focusing on humanitarian considerations, economic benefits, and political stability, can help India navigate the complex challenges posed by refugee crises. By emphasizing inclusivity, collaboration, and adherence to international standards, India can position itself as a responsible global actor while advancing its interests and contributing to a more harmonious world. In considering whether India should ratify the Refugee Convention, it is crucial to weigh the potential benefits and drawbacks in the context of its economic, political, geopolitical, and social interests. From an economic perspective, ratifying the Refugee Convention could offer India certain advantages. It would provide a structured framework for dealing with refugees, including access to international assistance and cooperation. This can help alleviate the financial burden of hosting refugees and even potentially contribute to economic growth by allowing refugees to legally participate in the labour market, thereby tapping into a skilled workforce.

In the political arena, ratifying the Refugee Convention would demonstrate India's commitment to international human rights standards and the rule of law. This can enhance its diplomatic standing, strengthen regional relationships, and potentially facilitate cooperation on various issues, such as security, trade, and climate change, ultimately serving its political interests. Geopolitically, India's ratification could enhance its influence on the global stage by showcasing its dedication to addressing humanitarian concerns and contributing to global stability. It could bolster India's image as a responsible and compassionate international actor, which can be advantageous in securing strategic alliances and partnerships. However, India's social interests are equally important. Ratification must be accompanied by a well-crafted domestic refugee policy that safeguards the rights and interests of its citizens while providing refuge to those in need. Balancing social cohesion and the protection of vulnerable populations is crucial. It is essential to recognise that ratifying the Refugee Convention also comes with potential challenges, such as managing a potentially large influx of refugees and adhering to international obligations, which may strain resources and infrastructure. Careful planning and collaboration with international organisations and neighbouring countries would be necessary to mitigate these challenges effectively. In conclusion, India's decision to ratify the Refugee Convention should be considered holistically, weighing its economic, political, geopolitical, and social interests. While ratification could bring benefits in terms of economic growth, diplomatic relations, and geopolitical influence, it should be accompanied by a well-thought-out refugee policy that addresses domestic concerns and ensures that the interests of both refugees and citizens are safeguarded. Ultimately, the decision should align with India's broader goals of contributing to global stability, ideology of shared responsibility while also protecting its national interests and societal harmony.

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