

Protecting the Displaced: A Critical Analysis of Refugee Rights in Current Scenario

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Abstract

India hosts over 273,000 refugees from various neighboring countries, yet lacks a comprehensive legal framework to protect their fundamental rights. This research paper critically examines the current state of refugee rights in India, analyzing the legal, institutional, and humanitarian challenges faced by displaced populations. Despite India's long tradition of providing refuge to persecuted communities, the absence of domestic refugee legislation and non-ratification of the 1951 UN Refugee Convention creates significant protection gaps. The implementation of the Immigration and Foreigners Act, 2025, and the discriminatory provisions of the Citizenship Amendment Act (CAA) 2019 have further complicated the refugee landscape, particularly for Muslim minorities like the Rohingya. Through qualitative analysis of recent legal developments, court judgments, international obligations, and academic literature, this study explores India's ad hoc approach to refugee protection, the principle of non-refoulement under international law, differential treatment of refugee populations, and the urgent need for comprehensive refugee legislation. The research employs a multi-dimensional analytical framework examining five pivotal domains: insufficiency of legal safeguards, ambiguity and inconsistent treatment, restricted access to essential services, susceptibility to exploitation, and burdens on host communities. This study argues that India must establish a rights-based refugee framework that balances humanitarian concerns with national security interests while upholding constitutional values of equality and dignity.

Keywords

Refugee rights, India, non-refoulement, Rohingya, CAA 2019, Immigration Act 2025, UNHCR, asylum seekers, international law, fragmented protection

1. Introduction

The global refugee crisis has reached unprecedented levels, with millions of people forcibly displaced from their homes due to persecution, conflict, and human rights violations. India, strategically located in South Asia and sharing borders with several politically unstable nations, has historically served as a sanctuary for displaced populations. From Tibetan refugees fleeing Chinese occupation in 1959 to Sri Lankan Tamils escaping civil war, and more recently, Rohingya Muslims fleeing genocide in Myanmar, India has provided refuge to diverse communities¹. As of 2025, India hosts over 273,000 refugees and asylum seekers, with the largest populations originating from Myanmar (approximately 99,000), Sri Lanka, Afghanistan, and other countries¹.

However, India's approach to refugee protection remains fundamentally ad hoc and discretionary, lacking the institutional framework necessary for consistent and equitable treatment. India is not a signatory to the 1951 UN Refugee Convention or its 1967 Protocol, which are the cornerstones of international refugee protectionⁱⁱⁱ. Consequently, refugees in India exist in a state of legal limbo, their status determined by executive discretion rather than legal entitlement^{iv}. This creates significant vulnerabilities, particularly for populations that fall outside India's geopolitical interests or religious majority preferences.

Recent scholarly research highlights the pressing necessity for comprehensive refugee legislation in India and the repercussions arising from the absence of such legal provisions⁴. The nonexistence of refugee laws gives rise to various consequences impacting refugees and the host country, including insufficiency of legal safeguards, ambiguity and inconsistent treatment, restricted access to essential services, susceptibility to exploitation and mistreatment, and burdens on host communities⁴. Moreover, national security concerns originating from the dearth of a comprehensive refugee law affect India's global standing and its commitment to human rights and international humanitarian endeavors⁴.

Recent legislative developments, including the Immigration and Foreigners Act, 2025, and the continued implementation of the Citizenship Amendment Act (CAA) 2019, have intensified concerns about the protection of refugee rights in India^{v-vi}. The Immigration Act 2025, which purports to modernize India's immigration framework, remains conspicuously silent on refugees and asylum seekers, collapsing vastly different legal and humanitarian categories into a single administrative framework⁵. Meanwhile, the CAA 2019 introduces religious discrimination into citizenship laws by fast-tracking naturalization for non-Muslim minorities from neighboring countries while explicitly excluding Muslim refugees^{vii}.

This research paper examines the current state of refugee rights in India through multiple lenses: the legal and institutional framework governing refugees, India's international obligations under customary international law, the practical challenges faced by different refugee populations, recent judicial pronouncements, and the discriminatory impact of recent legislation. The study argues that India's failure to establish a comprehensive, rights-based refugee framework not only violates international legal principles but also undermines the constitutional values of equality, non-discrimination, and human dignity that form the foundation of Indian democracy^{viii}.

2. Research Methodology

This study adopts a qualitative research approach, focusing on gaining in-depth insights into the challenges faced by refugees and host communities in India and the consequences of lacking a dedicated refugee law⁴. The research methodology encompasses:

Documentary Analysis: Comprehensive examination of primary legal documents including the Immigration and Foreigners Act 2025, Citizenship Amendment Act 2019, constitutional provisions, and international instruments (1951 Refugee Convention, ICCPR, CAT). Analysis of Supreme Court and High Court judgments concerning refugee rights, non-refoulement, and deportation orders.

Literature Review: Critical synthesis of peer-reviewed academic journals, reports from international organizations (UNHCR, Amnesty International, Human Rights Watch, Refugees International), policy documents from government sources, and scholarly analyses of India's refugee policy evolution^{4,7,8,ix,x,xi,xii,xiii,xiv}

Comparative Framework: Examination of refugee protection mechanisms in other jurisdictions to identify best practices and gaps in India's approach¹³. Analysis of differential treatment across refugee populations (Tibetan, Tamil, Rohingya, Afghan) to identify patterns of discrimination and protection gaps.

Human Rights-Based Approach: Application of international human rights law principles to evaluate India's obligations under ICCPR, CAT, and customary international law^{[33][34][35]}. Assessment of gender-specific vulnerabilities and intersectional discrimination affecting refugee women and girls¹¹.

The analysis underscores the criticality of enacting a robust refugee law to safeguard the rights, security, and welfare of refugees; foster their integration into society; and showcase India's dedication to human rights and international humanitarian endeavors⁴.

3. Literature Review and Theoretical Framework

3.1 The Absence of Refugee Law: Conceptual Framework

Recent scholarship establishes five pivotal domains where the lack of a refugee law in India yields significant ramifications^{4,7}:

Insufficiency of Legal Safeguards: Without dedicated legislation, refugees lack enforceable rights to protection, non-refoulement, and access to justice. The vacuum leaves them vulnerable to arbitrary detention and deportation under general immigration laws designed for economic migrants rather than protection seekers.

Ambiguity and Inconsistent Treatment: The ad hoc nature of India's refugee governance results in fragmented protection marked by different degrees of negotiated access to services depending on nationality, religion, and location¹². This fragmentation is particularly evident in the Rohingya case, where policy toward a single refugee group has shifted drastically from granting official Long Term Visas in 2012 to marking them for detention and deportation as illegal immigrants in 2025¹².

Restricted Access to Essential Services: Refugees face systematic barriers to healthcare, education, employment, and livelihood opportunities due to lack of legal status and documentation^{4,12}. The precarity of legal status profoundly influences the operational space for protection and inhibits integration¹².

Susceptibility to Exploitation and Mistreatment: The absence of legal protection exposes refugees to human rights violations, gender-based violence, trafficking, and exploitation by both state and non-state actors^{4,11}. Refugee women face particular vulnerabilities, with humanitarian organizations tending to foreground humanitarian over human rights concerns and relying on cultural explanations for subjugation¹¹.

Burdens on Host Communities: The lack of structured refugee management creates tensions with host populations, particularly when refugees compete for limited resources without formal integration pathways⁴. This burden is exacerbated by the absence of international burden-sharing mechanisms due to India's non-participation in the global refugee regime.

3.2 Theoretical Perspectives on India's Refugee Policy

Scholarly analysis reveals that India's refugee policy is characterized by differential treatment based on geopolitical considerations, strategic interests, and increasingly, religious identity. The policy trajectory has been shaped by historical evolution, legislative measures, government initiatives, and international collaborations^{7,8}. Key events and geopolitical shifts—including the 1947 Partition, Tibetan refugee influx (1959), Bangladesh Liberation War (1971), Sri Lankan civil conflict (1980s-2009), and Myanmar's Rohingya persecution (2012-present)—have influenced policy dynamics⁷.

Research indicates that India's practice of offering protection and shelter only to persecuted minorities from specific states, while excluding Muslims, is intrinsically discriminatory and violates the fundamental principles of the Indian Constitution⁸. The characterization of Rohingya refugees as 'illegal immigrants' and a potential risk to national security stands on unsubstantiated grounds, lacking substantial evidence to support this assertion¹³.

3.3 The Rohingya Crisis: A Case Study in Fragmented Protection

Amidst the densely populated terrain of India and the challenges of significant poverty, the country grapples with refugee influx issues exacerbated by the lack of standardized refugee laws and political maneuvering¹². The Rohingya crisis exemplifies how fragmented governance and divergent settlement patterns result in fragmented protection¹². Drawing from fieldwork with refugees, community leaders, and NGOs across the country, research demonstrates how the Rohingya's precarious legal status as UNHCR card-holders simultaneously deemed illegal by the Indian government creates profound operational constraints.

The fragmented protection is increasingly shaped by structural shocks including the political (negative government stance), the discursive (growing negative public perception), and the administrative (digital identification schemes inhibiting policy discretion)¹². This case highlights the critical importance of implementing uniform refugee laws prevalent under international law to prevent discrimination and uphold constitutional secular principles⁷.

3.4 Gender Dimensions and Human Rights Perspectives

Within India's ad-hoc practices, research challenges the representation of the female refugee subject as a passive victim devoid of agency¹¹. Using gendered analysis, scholarship demonstrates refugee women's capacity to carve out independent identities and sociopolitical selves, while critiquing the tendency to rely on cultural explanations for consent norms that perpetuate subjugation¹¹. The default practice of 'going through the men' silences voice, denies agency, and increases vulnerability¹¹.

3.5 Emerging Challenges: Climate-Induced Displacement

Recent scholarship addresses the intersection of climate change-induced disaster displacement and refugee protection in India¹³. The integration of artificial intelligence into national disaster laws, climate law frameworks, and international human rights law presents both opportunities and risks for protecting human rights of climate-displaced populations¹². This emerging dimension requires India to re-imagine crisis response frameworks with human rights-based approaches rather than purely securitized responses¹¹.

4. Historical Context and India's Refugee Landscape

4.1 Evolution of Refugee Policy in India

India's engagement with refugees predates its independence, rooted in the massive population exchange during the 1947 Partition, which displaced an estimated 10-20 million people. The Displaced Persons (Compensation and Rehabilitation) Act, 1954, was enacted to address the specific needs of Partition refugees^{xv}. However, this legislation was situation-specific and did not establish a general framework for refugee protection.

Post-independence, India adopted a pragmatic, case-by-case approach to refugees, providing protection based on historical ties, cultural affinity, geopolitical considerations, and strategic interests⁴. Tibetan refugees, who began arriving in 1959 following the failed uprising against Chinese rule, received relatively favorable treatment with establishment of settlements, issuance of Registration Certificates, and permission to engage in economic activities^{xvi}. Similarly, refugees from East Pakistan (later Bangladesh) during the 1971 Liberation War were accommodated, though temporarily, with significant international assistance.

This pattern of selective hospitality continued with subsequent refugee influxes. Sri Lankan Tamil refugees, arriving in waves since the 1980s due to civil conflict, have been housed in camps primarily in Tamil Nadu, with varying degrees of assistance and restrictions^{xvii}. Afghan refugees, particularly those who arrived during the Soviet invasion and later Taliban regimes, received long-term visas and limited integration opportunities, though with clear preferences for Hindu and Sikh minorities^{xviii}.

4.2 Current Refugee Demographics

As of 2025, India's refugee population reflects diverse origins and experiences. Myanmar refugees, predominantly Rohingya Muslims and Chin Christians, constitute the largest group at approximately 99,000 individuals². The Rohingya, described by the United Nations as "the

world's most persecuted minority," face particularly harsh conditions in India, marked by arbitrary detention, deportation threats, and systematic denial of basic rights^{xix}.

Sri Lankan Tamil refugees, despite decades of residence in India, remain in camps with restricted mobility and limited economic opportunities. Approximately 62,000 Tamil refugees live in 107 camps throughout Tamil Nadu, with another 37,000 residing outside camps^{xx}. The protracted nature of their displacement, spanning in some cases over 40 years, raises serious questions about durable solutions and the right to local integration^{20,7}.

Afghan refugees in India, estimated at several thousand, face uncertainty following the Taliban's return to power in August 2021. While India announced emergency e-visas for Afghan nationals, only a small fraction of the 60,000 applications received by September 2021 had been processed by December that year, with clear prioritization of Hindu and Sikh applicants over Muslim refugees^{19,xxi}.

5. Legal and Institutional Framework

5.1 Absence of Domestic Refugee Legislation

India's most significant lacuna in refugee protection is the absence of dedicated refugee legislation^{4,8}. Unlike many countries that have enacted specific laws to implement their international obligations under the Refugee Convention, India has no statutory framework defining who qualifies as a refugee, what rights refugees possess, or what procedures govern asylum determination^{xxii}. This legislative vacuum creates multiple problems identified in recent scholarship⁴:

First, it leaves refugees subject to general immigration laws designed for foreign nationals, not individuals fleeing persecution. The Foreigners Act, 1946, Registration of Foreigners Act, 1939, and Passport (Entry into India) Act, 1920 treat all non-citizens without valid documentation as "illegal immigrants" subject to detention and deportation, regardless of their need for international protection^{xxiii}. These colonial-era statutes prioritize exclusion and control over protection and human rights.

Second, the absence of legislation means refugee status determination (RSD) occurs through an opaque, discretionary process lacking clear standards, procedural safeguards, or appeal mechanisms^{4,8}. For refugees from certain countries, the Government of India conducts RSD internally; for others, the United Nations High Commissioner for Refugees (UNHCR) has been delegated this function^{xxiv}. However, there is no legal basis for this division of responsibility, and government recognition of UNHCR-issued refugee certificates is inconsistent and declining¹².

Third, without statutory protection, refugees have no legally enforceable rights. Access to education, healthcare, employment, and other basic services depends on executive discretion and varies dramatically based on nationality, religion, and political considerations^{4,12}. What emerges is an "everyday border," where access to services becomes contingent on documentation that may or may not be recognized by state authorities¹².

5.2 The Immigration and Foreigners Act, 2025

The Immigration and Foreigners Act, 2025, introduced in Lok Sabha on March 11, 2025, was presented as a comprehensive modernization of India's immigration framework, consolidating four colonial-era statutes into a single law^{xxv}. However, from a refugee rights perspective, the Act represents a missed opportunity and, in several respects, a regression¹⁴.

Most critically, the Act remains entirely silent on refugees and asylum seekers. It makes no attempt to distinguish between economic migrants and individuals fleeing persecution, collapsing vastly different legal and humanitarian realities into a single administrative category⁵. This omission is particularly troubling given that India has decades of experience hosting refugee populations and could have used this legislative reform to establish clear protection standards¹⁴.

The Act centralizes discretionary power in the executive while weakening procedural safeguards. It does not clearly specify standards of proof for detention and deportation, limits on detention periods, guaranteed access to legal counsel, or meaningful avenues of appeal⁵. For refugees like the Rohingya, this means they can now be detained and deported without ever appearing before a court of law, with no guaranteed hearing and no clear standard of proof⁵.

The statute's silence creates expansive legal grey zones with tangible human consequences. As legal scholars have noted, contemporary border regimes rarely rely on overt violence; instead, they operate by withdrawing legal protection, exposing people to detention, exploitation, and potentially refoulement to danger⁵. This exposure to harm through administrative exclusion is not incidental but a central feature of the new immigration architecture.

5.3 The Citizenship Amendment Act (CAA), 2019

The Citizenship Amendment Act, enacted in December 2019 and operationalized in March 2024, represents India's first explicit legislative recognition of refugees—yet it does so through a discriminatory framework that violates fundamental principles of equality and non-discrimination^{xxvi,7}. The CAA fast-tracks citizenship for Hindu, Sikh, Buddhist, Jain, Parsi, and Christian refugees from Afghanistan, Bangladesh, and Pakistan who entered India before December 31, 2014, explicitly excluding Muslim refugees from the same countries^{xxvii,7}.

The government justifies this exclusion by arguing that these six communities face religious persecution in the three Muslim-majority countries, while Muslims, being the majority religion, do not require such protection^{xxviii}. However, this reasoning fails on multiple grounds identified by scholars⁷. First, it ignores the reality that Muslim minorities within these countries—such as Ahmadiyya Muslims, Shia Muslims, and others—face severe persecution. Second, it excludes persecuted Muslim groups from other countries, notably the Rohingya from Myanmar, despite their well-documented status as victims of genocide¹³.

Research establishes that India's practice of offering protection only to persecuted minorities from specific states while excluding Muslims is intrinsically discriminatory and violates fundamental constitutional principles⁸. The discriminatory nature of the CAA has been widely condemned by international human rights organizations. Amnesty International described it as "a blow to Indian constitutional values of equality and religious non-discrimination" and "inconsistent and incompatible with India's international human rights obligations". Human Rights Watch similarly characterized it as a "discriminatory citizenship law" that specifically excludes Muslim refugees²⁵.

Beyond religious discrimination, the CAA raises concerns when viewed in conjunction with the proposed National Register of Citizens (NRC)⁷. Together, these policies create a framework that could render Muslim citizens and refugees stateless: if excluded from the NRC, they would be classified as foreigners and sent to detention centers, but unlike non-Muslim groups who could claim protection under the CAA, Muslims would have no such recourse²⁵.

For refugee populations currently in India, the CAA creates a stark hierarchy of protection¹². Hindu and Sikh refugees from the specified countries receive a clear pathway to citizenship, while Rohingya Muslims, despite being recognized by the UN as facing genocide, are systematically excluded and face heightened risk of deportation^{28,12}.

6. International Legal Obligations and Non-Refoulement

6.1 India's Stance on the Refugee Convention

India's refusal to accede to the 1951 UN Refugee Convention and its 1967 Protocol has been consistently cited by government officials and even by Indian courts as justification for non-compliance with international refugee protection standards^{xxix}. The argument is straightforward: as a non-signatory, India has no treaty obligation to provide refugee protection or respect principles like non-refoulement. However, this position reflects a narrow understanding of international law and India's actual obligations¹⁰. International human rights law operates through multiple sources—not only treaties to which states are parties, but also customary international law and general principles of law recognized by civilized nations. India's obligations toward refugees arise from both categories^{10,14}.

6.2 The Principle of Non-Refoulement

Non-refoulement—the prohibition against returning refugees to territories where they face persecution or serious harm—is widely recognized as a cornerstone of international refugee protection^{xxx}. While Article 33 of the 1951 Refugee Convention is the primary treaty provision codifying this principle, its scope extends far beyond that single instrument¹⁰.

First, non-refoulement is reflected in other international treaties to which India is a party¹⁰. The International Covenant on Civil and Political Rights (ICCPR), ratified by India, implicitly prohibits refoulement through Articles 6 (right to life) and 7 (prohibition of torture and cruel, inhuman or degrading treatment)^{xxxi}. The UN Human Rights Committee has consistently interpreted these provisions to prohibit states from removing individuals to places where they would face a real risk of such violations. Similarly, the Convention Against Torture (CAT), to which India is a party, explicitly prohibits refoulement in Article 3^{xxxii,10}.

Second, non-refoulement has achieved the status of customary international law, binding on all states regardless of their treaty commitments^{10,30}. A principle becomes customary international law when two conditions are met: consistent state practice (*usus*) and recognition that this practice is legally required (*opinio juris*). Numerous international tribunals, including the International Court of Justice, have affirmed that non-refoulement meets both criteria. The principle's customary status has even been recognized by the Supreme Court of India in *People's Union for Civil Liberties v. Union of India*, where the court emphasized the importance of customary law in domestic legal interpretation^{10,32}.

Some scholars argue that non-refoulement has achieved *jus cogens* status—a peremptory norm of international law from which no derogation is permitted^{xxxiii}. While this claim remains debated, the consensus that non-refoulement binds all states, whether party to the Refugee Convention or not, is well-established in international jurisprudence¹⁰.

Comparative analysis reveals that countries like Germany have robust asylum laws protecting refugees and upholding non-refoulement, while Syria's ongoing conflict makes it both a source and potential destination for forced returns^[39]. India's position falls between these extremes but lacks the legal certainty necessary for effective protection¹⁴.

6.3 Indian Jurisprudence on Non-Refoulement

Indian courts have issued contradictory rulings on the applicability of non-refoulement¹³. In some early cases, courts recognized the principle and even expanded its scope. In *Syed Ata Mohammad v. Union of India* (1994), the Bombay High Court held that an Iranian refugee recognized by UNHCR could not be deported to Iran^{xxxiv}. The Delhi High Court in *Dongh Lian Kham v. Union of India* (2015) held that non-refoulement is encompassed in Article 21 of the Indian Constitution (right to life and personal liberty)^{xxxv}.

However, recent Supreme Court decisions have taken a regressive stance¹³. In *Mohammad Salimullah v. Union of India* (2021), concerning the deportation of Rohingya refugees to Myanmar, the Supreme Court ruled that only Indian citizens have constitutional rights to reside in the country and that Rohingya refugees fall under the Foreigners Act, which permits deportation³⁰. The Court stated that India, not being a signatory to the Refugee Convention, cannot be compelled to comply with non-refoulement.

This reasoning has been criticized by international law scholars as fundamentally flawed^{10,13}. As one analysis noted, the Court completely ignored that non-refoulement applies to India through: (1) international treaties India has ratified, such as the ICCPR and CAT; and (2) customary international law, which binds all states regardless of specific treaty commitments³¹. The Court's failure to engage with India's actual international obligations represents a significant gap in constitutional adjudication¹³.

Most alarmingly, in April 2021, the Supreme Court refused to stay the deportation of seven Rohingya refugees to Myanmar, despite overwhelming evidence of genocide and crimes against humanity against the Rohingya^{xxxvi}. In October 2018, the Court similarly refused interim relief to other Rohingya facing deportation, stating that illegal immigration could not be permitted. These decisions occurred even as the International Criminal Court was conducting preliminary examinations into crimes against the Rohingya.

7. Differential Treatment of Refugee Populations

7.1 Tibetan and Sri Lankan Tamil Refugees

India's ad hoc approach to refugee protection has produced stark disparities in treatment across different refugee communities¹². Tibetan refugees, the earliest and most integrated group, received Registration Certificates allowing freedom of movement, access to education and healthcare, and permission to establish settlements and engage in economic activities¹². This relatively favorable treatment reflects historical ties between India and Tibet, sympathy for the Dalai Lama, and strategic considerations regarding China.

Sri Lankan Tamil refugees present a more complex picture^{11,12}. While they have received basic humanitarian assistance and protection from refoulement, their lives remain heavily circumscribed. Those living in camps face significant restrictions on movement, limited livelihood opportunities, and inadequate living conditions^{[11][32]}. Despite residing in India for decades—in some cases over 40 years—they have no clear pathway to citizenship or permanent residence^{xxxvii}.

The Madras High Court has issued several judgments directing the Union Government to consider citizenship applications from Sri Lankan Tamil refugees of Indian origin, emphasizing that their exclusion infringes upon the right to life and personal liberty under Article 21³⁷. A landmark 2019 judgment by Justice G.R. Swaminathan explicitly instructed the government to process such applications³⁷. However, implementation remains slow and inconsistent, particularly for refugees who arrived after 1983.

7.2 The Rohingya Crisis: Fragmented Protection and Systematic Persecution

The Rohingya represent the most vulnerable and persecuted refugee group in India^{7,12,13}. Fleeing systematic violence, including what the United Nations has characterized as genocide in Myanmar, approximately 40,000-50,000 Rohingya sought refuge in India¹³. However, rather than receiving protection, they face arbitrary detention, criminal prosecution, and forcible deportation^{7,12,13}.

Research on Rohingya experiences reveals how the combination of fragmented migration governance and divergent settlement patterns has resulted in fragmented protection, marked by different degrees of negotiated access to services such as health and education¹². At the same time, the precarity of the Rohingyas' legal status in India as UNHCR card-holders who are simultaneously deemed illegal by the Indian government profoundly influences the operational space and potential impact of this fragmented protection^{7,12,13}.

Fragmented protection is increasingly shaped by structural shocks including the political (negative government stance on refugees), the discursive (growing negative public perception of the Rohingya), and the administrative (drives toward all-encompassing digital identification schemes inhibiting the space for policy discretion)¹². Once granted official Long Term Visas as asylum seekers in 2012, Rohingya are now marked for detention and deportation as illegal immigrants in 2025^{12,13}.

India's treatment of Rohingya refugees reflects multiple factors: Islamophobic rhetoric and anti-immigrant policies, security concerns (often exaggerated and unsubstantiated), and reluctance to antagonize Myanmar¹³. In May 2025, the Indian government told the Supreme Court that it neither recognizes UNHCR-issued refugee cards nor acknowledges the Rohingyas as refugees^{xxxviii}. This position directly contradicts India's practice with other refugee groups, where UNHCR certification has historically provided at least minimal protection.

The consequences of this denial of protection are severe. Rohingya refugees face constant risk of arrest under the Foreigners Act for "illegal entry," followed by prolonged detention in often harsh conditions^{7,12,13}. Detention can last years, with detainees having limited access to legal counsel or judicial review. In 2025, India deported scores of Rohingya refugees to Bangladesh and Myanmar without adequate legal protections^{xxxix}. These deportations occurred despite the principle of non-refoulement and credible reports that returnees face serious harm¹³.

Beyond detention and deportation, Rohingya in India confront systematic exclusion from basic services⁴. They lack access to formal employment, adequate shelter, healthcare beyond emergency services, and education for their children. They are vulnerable to exploitation, abuse, and violence from both authorities and host communities⁴. Human rights organizations have documented cases of extortion, arbitrary arrest, and physical violence against Rohingya refugees.

The enactment of the CAA 2019 further institutionalized discrimination against the Rohingya by explicitly excluding Muslim refugees from accelerated citizenship provisions while granting such benefits to non-Muslim groups⁷. This sends a clear message that Muslim refugees, regardless of the severity of persecution they face, are unwelcome in India^[33].

7.3 Afghan Refugees

Afghan refugees in India occupy an intermediate position in this hierarchy of protection⁸. Following the Soviet invasion in 1979 and subsequent Taliban rule, thousands of Afghans sought refuge in India⁸. The government issued long-term visas to many Afghan refugees, particularly those with professional skills or cultural ties to India. However, even this relatively favorable treatment revealed discriminatory patterns, with Hindu and Sikh Afghans receiving preferential treatment over Muslim refugees⁸.

When the Taliban returned to power in August 2021, India announced emergency e-visas for Afghan nationals—a seemingly humanitarian gesture³⁹. However, implementation was extremely limited. Of approximately 60,000 applications received by September 2021, only 200 e-visas had been granted by December that year³⁹. Evidence suggests that Sikh and Hindu Afghans were prioritized, while Muslim applicants faced lengthy delays or rejections.

Afghan refugees in India, like other groups, lack clear legal status and pathways to permanent residence or citizenship (except for non-Muslims who may eventually benefit from the CAA)^{14,8}. Their six-month emergency visas provide no right to formal employment or access to social services, creating precarious living conditions²¹. The lack of a comprehensive refugee framework means that Afghan refugees exist in legal limbo, dependent on executive discretion that can be withdrawn at any time¹⁴.

8. Practical Challenges and Human Rights Concerns

8.1 Access to Basic Services

The absence of legal refugee status and the inconsistent recognition of UNHCR documentation create enormous practical barriers for refugees in India^{4,12}. Accessing basic services increasingly requires government-issued documentation—Aadhaar cards, ration cards, or other official identification¹². Refugees without such documentation find themselves excluded from systems designed to serve the population.

Research identifies restricted access to essential services as one of five pivotal domains where the lack of refugee law yields significant ramifications⁴. Employment presents a particular challenge. While India has a vast informal economy that historically absorbed undocumented workers, recent government restrictions on employing persons without proper documentation have made even informal work increasingly difficult for refugees⁴. Simple economic activities like renting housing or purchasing SIM cards have become virtually impossible for many refugee populations.

Education access varies significantly across refugee groups and locations. Tibetan and some Sri Lankan refugees have relatively better access to primary and secondary education, while Rohingya children are often denied admission to government schools^{12,13}. Even when education is theoretically available, lack of documentation, language barriers, and poverty create additional obstacles.

Healthcare access is similarly restricted. While emergency medical care may be provided, refugees often lack access to ongoing treatment, specialist care, or maternal health services¹¹. The COVID-19 pandemic dramatically worsened this situation, with refugees excluded from vaccination programs and unable to access testing or treatment facilities.

8.2 Arbitrary Detention

Perhaps the most serious human rights violation faced by refugees in India is arbitrary detention^{4,10,12}. Under the Foreigners Act, immigration officials can detain individuals without valid documentation indefinitely while deportation proceedings occur⁴. This detention lacks many basic safeguards: there is no automatic judicial review, no maximum detention period, limited access to legal counsel, and often inadequate detention conditions.

For Rohingya refugees, detention has become systematic rather than exceptional^{12,13}. Entire families, including children, have been held in detention centers or jails for years¹². A 2025 report by Refugees International documented the detention of Rohingya refugees for periods ranging from months to years, with some detainees reporting abuse, inadequate food and medical care, and lack of information about their legal status¹⁹.

The Immigration and Foreigners Act, 2025, despite its modernizing claims, does nothing to address these concerns¹⁴. It maintains broad detention powers while failing to specify clear standards, limits, or procedural protections⁵. For refugee advocates, this represents a significant missed opportunity to align India's detention practices with international human rights standards¹⁴.

8.3 Gender-Specific Vulnerabilities

Refugee women and girls face compounded vulnerabilities¹¹. They are at heightened risk of gender-based violence, including domestic violence, sexual assault, and exploitation. The lack of legal status means they often cannot report crimes to police without risking detention themselves. Rohingya women, in particular, face intersecting discrimination based on gender, religion, and refugee status¹⁹.

Research challenges the tendency to foreground humanitarian over human rights concerns in relation to refugee women, and to rely on cultural explanations of consent norms for subjugation¹¹. It argues that the default practice of 'going through the men' silences voice, denies agency, and increases vulnerability, contesting the victimization, feminization, and infantilization of the refugee subject¹¹. Gendered analysis demonstrates refugee women's capacity to carve out independent identities and sociopolitical selves despite traditional constraints¹¹.

Access to reproductive healthcare, safe delivery services, and maternal care is severely limited for refugee women^{4,11}. Early and forced marriage rates are high in some refugee communities, partly due to poverty and lack of protection. Refugee girls face particular barriers to education, with cultural factors and economic necessity often forcing families to prioritize boys' education when resources are scarce.

9. Way Forward and Recommendations

9.1 Comprehensive Refugee Legislation

India urgently requires dedicated refugee legislation that establishes clear definitions, procedures, rights, and obligations^{4,8,14}. Research emphasizes that implementing comprehensive refugee law is imperative to address challenges posed by forced displacement and establish a secure and inclusive future for refugees and the host nation⁴. Such legislation should:

Define "refugee" and "asylum seeker" in accordance with international standards, while recognizing the specific regional context of South Asia¹⁴. Establish transparent, accessible refugee status determination procedures with clear timelines, evidentiary standards, and rights to legal counsel and interpretation. Provide for both individual RSD and group determination in mass influx situations⁸.

Codify the principle of non-refoulement without exception based on national security concerns that do not meet strict proportionality standards^{10,13,14}. Ensure that any limitations on non-refoulement comply with India's obligations under the ICCPR, CAT, and customary international law^{30,31}.

Guarantee fundamental rights for refugees and asylum seekers, including freedom from arbitrary detention, access to basic services (education, healthcare, livelihood), freedom of movement subject only to necessary and proportionate restrictions, and protection from discrimination based on race, religion, nationality, or refugee status¹⁴.

Establish independent oversight mechanisms, including specialized refugee tribunals with appeal rights to higher courts⁸. Create detention review mechanisms that ensure detention is used only as a last resort, for the shortest possible period, and subject to regular judicial review^{4,5}.

9.2 Balancing National Interests and International Obligations

Scholarly work emphasizes the need to promote effective refugee protection in India by balancing national interests and international obligations¹⁴. This requires recognizing that protecting refugees is not merely a humanitarian gesture but a legal obligation arising from international law and an ethical imperative rooted in human dignity¹⁴.

While domestic legislation alone can provide refugee protection, ratifying the 1951 Refugee Convention and its 1967 Protocol would signal India's commitment to international standards and facilitate cooperation with UNHCR and other states¹⁴. Ratification would also provide a clear normative framework for domestic legislation and judicial interpretation.

India should also consider ratifying or acceding to regional instruments and participating actively in regional consultative processes on refugee protection in South Asia. Comparative analysis with countries like Germany demonstrates that robust asylum frameworks can effectively balance protection obligations with legitimate security concerns¹⁴. Given the transnational nature of displacement in the region, enhanced regional cooperation is essential for durable solutions¹⁴.

9.3 Addressing Discrimination and Upholding Constitutional Values

The discriminatory provisions of the CAA 2019 should be repealed or substantially amended to ensure equal treatment regardless of religion¹⁴. Research establishes that citizenship and refugee protection should be based on need for protection and humanitarian considerations, not religious identity^{7,21}. The critical importance of implementing uniform refugee laws prevalent under international law is emphasized to prevent discrimination and uphold the secular principles enshrined in the Constitution⁷.

Any legitimate security concerns can be addressed through appropriate screening procedures that do not discriminate on religious grounds. More broadly, India must address the Islamophobic rhetoric and policies that have created an environment of hostility toward Muslim refugees, particularly the Rohingya⁸. Government officials and political leaders have a responsibility to refrain from inflammatory language that incites xenophobia and endangers vulnerable populations⁸.

9.4 Strengthening Institutional Capacity

India's Ministry of Home Affairs, which handles refugee matters, lacks specialized expertise and resources for refugee protection⁷. Establishing a dedicated refugee agency or specialized unit with trained personnel, adequate resources, and clear protection mandate would significantly improve refugee outcomes¹⁴.

Enhanced cooperation with UNHCR, while maintaining state sovereignty over status determination, would leverage international expertise and resources¹⁴. UNHCR's role should be formalized through domestic legislation or at minimum through clear memoranda of understanding that specify responsibilities, data sharing, and protection standards⁸.

9.5 Durable Solutions and Integration Pathways

For long-staying refugee populations, particularly Sri Lankan Tamils who have been in India for decades, pathways to local integration and citizenship should be provided^{8,32}. Protracted refugee situations deny individuals the opportunity to plan their futures and contribute fully to society⁸.

Voluntary repatriation should be facilitated when conditions in countries of origin allow for safe, dignified return. However, such repatriation must be genuinely voluntary, not coerced through deteriorating conditions or threats of deportation^{11,12}. Post-return monitoring should ensure returnees' safety and successful reintegration⁴.

For refugees who cannot return safely and for whom local integration is not feasible, resettlement to third countries should be actively pursued in cooperation with UNHCR and resettlement countries¹⁴.

9.6 Addressing Emerging Challenges

India must prepare for emerging forms of displacement, particularly climate-induced disaster displacement¹⁴. Research indicates the need to integrate artificial intelligence and human rights-based approaches into national disaster laws, climate law frameworks, and international human rights law to protect climate-displaced populations⁴. This requires re-imagining crisis response frameworks beyond purely securitized approaches to incorporate diagnostic, formative, and summative digital assessments integrated with legal protection frameworks¹⁴.

10. Conclusion

India stands at a critical juncture in its approach to refugee protection. With over 273,000 refugees and asylum seekers currently in the country, and with regional instability likely to generate further displacement, the inadequacy of India's ad hoc, discretionary approach is increasingly apparent². Recent scholarly research conclusively establishes that the absence of comprehensive refugee legislation, the non-ratification of international instruments, and recent discriminatory legislation have created a protection environment that fails vulnerable populations and contradicts India's stated commitment to human rights and humanitarian values^{4,10,13,14}.

The analysis underscores five critical domains where the lack of refugee law yields significant ramifications: insufficiency of legal safeguards, ambiguity and inconsistent treatment, restricted access to essential services, susceptibility to exploitation and mistreatment, and burdens on host communities⁴. Moreover, national security concerns originating from the dearth of comprehensive refugee law affect India's global standing and its dedication to human rights and international humanitarian endeavors⁴.

The enactment of the Immigration and Foreigners Act, 2025, represented a lost opportunity to establish a modern, rights-based framework for refugee protection⁴. Instead, the Act perpetuates colonial-era approaches to immigration control while remaining entirely silent on the specific needs and rights of refugees. The continued implementation of the discriminatory CAA 2019 further undermines India's reputation as a tolerant, pluralistic democracy committed to equality before the law¹².

The treatment of Rohingya refugees represents the most egregious failure of India's current approach^{8,10}. Despite fleeing genocide and persecution, they face systematic denial of protection, arbitrary detention, and forcible deportation in violation of the principle of non-refoulement^{36,37,38}. Research demonstrates how fragmented governance has resulted in fragmented protection increasingly shaped by political, discursive, and administrative structural shocks¹³. This treatment not only breaches India's international legal obligations under the ICCPR, CAT, and customary international law, but also violates the fundamental constitutional guarantee of life and personal liberty under Article 21^{30,31}.

The stark differential treatment of refugee populations—with Tibetans receiving relatively favorable treatment, Sri Lankan Tamils facing prolonged limbo, and Rohingya encountering active persecution—reveals the problems inherent in an approach based on ad hoc discretion rather than legal rights^{[32][37]}. When protection depends on political considerations, religious identity, and shifting geopolitical alignments, the most vulnerable inevitably suffer. Research on India's refugee policy trajectory confirms that differential treatment based on geopolitical considerations, strategic interests, and religious identity characterizes India's approach^{11,12}.

India's judiciary has played an inconsistent role in refugee protection^{8,13}. While some high court judgments have recognized rights and directed government action, recent Supreme Court decisions have retreated from international legal obligations and constitutional principles, prioritizing narrow national security concerns over human rights^{29,33,35}. The courts have failed to hold the executive accountable to India's international commitments and constitutional values.

Moving forward, India must undertake comprehensive reform of its refugee protection framework⁴. This requires enacting dedicated refugee legislation that codifies the principle of non-refoulement, establishes transparent status determination procedures, guarantees fundamental rights, and provides independent oversight⁴. The discriminatory provisions of the CAA 2019 must be repealed or amended to ensure equal treatment⁷. Institutional capacity must be strengthened through creation of specialized refugee agencies with adequate resources and expertise⁴.

Scholarly consensus emphasizes that promoting effective refugee protection requires balancing national interests and international obligations^[40]. Research on comparative frameworks demonstrates that robust asylum systems can effectively manage both protection and security concerns²¹. The critical importance of implementing uniform refugee laws prevalent under international law is established to prevent discrimination and uphold constitutional secular principles⁷.

Most fundamentally, India must recognize that protecting refugees is not merely a humanitarian gesture but a legal obligation arising from international law and an ethical imperative rooted in human dignity^{10,14}. The same constitutional values of equality, liberty, and fraternity that protect Indian citizens must extend to those who seek refuge on Indian soil. India's long tradition of providing sanctuary to the displaced should be formalized and strengthened through law, not undermined by discriminatory policies and administrative discretion^{4,10}.

As regional instability persists and emerging challenges like climate-induced displacement increase¹⁴, India's refugee challenge will only grow. The question is whether India will rise to meet this challenge with a rights-based framework that honors its humanitarian traditions and international obligations, or whether it will continue down a path of ad hoc discretion, discrimination, and protection gaps that cause immeasurable suffering to the world's most vulnerable populations.^{x1} The answer to this question will define not only India's approach to refugees, but its commitment to the fundamental human rights that underpin any just and civilized society.

The research conclusively demonstrates that implementing comprehensive refugee law is imperative to address the challenges posed by forced displacement and establish a secure and inclusive future for refugees and the host nation⁴. India must showcase its dedication to human rights and international humanitarian endeavors through concrete legislative reform, institutional strengthening, and elimination of discriminatory practices that contradict its constitutional values⁴.

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