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Refugees in Legal Limbo: The Need for a Comprehensive Refugee Protection Framework in India

SACHIN SHEORAN* AND DR. NEHA MISHRA**

ABSTRACT

This paper examines the legal status of refugees in India and evaluates the challenges arising from the absence of a comprehensive refugee protection framework. Forced migration driven by armed conflict, persecution, generalised violence, environmental degradation, and climate-induced disaster has emerged as one of the foremost humanitarian challenges of the twenty-first century, yet India remains outside the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol despite hosting diverse refugee populations for decades. The paper analyses the international legal regime governing refugees, the constitutional and judicial protections available within India, and the practical difficulties confronting refugee communities, including legal uncertainty, inconsistent treatment, documentation gaps, detention and deportation risk, and socio-economic exclusion. Drawing on comparative practice in Canada, Germany, and South Africa, it proposes legislative and policy reforms aimed at establishing a coherent, rights-based, and humanitarian refugee protection system. The paper argues that a dedicated refugee law would strengthen India's commitment to humanitarian principles while simultaneously addressing legitimate national security concerns.

Keywords: Refugees, Refugee Law, Non-Refoulement, Human Rights, International Humanitarian Law, UNHCR, India.

I. INTRODUCTION

Human mobility has been a recurring feature of human civilisation, but contemporary patterns of forced displacement have reached unprecedented levels. According to global humanitarian assessments, millions of people worldwide have been forcibly displaced by armed conflict, persecution, generalised violence, environmental degradation, and human rights violations. Unlike voluntary migrants who move in pursuit of economic opportunity, refugees are

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compelled to leave their countries because remaining in their homeland threatens their life, liberty, or security.¹ Their displacement is not a matter of choice but a necessity for survival.

The refugee question occupies a significant place within international law because it involves the intersection of human rights, humanitarian obligations, state sovereignty, and international cooperation. Refugees frequently lose the protection of their home states and become dependent upon the protection offered by host countries and international institutions. Without legal recognition and protection, refugees are vulnerable to exploitation, arbitrary detention, deportation, discrimination, statelessness, and the denial of fundamental rights.

India has long been regarded as a country that has provided refuge to individuals fleeing persecution and violence. Throughout its history, India has welcomed diverse refugee populations, including Tibetans escaping political persecution, Sri Lankan Tamils displaced by civil war, Afghans fleeing conflict, and Rohingyas escaping violence in Myanmar.² Despite this humanitarian tradition, India has neither ratified the 1951 Refugee Convention nor enacted a domestic refugee protection statute. Consequently, refugee management in India depends largely upon executive discretion and judicial interpretation rather than a structured legal framework.

The absence of a comprehensive refugee law has created significant legal ambiguities. Different refugee groups are treated differently on the basis of geopolitical considerations, diplomatic relations, and security concerns. While certain communities enjoy extensive support and recognition, others face detention, restricted movement, or the threat of deportation. Such inconsistencies have raised concerns regarding equality, fairness, and compliance with international humanitarian standards.³

This paper examines the legal predicament faced by refugees in India and the urgent need for a comprehensive refugee protection framework. It analyses the existing international legal standards governing refugee protection, evaluates India's constitutional and judicial approach toward refugees, identifies the challenges arising from the current legal vacuum, and proposes reforms that balance humanitarian obligations with national security interests.

¹ Dhruva Borah & Bhaskar Das, *India's Refugee Policy: A Critical Analysis*, 44(3) LIBRARY OF PROGRESS-LIBRARY SCIENCE, INFORMATION TECHNOLOGY & COMPUTER 9877 (2024).

² Manik Debbarma, *Refugees' Experience and the Host Communities: Critical Analyses on the Absence of Refugee Law in India*, 60(5) J. ASIAN & AFR. STUD. 3204 (2025).

³ *Id.*

A. Meaning and concept of refugees

The concept of a refugee is distinct from that of migrants, asylum seekers, and internally displaced persons. Under Article 1(A)(2) of the 1951 Convention Relating to the Status of Refugees, a refugee is a person who, owing to a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of nationality and is unable or unwilling to avail themselves of the protection of that country.⁴

The refugee definition reflects a recognition that certain individuals require international protection because their home states are either unwilling or unable to safeguard their rights. Refugees are therefore entitled to special legal protection under international law. Unlike ordinary migrants, refugees cannot safely return to their countries of origin without risking persecution or serious harm.

Over time, the refugee concept has evolved in response to changing global realities. Contemporary displacement often arises not only from targeted persecution but also from civil wars, ethnic conflicts, generalised violence, environmental disasters, and climate change.⁵ These developments have prompted debate regarding the adequacy of traditional refugee definitions and the need for broader protection mechanisms that address emerging forms of forced migration.

B. The global refugee crisis and contemporary challenges

The modern world is witnessing one of the largest displacement crises in recorded history. Armed conflicts in regions such as the Middle East, Africa, and Asia have generated massive refugee flows. Political repression, ethnic cleansing, terrorism, and environmental degradation have further intensified displacement trends.⁶ Climate change has emerged as an additional factor contributing to forced migration through rising sea levels, droughts, floods, and extreme weather events.

The growing scale of displacement presents significant challenges for host countries. Governments must balance humanitarian responsibilities against concerns relating to national security, economic resources, social integration, and public administration. Developing countries often bear a disproportionate burden of refugee protection despite possessing limited

⁴ Matthew Lister, Who are Refugees?, 32(5) LAW & PHIL. 645 (2013).

⁵ Nadia Fadlalla, Conceptualizing the Meaning of Home for Refugees, 1(3) SPACES & FLOWS: INT'L J. URBAN & EXTRA URBAN STUD. (2011).

⁶ Joseph Besigye Bazirake, The Contemporary Global Refugee Crisis, 29(1) PEACE REV. 61 (2017).

resources.⁷

International institutions such as the United Nations High Commissioner for Refugees (UNHCR) play a crucial role in coordinating humanitarian assistance and promoting refugee rights. Nevertheless, effective refugee protection ultimately depends upon the willingness of states to adopt legal and institutional frameworks that safeguard displaced populations while maintaining legitimate regulatory control over migration.

II. INTERNATIONAL LEGAL FRAMEWORK FOR REFUGEE PROTECTION

The international refugee protection regime emerged as a response to the large-scale displacement caused by the two World Wars. The devastation and humanitarian crises witnessed during the first half of the twentieth century highlighted the need for an organised international system capable of protecting individuals who were unable to secure protection from their own states. Consequently, the international community developed a body of legal principles and institutional mechanisms designed to safeguard refugees and ensure their access to fundamental rights.⁸ Today, refugee protection is governed by a combination of international refugee law, international human rights law, and international humanitarian law, all of which contribute to the protection of displaced persons.

The contemporary refugee regime is founded upon the recognition that refugees occupy a unique legal position. Having lost the protection of their country of origin, they require international protection until conditions permit their safe return, local integration, or resettlement in a third country.⁹ International law therefore seeks to establish minimum standards for the treatment of refugees while simultaneously preserving the sovereign right of states to regulate immigration and border control.

A. The 1951 Refugee Convention and the 1967 Protocol

The cornerstone of international refugee law is the Convention Relating to the Status of Refugees, 1951, adopted under the auspices of the United Nations. The Convention was initially designed to address the displacement resulting from events occurring in Europe before 1 January 1951. It provided the first comprehensive legal definition of a refugee and established a framework of rights and obligations applicable to refugees and host states.

Article 1(A)(2) of the Convention defines a refugee as a person who, owing to a well-founded

⁷ Debbarma, *supra* note 2.

⁸ Guy S. Goodwin-Gill, The International Law of Refugee Protection, in THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES 36 (2014).

⁹ *Id.*

fear of persecution on grounds of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of nationality and is unable or unwilling to avail themselves of the protection of that country. This definition remains the foundation of refugee status determination across much of the world.¹⁰

The Convention recognises several important rights for refugees, including the right to access courts, freedom of religion, access to education, employment opportunities, public relief, housing, and freedom of movement. Refugees are also entitled to identity papers and travel documents that facilitate their legal existence within host states. The Convention emphasises that refugees should not be discriminated against on the basis of race, religion, or country of origin.

At the same time, the Convention imposes obligations upon refugees. Refugees are required to respect the laws and regulations of the host country and to refrain from activities that threaten national security or public order. The Convention thus seeks to balance humanitarian protection against the legitimate interests of states.

Although the 1951 Convention represented a landmark achievement, its original temporal and geographical limitations soon became inadequate as refugee crises emerged in different parts of the world. To address this difficulty, the 1967 Protocol Relating to the Status of Refugees removed the Convention's temporal and geographical restrictions, transforming the refugee regime into a universal instrument applicable to refugee situations worldwide.

Today, the Convention and Protocol collectively constitute the primary legal framework governing refugee protection. States that are parties to these instruments are required to establish procedures for recognising refugees and ensuring compliance with international standards of protection.¹¹

Despite being home to a substantial refugee population, India has neither ratified the 1951 Convention nor acceded to the 1967 Protocol. Indian policymakers have traditionally expressed concerns regarding the Convention's Eurocentric origins, its potential limitations on state sovereignty, and the possibility of creating binding obligations that may not adequately account for regional realities. Nevertheless, many principles embodied within the Convention have acquired broader recognition through customary international law and human rights jurisprudence.

¹⁰ ANDREAS ZIMMERMANN, JONAS DÖRSCHNER & FELIX MACHTS (EDS.), *THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY* (Oxford Univ. Press 2011).

¹¹ Joan Fitzpatrick, *Revitalizing the 1951 Refugee Convention*, 9 HARV. HUM. RTS. J. 229 (1996).

B. The principle of non-refoulement

Among all principles of refugee law, none is more significant than the principle of non-refoulement. This principle prohibits states from returning a refugee or asylum seeker to a territory where they face threats to life, freedom, torture, persecution, or other serious harm.

Article 33(1) of the 1951 Refugee Convention provides that no contracting state shall expel or return a refugee in any manner whatsoever to territories where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion. This provision forms the cornerstone of international refugee protection.

The importance of non-refoulement lies in its humanitarian purpose. Refugee protection would become meaningless if individuals could be returned to countries where they face persecution. The principle therefore operates as a safeguard against forced return and ensures that refugees have access to protection mechanisms before any removal decision is made.

Over time, non-refoulement has acquired a status extending beyond the Refugee Convention. Numerous international human rights instruments reinforce the prohibition against returning individuals to situations involving torture, cruel treatment, arbitrary deprivation of life, or serious human rights violations. Consequently, many scholars and international bodies regard non-refoulement as a principle of customary international law binding upon all states regardless of treaty ratification.¹²

The application of non-refoulement nonetheless remains contested in situations involving national security concerns. States often argue that the presence of certain individuals may pose security threats or create administrative burdens. Even so, international law generally requires that any security-based restriction be implemented in a manner consistent with fundamental humanitarian obligations.

In the Indian context, although there is no statutory recognition of non-refoulement, courts have frequently interpreted constitutional protections in a manner consistent with this principle. Judicial decisions have emphasised that refugees and non-citizens are entitled to basic protection against arbitrary deprivation of life and liberty.

¹² Nils Coleman, Non-Refoulement Revised: Renewed Review of the Status of the Principle of Non-Refoulement as Customary International Law, 5 EUR. J. MIGRATION & L. 23 (2003).

C. The relationship between refugee law, human rights law, and international humanitarian law

Modern refugee protection cannot be understood solely through the framework of refugee law. It operates at the intersection of three interconnected branches of international law: international refugee law, international human rights law, and international humanitarian law.

International refugee law specifically addresses the rights and protection of refugees. It governs refugee status determination, protection from refoulement, access to basic rights, and the responsibilities of host states. The 1951 Convention and 1967 Protocol constitute the principal instruments within this branch of law. Refugee law focuses primarily on individuals who have crossed international borders and require protection because they cannot safely return to their home countries. Its central objective is to ensure that refugees receive legal recognition and protection while durable solutions are pursued.

International human rights law complements refugee law by guaranteeing fundamental rights to all individuals regardless of nationality or immigration status. Instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights recognise rights that are equally applicable to refugees. These rights include the right to life, equality before the law, freedom from torture, access to education and healthcare, freedom of religion, and protection against arbitrary detention. Unlike refugee law, which applies specifically to refugees, human rights law applies universally to all human beings. For countries such as India that are not parties to the Refugee Convention, human rights law assumes particular importance, since constitutional guarantees and international human rights obligations often provide the primary legal basis for refugee protection.¹³

International humanitarian law, also known as the law of armed conflict, plays a crucial role in refugee protection by addressing the causes and consequences of displacement during armed conflict. Instruments such as the four Geneva Conventions of 1949 and their Additional Protocols establish rules governing the conduct of hostilities and the protection of civilians. Armed conflicts frequently generate refugee movements by exposing civilian populations to violence, persecution, and destruction. International humanitarian law seeks to reduce such displacement by protecting civilians and restricting the methods of warfare, and it also provides

¹³ Alice Edwards, Crossing Legal Borders: The Interface between Refugee Law, Human Rights Law and Humanitarian Law in the 'International Protection' of Refugees, in *INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW* 421 (2008).

special protections for displaced persons during armed conflict.¹⁴ Although refugee law and humanitarian law operate in different contexts, they are closely connected: humanitarian law seeks to protect individuals during conflict, while refugee law provides protection when displacement across borders occurs. Together, these legal frameworks contribute to a comprehensive system of humanitarian protection.

D. Emerging challenges and the evolution of refugee protection

The traditional refugee regime faces increasing pressure from contemporary challenges. Climate change, environmental disasters, transnational terrorism, organised violence, and mixed migration flows have generated forms of displacement that are not always adequately addressed by existing legal definitions.

Particularly significant is the growing phenomenon of climate-induced displacement. Rising sea levels, desertification, droughts, floods, and extreme weather events are forcing communities to relocate within and across national borders. Since climate-displaced persons generally do not fall within the traditional refugee definition, significant protection gaps remain.¹⁵

These emerging realities have prompted calls for a broader and more flexible approach to refugee protection. States and international organisations are increasingly exploring mechanisms that integrate humanitarian, human rights, and development perspectives to address contemporary displacement challenges.

The evolution of international refugee protection demonstrates that humanitarian obligations are not static but continually adapt to changing global conditions. For India, these developments highlight the importance of developing a legal framework capable of responding not only to traditional refugee situations but also to future displacement crises.¹⁶ Such a framework would strengthen legal certainty, promote consistency in refugee governance, and align domestic practice with internationally recognised humanitarian standards.

III. REFUGEE PROTECTION IN INDIA: THE EXISTING LEGAL POSITION

India occupies a unique position in the global refugee protection landscape. Despite not being a party to the 1951 Refugee Convention or its 1967 Protocol, India has a long-standing tradition of providing refuge to individuals fleeing persecution, conflict, and humanitarian crises.

¹⁴ Hans-Joachim Heintze, On the Relationship between Human Rights Law Protection and International Humanitarian Law, 86(856) INT'L REV. RED CROSS 789 (2004).

¹⁵ Syed Sami Abbas Quadri et al., Legal Gaps in Protecting Climate Refugees: Toward a New International Convention, 4(3) SOC. SCI. SPECTRUM 229 (2025).

¹⁶ Erika Feller, The Evolution of the International Refugee Protection Regime, 5 WASH. U. J.L. & POL'Y 129 (2001).

Throughout its post-independence history, India has hosted diverse refugee communities, including Tibetans, Sri Lankan Tamils, Chakmas, Afghans, Bhutanese, and Rohingyas. This humanitarian approach reflects India's civilisational values of tolerance, compassion, and protection for vulnerable populations.

Refugee protection in India is nonetheless characterised by the absence of a comprehensive legal framework. Unlike several countries that have enacted dedicated refugee legislation, India manages refugee issues through a combination of constitutional principles, executive policies, judicial decisions, and general laws regulating foreigners. Consequently, refugee protection often depends upon administrative discretion rather than clearly defined legal rights and procedures.¹⁷

The absence of a specific refugee law has produced a complex legal environment in which different refugee groups receive varying levels of protection. While certain communities have been granted extensive support and legal recognition, others have faced restrictions, detention, or the threat of deportation. This inconsistency has generated concerns regarding equality, legal certainty, and compliance with international humanitarian standards.

A. India's approach towards refugees

India's refugee policy has historically been shaped by humanitarian considerations, regional geopolitics, national security concerns, and diplomatic relations. Rather than adopting a uniform legal framework, India has responded to refugee situations on a case-by-case basis.

One of the most notable examples of India's humanitarian approach is the reception of Tibetan refugees following the 1959 Tibetan uprising. Thousands of Tibetans, including the Dalai Lama, were granted asylum in India. The Indian government facilitated their settlement, education, cultural preservation, and economic integration, and Tibetan refugees continue to enjoy a relatively stable legal status and access to various social and economic opportunities.¹⁸

Similarly, India provided refuge to a large number of Sri Lankan Tamil refugees who fled the civil war in Sri Lanka. Camps and welfare measures were established to support displaced persons, reflecting India's commitment to humanitarian protection.

India has also hosted Afghan refugees escaping decades of conflict and political instability. Many Afghans have received assistance through the UNHCR, which operates refugee status determination procedures in India for certain categories of asylum seekers.

¹⁷ Indra Bhardwaj & Nikhil Shaswat, *Refugee Protection in India: International Obligations and Need for Legislation*, 23 SUPREMO AMICUS 419 (2021).

¹⁸ Borah & Das, *supra* note 1.

The treatment of refugee groups has not, however, been uniform. The experience of Rohingya refugees illustrates the challenges associated with India's discretionary approach. Concerns regarding irregular migration, national security, and demographic change have influenced governmental responses toward Rohingya refugees, resulting in legal and political controversy surrounding their status and protection.¹⁹

The absence of standardised criteria for refugee recognition means that executive authorities retain significant discretion in determining the rights and treatment of different refugee populations. Consequently, refugees often remain uncertain about their legal status and future prospects.

B. Constitutional safeguards available to refugees

Although the Constitution of India does not expressly mention refugees, several constitutional provisions extend protection to all persons within Indian territory, including non-citizens.²⁰ These provisions have formed the foundation of judicial efforts to safeguard refugee rights.

Article 14 guarantees equality before the law and the equal protection of the laws to any person within the territory of India. The use of the term person rather than citizen signifies that the protection extends to foreigners and refugees as well. The Supreme Court has consistently interpreted Article 14 as prohibiting arbitrary state action. Refugees are therefore entitled to protection against discriminatory treatment and arbitrary decisions affecting their rights and freedoms.²¹

Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. This provision has emerged as the most important constitutional safeguard for refugees in India. Judicial interpretation has expanded Article 21 beyond mere physical survival to encompass human dignity, livelihood, shelter, health, education, and other essential aspects of life. Since Article 21 applies to all persons regardless of nationality, refugees benefit from its broad protective scope. Indian courts have frequently invoked Article 21 to prevent action that would expose refugees to threats against life and liberty, and in many instances the constitutional guarantee has functioned as an indirect safeguard against refoulement and arbitrary deportation.²²

Article 22 provides procedural safeguards against arbitrary arrest and detention. While certain

¹⁹ RANJANA KAPOOR, *MAKING REFUGEES IN INDIA* (Oxford Univ. Press 2022).

²⁰ Evgeni Tanchev, *Constitutional Safeguards of Legality and Legitimacy*, in *OPENNESS AND TRANSPARENCY IN GOVERNANCE: CHALLENGES AND OPPORTUNITIES* (2000).

²¹ INDIA CONST. art. 14.

²² INDIA CONST. art. 21.

restrictions may apply to foreigners under immigration laws, refugees remain entitled to the basic procedural protections recognised under constitutional jurisprudence.²³

Articles 25 and 29 contribute to the protection of refugee communities by safeguarding religious freedom and cultural identity.²⁴ These provisions are particularly significant for refugee populations seeking to preserve their traditions while residing in India. Despite these constitutional protections, refugees do not enjoy all the rights available to citizens. Political rights such as voting and contesting elections remain restricted to citizens. Nevertheless, constitutional guarantees provide an important legal foundation for refugee protection in the absence of dedicated legislation.

C. The role of UNHCR in India

The UNHCR plays a crucial role in refugee protection within India. Established in 1950, it is the principal international organisation responsible for safeguarding refugee rights and coordinating international responses to displacement.

In India, the UNHCR performs refugee status determination for certain groups of asylum seekers, particularly those who are not covered by specific governmental arrangements. Through this process, the UNHCR assesses whether individuals satisfy the criteria for refugee status under international law.²⁵ The UNHCR also provides documentation, legal assistance, educational support, livelihood programmes, and humanitarian aid to recognised refugees. These initiatives help refugees access basic services and reduce their vulnerability to exploitation and abuse. The organisation's activities are particularly important because India lacks a formal domestic mechanism for refugee status determination, and in many cases UNHCR documentation serves as evidence of an individual's need for international protection.

The UNHCR's role in India is nonetheless limited by the absence of a statutory framework formally recognising its decisions.²⁶ Refugees recognised by the UNHCR may still encounter difficulties relating to residence permits, employment opportunities, healthcare access, and protection from detention or deportation. Consequently, while the UNHCR provides valuable humanitarian assistance, its effectiveness depends significantly upon cooperation with Indian authorities and the broader legal environment.

²³ INDIA CONST. art. 22.

²⁴ INDIA CONST. arts. 25, 29.

²⁵ ALEXANDER BETTS, GIL LOESCHER & JAMES MILNER, *THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR): THE POLITICS AND PRACTICE OF REFUGEE PROTECTION* (Routledge 2013).

²⁶ Bojan Stojanović, *The Role of the United Nations High Commissioner for Refugees (UNHCR) in the Protection of Refugees and Asylum Seekers*, 5 *BIRCI-J.* 313 (2022).

D. Judicial response and landmark decisions

In the absence of comprehensive refugee legislation, the Indian judiciary has played a pivotal role in developing refugee protection principles. Courts have frequently relied upon constitutional provisions, international human rights norms, and humanitarian considerations to address refugee-related issues.

One of the most significant refugee cases in India is *National Human Rights Commission v. State of Arunachal Pradesh*, which concerned the Chakma refugee community residing in Arunachal Pradesh. The Supreme Court held that the State was constitutionally obligated to protect the life and liberty of every human being within its territory, and directed the authorities to ensure the safety of Chakma refugees and prevent their forcible expulsion.²⁷ This decision reinforced the principle that constitutional protections extend to non-citizens and demonstrated the judiciary's willingness to protect vulnerable refugee populations.

In *Louis De Raedt v. Union of India*, the Supreme Court acknowledged that foreigners possess the right to life and personal liberty under Article 21. The Court also emphasised, however, that foreigners do not possess an unrestricted right to reside and settle in India.²⁸ The judgment highlighted the balance between individual rights and state sovereignty, recognising both humanitarian considerations and the government's authority over immigration matters.

In *Ktaer Abbas Habib Al Qutaifi v. Union of India*, the Gujarat High Court recognised the significance of the principle of non-refoulement and linked it to Article 21 of the Constitution. The Court observed that returning individuals to situations where they face persecution would be inconsistent with constitutional guarantees of life and liberty.²⁹ The judgment represented a significant step toward integrating international refugee principles into Indian constitutional jurisprudence.

The legal status of Rohingya refugees has generated substantial judicial and political debate. Petitions challenging deportation measures argued that refugees faced serious risk if returned to Myanmar and therefore deserved constitutional protection. The courts acknowledged the humanitarian concerns but also recognised the government's responsibility to address national security considerations. These cases illustrate the continuing tension between refugee protection and state security interests.

India's existing refugee protection framework is characterised by a paradox. On the one hand,

²⁷ *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742 (India).

²⁸ *Louis De Raedt v. Union of India*, (1991) 3 SCC 554 (India).

²⁹ *Ktaer Abbas Habib Al Qutaifi v. Union of India*, 1999 Cri LJ 919 (Guj.) (India).

constitutional values, judicial intervention, and humanitarian tradition have enabled India to provide protection to numerous refugee communities. On the other hand, the absence of a dedicated refugee law has produced uncertainty, inconsistency, and unequal treatment among different groups. The constitutional framework has served as an important safeguard by extending fundamental rights to all persons, including refugees, and judicial decisions have further strengthened humanitarian protection by emphasising the importance of life, liberty, dignity, and non-discrimination. The UNHCR has supplemented these efforts by providing practical assistance and refugee status determination services.

These mechanisms nevertheless remain insufficient substitutes for a comprehensive legal framework. The absence of statutory procedures for refugee recognition, rights protection, and durable solutions continues to leave refugees in a state of legal limbo. This legal uncertainty underscores the urgent need for a coherent refugee protection regime capable of balancing humanitarian obligations against legitimate national security concerns.

IV. REFUGEES IN LEGAL LIMBO: CHALLENGES AND GAPS

Despite India's long-standing humanitarian tradition and judicial commitment to protecting vulnerable individuals, refugees in India continue to exist in a state of legal uncertainty. The absence of a dedicated refugee law has created significant gaps in protection, leaving refugees dependent upon executive discretion, inconsistent administrative practice, and case-specific judicial intervention. This legal vacuum not only affects the lives of refugees but also creates challenges for governance, national security management, and compliance with international humanitarian standards.³⁰

The term legal limbo accurately describes the condition of many refugees in India. Although they are physically present within Indian territory and often reside in the country for years or even decades, their legal status remains uncertain. Many refugees lack clear recognition, secure documentation, access to rights, and assurance against deportation. Consequently, they often face barriers in accessing education, healthcare, employment, housing, and social welfare benefits. The challenges arising from this situation reveal the urgent need for a comprehensive refugee protection framework capable of balancing humanitarian obligations against legitimate state interests.

³⁰ Volker Türk & Rebecca Dowd, Protection Gaps, in *THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES* 278 (2014).

A. Absence of a dedicated refugee law

The most fundamental challenge confronting refugees in India is the absence of a specific legal framework governing refugee protection. Unlike many countries that have enacted refugee legislation incorporating international standards, India regulates refugees through general laws applicable to foreigners.³¹

The principal statutes governing non-citizens in India include the Foreigners Act, 1946, the Registration of Foreigners Act, 1939, the Passports Act, 1967, and the Citizenship Act, 1955. These laws were designed primarily to regulate immigration, national security, and foreign nationals rather than to address the unique circumstances of refugees fleeing persecution and conflict.

As a result, refugees are often legally classified as foreigners without recognition of their distinct humanitarian status. This approach fails to acknowledge the fundamental difference between voluntary migrants and individuals who are compelled to flee their countries owing to threats to life and liberty. Refugees therefore become subject to legal regimes that prioritise control and regulation rather than protection.

The absence of refugee legislation also means that there is no uniform procedure for refugee status determination. Unlike countries that maintain formal asylum systems, India lacks statutory mechanisms for receiving asylum applications, assessing claims, granting refugee status, and reviewing decisions. Consequently, refugee recognition often depends upon executive policy or UNHCR intervention rather than legal right.³²

This legal vacuum generates uncertainty for both refugees and state authorities. Refugees remain unsure about their rights and future prospects, while administrative authorities lack clear guidelines regarding refugee management. The resulting ambiguity contributes to inconsistent decision-making and undermines legal predictability.

B. Inconsistent treatment of refugee communities

A significant consequence of the absence of a comprehensive legal framework is the differential treatment accorded to various refugee groups. India's refugee policy has historically been influenced by political, diplomatic, strategic, and security considerations, with the result that different refugee communities have received varying levels of protection and assistance.

³¹ Megan J. Ballard, *Refugees, Rights, and Responsibilities: Bridging the Integration Gap*, 39 U. PA. J. INT'L L. 185 (2017).

³² Madeline Garlick & Claire Inder, *Protection of Refugees and Migrants in the Era of the Global Compacts: Ensuring Support and Avoiding Gaps*, 23(2) INTERVENTIONS 207 (2021).

Tibetan refugees constitute one of the most notable examples of relatively favourable treatment. Following their arrival in India, Tibetans were provided with settlement opportunities, educational institutions, economic support, and cultural autonomy. Over time, many Tibetans successfully integrated into Indian society while preserving their distinct identity.³³

Similarly, Sri Lankan Tamil refugees benefited from organised rehabilitation programmes, refugee camps, and welfare assistance. The Indian government established various measures aimed at supporting displaced persons affected by the Sri Lankan civil war.

Other refugee groups, by contrast, have encountered greater challenges. Afghan refugees, despite receiving assistance from the UNHCR, often struggle with documentation issues, employment restrictions, and limited access to social services. Rohingya refugees have faced even greater difficulty owing to concerns relating to irregular migration, demographic impact, and national security.³⁴

The differential treatment of refugee groups raises important concerns regarding equality and fairness. Refugees fleeing persecution may experience substantially different outcomes depending upon their nationality, ethnicity, religion, or geopolitical significance rather than upon the severity of their humanitarian need. A comprehensive refugee law could help address these inconsistencies by establishing uniform criteria for refugee recognition and protection, ensuring that humanitarian considerations remain central to refugee governance while reducing arbitrary distinctions among refugee populations.

C. Documentation and identity challenges

Documentation is essential for legal recognition, access to services, and protection against exploitation. Many refugees in India nonetheless face significant difficulty in obtaining and maintaining valid identity documents.

Refugees frequently arrive without passports, visas, or official records owing to the circumstances of their displacement. Conflict, persecution, and forced migration often prevent individuals from carrying documentation when fleeing their countries.³⁵ In the absence of a dedicated refugee framework, obtaining alternative documentation can be extremely difficult.

While the UNHCR issues identification documents to recognised refugees, these documents do not always receive consistent recognition by all authorities. Refugees may encounter obstacles

³³ Borah & Das, *supra* note 1.

³⁴ Florin Brasoveanu, Legal Protection of Refugee Rights: Challenges and Solutions, 52 *TECHNIUM SOC. SCI. J.* 139 (2023).

³⁵ Ballard, *supra* note 31.

when attempting to open bank accounts, secure housing, access healthcare services, enrol children in schools, or obtain employment. The lack of reliable documentation also increases vulnerability to arbitrary detention and harassment, since refugees may be unable to prove their legal status during interactions with law enforcement authorities.

Inadequate documentation further complicates access to long-term solutions. Refugees who reside in India for extended periods may remain unable to regularise their status, obtain travel documents, or pursue pathways toward permanent residence, and the resulting insecurity contributes to social and economic marginalisation. A dedicated refugee law could establish standardised procedures for registration, documentation, and identity verification, thereby enhancing both refugee protection and administrative efficiency.

D. Detention and deportation concerns

One of the most serious challenges facing refugees in India involves the risk of detention and deportation. Since refugees are generally treated under laws applicable to foreigners, they may become subject to detention for immigration-related violations, including irregular entry or the absence of valid travel documents.

This situation is problematic because refugees frequently enter host countries without authorisation owing to the urgent circumstances of their flight. International refugee law recognises that individuals escaping persecution may not always be able to comply with normal immigration requirements.³⁶ Punitive responses to irregular entry therefore risk undermining the humanitarian purpose of refugee protection. Detention can have severe consequences for refugees, particularly women, children, elderly persons, and survivors of trauma, and prolonged detention often contributes to psychological distress, family separation, economic hardship, and barriers to integration.

The threat of deportation presents an even greater concern. In the absence of statutory safeguards incorporating the principle of non-refoulement, refugees may face removal to countries where they are exposed to persecution, violence, or serious human rights violations. Although Indian courts have occasionally intervened to protect vulnerable individuals, reliance upon litigation cannot substitute for comprehensive legal guarantees.³⁷ The uncertainty surrounding deportation creates fear and insecurity among refugee populations, many of whom remain uncertain whether they will be permitted to remain in India or compelled to return to

³⁶ Alina Das, *Immigration Detention: Information Gaps and Institutional Barriers to Reform*, 80 U. CHI. L. REV. 137 (2013).

³⁷ Philippe De Bruycker & Evangelia Tsourdi, *The Challenge of Asylum Detention to Refugee Protection*, 35(1) REFUGEE SURV. Q. 1 (2016).

unsafe conditions. A refugee protection framework incorporating procedural safeguards, individualised assessment, and non-refoulement principles would significantly strengthen protection against arbitrary detention and wrongful deportation.

E. Socio-economic exclusion and limited access to rights

Legal uncertainty frequently translates into socio-economic exclusion. Refugees often encounter barriers in accessing employment, education, healthcare, housing, and financial services.

Employment opportunities are particularly limited. Without clear legal authorisation to work, many refugees are forced into informal sectors characterised by low wages, poor working conditions, and exploitation. Economic insecurity increases dependence upon humanitarian assistance and reduces opportunities for self-reliance.³⁸

Educational access also remains uneven. Although some refugee children successfully attend school, documentation requirements, language barriers, and financial constraints often hinder educational opportunity. The denial of education not only affects individual development but also contributes to long-term cycles of poverty and marginalisation.

Healthcare access presents additional challenges. Refugees may struggle to obtain affordable medical treatment owing to documentation requirements, financial limitations, or a lack of awareness regarding available services. Vulnerable groups such as pregnant women, children, elderly individuals, and persons with disabilities are particularly affected.³⁹

Housing insecurity further compounds these difficulties. Many refugees reside in overcrowded settlements with inadequate infrastructure and limited access to sanitation, clean water, and essential services. Such conditions undermine human dignity and hinder social integration. The absence of clearly defined rights creates uncertainty regarding refugees' access to public services and opportunities. A comprehensive legal framework could establish minimum standards of socio-economic protection while facilitating refugee self-sufficiency and reducing dependence upon external assistance.

F. National security and humanitarian obligations

Perhaps the most complex issue in refugee governance concerns the relationship between humanitarian protection and national security. States possess a legitimate interest in protecting

³⁸ Fatma E. Marouf & Deborah Anker, *Socioeconomic Rights and Refugee Status: Deepening the Dialogue Between Human Rights and Refugee Law*, 103(4) AM. J. INT'L L. 784 (2009).

³⁹ Brasoveanu, *supra* note 34.

territorial integrity, maintaining public order, and preventing security threats. At the same time, humanitarian principles require protection for individuals fleeing persecution and violence.

Indian policymakers have frequently cited security concerns when addressing refugee-related issues. Challenges such as cross-border terrorism, irregular migration, organised crime, and demographic pressure have influenced governmental approaches toward refugee populations. Security concerns are particularly significant in regions characterised by political instability and transnational conflict.⁴⁰ Governments must ensure that refugee protection mechanisms are not exploited by individuals seeking to engage in criminal or extremist activity, and effective screening, registration, and monitoring procedures are therefore essential components of refugee governance.

The existence of security concerns should not, however, justify the denial of humanitarian protection to genuine refugees. International law recognises that security measures and refugee protection are not mutually exclusive objectives. Properly designed legal frameworks can accommodate both interests through transparent procedures, individualised assessment, and appropriate safeguards. The absence of a comprehensive refugee law often complicates rather than resolves security concerns, because without formal registration systems and standardised procedures, authorities may find it more difficult to distinguish refugees from other categories of migrants. A legal framework that provides clear mechanisms for identification, documentation, and monitoring could enhance both refugee protection and national security.

The challenges faced by refugees in India reveal the limitations of the existing ad hoc approach to refugee governance. The absence of dedicated legislation has resulted in legal uncertainty, inconsistent treatment, inadequate documentation, socio-economic exclusion, and continuing concerns regarding detention and deportation. While constitutional protections, judicial intervention, and humanitarian tradition have provided important safeguards, they remain insufficient substitutes for a comprehensive legal framework.⁴¹ The current system leaves refugees vulnerable to administrative discretion and deprives them of the certainty necessary for meaningful protection and integration, while the absence of standardised procedures creates difficulty for governmental authorities seeking to manage refugee populations effectively. These challenges demonstrate that refugee protection and national security should not be viewed as competing objectives: a well-designed refugee law can promote humanitarian values while strengthening administrative efficiency and security management. The experiences of

⁴⁰ MICHELLE FOSTER, *INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS: REFUGE FROM DEPRIVATION* (Cambridge Univ. Press 2007).

⁴¹ *Id.*

other jurisdictions provide valuable lessons regarding how such a framework may be developed.

V. COMPARATIVE ANALYSIS AND THE NEED FOR REFORM

The challenges associated with refugee protection in India become more apparent when viewed in comparison with the legal frameworks adopted by other jurisdictions. Across different regions of the world, states have developed legislative and institutional mechanisms to regulate refugee protection while balancing humanitarian obligations against national security concerns. Although the political, social, and economic circumstances of each country differ, comparative experience demonstrates that a well-structured refugee protection system can provide legal certainty, administrative efficiency, and enhanced protection for displaced persons.⁴²

For India, comparative analysis is particularly valuable because it highlights practical approaches that may be adapted to domestic realities. The objective is not to replicate foreign models in their entirety but to identify principles and practices that can inform the development of a comprehensive refugee protection framework suited to India's constitutional values, security concerns, and humanitarian traditions.

A. Refugee protection frameworks in selected jurisdictions

Canada is widely regarded as one of the most progressive jurisdictions in refugee protection. Its refugee regime is governed primarily by the Immigration and Refugee Protection Act, which establishes a detailed legal framework for refugee status determination, asylum procedures, rights protection, and resettlement programmes. One of the most significant features of the Canadian system is the existence of an independent adjudicatory body responsible for assessing refugee claims. Applicants are provided an opportunity to present evidence, participate in hearings, and challenge adverse decisions through review mechanisms, and such procedural safeguards promote fairness, transparency, and accountability.⁴³ Canada also facilitates refugee integration by providing access to education, healthcare, employment opportunities, and settlement services. This emphasis on integration recognises that refugees should not remain permanently dependent upon humanitarian assistance but should be empowered to contribute to society. The Canadian model demonstrates how refugee protection can be institutionalised within a clear legislative framework while maintaining effective immigration controls and security screening mechanisms.

⁴² James C. Simeon, *The Human Rights Bases of Refugee Protection in Canada*, in *HUMAN RIGHTS AND THE REFUGEE DEFINITION* 86 (Brill Nijhoff 2016).

⁴³ Khalid Koser, *Germany: Protection for Refugees or Protection from Refugees*, in *KOSOVO'S REFUGEES IN THE EUROPEAN UNION* 24 (2000).

Germany's refugee protection regime operates within both domestic legislation and the broader European Union asylum framework. The country has played a significant role in responding to refugee crises, particularly during periods of large-scale displacement from conflict-affected regions. German law establishes procedures for refugee status determination and provides legal protection against refoulement. Refugees are entitled to accommodation, social assistance, healthcare, language training, and educational opportunities, with particular emphasis placed on integration programmes designed to facilitate participation in social and economic life.⁴⁴ Germany's experience illustrates the importance of balancing humanitarian commitments against administrative capacity. The influx of large refugee populations has presented significant challenges; however, the existence of established legal institutions has enabled the authorities to process claims systematically and provide protection in accordance with legal standards.

South Africa offers an important example from the Global South. Unlike many developing countries, South Africa has enacted comprehensive refugee legislation through the Refugees Act, 1998. The Act incorporates international refugee principles, including non-refoulement, and establishes procedures for refugee status determination, while recognised refugees enjoy several rights, including access to employment, education, and healthcare.⁴⁵ South Africa's experience is particularly relevant for India because both countries are diverse democracies confronting developmental challenges and resource constraints. The South African model demonstrates that comprehensive refugee legislation is achievable even within developing-country contexts.

A comparative analysis of refugee protection frameworks across various jurisdictions reveals several common features that contribute to the effective governance and protection of refugee populations. One of the most significant observations is that refugee protection is generally regulated through dedicated refugee legislation rather than through ordinary immigration or foreigner laws. Such legislation recognises the unique circumstances of refugees and establishes specific legal standards tailored to their protection needs. Another common characteristic is the existence of clear and structured procedures for refugee status determination, which enable authorities to assess asylum claims in a fair, transparent, and consistent manner, often providing applicants with opportunities to present evidence, participate in hearings, and seek review of adverse decisions.

⁴⁴ Reuven Ziegler, Access to Effective Refugee Protection in South Africa: Legislative Commitment, Policy Realities, Judicial Rectifications?, 10(1) CONST. CT. REV. 65 (2020).

⁴⁵ SUSAN KNEEBONE (ED.), COMPARATIVE REGIONAL PROTECTION FRAMEWORKS FOR REFUGEES (Routledge 2017).

Most refugee protection systems further incorporate legal safeguards that protect refugees from arbitrary detention, expulsion, or deportation, particularly where return may expose them to persecution or serious harm. Refugees are also provided with identity documentation and legal recognition, which not only facilitate access to essential services but also help prevent statelessness, exploitation, and administrative uncertainty. Access to fundamental socio-economic rights, including education, healthcare, housing, and employment opportunities, is another recurring feature of effective refugee governance, enabling refugees to live with dignity and gradually achieve self-reliance within host societies.

At the same time, these legal frameworks do not disregard national security concerns. Most countries integrate security screening, background verification, and monitoring mechanisms into their refugee protection systems, thereby ensuring that humanitarian obligations are balanced against the legitimate interests of the state. Independent institutions or specialised authorities are often entrusted with refugee-related decision-making, promoting transparency, accountability, and consistency in the implementation of refugee policy. Collectively, these features contribute to legal certainty, administrative efficiency, and the effective management of refugee populations while ensuring that humanitarian principles remain central to the refugee protection regime.⁴⁶

B. Best practices in refugee governance

Comparative experience reveals several best practices that may guide refugee governance. A formal refugee status determination mechanism is essential for distinguishing refugees from other categories of migrants. Such procedures enable authorities to assess claims objectively while ensuring procedural fairness, and transparent determination processes also enhance national security by facilitating systematic registration, identity verification, and background checks.⁴⁷

Most modern refugee systems incorporate legal safeguards against refoulement. The recognition of this principle ensures that individuals are not returned to territories where they face persecution, torture, or serious threats to life and liberty. Incorporating non-refoulement into domestic law would align India's refugee policy with internationally recognised humanitarian standards.

Reliable documentation is critical for both refugee protection and governmental administration.

⁴⁶ Ali Zamani, *Best Practices in Refugee Integration* (2020) (Doctoral dissertation, The American College).

⁴⁷ Shirin Madon & Emrys Schoemaker, *Digital Identity as a Platform for Improving Refugee Management*, 31(6) INFO. SYS. J. 929 (2021).

Identity documents enable refugees to access essential services while assisting authorities in maintaining accurate records and monitoring refugee populations.⁴⁸ Standardised documentation systems reduce uncertainty and facilitate lawful residence.

Best practices also emphasise access to education, healthcare, housing, and livelihood opportunities. Such measures promote self-reliance, reduce dependency on humanitarian assistance, and contribute to social stability. Refugees who are able to work, study, and participate in society are more likely to integrate successfully and contribute positively to host communities.

Finally, the existence of independent institutions enhances accountability and fairness. Review mechanisms help prevent arbitrary decision-making and strengthen confidence in refugee governance systems.⁴⁹ Judicial and administrative review processes also ensure compliance with constitutional and human rights standards.

C. The need for a comprehensive refugee protection framework in India

The comparative analysis clearly demonstrates that India's current approach is inadequate to address the complexities of modern refugee protection. While constitutional safeguards and judicial intervention have provided important protections, they cannot substitute for a comprehensive legislative framework.

One of the primary benefits of refugee legislation would be the creation of legal certainty. Refugees would possess a clearly defined legal status, while governmental authorities would have explicit guidelines regarding refugee recognition, rights, and obligations. Legal certainty would reduce administrative confusion and facilitate more consistent decision-making.⁵⁰

A comprehensive refugee law would also help eliminate disparities in the treatment of different refugee communities. Uniform standards would ensure that protection is based upon humanitarian need rather than political or diplomatic considerations, and such consistency would strengthen the legitimacy and fairness of refugee governance.

A dedicated legal framework could further codify essential protections relating to life, liberty, dignity, education, healthcare, and employment. Refugees would no longer depend solely upon judicial intervention to secure fundamental rights, and legislative recognition would provide stronger and more predictable protection mechanisms.⁵¹

⁴⁸ Christine Woodruff, *Refugee Law: Improving Oversight and Accountability*, 29 GEO. IMMIGR. L.J. 147 (2014).

⁴⁹ Borah & Das, *supra* note 1.

⁵⁰ James C. Hathaway, *A Global Solution to a Global Refugee Crisis*, 2016(1) EUR. PAPERS 93 (2016).

⁵¹ Lister, *supra* note 4.

Contrary to common assumptions, refugee legislation can enhance rather than undermine national security. A formal registration and status determination system would enable authorities to identify refugees accurately, conduct security screening, maintain records, and monitor compliance with legal requirements. The absence of clear procedures often creates administrative uncertainty that may itself generate security concerns.

Although India is not a party to the 1951 Refugee Convention, it remains bound by various international human rights obligations. A comprehensive refugee law would demonstrate India's commitment to humanitarian principles and strengthen its reputation as a responsible member of the international community, while also reflecting constitutional values of equality, dignity, and justice.

Future displacement patterns are likely to be influenced by climate change, environmental degradation, resource scarcity, and regional instability. Existing legal mechanisms are poorly equipped to address these emerging challenges. A modern refugee framework could incorporate flexible provisions capable of responding to new forms of forced migration while maintaining appropriate safeguards.

A future Indian Refugee Protection Act should be designed as a comprehensive legal framework that balances humanitarian obligations against national security considerations. At the outset, the legislation should provide a clear statutory definition of the term refugee that is broadly consistent with internationally accepted standards while taking into account India's unique geopolitical and regional circumstances. The Act should establish transparent and fair procedures for the submission of asylum applications and the determination of refugee status, ensuring that individuals seeking protection are given an opportunity to present their claims and receive impartial consideration. An essential component of the framework should be the formal recognition of the principle of non-refoulement, which prohibits the return of refugees to territories where they may face persecution, violence, torture, or other serious threats to their life and liberty.

The proposed legislation should also create robust mechanisms for the registration and documentation of refugees, enabling them to obtain legal recognition and identity documents that facilitate access to essential services and reduce the risk of arbitrary detention or harassment. The Act should explicitly guarantee certain socio-economic rights, including access to education, healthcare, employment opportunities, and adequate housing, thereby enabling refugees to live with dignity and become self-reliant members of society. Special attention should be given to vulnerable groups such as women, children, elderly persons, and persons

with disabilities through targeted protection measures that address their specific needs and vulnerabilities.

At the same time, the legislation should incorporate appropriate security screening procedures and safeguards to ensure that refugee protection mechanisms are not misused by individuals who may pose threats to national security or public order. To promote fairness, transparency, and accountability, the Act should establish independent appellate and review mechanisms through which refugee status decisions and related administrative actions may be challenged. The framework should also contain provisions governing durable solutions for refugees, including voluntary repatriation to the country of origin when conditions become safe, local integration within India, and resettlement in third countries where appropriate. Finally, effective coordination mechanisms should be established among governmental agencies, state authorities, international organisations, and humanitarian institutions to ensure the efficient implementation of refugee protection measures. Collectively, these components would create a balanced and coherent refugee protection regime capable of safeguarding the rights and dignity of refugees while simultaneously protecting India's national interests and security concerns.

Comparative experience from different jurisdictions demonstrates that refugee protection is most effective when supported by clear legislation, transparent procedures, and institutional accountability. Countries across both developed and developing regions have successfully established refugee governance frameworks that reconcile humanitarian obligations with state sovereignty and security concerns. India's current reliance upon executive discretion, judicial intervention, and general foreigner laws has by contrast resulted in uncertainty and inconsistency. Although constitutional protections provide an important foundation, they are insufficient to address the complexities of contemporary displacement, and the growing scale of global refugee movements together with the emergence of new forms of forced migration further underscores the need for reform. A comprehensive refugee protection framework would strengthen legal certainty, enhance human rights protection, improve administrative efficiency, and promote national security. More importantly, it would ensure that refugees are no longer left in legal limbo but are provided with a predictable and humane system of protection consistent with India's constitutional values and humanitarian traditions.

VI. RECOMMENDATIONS AND CONCLUSION

Refugee protection has become one of the defining humanitarian and legal challenges of the contemporary era. Increasing armed conflict, political persecution, ethnic violence, religious intolerance, environmental degradation, and climate-induced displacement have contributed to

unprecedented levels of forced migration across the globe. As a country situated in a geopolitically sensitive region and sharing borders with several conflict-prone states, India has repeatedly encountered refugee influxes throughout its post-independence history. Despite providing refuge to numerous displaced populations and demonstrating a strong humanitarian tradition, India continues to lack a comprehensive legal framework governing refugee protection.

Refugees in India occupy a precarious legal position. While constitutional guarantees, judicial intervention, executive policies, and the assistance of the UNHCR provide a degree of protection, these mechanisms remain fragmented and insufficient. The absence of dedicated legislation has resulted in uncertainty regarding refugee status determination, unequal treatment among refugee groups, inadequate procedural safeguards, and limited access to socio-economic rights. The challenges identified underscore the urgent need for legal and policy reform capable of establishing a coherent refugee protection regime. Such reform must reconcile humanitarian obligations with legitimate national security concerns while remaining consistent with India's constitutional values and international commitments.

A. Legislative recommendations

The most important recommendation emerging from this paper is the enactment of a comprehensive Refugee Protection Act. A dedicated statute would provide legal certainty and establish a uniform framework governing refugee recognition, rights, obligations, and protection mechanisms. The proposed legislation should clearly define the term refugee in accordance with internationally recognised principles while allowing flexibility to address regional realities and emerging forms of displacement. A statutory definition would eliminate ambiguity and ensure consistency in decision-making. The legislation should distinguish refugees from other categories of migrants and recognise the unique vulnerabilities associated with forced displacement, thereby facilitating the development of tailored protection measures rather than subjecting refugees to legal frameworks designed for ordinary immigration control.

A central feature of any comprehensive refugee protection legislation in India should be the establishment of a formal refugee status determination mechanism. At present, the absence of a statutory asylum framework means that the recognition of refugees often depends upon executive discretion or the intervention of the UNHCR, resulting in inconsistency and legal uncertainty. A dedicated refugee status determination system would provide a structured and transparent process through which individuals seeking protection can have their claims assessed in accordance with established legal standards. Such a mechanism should include clearly

defined procedures for the submission and registration of asylum applications, ensuring that applicants have a fair opportunity to seek protection.

The determination process should be conducted through fair, impartial, and objective assessment of claims, taking into account the circumstances that compelled individuals to flee their countries of origin. Applicants should be provided with adequate opportunities to present evidence, documents, and personal testimony in support of their claims. Given the linguistic and cultural barriers often faced by asylum seekers, access to interpretation and translation services should be guaranteed to ensure meaningful participation in the process. Legal assistance should also be made available, particularly in complex cases or where applicants may be unable to represent themselves effectively. Decisions regarding refugee status should be communicated through reasoned written orders that clearly explain the basis of acceptance or rejection, thereby promoting transparency and accountability. To prevent error and arbitrary decision-making, the framework should provide for independent appellate and review mechanisms through which applicants can challenge adverse determinations. The establishment of such comprehensive procedures would enhance procedural fairness, strengthen public confidence in refugee governance, and ensure that refugee protection decisions are made in a consistent, transparent, and legally sound manner.

The principle of non-refoulement should be expressly incorporated into domestic law. No refugee or asylum seeker should be returned to a territory where there exists a substantial risk of persecution, torture, arbitrary deprivation of life, or serious human rights violations. Codification of non-refoulement would provide legal certainty and align India's refugee practice with widely recognised humanitarian principles. Appropriate exceptions may be incorporated for cases involving genuine and demonstrable threats to national security, provided that such measures comply with constitutional and human rights standards.

B. Administrative and institutional reforms

Effective refugee protection requires institutional support. India should establish a specialised National Refugee Authority responsible for refugee registration, status determination, documentation, policy coordination, and the implementation of protection measures. The Authority should function as an independent administrative body staffed by trained professionals possessing expertise in refugee law, human rights, humanitarian affairs, and migration governance. A centralised institution would reduce administrative inconsistencies and facilitate uniform implementation across different states and territories.

A robust registration mechanism is essential for both refugee protection and national security. Every refugee and asylum seeker should be registered through a standardised process that includes identity verification, biometric documentation, and security screening. Accurate registration would improve administrative efficiency, reduce the risk of fraud, facilitate access to services, enhance security monitoring, and enable effective policy planning. Rather than viewing registration as a burden, policymakers should recognise it as a tool that simultaneously advances humanitarian and security objectives.

India should also strengthen cooperation with the UNHCR while retaining sovereign control over refugee governance. The expertise and resources of the UNHCR can contribute significantly to refugee status determination, capacity building, technical assistance, and humanitarian support, and formal cooperation agreements may help ensure consistency between domestic practice and international standards.

C. Socio-economic protection measures

Education is fundamental to human development and social integration. Refugee children should have access to primary and secondary education without discrimination, and administrative barriers relating to documentation and residency requirements should be minimised. Educational opportunities not only benefit refugee communities but also contribute to social stability, economic productivity, and long-term development. Special language and integration programmes may assist refugee children in adapting to educational systems while preserving their cultural identities.

Refugees should be guaranteed access to essential healthcare services, particularly emergency medical care, maternal healthcare, child health services, and mental health support. Many refugees have experienced conflict, persecution, violence, and displacement-related trauma, and comprehensive healthcare policies must therefore address both physical and psychological needs. Improved healthcare access would enhance public health outcomes and reduce vulnerabilities among displaced populations.

Refugees should be permitted to engage in lawful employment and self-employment activities subject to reasonable regulatory requirements. Economic self-reliance reduces dependence upon humanitarian assistance and enables refugees to contribute positively to host communities. Access to livelihoods promotes dignity, integration, and social cohesion, and it also reduces the risk of exploitation associated with informal and unregulated employment sectors.

Refugees should further have access to adequate housing and essential social services. Particular attention must be devoted to vulnerable groups, including women, children, elderly

persons, and persons with disabilities. Housing policies should prioritise safety, dignity, and access to basic infrastructure such as sanitation, clean water, and healthcare facilities.

D. Protection of vulnerable groups

Women refugees often face heightened risks of gender-based violence, trafficking, exploitation, and discrimination. Refugee protection frameworks must therefore incorporate gender-sensitive measures addressing these challenges, and special support services, legal assistance, healthcare provisions, and protection mechanisms should be available to women who have experienced violence or abuse.

Children constitute one of the most vulnerable refugee populations. Many refugee children experience family separation, interrupted education, malnutrition, psychological trauma, and exploitation. A comprehensive refugee framework should prioritise the best interests of the child and ensure access to education, healthcare, protection services, and family reunification mechanisms.

Refugee policies should likewise recognise the unique needs of elderly persons and individuals with disabilities. Accessible services, targeted support programmes, and inclusive protection measures are essential for ensuring dignity and equality.

E. Balancing humanitarian protection and national security

A recurring concern in refugee governance relates to national security. Critics of expansive refugee protection often argue that refugee inflows may create security risks, demographic pressure, and administrative burdens. This paper acknowledges the legitimacy of national security concerns, since states possess both the right and the responsibility to protect territorial integrity, public order, and national interests. Security considerations should not, however, be treated as incompatible with humanitarian obligations. A comprehensive refugee framework can strengthen security by establishing systematic registration procedures, conducting background verification, maintaining accurate records, facilitating monitoring and oversight, and distinguishing genuine refugees from other categories of migrants. In many respects, the absence of formal refugee procedures creates greater uncertainty than a well-regulated protection system, since effective governance requires both humanitarian safeguards and robust administrative controls.

F. Future challenges: climate change and emerging displacement

The future of refugee protection will increasingly be shaped by environmental and climate-related factors. Rising sea levels, desertification, extreme weather events, droughts, and

resource scarcity are already contributing to large-scale population movements. Traditional refugee definitions do not adequately address climate-induced displacement, and policymakers must therefore anticipate emerging humanitarian challenges and develop flexible legal responses. India's future refugee framework should incorporate mechanisms capable of responding to evolving forms of forced migration, and such foresight would enhance resilience and ensure preparedness for future displacement crises.

G. Conclusion

This paper has examined the legal position of refugees in India and critically evaluated the consequences of the absence of a dedicated refugee protection framework. It demonstrates that, although India has historically provided refuge to displaced populations and upheld important humanitarian values, its existing approach remains fragmented and inconsistent. Constitutional guarantees, judicial intervention, executive policies, and UNHCR assistance have collectively contributed to refugee protection, yet these mechanisms cannot substitute for a comprehensive legal framework capable of addressing the complex realities of modern displacement. Refugees in India continue to face uncertainty regarding their legal status, rights, documentation, and future prospects, leaving many trapped in a condition of legal limbo.

Comparative experience from other jurisdictions reveals that refugee protection and national security are not mutually exclusive objectives. Through appropriate legislation, institutional mechanisms, and procedural safeguards, states can effectively balance humanitarian obligations against sovereign interests. Such frameworks provide legal certainty, enhance administrative efficiency, strengthen security management, and promote respect for human dignity. India's constitutional commitment to justice, equality, dignity, and human rights provides a strong foundation for the development of a refugee protection regime. Enacting comprehensive refugee legislation would not merely address a legal gap; it would affirm India's historical tradition of humanitarianism and strengthen its role as a responsible actor in the international community.

Ultimately, the measure of a legal system lies not only in its treatment of citizens but also in its protection of the vulnerable. Refugees, having lost the protection of their own states, depend upon the compassion and legal safeguards of host societies. A comprehensive refugee protection framework would ensure that those seeking safety in India are not left in uncertainty but are afforded the dignity, security, and protection that every human being deserves.
