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Stateless at the Gates: Legal Lacunae, Human Rights Obligations, and the Imperative of a Refugee Protection Framework in India

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ABSTRACT

India occupies a deeply paradoxical position in the global refugee protection matrix: it hosts one of the largest populations of displaced persons in South Asia yet remains outside the principal international legal instruments governing their protection. Absent a domestic refugee law and without accession to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, India's management of approximately 250,000 registered refugees, alongside several million undocumented cross-border migrants, is characterised by administrative discretion, legislative silence, and institutional incoherence. This paper examines the multi-layered marginalisation suffered by refugees and cross-border immigrants in India, operating simultaneously at the levels of law, policy, socio-economics, and political identity. Drawing upon international refugee law, constitutional jurisprudence, comparative frameworks, and an analysis of landmark judicial decisions, the paper argues that India's existing legal apparatus, anchored in archaic colonial legislation, fails to adequately protect the fundamental human rights of these vulnerable populations. The paper further interrogates the securitisation of migration as an ideological construct that criminalises forced displacement and renders invisible its humanitarian dimensions. It concludes with a normative framework for a rights-based National Refugee Law that harmonises national security imperatives with India's international human rights obligations, and charts a path toward the 'desecuritisation' of migration in South Asia.

Keywords: *Refugee; Cross-Border Migration; Marginalisation; Non-Refoulement; Statelessness; Securitisation; International Refugee Law; Indian Constitutional Law.*

I. INTRODUCTION

The global refugee crisis presents one of the most urgent moral and legal imperatives of the twenty-first century. According to the United Nations High Commissioner for Refugees (UNHCR), by mid-2023, the number of forcibly displaced persons worldwide exceeded 110

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million for the first time in recorded history, with over 36.4 million registered refugees, more than half of whom were children stripped prematurely of their futures.¹ Within this global humanitarian crucible, India occupies a position of profound ambivalence. As the demographic and geographic heartland of South Asia, India has historically been both a source and preferred destination of large-scale forced displacement, from the catastrophic partitions of 1947 and 1971 to the enduring influx of Rohingyas from Myanmar and undocumented economic migrants from Bangladesh. Yet India remains conspicuously absent from the international refugee protection regime, having acceded to neither the 1951 Convention Relating to the Status of Refugees² nor its 1967 Protocol.³

This institutional absence has produced a condition of legal limbo for hundreds of thousands of persons on Indian soil. The country's management of its estimated 250,000 registered refugees, predominantly Tibetans, Sri Lankans, Afghans, and Myanmarese nationals, alongside several million undocumented economic migrants is governed not by a principled legal framework, but by a patchwork of colonial-era statutes and ad hoc administrative discretion. The Foreigners Act of 1946⁴ and the Passport (Entry into India) Act of 1920⁵, instruments fashioned for an entirely different political era, constitute the primary legal vehicles through which the Indian state exercises authority over non-citizens, including those fleeing persecution and systematic violence.

This paper interrogates the phenomenon of marginalisation of refugees and cross-border immigrants in India through three analytical lenses: first, the structural deficiencies of India's domestic legal architecture; second, India's unfulfilled international human rights obligations; and third, the socio-political processes of securitisation that transform persons in flight into security threats requiring containment. The paper argues that genuine humanisation of India's response to refugees and migrants requires not merely incremental administrative reform but a fundamental paradigm shift: one anchored in a comprehensive National Refugee Law that operationalises India's constitutional commitments and international obligations.

¹UNHCR, *Global Trends: Forced Displacement in 2022*, at 2, 8 (2023), <https://www.unhcr.org/global-trends-report-2023>.

²Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137 [*hereinafter* 1951 Refugee Convention].

³Protocol Relating to the Status of Refugees art. I(2), Jan. 31, 1967, 606 U.N.T.S. 267 [*hereinafter* 1967 Protocol].

⁴Foreigners Act, No. 31 of 1946, § 3 (India).

⁵Passport (Entry into India) Act, No. 34 of 1920 (India).

II. THE REFUGEE-MIGRANT DISTINCTION AND THE SECURITISATION OF MIGRATION

The conceptual terrain of forced migration is marked by contested and shifting boundaries. The 1951 Refugee Convention defines a refugee as a person who, owing to a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality and unable or unwilling to avail themselves of its protection.⁶ The 1967 Protocol universalised this definition by removing its temporal and geographical limitations.⁷ The principle of non-refoulement, enshrined in Article 33 of the Convention, prohibits the return of a refugee to a territory where their life or freedom would be endangered, a norm now widely regarded as part of customary international law binding upon all states, including non-signatories such as India.⁸

In the context of South Asia, where poverty, structural violence, environmental degradation, and political persecution are often co-constitutive, the distinction between ‘refugees’ and ‘economic migrants’ is legally significant but practically elusive. India’s legal framework makes no such distinction: all non-citizens without valid documentation are treated as ‘illegal foreigners’ under the Foreigners Act,⁹ making no allowance for humanitarian considerations. This conflation carries grave consequences: it subjects those fleeing persecution to the same legal fate as those who have entered for purely economic reasons, denying the former any meaningful protection.

The securitisation of migration, the political process whereby cross-border movement is framed as an existential threat to the state rather than a humanitarian phenomenon, has become the dominant epistemic lens through which the Indian state views the movement of peoples across its borders. This conceptual shift transforms the refugee and the economic migrant alike into the figure of the ‘illegal alien’: a threat to national identity, demographic composition, economic

⁶1951 Refugee Convention, *supra* note 2, art. 1(A)(2). The 1969 OAU Convention and the 1984 Cartagena Declaration subsequently broadened the definition to encompass persons fleeing generalised violence and events seriously disturbing public order. Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa art. 1(2), Sept. 10, 1969, 1001 U.N.T.S. 45; Cartagena Declaration on Refugees, Nov. 22, 1984, reprinted in UNHCR, *Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR*, Vol. III, at 209 (2007).

⁷1967 Protocol, *supra* note 3, art. I(2) (removing the temporal limitation of ‘events occurring before 1 January 1951’).

⁸1951 Refugee Convention, *supra* note 2, art. 33(1). On the customary international law status of non-refoulement, see Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, in REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR’S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION 87, 149 (Erika Feller et al. eds., 2003).

⁹Foreigners Act, *supra* note 4, §§ 2(a), 3 (defining ‘foreigner’ as any person who is not a citizen of India, with no humanitarian carve-out for refugees or stateless persons).

resources, and territorial integrity. The modern nation-state, constituted by the Westphalian logic of territorial sovereignty,¹⁰ is structurally inclined to perceive trans-border human movement as an assault upon its political ontology.

Political philosopher Hannah Arendt's prescient observation that the twentieth century had produced a class of persons who were 'nothing but human', stripped of all civic status and reduced to bare existence, finds disturbing resonance in the condition of India's refugees and undocumented migrants today.¹¹ Seyla Benhabib has extended this insight to argue that the 'right to have rights' must be grounded in the universal recognition of personhood, demanding of states a cosmopolitan hospitality toward those who cross their borders in vulnerability.¹²

III. INDIA'S LEGISLATIVE VOID: A CRITICAL ANALYSIS

India's legal management of refugees and migrants rests upon a remarkably thin and antiquated statutory foundation. The Foreigners Act of 1946¹³, enacted by colonial authorities primarily to regulate the movement of enemy aliens during the Second World War, grants the central government near-absolute power to detain, deport, and restrict the movement of any non-citizen. The Registration of Foreigners Act of 1939¹⁴ and the Passport (Entry into India) Act of 1920¹⁵ further entrench a legal regime that treats non-citizens primarily as administrative and security subjects rather than rights-bearing persons entitled to protection.

India has no domestic refugee law. The government operates a *de facto* dual system: persons from Tibet and Sri Lanka are recognised and assisted directly by the government, while refugees from all other nations, including Myanmar and Afghanistan, are referred to the UNHCR for refugee status determination. This bifurcation is neither principled nor procedurally consistent; it reflects geopolitical calculations and historical accidents rather than any coherent rights-based approach. UNHCR's mandate, while invaluable, cannot substitute for a domestic legal framework providing justiciable protections.

¹⁰Peace of Westphalia, Oct. 24, 1648, 1 Consolidated Treaty Series 198. The equation of sovereignty with exclusive territorial jurisdiction is the foundational premise of the modern inter-state order. See STEPHEN KRASNER, *SOVEREIGNTY: ORGANISED HYPOCRISY* 20–25 (1999).

¹¹HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 296–98 (1951). Arendt observed that the stateless person's loss of political community reduced them to 'the abstract nakedness of being human and nothing but human.'

¹²SEYLA BENHABIB, *THE RIGHTS OF OTHERS: ALIENS, RESIDENTS AND CITIZENS* 11, 67 (2004). Benhabib advocates 'democratic iterations': public deliberative processes that translate cosmopolitan norms into justiciable domestic entitlements.

¹³Foreigners Act, *supra* note 4. The Act was enacted during the Second World War for the regulation of enemy aliens and has never been updated to reflect international refugee law developments.

¹⁴Registration of Foreigners Act, No. 16 of 1939 (India).

¹⁵Passport (Entry into India) Act, *supra* note 5.

The structural inadequacy of this system is particularly acute given the absence of any prescribed procedure for refugee status determination, the lack of statutory entitlements to basic services, and near-total dependence on the goodwill of individual government officials. A UNHCR refugee card, the primary identity document held by many non-Tibetan, non-Sri Lankan refugees, carries no formal legal status under Indian law and is frequently unrecognised by state-level authorities responsible for access to schools, health-care facilities, and welfare schemes. This creates what scholars aptly describe as a ‘legal grey zone’, a condition of precarious limbo in which individuals possess theoretical protections but lack any effective means of accessing them.¹⁶

The Foreigners’ Tribunals Order of 1964¹⁷ and the subsequently enacted (and later struck down) Illegal Migrants (Determination by Tribunals) Act of 1983¹⁸ illustrate the Indian state’s persistent instinct toward exclusion and deterrence rather than protection and integration. The Supreme Court in *Sarbananda Sonowal v. Union of India*¹⁹ struck down the IMDT Act as unconstitutional for shifting the burden of proof away from the state. While legally significant, the ruling did nothing to advance the protection of genuine refugees within the undocumented population.

IV. INDIA’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

While India is not party to the 1951 Refugee Convention or its 1967 Protocol, its extensive engagement with the international human rights architecture creates a robust, if chronically underenforced, set of obligations toward refugees and migrants on its territory. India is a signatory to the International Covenant on Civil and Political Rights,²⁰ the International Covenant on Economic, Social and Cultural Rights,²¹ and the Convention on the Rights of the

¹⁶See MIGRATION POLICY INSTITUTE, *Gaps in India Leave Refugees and Vulnerable Internal Migrants in Pandemic* (Apr. 2020), <https://www.migrationpolicy.org/article/gaps-india-refugees-vulnerable-internal-migrants-pandemic>; UNHCR, *India Fact Sheet, January 2020* (2020).

¹⁷Foreigners Tribunals Order, 1964, Ministry of Home Affairs Notification No. 7/20/63-B, Oct. 26, 1964 (India).

¹⁸Illegal Migrants (Determination by Tribunals) Act, No. 39 of 1983 (India), *struck down by Sarbananda Sonowal v. Union of India*, (2005) 5 S.C.C. 665 (India).

¹⁹*Sarbananda Sonowal v. Union of India*, (2005) 5 S.C.C. 665 (India). The Supreme Court held that the IMDT Act was unconstitutional insofar as it shifted the burden of proof from the state to the individual citizen complaining of illegal immigration.

²⁰International Covenant on Civil and Political Rights art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171. India acceded on Apr. 10, 1979. Article 2(1) requires each State Party to ensure the Covenant’s rights to all individuals within its territory and subject to its jurisdiction, irrespective of nationality.

²¹International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3. India ratified on Apr. 10, 1979.

Child,²² each of which extends protection to all persons within a state's jurisdiction, irrespective of nationality or immigration status.

The Universal Declaration of Human Rights, the foundational document of the international human rights order, proclaims that all human beings are born free and equal in dignity and rights 'without distinction of any kind,' and explicitly recognises the right to seek and enjoy asylum from persecution.²³ These commitments, while not independently justiciable in Indian courts, constitute authoritative interpretive context for India's constitutional rights jurisprudence.

The Indian Constitution itself extends critical fundamental rights to non-citizens. Articles 14 and 21, guaranteeing equality before the law and protection of life and personal liberty respectively, are expressed in universal terms and have been held by the Supreme Court to apply to every person on Indian soil, including undocumented foreigners.²⁴ Article 51(c) of the Constitution further enjoins the state to foster respect for international law and treaty obligations.²⁵ Read together, these provisions create a constitutional mandate to treat refugees and migrants in accordance with international human rights norms.

The doctrine of non-refoulement, though derived from the 1951 Convention, is affirmed by leading scholars and treaty bodies as a norm of customary international law binding upon non-signatory states.²⁶ Indian courts have, in select cases, given effect to this norm, most notably in the Chakma case, where the Supreme Court directed that Chakma refugees not be expelled from Arunachal Pradesh without due process.²⁷

²²Convention on the Rights of the Child art. 2(1), Nov. 20, 1989, 1577 U.N.T.S. 3 (non-discrimination on grounds including national or social origin, or immigration status of parent or guardian). India ratified on Dec. 11, 1992.

²³Universal Declaration of Human Rights, G.A. Res. 217(III), arts. 2, 14, U.N. Doc. A/RES/3/217A (Dec. 10, 1948) (proclaiming human rights without distinction and recognising the right to seek and enjoy asylum from persecution).

²⁴INDIA CONST. arts. 14, 21. *See* Louis De Raedt v. Union of India, (1991) 3 S.C.C. 554 (confirming that Article 21 extends to non-citizens on Indian soil); National Human Rights Comm'n v. State of Arunachal Pradesh, (1996) 1 S.C.C. 742.

²⁵INDIA CONST. art. 51(c) (enjoining the state to 'foster respect for international law and treaty obligations in the dealings of organised peoples with one another'). Read with the non-obstante clause in Article 13, this provision strengthens the interpretive import of India's treaty obligations for constitutional rights.

²⁶*See* JAMES C. HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW 363–72 (2005); Human Rights Comm., General Comment No. 36, ¶ 31, U.N. Doc. CCPR/C/GC/36 (2018) (holding that ICCPR arts. 6 and 7 prohibit return to a risk of arbitrary killing or torture, giving treaty-based content to non-refoulement for all states parties).

²⁷National Human Rights Comm'n v. State of Arunachal Pradesh, (1996) 1 S.C.C. 742 (India) (directing state authorities to protect lives and properties of Chakma refugees and to process citizenship applications without delay). *see also* State of Arunachal Pradesh v. Khudiram Chakma, (1994) Supp (1) S.C.C. 615.

V. HISTORICAL PATTERNS OF DISPLACEMENT: PARTITION, DECOLONISATION, AND THEIR LEGACIES

Any rigorous analysis of refugee marginalisation in India must be situated within the region's turbulent history of forced displacement. The Indian subcontinent has experienced two seismic partitions, the division of British India in 1947 and the bifurcation of Pakistan to create Bangladesh in 1971, each generating mass displacement on a scale without modern peacetime parallel. Understanding the legal and political responses to these events is essential to diagnosing the structural inadequacies that persist today.

The 1947 Partition produced one of the largest involuntary migrations in human history, displacing an estimated fourteen to seventeen million persons and claiming over one million lives in communal violence. As political scientist Ranabir Samaddar has written, Partition 'has remained a reality, a deep metaphor for violence, fear, domination, separation', a historical trauma whose ramifications continue to shape the political, legal, and psychological landscape of the subcontinent.²⁸ The communities produced by Partition were integrated into Indian society with varying degrees of success, invariably marked by administrative inadequacy, political instrumentalisation, and enduring social marginalisation.

The 1971 Bangladesh Liberation War generated a refugee crisis of comparable magnitude. The Pakistani military's crackdown on Bengali nationalists drove an estimated ten million persons across the Indian border within weeks.²⁹ India's military intervention and the creation of Bangladesh resulted in the repatriation of most refugees, but a residual population remained, laying the demographic groundwork for the anti-immigrant movement in Assam that erupted in the late 1970s.

The case of the Chakma and Hajong communities offers a particularly illuminating study in the long-term marginalisation of refugees. Displaced from the Chittagong Hill Tracts of erstwhile East Pakistan in the early 1960s following the construction of the Kaptai Dam and episodes of religious persecution,³⁰ these communities were resettled by the Indian central government in

²⁸RANABIR SAMADDAR, *A BIOGRAPHY OF THE INDIAN NATION 1947–1997*, at 89 (1998). *see also* JOYA CHATTERJI, *THE SPOILS OF PARTITION: BENGAL AND INDIA, 1947–1967* (2007) (documenting the enduring socio-economic and legal precarity of partition-era refugee communities in eastern India).

²⁹PARTHA S. GHOSH, *MIGRANTS, REFUGEES AND THE STATELESS IN SOUTH ASIA* 78 (2016). UNHCR estimates that approximately ten million East Pakistanis crossed into India between March and December 1971. *see also* RICHARD SISSON & LEO E. ROSE, *WAR AND SECESSION: PAKISTAN, INDIA AND THE CREATION OF BANGLADESH* 155–58 (1990).

³⁰The Kaptai Dam on the Karnaphuli River, completed 1961–62, submerged approximately 54,000 acres in the Chittagong Hill Tracts and displaced roughly 100,000 indigenous Chakmas. *See* AMENA MOHSIN, *THE POLITICS OF NATIONALISM: THE CASE OF THE CHITTAGONG HILL TRACTS, BANGLADESH* 72–74 (1997).

the present-day Arunachal Pradesh. For over five decades they have existed in legal and political limbo: promised citizenship by the central government and directed to be granted it by the Supreme Court in 1996,³¹ yet denied by the state government in deference to the political sensitivities of indigenous tribal constituencies. Their case epitomises the tension between India's international humanitarian commitments and the federal-political dynamics of states where refugees are physically located.

VI. CONTEMPORARY MANIFESTATIONS: ROHINGYAS, NRC, AND CAA

The Rohingya crisis represents India's most recent and politically charged encounter with large-scale forced displacement. Following decades of systemic persecution in Myanmar, characterised by denial of citizenship, confinement in camps, and repeated episodes of mass violence, approximately 40,000 Rohingya refugees had made their way to India by 2017, many holding UNHCR refugee documentation.³² The Indian government's response has been to characterise all Rohingyas as illegal immigrants posing a security threat, and to pursue their detention and deportation. The Supreme Court in *Mohammad Salimullah v. Union of India*³³ declined to grant relief against deportation, refusing to treat UNHCR refugee status as a bar to removal under Indian law.

The Citizenship (Amendment) Act of 2019 (CAA)³⁴ introduced, for the first time in India's post-colonial constitutional history, a religious criterion into the law of citizenship. By providing an expedited pathway exclusively for non-Muslim migrants from three specified countries while explicitly excluding Muslims, the CAA has been widely condemned as incompatible with the constitutional guarantee of equality before law under Article 14.³⁵

³¹National Human Rights Comm'n v. State of Arunachal Pradesh, *supra* note 27. The Supreme Court's direction to grant citizenship to Chakma and Hajong refugees remains substantially unimplemented more than two decades after the judgment.

³²UNHCR, *India Fact Sheet, January 2020* (2020); HUMAN RIGHTS WATCH, *India Is Not Safe for Us: India's Treatment of Rohingya Refugees* (2018).

³³Mohammad Salimullah v. Union of India, Writ Petition (Civil) No. 793 of 2017 (Sup. Ct. India Apr. 8, 2021). The Court declined to interfere with the government's decision to deport Rohingya migrants, ruling that non-citizens have no fundamental right under the Constitution to reside in India and declining to treat UNHCR refugee status as a bar to deportation.

³⁴Citizenship (Amendment) Act, No. 47 of 2019, § 2 (India) [*hereinafter* CAA] (amending the Citizenship Act, No. 57 of 1955, to create an expedited citizenship pathway for Hindu, Sikh, Buddhist, Jain, Parsi, and Christian migrants from Afghanistan, Bangladesh, and Pakistan, while explicitly excluding Muslims).

³⁵INDIA CONST. art. 14. Multiple writ petitions challenging the CAA on equality grounds are pending before the Supreme Court. *See In re Validity of the Citizenship (Amendment) Act 2019*, WP (Civil) No. 1474 of 2019. *see also* Afeef Khan, *The Citizenship Amendment Act and the Constitutional Guarantee of Equality*, 57 J. INDIAN L. INST. 48 (2020).

The NRC exercise in Assam, which resulted in the exclusion of approximately 1.9 million persons from the citizenship rolls,³⁶ with disproportionate impact upon Muslim Bengali-speaking residents, combined with the CAA, creates a legal architecture that offers Muslim migrants and refugees no pathway to regularisation, effectively threatening them with indefinite statelessness in direct tension with India's obligations under international human rights law.

VII. MARGINALISATION IN PRACTICE: SOCIO-ECONOMIC AND POLITICAL EXCLUSION

The legal lacunae identified above translate, in lived experience, into a comprehensive condition of marginalisation operating simultaneously across multiple dimensions. Without legal status, refugees and undocumented migrants are excluded from the formal economy, unable to enter enforceable contracts, open bank accounts, or access regulated employment. They are relegated to the informal sector, where they are systematically subject to exploitation, wage theft, and physical abuse with no legal recourse.³⁷

Access to healthcare, education, and social welfare is contingent upon documentation that refugees and migrants typically cannot produce. Children of undocumented migrants face particular vulnerability: denied school admission, they are deprived of the most fundamental tool of social mobility, condemning successive generations to a self-perpetuating cycle of exclusion.³⁸ This is not merely a policy failure: it is a violation of binding treaty obligations. The Convention on the Rights of the Child, to which India is a party, mandates the right to education without discrimination on grounds of nationality or immigration status.³⁹

Political marginalisation further compounds socio-economic exclusion. Without formal political membership, refugees and migrants are invisible to the electoral calculus of democratic politics, their interests unrepresented and their voices unheard. Paradoxically, their very invisibility makes them vulnerable to political instrumentalisation: invoked as demographic threats by nativist movements, they are afforded no platform to contest such characterisations.

³⁶Re Updated National Register of Citizens (Assam), WP(C) No. 274/2009 (Sup. Ct. India). The NRC final list published Aug. 31, 2019, excluded approximately 1.9 million persons out of 33 million applicants. See AMNESTY INTERNATIONAL INDIA, *Designed to Exclude: How India's Courts Are Allowing the Foreigners Tribunals to Render People Stateless in Assam* (2019).

³⁷See RATNA KAPUR, *MIGRANT WOMEN AND THE LAW: CROSS-BORDER DREAMS AND LEGAL REALITIES* 142 (2005); Roli Srivastava & Anuradha Nagaraj, *No Way Back: Indian Workers Shun City Jobs After Lockdown Ordeal*, THOMSON REUTERS FOUND., May 27, 2020.

³⁸UNHCR, *COVID-19 Response Update: UNHCR India* (May 2020); MIGRATION POLICY INSTITUTE, *supra* note 16.

³⁹Convention on the Rights of the Child, *supra* note 22, art. 28 (right to education on the basis of equal opportunity). The Committee on the Rights of the Child has confirmed this obligation extends to undocumented migrant children. Comm. on the Rights of the Child, General Comment No. 6, ¶ 41, U.N. Doc. CRC/GC/2005/6 (2005).

As Samaddar has observed, the figure of the ‘marginal migrant’ in South Asia serves as the constitutive ‘other’ against which majoritarian national identity is performatively constructed and reinforced.⁴⁰

VIII. JUDICIAL RESPONSES: THE PROMISE AND LIMITS OF CONSTITUTIONAL PROTECTION

Indian constitutional jurisprudence has, in isolated but important instances, offered meaningful protection to refugees and migrants. The Supreme Court’s ruling in *National Human Rights Commission v. State of Arunachal Pradesh*⁴¹ directed state authorities to protect the lives and property of Chakma and Hajong refugees and to process their citizenship applications without delay, invoking Articles 14 and 21 of the Constitution. This decision established the significant principle that the right to life and equality before law extend to all persons on Indian soil, regardless of immigration status.

The Gauhati High Court, in *Ktaer Abbas Husain Al Quraishi v. Union of India*⁴² held that UNHCR-recognised refugees could not be detained merely on grounds of illegal entry, directing their release subject to conditions. Such decisions, while precedentially significant, remain exceptions rather than the norm. The absence of a statutory framework means that protection is discretionary, unpredictable, and dependent upon the initiative of individual litigants who frequently lack resources to access the courts.

The Supreme Court’s more recent jurisprudence, particularly in *Mohammad Salimullah v. Union of India*⁴³ has been deeply disappointing from a human rights perspective. The Court’s refusal to engage substantively with the principle of non-refoulement, notwithstanding India’s obligations under the ICCPR and its constitutional commitments, reflects the ascendancy of a national security discourse over humanitarian imperatives in constitutional adjudication. This underscores with urgency the need for legislative rather than purely judicial solutions to India’s refugee crisis.

⁴⁰RANABIR SAMADDAR, THE MARGINAL NATION: TRANSBORDER MIGRATION FROM BANGLADESH TO WEST BENGAL 45, 89–92 (1999).

⁴¹National Human Rights Comm’n v. State of Arunachal Pradesh, *supra* note 27.

⁴²Ktaer Abbas Husain Al Quraishi v. Union of India, (2000) 4 BNLJ 136 (Gauhati H.C.) (holding that UNHCR-recognised refugees cannot be detained merely on the ground of unlawful entry into India and directing their release subject to reporting conditions).

⁴³Mohammad Salimullah v. Union of India, *supra* note 33. For critical commentary, see Vineeth Krishna, *Refugees and Non-Refoulement in India: The Salimullah Judgment and Its Discontents*, 13 INDIAN J. INT’L ECON. L. 1 (2021).

IX. TOWARD A COMPREHENSIVE LEGAL FRAMEWORK: POLICY RECOMMENDATIONS

The foregoing analysis makes plain that India requires a fundamental paradigm shift: one premised not on administrative discretion and geopolitical calculation, but on a principled, rights-based legal architecture. The following recommendations are advanced.

A. Enactment of a National Refugee Law

India should enact a comprehensive National Refugee Law providing a domestic legal definition of refugees consistent with, and ideally broader than, the 1951 Convention's definition. Such legislation should establish a transparent and fair procedure for refugee status determination; create a statutory right to non-refoulement; mandate access to documentation, education, healthcare, and lawful employment for recognised refugees; and constitute an independent Refugee Status Determination Authority.⁴⁴ The Model National Law on Refugees drafted in 1997 by the Eminent Persons Group under the chairmanship of Justice P.N. Bhagwati,⁴⁵ the South Asian Declaration on Refugees of 2004,⁴⁶ and the Asylum Bill of 2015 proposed by M.P. Shashi Tharoor⁴⁷ provide valuable legislative antecedents upon which such a statute could be built.

B. Accession to International Instruments

India should give serious consideration to acceding to the 1951 Refugee Convention, its 1967 Protocol, and the 1954 Convention Relating to the Status of Stateless Persons.⁴⁸ Such accession would provide a principled and internationally accountable framework for managing displacement: one consistent with India's democratic values, its constitutional commitments, and its aspirations to regional and global leadership.

C. Regularisation of Long-Standing Refugee Communities

⁴⁴See JAMES C. HATHAWAY & MICHELLE FOSTER, *THE LAW OF REFUGEE STATUS* 17–25 (2d ed. 2014); GUY S. GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* 429–36 (3d ed. 2007) (surveying comparative models of domestic refugee status determination procedures).

⁴⁵Eminent Persons Grp. on Refugee & Migratory Movements in S. Asia, *Model National Law on Refugees* (1997) [*hereinafter* EPG Model Refugee Law] (drafted under the chairmanship of Justice P.N. Bhagwati, former Chief Justice of India, and commended to South Asian governments by the South Asian Association for Regional Cooperation).

⁴⁶South Asian Declaration on Refugees 2004, *reprinted in Regional Consultations on Refugees and Migratory Movements in South Asia* (Refugee & Migratory Movements Research Unit, Dhaka, 2004).

⁴⁷The Asylum (Protection of Refugees) Bill, 2015, Bill No. 79 of 2015 (Lok Sabha) (introduced by M.P. Shashi Tharoor; proposed creation of a National Asylum Commission with exclusive mandate for refugee status determination and a statutory right to non-refoulement).

⁴⁸Convention Relating to the Status of Stateless Persons art. 1(1), Sept. 28, 1954, 360 U.N.T.S. 117; Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175. India has acceded to neither instrument.

Communities that have resided on Indian soil for decades, including the Chakma and Hajong communities in Arunachal Pradesh, must be afforded clear and expeditious pathways to permanent residence and citizenship. The continued denial of citizenship to communities promised it by both the central government and the Supreme Court is a constitutional anomaly that corrodes the foundations of the rule of law and India's credibility as a rights-respecting democracy.

D. A Bilateral Cross-Border Work Permit Regime

For economic migrants, a population that falls outside the refugee framework but whose vulnerabilities are no less real, India should negotiate bilateral work permit and social security agreements with Bangladesh and Myanmar. The model of China's 1997 Agreement with Myanmar, which created a regulated system of cross-border movement for border residents,⁴⁹ offers a workable template. Such a regime would bring undocumented economic migration into a regulated, rights-respecting framework, reduce exploitation, and enable evidence-based labour market planning on both sides of the border.

E. Desecuritisation: A Change in Discourse and Policy

Legal reform must be accompanied by a discursive shift in the political framing of migration. The securitisation of cross-border movement distorts both policy and public understanding. As scholars of critical security studies and advocates of human security have argued, the security of the individual and the security of the state are fundamentally complementary rather than antagonistic.⁵⁰ India's democratic leadership must have the intellectual honesty and political courage to make this argument publicly and to enact law accordingly.

X. CONCLUSION

This paper has demonstrated that India's management of refugees and cross-border immigrants is characterised by a fundamental and unresolved tension between the imperatives of state sovereignty and the demands of universal human rights. The absence of a domestic refugee law, India's non-accession to the international refugee instruments, the securitisation of migration in political discourse, and the continued operation of archaic colonial statutes have combined to

⁴⁹See Lili Song, *Protecting the Forcibly Displaced: ASEAN's Framework, International Law and the Rohingya Crisis*, 30 INT'L J. REFUGEE L. 439, 452 (2018) (describing the 1997 Chinese-Myanmar Border Management Agreement and its regulated free-movement regime). On ILO frameworks for migrant workers, see *Migration for Employment Convention (Revised)*, No. 97 (1949); Int'l Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, U.N. Doc. A/RES/45/158 (Dec. 18, 1990).

⁵⁰See BARRY BUZAN, OLE WAEVER & JAAP DE WILDE, *SECURITY: A NEW FRAMEWORK FOR ANALYSIS* 25–32 (1998) (introducing the concept of securitisation as the performative construction of existential threat); UNDP, *Human Development Report 1994: New Dimensions of Human Security* 22–23 (1994) (articulating the paradigm of 'human security' centred on the individual rather than the state as the primary referent of security).

produce a condition of systematic marginalisation for some of the most vulnerable human beings on Indian soil.

The marginalisation of refugees is not merely a humanitarian problem but a legal failure: a failure of the state to honour its constitutional commitments, its international obligations, and its own proclaimed values of dignity, equality, and the rule of law. India, as a democracy forged in the fires of forced displacement and aspiring to regional and global leadership, has both the capacity and the solemn obligation to do better.

A comprehensive National Refugee Law, accession to the relevant international instruments, regularisation of long-term refugee communities, and a bilateral work permit regime for economic migrants are not utopian aspirations but achievable, evidence-based policy objectives consistent with India's security interests, economic needs, and democratic values. The path to humanising cross-border migration in South Asia begins with India's willingness to be governed, in this domain as in all others, by the rule of law, recognising that the humanity of the displaced is a mirror in which the humanity of the host state is ultimately reflected.
