



Protection of Human Rights of Refugees in India-A Legal Perspective.

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1. Historical Background

India has a long and distinguished tradition of offering refuge to people escaping persecution, war, and political instability. This humanitarian outlook is deeply rooted in the country's civilizational ethos, cultural diversity, and moral philosophy that emphasizes compassion and hospitality toward those in distress. Since gaining independence in 1947, India has opened its doors to numerous refugee communities, demonstrating both generosity and resilience in the face of complex regional crises.

One of the earliest and most significant refugee movements to India occurred in 1959, when thousands of Tibetan refugees fled their homeland following the Chinese takeover of Tibet. Led by the 14th Dalai Lama, they sought sanctuary in India. The Indian government not only permitted their entry but also allowed them to establish settlements across various states, such as Himachal Pradesh, Karnataka, and Uttara hand. These communities were provided land, education facilities, and the freedom to preserve their distinct cultural and religious identity, marking one of India's most compassionate refugee responses.

In 1971, India faced one of the largest refugee influxes in modern history when more than ten million people from East Pakistan (now Bangladesh) crossed the border to escape the violence of the Bangladesh Liberation War. Despite enormous economic and logistical challenges, India provided shelter, food, and medical aid to millions of displaced people, setting up numerous refugee camps along the eastern borders. This humanitarian response reflected India's commitment to the principle of asylum and ultimately contributed to the creation of an independent Bangladesh.

During the 1980s and early 2000s, India became a haven for Sri Lankan Tamil refugees fleeing the prolonged civil war between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE). Tamil Nadu, due to its linguistic and cultural ties with the Tamil population of Sri Lanka, became the primary host region. The

state government, with support from the central government, established refugee camps and provided welfare schemes, access to education, and employment opportunities to help them rebuild their lives.

India has also hosted thousands of Afghan refugees, who began arriving in waves following the Soviet invasion of Afghanistan in 1979, the subsequent civil conflicts, and more recently, the Taliban's return to power in 2021. Most Afghan refugees live in urban centers such as Delhi, supported by the United Nations High Commissioner for Refugees (UNHCR) and local civil society groups. Despite lacking formal legal status, many have integrated into Indian society, contributing to trade, education, and cultural exchange.

Another significant group seeking safety in India are the Rohingya refugees from Myanmar. Fleeing decades of ethnic persecution and violence, many Rohingyas entered India through its north-eastern borders in search of protection. However, their situation remains precarious due to the absence of a national refugee law and growing political and security debates over their presence. Many Rohingyas live in informal settlements with limited access to basic services such as education, healthcare, and sanitation.

Taken together, these examples highlight India's long-standing humanitarian approach toward displaced persons. Despite the absence of a dedicated refugee protection law, India has consistently demonstrated compassion and moral responsibility in responding to refugee crises. Its open-door policy in many historical instances reflects not only a sense of regional solidarity but also a deep-rooted respect for human rights and dignity.

1.1 Research questions.

1. What is the legal framework for the protection of refugees in India?
2. Human Rights Challenges Faced by Refugees?
3. What is the way forward for the protection of refugee rights in India?

1.2 Research methodology.

This study adopts a doctrinal research methodology, which involves a systematic examination of International conventions, legal principles, statutes, judicial decisions, and academic commentary relating to refugees in India.

2. Legal Framework: The Gap in Refugee Protection Legal Framework:

India's approach to refugee protection stands out globally for being largely ad hoc and policy-driven rather than law-based. Unlike many countries that have ratified the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, India has chosen not to become a party to these instruments. The 1951 Convention and its Protocol are the cornerstone of international refugee law, defining who qualifies as a refugee, outlining their legal rights, and setting out the obligations of host states. India's decision not to accede to these treaties stems from concerns about sovereignty, security, and the potential socio-economic impact of a large influx of refugees. The Indian government has often argued that the Convention was drafted in a Eurocentric post-World War II context and does not fully address the realities of refugee situations in developing countries,

particularly those in South Asia, where migration is complex and often interwoven with issues of ethnicity, poverty, and porous borders.

As India has not signed these international conventions, it does not have a dedicated domestic refugee law. In the absence of such legislation, refugees are governed under general statutes applicable to all non-citizens, most notably the Foreigners Act, 1946. This Act grants wide discretionary powers to the executive to control the entry, presence, and departure of foreigners from Indian territory. Under this legal framework, refugees are treated as “foreigners” without any formal distinction from tourists, migrant workers, or illegal entrants. This legal ambiguity leaves refugees in a vulnerable position, as their rights, residency, and protection depend heavily on administrative discretion and political will rather than enforceable entitlements.

Another piece of legislation relevant to refugee management is the Citizenship Act, 1955, which governs acquisition and termination of Indian citizenship. Amendments to this Act, most notably the Citizenship (Amendment) Act, 2019 (CAA), have introduced selective provisions for certain persecuted minorities from neighbouring countries such as Afghanistan, Bangladesh, and Pakistan, granting them a pathway to Indian citizenship. However, this policy has been criticized for excluding other refugee groups, particularly Muslims such as the Rohingyas, and for potentially undermining the principle of equality enshrined in the Indian Constitution. This selective approach further highlights the inconsistencies in India’s refugee policy framework, which tends to balance humanitarian considerations with domestic political and security concerns.

In practice, India has adopted a case-by-case or group-specific approach toward refugee management. Certain groups, such as Tibetans and Sri Lankan Tamils, have been directly recognized and assisted by the Government of India. These communities have been issued identity documents, granted access to education, and, in some cases, provided welfare benefits, housing, and employment opportunities. The government’s handling of these refugees has been guided by administrative decisions and bilateral relations rather than a uniform policy framework.

On the other hand, refugees from countries such as Afghanistan, Myanmar, Somalia, and Sudan are primarily assisted by the United Nations High Commissioner for Refugees (UNHCR), which operates under a limited mandate in India. The UNHCR registers asylum seekers, conducts refugee status determination (RSD) procedures, and issues refugee identity cards recognized in some urban centres, mainly New Delhi. However, since UNHCR’s operations are confined to areas permitted by the Indian government, many refugees outside these zones remain unregistered and unprotected. This fragmented dual system, where some refugees fall under the direct protection of the government and others under UNHCR, creates significant disparities in treatment and access to rights.

Moreover, the absence of a codified refugee law has implications for the principle of non-refoulement, a cornerstone of international refugee protection that prohibits returning refugees to a country where they face persecution. Although India has not formally incorporated this principle into its legislation, the Indian judiciary has often invoked constitutional provisions, especially Article 21 of the Constitution of India, which guarantees the right to life and personal liberty, to extend protection to refugees. Courts have emphasized that these rights

apply to all “persons,” not merely citizens. The cases of *National Human Rights Commission v. State of Arunachal Pradesh*, *Louis De Raedt v. Union of India* (1991), and *Ktaer Abbas Habib Al Qutaifi v. Union of India* (1999), are significant in the context of refugees in India, as they address the protection of fundamental rights and the treatment of non-citizens. In *National Human Rights Commission v. State of Arunachal Pradesh*, the Supreme Court highlighted the state’s responsibility to protect human rights, a principle extended to vulnerable groups such as refugees. *Louis De Raedt v. Union of India* underscored the need for procedural safeguards and the protection of personal liberties, relevant to refugees facing detention or deportation. Similarly, in *Ktaer Abbas Habib Al Qutaifi*, the Gujarat High Court emphasized that even non-citizens are entitled to basic human rights and judicial protection against arbitrary state action, including detention. Collectively, these cases establish that refugees in India, though not citizens, are entitled to humane treatment and legal safeguards under the Constitution.

Despite these judicial safeguards, the lack of a structured legislative framework leads to inconsistency, uncertainty, and occasional arbitrariness in refugee management. Refugees’ access to documentation, education, health services, and employment often varies depending on their nationality, political context, and geographic location. This legal vacuum not only affects the refugees’ ability to rebuild their lives but also hampers India’s administrative efficiency in managing cross-border migration.

Therefore, while India’s flexible, case-by-case approach allows it to adapt to changing geopolitical and humanitarian situations, it also results in uneven protection and policy fragmentation. A comprehensive refugee protection law, anchored in India’s constitutional values and international human rights standards, would help transform this patchwork system into a coherent framework that balances humanitarian obligations, national security, and administrative practicality.

3. Human Rights Challenges Faced by Refugees

Despite India’s long-standing moral and cultural tradition of hospitality, refugees in the country continue to face numerous human rights challenges that affect nearly every aspect of their lives. The absence of a comprehensive legal framework leaves them in a precarious position, often dependent on the goodwill of the authorities and the fluctuating political climate. Although India has provided refuge to various displaced populations over the decades, the lack of legal recognition and uniform protection mechanisms means that many refugees live in uncertainty, struggling to secure their basic rights and human dignity.

One of the most pressing challenges is the lack of legal status. Since refugees are not formally distinguished from other categories of foreigners under Indian law, they remain vulnerable to arbitrary detention, harassment, and even deportation. This insecurity discourages them from reporting abuses or seeking justice, as doing so could expose them to further legal risks. Many refugees possess only temporary documents issued by the UNHCR, which are not always recognized by local authorities, leaving them effectively invisible in the eyes of the law.

Another major issue is restricted access to basic services. Without official recognition or legal documentation, refugees often struggle to access essential services such as education, healthcare, and housing. Children born to refugee parents frequently face challenges enrolling in schools, while adults encounter barriers to obtaining jobs

in the formal sector. Healthcare access is equally limited, as most refugees cannot afford private treatment and are sometimes denied services at public hospitals due to lack of valid identification. This marginalization pushes many refugee families into poverty and dependence on humanitarian aid.

Detention and discrimination further aggravate their hardships. There have been reports of refugees being detained for overstaying visas or entering the country illegally, even when such actions were driven by the need to escape persecution. Social discrimination and xenophobia also pose serious challenges, particularly for vulnerable groups like the Rohingya Muslims, who are often portrayed in public discourse as security threats. This stigmatization leads to social isolation and hostility from local communities, making integration even more difficult.

Gender-based violence and child protection issues are additional areas of concern. Refugee women and girls are especially vulnerable to sexual exploitation, trafficking, and domestic abuse, often with limited access to legal recourse or psychosocial support. Many refugee children, on the other hand, are deprived of education and forced into child labor or early marriage due to financial hardship. The lack of structured protection mechanisms exposes them to exploitation, neglect, and long-term trauma.

Finally, political and security concerns significantly influence India's refugee policy. In recent years, refugees have increasingly been viewed through a national security lens rather than a humanitarian one. Political narratives sometimes depict refugees as potential threats to internal stability, leading to stricter border controls and deportation efforts. This securitized approach, while aimed at maintaining national order, often undermines the human rights of genuine asylum seekers who are fleeing violence and persecution.

Overall, these challenges illustrate the fragile position of refugees in India. Despite the nation's humanitarian legacy and constitutional commitment to human dignity, the gap between principle and practice remains wide. Strengthening legal protection and ensuring equitable access to rights and services are essential steps toward upholding the human rights of all refugees residing within India's borders.

Of course! Here's your "India's Humanitarian Practices and Positive Measures," "International Obligations and the Way Forward," and "Conclusion" sections fully elaborated into cohesive, detailed paragraphs, written in the same clear, academic tone as your earlier sections.

4. India's Humanitarian Practices and Positive Measures

Despite the absence of a formal refugee law and the many challenges refugees face, India has demonstrated remarkable humanitarian commitment and moral leadership over the years. Its treatment of refugees often reflects the nation's constitutional values, ancient traditions of tolerance, and a sense of regional responsibility. India's approach, though largely pragmatic and administrative, has frequently been guided by compassion and respect for human dignity.

One of the most notable examples of India's humanitarian practice is its support for Tibetan refugees. Since their arrival in 1959, Tibetan communities have been allowed to live with a degree of autonomy, preserving their cultural and religious heritage. The Indian government facilitated the establishment of Tibetan settlements in

states such as Himachal Pradesh, Karnataka, and Uttarakhand, providing land, housing, and access to education. The Central Tibetan Administration, headquartered in Dharamshala, functions as a self-governing body in exile, a privilege that reflects India's trust and generosity toward this community.

Similarly, Sri Lankan Tamil refugees have benefited from significant state and central government support. Following their displacement during the Sri Lankan civil war, the government of Tamil Nadu set up numerous refugee camps across the state. Refugees were provided with housing, food rations, healthcare, and education through targeted welfare schemes. Over the years, many Tamil refugees have integrated socially and economically, contributing to the local economy while maintaining their cultural identity.

India's judiciary has also played a vital role in protecting the rights of refugees through progressive interpretations of constitutional provisions. The Supreme Court of India has repeatedly emphasized that the Right to Life and Personal Liberty under Article 21 of the Constitution applies to "all persons," irrespective of nationality or citizenship status. This interpretation has ensured that refugees cannot be deported arbitrarily or deprived of basic human rights. Several landmark judgments have reinforced the principles of non-refoulement (protection from forced return) and humane treatment, even in the absence of specific refugee legislation.

In addition, civil society organizations and international agencies such as the United Nations High Commissioner for Refugees (UNHCR) play a critical role in supplementing government efforts. They provide education, vocational training, healthcare, legal aid, and psychosocial support to thousands of refugees across the country. Numerous non-governmental organizations (NGOs) and volunteer groups also work at the grassroots level to promote community integration and awareness about refugee rights. Together, these collective efforts illustrate India's enduring humanitarian spirit and its willingness to assist those in need, even within the limitations of an informal legal system.

5. International Obligations and the Way Forward

Although India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, it remains bound by various international human rights instruments that uphold the principles of equality, dignity, and justice for all human beings. As a member of the global community, India has endorsed the Universal Declaration of Human Rights (UDHR), which guarantees the right to seek asylum from persecution. It is also a state party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), both of which obligate states to protect individuals from arbitrary treatment, violence, and deprivation of basic rights. These commitments reflect India's moral and legal responsibility to ensure that refugees and asylum seekers are treated with fairness and humanity.

To strengthen refugee protection, several policy reforms could be considered. The most urgent step would be to enact a comprehensive National Refugee Law that clearly defines who qualifies as a refugee, outlines their rights and duties, and sets procedures for asylum determination. Such legislation would bring uniformity, transparency, and accountability to refugee governance. It is also essential to distinguish refugees from illegal immigrants within national immigration and security policies, as the two groups have fundamentally different legal and moral standings. Furthermore, enhanced cooperation with UNHCR and regional partners, particularly in South and

Southeast Asia, could help in sharing the responsibility of hosting and supporting displaced persons. Finally, India should promote community integration and livelihood opportunities by allowing refugees access to education, healthcare, and formal employment, enabling them to live with dignity and contribute productively to society.

6. Conclusion

India's approach to refugees is characterized by both compassion and complexity. On one hand, the country's historical and moral commitment to offering refuge reflects its deep-rooted humanitarian values and respect for human rights. On the other hand, the absence of a formal legal framework leaves refugees in a state of uncertainty, dependent on temporary administrative measures and discretionary decisions. This duality has created a system that is generous in spirit but inconsistent in practice.

In a world where forced displacement continues to rise, India's experience stands as a reminder that moral tradition and policy need to evolve together. Establishing a dedicated refugee protection law, grounded in constitutional principles and international human rights norms, would be a decisive step forward. Such a law would not only ensure justice and security for those seeking safety within India's borders but also reinforce India's global image as a humane democracy committed to protecting the vulnerable and upholding the universal values of dignity, equality, and compassion.

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