

# INDIA'S POSITION ON REFUGEE LAW: SHOULD INDIA ADOPT A FORMAL REFUGEE LAW FRAMEWORK?

by

Bhumika Chowdhury  
Institute of Law, Nirma University

## I. Introduction

Refugee protection remains one of the most important areas of international law today it is situated at the intersection of humanitarian obligations, state sovereignty, and national security. While the international refugee regime provides a framework for the protection of displaced persons, states have adopted differing approaches to its implementation. India occupies a unique position within this landscape, having hosted diverse refugee populations for decades without acceding to the 1951 Refugee Convention or enacting a dedicated refugee law. This paper examines India's approach to refugee protection, evaluates the adequacy of the existing legal framework, and assesses whether the adoption of a formal refugee law regime is necessary.

### 1.1 Statement of the Problem

Forced displacement is one of the complicated humanitarian and legal challenges of the contemporary world. The burden of hosting the displaced population falls disproportionately on developing countries, with low and middle income states hosting approximately 71 percent of the world's refugees.

India has hosted successive waves of forced displacement over more than seven decades, from the partition of 1947 and the arrival of Tibetan refugees in 1959, to the mass influx during the Bangladesh Liberation War of 1971, and more recently the arrival of Rohingya from Myanmar and Myanmarese civilians fleeing the 2021 military coup.

Despite this extensive and sustained engagement with forced displacement, India remains outside the formal international refugee protection regime. It has not acceded to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, and has enacted no domestic legislation specifically governing the identification, rights, or treatment of refugees. In the absence of such a framework, refugees in India are governed by colonial era legislation like the Foreigners Act 1946 and the Registration of Foreigners Act 1939, which make no distinction between refugees and other categories of non citizens, and which gives the executive broad and unconstrained powers of detention and deportation. It should be noted that the legislative landscape governing foreigners in India has undergone a significant structural change since the passage of the Immigration and Foreigners Act, 2025, which received presidential assent in April 2025 and came into force on 1 September 2025. This consolidating statute repealed four earlier laws: the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act, 1939, the Foreigners Act, 1946, and the Immigration (Carriers' Liability) Act, 2000, merging them into a single legislative framework governing the entry, stay, movement, and exit of foreigners in India. The new Act provides for a statutory Bureau of Immigration, mandates biometric data collection, introduces graded penalties for immigration violations, and requires the establishment of holding centres for irregular migrants pending deportation. Crucially, however, despite this comprehensive overhaul of India's immigration machinery, the 2025 Act contains no specific

provisions for refugee recognition, asylum procedures, or protection against refoulement. The Act continues to treat all non-citizens identically, perpetuating the fundamental structural deficiency that this paper identifies, albeit within a modernised statutory framework. The exemptions it provides for Tibetan refugees and registered Sri Lankan Tamil refugees are limited, ad hoc, and do not amount to a refugee protection regime. As one commentator has observed, despite the legislative modernisation, the "policy gap" on refugee protection remains firmly in place.<sup>1</sup>

Refugees in India have no legally defined status, no enforceable rights, and no procedural safeguards specific to their situation. Protection is extended or withheld on the basis of political discretion rather than legal obligation, this discretionary approach produces profound inconsistency, renders protection inherently precarious, and creates a structural accountability gap that judicial intervention alone cannot adequately remedy.<sup>2</sup>

The problem this paper addresses is the adequacy of India's existing legal framework in meeting its obligations under general international law, and the practical consequences of that framework's inadequacy for the hundreds of thousands of refugees and asylum seekers who depend on India's protection.

## 1.2 Research Questions

Q1) What are the foundations of international refugee protection, and to what extent does India's current approach align with those foundations?

Q2) What has India's historical experience of refugee protection been, and what patterns does that experience reveal about the structural characteristics of India's approach to forced displacement?

Q3) What is the existing domestic legal framework governing refugees in India, and what are its structural deficiencies?

Q4) What are India's reasons for non-accession to the 1951 Convention?

## 1.3 Hypothesis and Central Argument

This paper proceeds on the hypothesis that India's current approach to refugee protection characterised by the absence of a formal legal framework, reliance on discretionary executive responses, and selective treatment of different refugee groups is structurally inadequate and constitutes a failure to meet both India's obligations under general international law and its own constitutional commitments to the protection of life and personal liberty.

The central argument of this paper is that India should adopt a formal domestic refugee law framework.

First, in the absence of a formal refugee law framework refugees in India are detained under colonial era legislation, deported without adequate procedural safeguards, denied access to basic services.

Second, India already bears obligations under general international law and ratified human rights instruments including the ICCPR, CRC, and ICERD that overlap significantly with refugee protection.

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<sup>1</sup> 'Immigration and Foreigners Act 2025: Key Provisions Explained' (IASPOINT, 15 September 2025)

<https://iaspoint.com/immigration-and-foreigners-act-2025-key-provisions-explained/> accessed 5 June 2026.

<sup>2</sup> Seth S, "Why India Needs a Refugee Law" *Lowy Institute* (July 25, 2022)

<<https://www.lowyinstitute.org/the-interpretor/why-india-needs-refugee-law>> accessed May 31, 2026

A formal refugee law framework would give effect to these existing obligations in a coherent, accessible, and enforceable form, rather than leaving their implementation to judicial oversight and executive discretion.

This paper does not argue that India should simply accede to the 1951 Convention without more, although accession would be a significant step. It argues that India should enact domestic refugee legislation that gives effect to the core principles of international refugee law including a definition of refugee status, procedure for its determination, principle of non-refoulement, and a framework of rights and entitlements in a form suited to India's specific constitutional and geopolitical situations.

A further dimension that strengthens this argument is the existence of concrete legislative proposals that have been placed before Parliament but have failed to advance. In December 2015, Dr Shashi Tharoor, Member of Parliament from Thiruvananthapuram, introduced The Asylum Bill, 2015, as a Private Member's Bill in the Lok Sabha. The Bill proposed the establishment of a formal asylum system, including criteria for refugee recognition, an institutional determination mechanism, codification of the principle of non-refoulement, and a framework of rights and obligations for refugees. It drew upon asylum legislation from jurisdictions including Brazil, the Philippines, Turkey, South Africa, and South Korea, and was drafted with the assistance of the Ara Trust, a refugee advocacy organisation. The Bill did not find favour with the Government and lapsed without being taken up for debate.<sup>3</sup> In 2022, Dr Tharoor introduced a further iteration, the Refugee and Asylum Bill, proposing comprehensive criteria for recognising asylum seekers and refugees and prescribing specific rights and duties accruing from such status.<sup>4</sup> The repeated failure of these legislative attempts does not diminish their significance; rather, it confirms that the problem identified in this paper has been recognised within Parliament itself, and that concrete models for reform exist, rendering the absence of a domestic framework a matter of political will rather than institutional capacity.

## II. Conceptual Foundations of Refugee Protection

The concept of refugee protection has evolved within international law from ad hoc humanitarian responses to a structured legal regime grounded in defined rights, obligations, and mechanisms of protection. Yet this evolution has not been uniformly reflected in domestic legal systems, and India remains a notable example of a state operating outside the formal international refugee framework. Despite hosting refugee populations for decades, India lacks a comprehensive statutory regime governing refugee recognition and protection.

### 2.1 Defining the 'Refugee': Distinguishing Refugees from Migrants, Asylum-Seekers, Stateless Persons, and Internally Displaced Persons

Refugees are people forced to flee their own country and seek safety in another country. They are unable to return to their own country because of feared persecution as a result of who they are, what they believe in or say, or because of armed conflict, violence or serious public disorder. Many are forced to flee with little to nothing, leaving behind their homes, possessions, jobs. They suffer human rights violations, been injured in their flight, or have seen family members or friends killed.<sup>5</sup>

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<sup>3</sup> 'Ara Trust: India Introduces Domestic Asylum Bill' (Rights in Exile Newsletter, 21 December 2015) <https://rightsinexile.tumblr.com/post/136381839717/ara-trust-india-introduces-domestic-asylum-bill> accessed 5 June 2026.

<sup>4</sup> 'India Needs a Refugee and Asylum Law' (IAS Baba, 19 February 2022) <https://iasbaba.com/2022/02/india-needs-a-refugee-and-asylum-law/> accessed 5 June 2026.

<sup>5</sup> "Refugee Definitions and Meaning" (UNHCR India -) <<https://www.unhcr.org/in/about-unhcr/who-we-protect/refugees>> accessed May 31, 2026

According to Article 1 A (2) of the 1951 Convention the term “refugee” shall apply to any person who:

“As a results of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted of race, religion and nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>6</sup>

The phrase “well-founded fear of being persecuted” is a key phrase of the definition. This replaces the earlier method of defining refugees by categories (i.e. persons of a certain origin not enjoying the protection of their country.)

Determination of refugee status will therefore primarily require an evaluation of the applicant’s statement along with the situation prevailing in his country of origin, thus containing both the subjective and objective element. Due to the importance of the subjective element, it is necessary to take into account the personal and family background, membership of a particular racial, religious, national, social or political group, his own interpretation of the situation and personal experiences. This is particularly evident in India’s treatment of the Rohingya — a stateless Muslim minority fleeing persecution in Myanmar — whom India has sought to deport despite their arguably meeting the refugee definition under international law.<sup>7</sup>

Knowledge of the condition in the applicant’s country of origin – the laws of the country, and particularly the manner in which they are applied, is an important element in assessing the applicant’s credibility. It must also be noted that persecution is distinguished from punishment for a common law offence. Person fleeing from prosecution are not refugees, refugees are victims – or potentially victims, not fugitives.

The above distinction may, however, occasionally be obscured. In some scenarios prosecution amounts to persecution if the laws concerned are not in conformity with accepted human rights standards set by various international instruments relating to human rights, such as those stated in International Covenants of Human Rights, which builds binding commitments for the State parties to the 1951 Convention have acceded.<sup>8</sup>

There is no international accepted legal definition of a migrant. A migrant is a person who, for reasons other than those contained in the definition, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or adventure, or by family or other reasons of personal nature. If he is moved by an economic consideration, he is an economic migrant. A migrant can return home without risking their life or freedom.<sup>9</sup>

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<sup>6</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 1A(2).

<sup>7</sup> *Mohammad Salimullah v Union of India* [2021] INSC 239

<sup>8</sup> *Handbook on Procedures and Criteria for Determining Refugee Status: Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (1992)

<sup>9</sup> “Refugees, Asylum Seekers and Migrants” (*Amnesty International*, March 5, 2021) <<https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/>> accessed May 31, 2026

The distinction between an economic migrant and a refugee is, however, sometimes blurred. Where economic measures destroy the economic existence of a particular section of the population (i.e. withdrawal of traditional rights from, or discriminatory or excessive taxation of, a specific ethnic or religious group), the victims may according to the circumstances become refugee on leaving the country. This distinction carries practical significance in the Indian context, where Bangladeshi nationals crossing into India are frequently categorised as illegal economic migrants and deported, without any formal assessment of whether some among them may have valid refugee claims.<sup>10</sup> The conceptual difficulty in distinguishing economic migrants from refugees is compounded in the South Asian context by the absence of any formal screening mechanism at India's borders. As scholars have noted, India's porous land boundaries with Bangladesh, Myanmar, and Nepal mean that individuals with mixed motivations for migration, including those with legitimate protection claims, are often categorised as illegal immigrants through presumptive administrative decisions rather than through any individualised assessment process. The phenomenon of "mixed migration," recognised by UNHCR as a defining feature of contemporary displacement, requires precisely the kind of screening and determination procedures that India's legal framework does not provide. The 2025 Immigration and Foreigners Act, by formalising the powers of border guarding forces and the coast guard to detain and deport irregular entrants after capturing biometric data, risks further entrenching this undifferentiated approach unless accompanied by complementary refugee protection legislation.<sup>11</sup>

An asylum seeker is someone who is seeking international protection. Their request for refugee status, or complementary protection status, has yet to be processed, or they may not yet have requested asylum but intend to do so.

War, persecution and human rights violations force people to flee their homes. To escape violence or threats to their lives or freedoms, many must leave with a few moments notice. When someone crosses an international border seeking safety, they need to apply to be legally recognized as a refugee. While they seek asylum and await the outcome of their application, they are referred to an asylum seeker and should be protected. Not all asylum seekers will be found to be refugees, but all refugees were once asylum seekers.<sup>12</sup>

In India, the absence of domestic refugee legislation creates a particularly precarious situation for asylum seekers. UNHCR issues asylum seeker certificates to those awaiting status determination, however these documents carry no legal weight under Indian law. Asylum seekers remain liable to arrest, detention and deportation under the Foreigners Act, 1946, leaving them effectively unprotected during the very period in which their claim is being assessed.<sup>13</sup>

According to the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as:

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<sup>10</sup> Commonwealth Human Rights Initiative, *A Basic Guide: Defending Asylum Seekers in Detention* (CHRI 2008) 3.

<sup>11</sup> B Sethuraman, 'India's Refugee Policy: Implications of an Ambiguous Approach' (The Peninsula, 15 February 2026) <https://thepeninsula.org.in/blog/indias-refugee-policy-implications-of-an-ambiguous-approach> accessed 5 June 2026.

<sup>12</sup> "Asylum-Seeker Definition and Meaning" (UNHCR India -) <<https://www.unhcr.org/in/about-unhcr/who-we-protect/asylum-seekers>> accessed May 31, 2026

<sup>13</sup> ANI, "UNHCR Refugee Status without Valid Travel Documents Is of No Consequence in India: Centre Tells HC" *theprint* (February 25, 2023) <<https://theprint.in/india/unhcr-refugee-status-without-valid-travel-documents-is-of-no-consequence-in-india-centre-tells-hc/1397701/>> accessed June 2, 2026

“A person who is not considered as a national by any State under the operation of its law”

Millions of people around the world are denied the right to nationality, leaving them unable to access other basic rights and services, such as being able to go to school, work legally, access health care or get married. They are often at a higher risk of exploitation and abuse. Stateless people face a lifetime of missed opportunities and disappointment. When they are born, their parents may not be able to register their birth, obtain a birth certificate or other legal identity documents. Which leads to hurdles in formal schooling and later obtaining jobs in adult life, leaving them at an increased risk of exploitation and abuse as they take low paying and informal jobs. They often cannot access public services, like health care and must rely on costly private clinics. They also frequently cannot open a bank account, vote, get a passport to travel.

Stateless people cannot confer a nationality on their children. If the child is unable to obtain a nationality through the other parent or from the country of birth, they will also end up stateless, perpetuating statelessness across generations. In India, the Chakmas and Hajongs of Arunachal Pradesh represent a stark example of intergenerational statelessness — displaced from erstwhile East Pakistan in the 1960, they have lived in India for decades yet remain without citizenship, unable to access basic rights and passed their stateless status to successive generations.<sup>14</sup>

A refugee is someone who has fled their country to escape conflict or persecution and has crossed an international border, most refugees can be both stateless and a refugee. However, the majority of the stateless people live within the country in which they were born and have never crossed an international border.<sup>15</sup>

An Internationally Displaced Person, or IDP, is someone who has been forced to flee their home but never cross an international border. These individuals seek safety anywhere they can find it – in nearby towns, schools, settlements, internal camps, even forests and fields.<sup>16</sup> Unlike refugees, IDPs are not protected by international law or eligible to receive many types of aid because they are legally under the protection of their own government.<sup>17</sup> India itself has witnessed significant internal displacement — in Kashmir, the northeastern states, and as a result of communal violence — yet no domestic legal framework exists to formally recognise or protect those displaced within its own borders, leaving them entirely dependent on discretionary state responses.<sup>18</sup> India’s fragmented treatment of these categories reflects the absence of a unified legal framework governing forced displacement.

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<sup>14</sup> *National Human Rights Commission v State of Arunachal Pradesh* (1996) 1 SCC 742.

<sup>15</sup> “What Happens If You Are Stateless?” (*UNHCR - The UN Refugee Agency*) <<https://www.unhcr.org/about-unhcr/who-we-protect/stateless-people>> accessed May 31, 2026

<sup>16</sup> UNHCR U for, “What Is a Refugee? Definition and Meaning” *USA for UNHCR* (October 27, 2025) <<https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>> accessed May 31, 2026

<sup>17</sup> Law R-UG and Database P, “Guiding Principles on Internal Displacement” (*Refworld*, October 28, 2023) <<https://www.refworld.org/legal/otherinstr/unchr/1998/18487>> accessed May 31, 2026

<sup>18</sup> “IDMC” (*2023 Global Report on Internal Displacement*) <<https://www.internal-displacement.org/global-report/grid2023/>> accessed June 2, 2026

## 2.2 Evolution of International Refugee Protection: From the League of Nations to UNHCR

Earlier in the twentieth century, the refugee problem became concern of the international community, for humanitarian reasons, began to assume responsibility for protecting and assisting refugees. The first refugee accords emerged during 1922 and 1926 to address influx of Russian and Armenian refugees. In the wake of National Socialism, those victims of the Nazi regime able to escape their homelands were protected. Administrative responsibilities were entrusted to several international agencies to issue identity and travel documents to refugees as means of facilitating their entry into society. There was no attempt to control the movement of refugees but an effort to help integrate into society. These agreements were later extended to several similar refugee groups in 1928 and 1935.

International refugee protection began in earnest when the League of Nations appointed Fridtjof Nansen as the first high commissioner for Refugees in 1921. At that time, millions of Russians fled due to the Bolshevik Revolution and people displaced by the collapse of the Ottoman empire. People desperately required legal recognition and travel documents. Nansen's appointment responded to the displacement of over one million Russians scattered across Europe following the Bolshevik Revolution. His role was initially limited in scope: he was formally appointed as the High Commissioner for Russian Refugees in August 1921, a mandate that was distinct from his earlier appointment in 1920 as High Commissioner for Prisoners of War. His achievement lay not merely in issuing identity documents but in establishing the foundational principle that displaced persons required an international institutional response, even in the absence of binding legal obligations upon states. As one authoritative account has noted, Nansen operated "with practically no budget" and relied on persuasion, coordination with the International Committee of the Red Cross, and appeals to governments' humanitarian instincts rather than legally enforceable obligations.<sup>19</sup>

In 1922, the Nansen passport (League of Nations Passport) was created, one of the first international legal instrument granting protection to refugees. The document allowed half a million stateless people to settle in new countries, establishing the principle that displaced persons deserved international assistance beyond their home state's reach.<sup>20</sup>

However, the approach had significant limitations. It operated on a group specific basis, defining refugees by their national origin or the crisis that displaced them. Some other significant restrictions to its application, only people who succeeded in leaving their country were assisted, the international agencies trusted with assist the refugees were not provided with any funds to provide relief, refugees enjoyed no guarantee of nationalization but were governed by domestic or international conventions.

In 1927, the High Commissioner sought to extend the definition of who could be regarded as refugees as, those who had no means of subsistence and are unable to in their present position to obtain any, his report was rejected, although it made it clear that the humanitarian need of the groups was at least as great as that of the refugees to whom protection had been extended but assistance was explicitly limited to only those persons whose displacement could be attributed to World War I. After Nansen's death in 1930, the protection of refugees was entrusted to the Nansen International Office for Refugees, but his office accomplished little before its mandate expired in 1938.<sup>21</sup>

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<sup>19</sup> 'The Passion, Vision and Action of Fridtjof Nansen, Humanitarian Extraordinaire' (UNHCR, 23 October 2025) <https://www.unhcr.org/us/news/stories/passion-vision-and-action-fridtjof-nansen-humanitarian-extraordinaire> accessed 5 June 2026.

<sup>20</sup> Kumar P, "The Evolution of International Refugee Law: Origins to Modern Frameworks • Law Notes by TheLaw.Institute" (*The Law Institute*, January 15, 2026) <<https://thelaw.institute/understanding-ihl/evolution-international-refugee-law-history/>> accessed June 1, 2026

<sup>21</sup> Erika Feller, 'The Evolution of the International Refugee Protection Regime' (2001) 5 Washington University Journal of Law & Policy 129, 142.

The Intergovernmental committee on Refugees (IGCR) was created in 1938 on the initiative of US President Franklin D. Roosevelt to administer intergovernmental efforts to resettle refugees from Nazi Germany. The IGCR was directed from 1939 by Sir Herbert Emerson, a former High Commissioner of League of Nations, and was financed by member contributions. Its work was expanded in 1943 to cover all European refugees, only those individuals forced to emigrate “on accounts of their political opinions, religious beliefs, [or] racial origin” qualified for assistance. It was terminated in 1947.<sup>22</sup>

The United Nations Relief and Rehabilitation Administration (UNRRA) was created on November, 1943. Its mission was to provide economic assistance to European Nations after World War II and to repatriate and assist the refugees who would come under Allied control. Though, it insisted upon concrete evidence of persecution. During 1945, UNRRA assisted in the repatriation of millions of refugees and managed hundreds of displaced persons camp in Germany, Italy and Austria. It provided welfare assistance and vocational training. It administered the work of 23 separate voluntary welfare agencies, including the Joint Distribution Committee, the Organization for Rehabilitation through Training (ORT), and the Hebrew Immigrant Aid Society (HIAS). The massive and protracted relief efforts caused the agency to run out of funds and in 1947 its task was taken over by a successor organization, the International Refugee Organisation.<sup>23</sup>

The International Refugee Organisation (IRO) was established on April 20, 1946, to address the refugee crisis following World War II. It became an official agency of the United Nations in 1948, assuming most of the functions of United Nations Relief and Rehabilitation Administration (UNRRA). It was responsible for the administration of camps for displaced persons and for their resettlement in permanent homes. It required the demonstration of “valid objections” to return to the state of origin. The IRO was abolished in 1952, and its functions were assumed by the United Nations High Commissioner for Refugees.<sup>24</sup>

The most substantial change IRO made was, it moved to a more individual conception of refugeehood, signalling the shift from a refugee law based on general humanitarian concern to provide en bloc protection, to a more selective focus on assisting persons whose basic human rights were jeopardized. It was arguably necessary due to the limited resources to assist the “most deserving” among the multitudes of displaced and suffering person.

The General Assembly in December 1950 established The United Nations High Commissioner for Refugees (UNHCR), for an initial three-year mandate to resolve Europe’s displacement crisis, as a subsidiary organ of the General Assembly under Article 22 of the United Nations Charter. UNHCR’s tasks were to provide international protection for refugees and to seek permanent solutions to their problems by assisting governments to facilitate their voluntary repatriation or their assimilation within new international communities.

The UNHCR is governed by the 1951 Refugee Convention and its 1967 protocol. It currently operates across 128 countries and promotes and monitors non-Refoulment (prohibiting returning victims to

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<sup>22</sup> Britannica Editors, “Intergovernmental Committee on Refugees (IGCR or ICR)” *Encyclopedia Britannica* (February 9, 2010) <<https://www.britannica.com/topic/Intergovernmental-Committee-on-Refugees>> accessed June 1, 2026

<sup>23</sup> “United Nations Relief and Rehabilitation Administration” (*Holocaust Encyclopedia*) <<https://encyclopedia.ushmm.org/content/en/article/united-nations-relief-and-rehabilitation-administration>> accessed June 1, 2026

<sup>24</sup> “International Refugee Organization Records” (*Harry S. Truman*) <<https://www.trumanlibrary.gov/library/personal-papers/international-refugee-organization-records>> accessed June 1, 2026

hazardous zones). It is dependant entirely on voluntary contributions from public and private donors. The 1967 Protocol subsequently removed both the temporal and geographic limitations of the 1951 Convention, expanding its application universally — though the fundamental architecture of the refugee definition, and its State-centric assumptions, remained unchanged.<sup>25</sup>

India's relationship with refugee protection during this period was largely informal. During the post-partition displacement of 1947, the Bangladesh liberation war of 1971, and the arrival of Tibetan refugees from 1959 onwards, India responded generously but entirely outside any formal legal framework — driven by political considerations and humanitarian instinct rather than legal obligation. This pattern of ad hoc, politically driven responses rather than rights-based protection has persisted to the present day, and its origins can be traced to India's deliberate decision not to accede to the 1951 Convention. This historical evolution underscores India's continued reliance on discretionary, rather than codified, mechanisms of refugee protection.

### 2.3 The 1951 Refugee Convention and the 1967 Protocol: A Brief Survey

The 1951 Refugee Convention remains the cornerstone of international refugee law. Adopted on 28 July, 1951, by a United Nations Conference, it was initially limited in scope – both temporally, applying to events occurring before January 1, 1951, and geographically, allowing states to restrict its application to events in Europe. These limitations reflected the immediate post war context in which the Convention was drafted.<sup>26</sup>

The 1967 protocol removed both restrictions, universalizing the Convention's application and transforming it from a European instrument to a genuine global framework.

The Convention establishes a range of rights for recognized refugees, including, right to work, access to courts, freedom of movement, and right to identity and travel documents. These rights are granted on a graduated basis – some available to all refugees, some depends on lawful or habitual residence.

The most fundamental principle enshrined in the Convention is the principle of non-Refoulement, codified under Article 33(1).<sup>27</sup> It prohibits states from returning a refugee to a territory where their life or freedom would be threatened or violated on accounts of race, religion, nationality, membership of a particular social or political group. Unlike other provisions of Convention, the principle of non-refoulement is binding on all states, regardless of whether they have signed or ratified the Convention.<sup>28</sup>

This has significant implications for India, as it is not a signatory to the 1951 convention or its 1967 protocol, and has no domestic refugee legislation. India has consistently maintained the Convention does not bind it. However, the argument that non refoulement constitutes customary international law and is therefore binding, presents a serious legal challenge to the position. If non refoulement is indeed

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<sup>25</sup> James C Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31(1) Harvard International Law Journal 129, 135.

<sup>26</sup> "What Is the Difference between the 1951 Convention and Its 1967 Protocol?" (UNHCR - The UN Refugee Agency) <<https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention>> accessed June 2, 2026

<sup>27</sup> Janmyr M, "The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda" (2021) 33 International Journal of Refugee Law 188

<sup>28</sup> "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol" (UNHCR - The UN Refugee Agency) <<https://www.unhcr.org/media/advisory-opinion-extraterritorial-application-non-refoulement-obligations-under-1951-0>> accessed June 2, 2026

a norm of customary international law, India's practice of deporting an asylum seeker may constitute a violation of its obligation, independent of any treaty commitment.

The Convention also establishes a framework for refugee status determination- the formal process by which a state or UNHCR assesses whether an individual qualifies a refugee status. In India, there is no such framework, UNHCR conducts refugee status determination independently, that raises questions about consistency, accountability and the legal standing of those recognised.

The absence of a formal legal framework does not mean India operates in a complete vacuum. India is a party to several human rights instruments – Convention on the Rights of the Child 1989<sup>29</sup>, and International Covenant on Civil and Political Rights, ratified in 1979, which impose obligations that overlap significantly with refugee protection.<sup>30</sup> While India signed the Convention Against Torture in 1997, it has not ratified it, meaning its obligations under that instrument remain voluntary rather than binding. This further narrows the legal framework within which refugees in India can claim protection. Nevertheless, the absence of a specific refugee law framework means that protection in India remains discretionary, inconsistent, and vulnerable to executive policy shifts rather than being grounded in enforceable legal rights.<sup>31</sup> India's non-accession to the Convention places it outside the formal global refugee protection regime, resulting in legal uncertainty for displaced persons within its territory.

#### 2.4 Regional Instruments: The African and Latin American Experience and the South Asian Gap

The 1951 Refugee Convention, while foundational, was conceived in a specific historical and geographical context. But as displacement crises emerged across the developing world through the latter half of the twentieth century, it made the Convention's narrow definition centred on individual persecution on specific grounds inadequate to address the mass displacement caused by armed conflict, and widespread civil unrest. In response, regional bodies in Africa and Latin America developed their own instruments, to expand the scope of refugee protection.<sup>32</sup>

The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, was adopted in 1969, was the first to supplement the 1951 Convention. It significantly expanded the refugee status to any person compelled to flee owing to external aggression, occupation, foreign domination, or events disturbing public order in either parts or the whole country. This expansion moved away requirement of individual persecution and recognised that entire population could be displaced by circumstances. In this sense, the OAU Convention represented a partial return to the earlier group-based model of refugee protection that had preceded the IRO's shift toward individual refugee determination in 1946 — recognising that mass displacement by its nature

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<sup>29</sup> “Convention on the Rights of the Child” (OHCHR) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed June 2, 2026

<sup>30</sup> “International Covenant on Civil and Political Rights” (OHCHR) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed June 2, 2026

<sup>31</sup> “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (OHCHR) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>> accessed June 2, 2026

<sup>32</sup> Law R-UG and Database P, “1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (‘OAU Convention’)” (Refworld, October 28, 2023) <<https://www.refworld.org/legal/agreements/oau/1969/en/13572>> accessed June 2, 2026

cannot always be reduced to individual persecution. The OAU Convention is legally binding on its member states and remains the primary regional refugee instrument in Africa.<sup>33</sup>

The Cartagena Declaration on Refugees in Latin America, was adopted in 1984. The expansion came in following the mass displacement conflicts in Central America, as it included refugees to include persons who flee their country because their lives, safety, freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights, or serious disturbance of public order. This is considered the most progressive refugee instrument in the world, while not legally binding, it has been widely incorporated into domestic legislation across the region.<sup>34</sup>

States and Regional bodies have repeatedly recognised the inadequacy of the 1951 Convention and responded by developing supplementary frameworks suited to their specific contexts.

Notably, South Asia, home to some of the world's largest refugee population has never developed a regional instrument suitable to the contemporary situation of the area. The South Asian Association for Regional Cooperation (SAARC) has never produced a binding refugee protection framework. This regional gap highlights the absence of a coordinated South Asian approach to refugee protection, reinforcing the fragmented and state-centric nature of refugee governance in the region. The absence of a regional framework in South Asia further entrenches India's unilateral and ad hoc approach to refugee governance.

The absence of a South Asian regional instrument is particularly striking given the density and frequency of displacement crises in the region. South Asia accounts for a significant proportion of global cross-border displacement, yet the principal regional body, the South Asian Association for Regional Cooperation (SAARC), has consistently avoided adopting binding refugee protection instruments. Scholarly analysis attributes this to a combination of factors: the dominance of state sovereignty discourse in South Asian diplomacy, the securitisation of migration across the region, and the absence of a regional human rights mechanism comparable to the African Commission on Human and Peoples' Rights or the Inter-American Commission on Human Rights. BS Chimni has argued that the failure of South Asian states to develop a regional framework reflects a broader pattern in which "the geopolitics of refugee studies" privileges Northern perspectives and marginalises Southern experiences, leaving developing states without the institutional architecture to manage displacement in a rights-based manner.<sup>35</sup> This institutional vacuum has meant that each South Asian state has developed its own ad hoc response, with India's discretionary approach representing the most significant example of this pattern. The development of a SAARC Declaration on Refugees, drawing upon the expanded definitions in the OAU Convention and the Cartagena Declaration, has been proposed by academics and civil society organisations but has never achieved political traction.<sup>36</sup>

### III. India's Refugee Experience: A Historical Survey

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<sup>33</sup> "OAU Convention Governing the Specific Aspects of Refugee Problems in Africa" (*African Union*) <<https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>> accessed June 2, 2026

<sup>34</sup> "Cartagena Declaration on Refugees, Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984" (*UNHCR India* -) <<https://www.unhcr.org/in/media/cartagena-declaration-refugees-adopted-colloquium-international-protection-refugees-central>> accessed June 2, 2026

<sup>35</sup> BS Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11 *Journal of Refugee Studies* 350. <https://doi.org/10.1093/jrs/11.4.350-a>

<sup>36</sup> M Debbarma, 'Refugees Experience and the Host Communities: Critical Analyses on Absence of Refugee Law in India' (2024) SAGE Publications <https://journals.sagepub.com/doi/10.1177/00219096241228804> accessed 5 June 2026.

India's approach to refugee protection has evolved in the absence of a formal statutory framework, resulting in responses shaped primarily by political discretion and administrative necessity rather than codified legal obligations. Unlike jurisdictions such as Germany or Canada, which have institutionalised refugee status determination through domestic legislation, India's engagement with forced displacement has remained largely reactive, emerging in response to successive waves of migration triggered by partition, regional conflicts, and geopolitical crises.

### 3.1 Partition (1947) and the Displacement

The partition of British India in August 1947 into independent states of India and Pakistan were demarcated on the basis of Radcliffe Lines under the Boundary Commission. This was the largest forced migration in recorded history, estimates suggest that between 14 and 15 million people were displaced within months, as Hindus and Sikhs fled westward into India, and Muslims moved into West Pakistan and East Pakistan (now Bangladesh). Whilst the idea was to divide these countries according to Muslim- Hindi population demographics, in reality, the partition reflected a political compromise specially in division of Bengal and Punjab province, where the most brutal of communal violence was recorded. The partition was hurried and chaotic with minorities scrambling to get to the other side, this mass movement was accompanied by widespread communal violence, massacres, abductions, and destruction of property, resulting in the death of an estimated one million people.

The partition displacement was bidirectional across multiple provinces, the scale of movements rendered any systematic legal response impossible. In the absence of any refugee framework applicable at the time the Indian government, under Jawaharlal Nehru, responded through administrative and executive measures than legislative actions. A Ministry of Relief and Rehabilitation was established to coordinate the absorption of displaced persons, providing relief camps, financial assistance, land allotment schemes and vocational rehabilitation programmes.

Displaced Hindu and Sikhs were not formally designated as refugees under any legal framework, they were treated as displaced citizens entitled to rehabilitation – a deliberate framing that avoided the creation of distinct legal category of refugee and obligations that accompany it.

Displaced Persons (Institution of Suits) Ordinance, 1948<sup>37</sup>, it allowed displaced persons to file lawsuits in courts where they currently resided or carried on business, rather than where the defendant resided. It provided extensions to standard limitation periods, recognizing that mass displacement made timely legal action practically impossible. Suits could only be brought against defendants who were not displaced persons residing in India.

Displaced Persons (Debt Adjustment) Act, 1951<sup>38</sup>, displaced persons who on the account of their displacement cannot properly pay back their debts, to make an application to the tribunal for adjustments of their debts.

Resettlement of Displaced Persons (Land Acquisition) Act, 1948<sup>39</sup>, states the state government can acquire any land by notice for the resettlement of displaced persons. The notice may be served to the owner or publish in the official Gazette, and if the occupier doesn't take possession of such land in 48 hours, the government could acquire such land. The possibility here was the land belonging to the people who left India and went to Pakistan can be taken over by the government, and people who came to India as displaced persons can be resettled in such land.<sup>40</sup>

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<sup>37</sup> Displaced Persons (Institution of Suits) Ordinance, 1948

<sup>38</sup> Displaced Persons (Debt Adjustment) Act, 1951

<sup>39</sup> Resettlement of Displaced Persons (Land Acquisition) Act, 1948

<sup>40</sup> refugeeinitiative, "The Partition of British India, Mass Displacement and Related Legislations in Independent India" (*Refugee Law Initiative Blog*, January 26, 2023)

<<https://rli.blogs.sas.ac.uk/2023/01/26/the-partition-of-british-india-mass-displacement-and-related-legislations-in-independent-india/>> accessed June 2, 2026

The Displaced Persons (Compensation and Rehabilitation ) Act, 1954, addressed property claims of displaced persons. The government established a socio-economic pool comprising acquired evacuee properties and government funds to finance rehabilitation. It shifted refugees from temporary relief camps to permanent settlement by legally transferring land titles and adjusting government welfare loans.<sup>41</sup>

It is also important to note the gendered dimension of partition displacement, which has received increasing scholarly attention. The Abducted Persons (Recovery and Restoration) Act, 1949, authorised the forcible "recovery" of women who had been abducted during partition and their return to their "original" communities, often without regard to the women's own wishes or the families they may have formed in the intervening period. While the Act was framed as a humanitarian measure, feminist scholars have critiqued it as an instrument that treated women as markers of national honour rather than as autonomous persons with their own protection needs. This early legislative response to partition displacement thus reveals a pattern that persists in Indian refugee governance: the subordination of individual rights and agency to broader political and communal considerations.<sup>42</sup>

The partition experience established a foundational precedent in India's approach to forced displacement that large scale refugee situation could be managed through executive and administrative machinery without formal legal framework. This precedent normalised the absence of codified protection as an acceptable mode of governance.

### 3.2 Tibetan Refugees (1959 onwards)

In 1959, following China's military consolidation of Tibet, approximately 80000 Tibetans and the Dalai Lama sought refuge in India. This was significantly different than forced displacement of partition, the Tibetan influx presented a classic refugee situation, a persecuted minority fleeing state sponsored repression across an international border.<sup>43</sup>

The Nehru government extended asylum to the Dalai Lama and the Tibetan community, permitting them to establish a government in exile, in Dharmshala, Himachal Pradesh. The Tibetans settled across several states, including Uttarakhand and the largest settlement being Bylakuppe in Karnataka. The Central Tibetan Administration was later permitted to function as a quasi governmental body managing the affairs of the refugee community.<sup>44</sup>

The Tibetan refugees were issued Identity cards, along with travel documents to substitute passports. Though these certificates while significant were administrative instrument with no statutory basis.

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<sup>41</sup> "The Displaced Persons (Compensation and Rehabilitation) Act, 1954"  
<<https://indiankanoon.org/doc/1945893/>> accessed June 2, 2026

<sup>42</sup> 'The Partition of British India, Mass Displacement and Related Legislations in Independent India' (Refugee Law Initiative Blog, 26 January 2023) <https://rli.blogs.sas.ac.uk/2023/01/26/the-partition-of-british-india-mass-displacement-and-related-legislations-in-independent-india/> accessed 5 June 2026.

<sup>43</sup> Bloch N, "Boundary-Making and Political Activism in Protracted Exile: Second-Generation Tibetan Refugees in India" (2023) 38 *Journal of Refugee Studies* 340

<sup>44</sup> Anand T, "World's Most Successful Refugee Community – The Case of Tibetan Refugees in India" *CJP* (February 18, 2020) <<https://cjp.org.in/worlds-most-successful-refugee-community-the-case-of-tibetan-refugees-in-india/>> accessed June 2, 2026

<sup>45</sup>They were registered under the Foreigners Act 1946<sup>46</sup>, and required to renew their residence permit periodically. Despite decades of residence in India they cannot acquire citizenship through naturalisation, face restriction on property ownership.

The absence of a statutory framework means that the protections extended to Tibetan refugees are not legally enforceable rights but administrative concessions that could be withdrawn anytime. India's treatment of the Tibetan refugees has been markedly more favourable than others. This is widely attributed to geopolitical significance like cultural and historical ties with Tibet, the symbolic significance of the Dalai Lama. The position of Tibetan refugees in India has also been affected by successive shifts in India-China diplomatic relations. Scholars have documented that from the early 2000s onwards, Indian authorities imposed increasing restrictions on Tibetan political activities, particularly public protests and demonstrations, reflecting India's evolving diplomatic engagement with China. A 2011 report by the Tibet Justice Center found that while Tibetans in India had historically been allowed relative freedom of expression, the Indian government had increasingly curtailed such activities to avoid diplomatic friction with Beijing. Furthermore, the status of Tibetans born in India after 1987 has remained ambiguous; while the Citizenship Act, 1955, provides for citizenship by birth for those born in India between 1950 and 1987, those born after 1 July 1987 must demonstrate that at least one parent was an Indian citizen at the time of birth, effectively barring second and third generation Tibetans from citizenship.<sup>47</sup>

The preferential treatment of Tibetans illustrates a central issue of India's discretionary approach, protection is extended not on basis of only need or legal entitlement but also political utility.

### 3.3 The Bangladesh Liberation War and the 1971 Influx

In 1971, the Bangladesh Liberation War led to one of the largest refugee influxes in India, after the Pakistani government launched Operation Searchlight on March 25, 1971, millions of Bengali Hindus fled Bangladesh to avoid persecution.

The Indian government took extraordinary measures, established hundreds of refugee camps across the border states of West Bengal, Assam, Meghalaya, and Tripura, they provided food, shelter and medical assistance to millions of displaced persons. The financial burden was enormous estimates suggesting 700 million US dollars on refugee relief during the crisis, while UNHCR made contributions, India played the primary role in managing the influx.

Despite the scale of the response, no formal refugee legislation or legal status was determined it was enacted on administrative measures. The government framed the influx in political and humanitarian terms, the refugees were characterised as victims of Pakistani aggression rather than persons entitled to protection under international refugee law, as India was not a signatory to 1951 Convention.<sup>48</sup>

India's decision to intervene militarily led to the created of Bangladesh in 1971, which allowed for repatriation of majority of the refugees. While the refugee influx was swiftly managed by India's ad hoc

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<sup>45</sup> Tibet Justice Center, *Tibet's Stateless Nationals II: Tibetan Refugees in India* (Tibet Justice Center 2011)

<sup>46</sup> "Legal Overview of the Status of Tibetans in India – Tibetan Legal Association" <<https://tibetanlegalassociation.org/en/legal-overview-of-the-status-of-tibetans-in-india/>> accessed June 2, 2026

<sup>47</sup> JP Coelho, 'The Paradox of Citizenship and Nationality among Tibetans Living in India' (2023) 15(1) South Asian Diaspora 81 <https://doi.org/10.1080/19438192.2022.2153211>.

<sup>48</sup> Grbac P, "India and Its 1971 Refugee 'Problem'" (*McGill Human Rights Internship Program Blog*, July 28, 2014) <<https://humanrightsinterns.blogs.mcgill.ca/2014/07/28/india-and-its-1971-refugee-problem/>> accessed June 3, 2026

approach due to the geopolitical outcome of creation of Bangladesh, had the crisis persisted it would've left millions of refugees without any formal legal framework or enforceable legal status or rights.<sup>49</sup>

### 3.4 Sri Lankan Tamil Refugees (1983 onwards)

Sri Lanka following its independence in 1948 passed a number of discriminatory acts favouring its Sinhalese population, which was the majority. Most notably the 1956 Sinhala Only Act which systematically stripped Tamils of civic, linguistic and employment rights due to Sinhala nationalist majoritarianism. After decades of peaceful protests failed to yield state reforms, the Liberation Tigers of Tamil Eelam (LTTE) was formed in 1976 demanding a separate Tamil state. This ethnic polarization led to the targeted violence of July 1983. Driven by an immediate threat to their lives, over 134000 Tamil civilians were forced to abandon their homes and cross the Palk Strait into Tamil Nadu between 1983 and 1987.<sup>50</sup>

India's response was shaped heavily by domestic political considerations rather than any formal legal framework. Refugees were housed in government managed camps across Tamil Nadu, provided with basic amenities and relief assistance funded jointly by the Tamil Nadu state and the central government. They were governed as foreigners under the Foreigners Act 1946, they were neither formally recognised as refugees nor granted rights beyond what the state chose to extend on humanitarian grounds.<sup>51</sup>

Between 1987 and 1990, the situation complicated due to India's direct military intervention through the Indian Peacekeeping Force and the assassination of Prime Minister Rajiv Gandhi by an LTTE suicide bomber in 1991. Tamil refugees came to be regarded with increased suspicion, camps were placed under police surveillance and the process of naturalisation was foreclosed by a 1986 Ministry of Home Affairs letter to chief secretaries.<sup>52</sup>

Decades later, despite Sri Lankan Tamil refugees living in India for four decades cannot acquire citizenship through naturalisation, face restriction in movement and employment and were excluded from the Citizenship amendment act 2019, which fasttracked citizenship for persecuted non Muslim minorities from neighbouring countries. Their continued exclusion demonstrates how the absence of a formal refugee law allows political considerations to override humanitarian ones.<sup>53</sup>

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<sup>49</sup> Refuge by Technical Means: Humanitarianism, Bureaucratic Asylum, and the Politics of Refracted Mandates in Postcolonial India 1947–1981' (2026) *Journal of Refugee Studies*

<sup>50</sup> <https://jrs.net/wp-content/uploads/2023/07/Tamil-Refugees-in-India-40-Years-after-.pdf>

<sup>51</sup> [https://www.tn.gov.in/rti/proactive/public/handbook\\_rehabilitation.pdf](https://www.tn.gov.in/rti/proactive/public/handbook_rehabilitation.pdf)

<sup>52</sup> Kumar MS, "The 'Crimmigration' of Sri Lankan Tamil Refugees in India" (*OHRH*) <<https://ohrh.law.ox.ac.uk/the-crimmigration-of-sri-lankan-tamil-refugees-in-india/>> accessed June 3, 2026

<sup>53</sup> "Stateless Inside: Sri Lankan Tamils and India's Refugee Gap" (*CPLAN*, December 30, 2025) <<https://cplan.in/stateless-inside-sri-lankan-tamils-and-indias-refugee-gap/>> accessed June 3, 2026

### 3.5 Chakma and Hajong Refugees from the Chittagong Hill Tracts

The Chakma and Hajong are indigenous communities of the Chittagong Hill Tracts of Bangladesh, who were displaced during 1960, due to the construction of the Kaptai Hydroelectric Dam in 1960, which submerged 40 percent of arable land in Chittagong hill tracts. The Indian government in consultation with the North East Frontier Agency administration resettled approximately 5000 Chakmas and Hajongs in Arunachal Pradesh.

Decades of neglect followed as they faced hostility from All Arunachal Pradesh Student Unions, which issued quit notices demanding their expulsion and despite assurance from government did not receive citizenship. The state government of Arunachal Pradesh was found to have actively facilitated efforts to evict them.<sup>54</sup>

The Supreme Court in the landmark case of *National Human Rights Commission v State of Arunachal Pradesh* in 1996, held that every person, citizen or non citizen is entitled to protection under Article 21 of the Constitution, and directed both state and central government to ensure the protection of the Chakma and Hajong and process their citizenship applications. Successive judgements in 1996 and 2015, have also gone unimplemented with the government of Arunachal Pradesh resisting the grant of citizenship.<sup>55</sup>

The Chakma and Hajong situation is perhaps the best illustration of the consequences of the absence of a formal refugee law, a community resettled by the Indian government itself, promised citizenship, and then left in a state of protracted statelessness for over six decades, dependent on judicial intervention for even basic protection of their right to life.<sup>56</sup>

### 3.6 Afghan Refugees (1979 onwards and 2021)

India's engagement with Afghan refugees spans more than four decades. Unlike Tibetan or Sri Lankan Tamil refugees, the Afghan refugee population has remained comparatively small and geographically concentrated.

The first significant wave of Afghan displacement followed the Soviet invasion of Afghanistan in December 1979, millions of Afghans fled to Pakistan, Iran. In India their presence was regulated through existing immigration and foreign control laws. Through 1980 to 90, civil war and the rise of Taliban more refugees sought protection in India.<sup>57</sup>

Religious minorities like the Afghan Hindus and Sikhs, who faced discrimination and targeted violence in Afghanistan settled in areas like New Delhi, where they relied upon community networks and international organisation for assistance. In the absence of a domestic refugee law, refugee status determination was conducted by UNHCR, which maintained an operational presence and issued documentation recognising eligible individuals as refugees. As of 2021, UNHCR had registered 15559

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<sup>54</sup> Nair R, "The Stateless Chakmas and Hajongs of the Indian State of Arunachal Pradesh: A Study of Systematic Repression – South Asia Human Rights Documentation Centre (SAHRDC)" <https://hrdc.net/the-stateless-chakmas-and-hajongs-of-the-indian-state-of-arunachal-pradesh-a-study-of-systematic-repression/> accessed June 3, 2026

<sup>55</sup> *National Human Rights Commission v State of Arunachal Pradesh* (1996) 1 SCC 742.

<sup>56</sup> Atul P Chakma, 'Chakma Problem: A Vexed Legal Issue and Human Rights Violations in India' *Pimpri Law Review Journal*. <https://law.dypvp.edu.in/plr/Publication/all-publication/Atul-Chakama-case-study.pdf>

<sup>57</sup> Alexander A and Singh N, "India and Refugee Law: Gauging India's Position on Afghan Refugees" (2022) 11 *Laws*

Afghan refugees and asylum seekers. This arrangement created an unusual situation in which refugee recognition was effectively delegated to an international organisation despite the absence of any statutory authority under Indian law.<sup>58</sup>

After the return of the Taliban in power in 2021, the government of India introduced the e Emergency X Misc Visa to facilitate the entry of vulnerable Afghan nationals seeking temporary protection. While an effective humanitarian aid the visa system did not establish a pathway for refugee status recognition or rights conferred under international law.

The Afghan refugee situation demonstrates that even in cases where India has adopted a relatively accommodating approach, protection remains contingent upon government policy rather than legal framework. As Afghan refugees continue to occupy a position of legal uncertainty, access to formal employment, long term residence, public services remain dependent upon administrative policy. India's ad hoc approach offers humanitarian protection through discretionary executive measures, but without institutional safeguards and formal refugee law framework those seeking long term protection are left in legal uncertainty.<sup>59</sup>

### 3.7 The Rohingya Influx (2012 onwards)

Rohingyas are a Muslim ethnic minority in the Rakhine state of Myanmar who have faced systematic discrimination, violence and persecution at the hands of the government. After the intense military operations of 2012 and the genocidal military campaigns in 2017, large numbers of Rohingyas have seek Asylum in Bangladesh, Malaysia and India.

India's response has been unambiguously hostile. The central government has classified Rohingyas as a threat to national security, The Ministry of Home Affairs in 2017, issued circulars directing all state governments to initiate deportation proceedings. This position was challenged in *Mohammad Salimullah v Union of India*, a writ petition filed by two Rohingya refugees arguing that deportation would violate their rights under Article 14 and 21 of the Constitution and the customary international law of non refoulement stated in Article 33(1) of the 1951 Convention. The Supreme Court in its 2021 ruling declined to grant interim relief, accepting the government's national security arguments while directing that no deportation should proceed without following statutory procedures.<sup>60</sup>

The Rohingya case demonstrates how the absence of a formal refugee law allows executive to categorise persecuted persons as illegal immigrants without any formal determination process – and how the supreme court's reluctance to apply non refoulment as a constitutional obligation despite its widely recognised status as customary international law reveals the legal vulnerability of refugees in the absence of a domestic statutory anchor.<sup>61</sup>

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<sup>58</sup> Deepa Salian and Rakshith B V, 'Protection of Afghan Refugees in India: A Critical Study' (2026) 8(2) International Journal for Multidisciplinary Research <<https://www.ijfmr.com/papers/2026/2/71240.pdf>> accessed June 4, 2026

<sup>59</sup> Kaul A, "Afghan Refugees in India Highlight the Need for Indian Domestic Refugee Law" (*Just Security*, October 18, 2021) <<https://www.justsecurity.org/78586/afghan-refugees-in-india-highlight-the-need-for-indian-domestic-refugee-law/>> accessed June 4, 2026

<sup>60</sup> *Mohammad Salimullah v Union of India*, Writ Petition (Civil) No 793 of 2017, 2021 SCC OnLine SC 296.

<sup>61</sup> Kapoor S, "Persecution to Protection? Analyzing the Scope of International Refugee Laws in the Rohingya Refugee Crisis within Indian Borders" (*NHSJS*, October 16, 2024) <<https://nhsjs.com/2024/persecution-to-protection-analyzing-the-scope-of-international-refugee-laws-in-the-rohingya-refugee-crisis-within-indian-borders/>> accessed June 4, 2026

### 3.8 Myanmarese Refugees Post-2021 Coup in Mizoram and Manipur

On February 1, 2021, a military coup overthrew the elected government of Aung San Suu Kyi, which led to a severe ongoing humanitarian crisis and persecution of pro democracy protestors and ethnic communities. It led to the displacement of over 78000 Myanmar nationals seeking refuge in India, concentrated primarily in Mizoram and Manipur, which share a 1.640 kilometre largely unfenced border with Myanmar.

The response of the Indian states was bifurcated. The Ministry of Home Affairs issued an advisory to the four northeastern border states Mizoram, Manipur, Nagaland and Arunachal Pradesh, asserting that states have no power to grant refugee status to foreigners as India is not a signatory to the 1951 Convention, and directed them to take appropriate measures to prevent further influx and repatriate those who had entered. It reflected the government's determination to maintain its discretionary, security oriented approach to refugee governance.<sup>62</sup>

Mizoram, however defied the government's directive. Chief Minister Zoramthanga refused to push back refugees who shared ethnic, linguistic, and familial ties with the Mizo people. The state government supported by civil society organisations like Young Mizo Association and church groups, provided shelter, food, and basic assistance. Mizoram also refused to comply with a subsequent central government directive to collect biometric data from refugees, on the grounds that doing so could facilitate discrimination and forced repatriation.<sup>63</sup>

Manipur, contrastingly aligned with the central government's position, identifying, detaining and deporting Myanmar nationals, characterising them as illegal immigrants. In one documented instance, Manipur sought to pushback 718 Myanmar nationals including 302 children who had entered the state fleeing fresh violence.

The divergent responses of Manipur and Mizoram to the same refugee crisis resulted from different political disposition. In the absence of a national refugee law establishing minimum standards of protection, the treatment of refugees is determined by the political inclination of whichever government happens to be in power.<sup>64</sup>

### 3.9 Observations: Treatment Across Refugee Groups

Protection in India is not based on legal entitlement but on the basis of political utility, and ethnic or religious affinity, the differential treatment across refugee groups shows that.

Tibetan refugees whose presence served India's geopolitical interest, received generous accommodation settlements, identity certificates and a government in exile. Sri Lankan Tamils, whose influx was initially received with openness, faced decades of legal uncertainty after the assassination of Rajiv Gandhi. Chakmas and Hajongs resettled by the Indian government themselves were denied citizenship

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<sup>62</sup> Khai TS, "Humanitarian Crises and Mental Health Coping Strategies Among Myanmar Refugees in Mizoram State, India" 20 *Asian Social Work and Policy Review*

<sup>63</sup> Karmakar S, "Mizoram Refuses to Comply with Centre's Directive to Collect Biometrics of Myanmar 'Refugees'" *Deccan Herald* (September 28, 2023) <<https://www.deccanherald.com/india/mizoram/mizoram-refuses-to-comply-with-centres-directive-to-collect-biometrics-of-myanmar-refugees-2705056>> accessed June 4, 2026

<sup>64</sup> Agarwala T, "India Deports Myanmar Refugees Who Fled 2021 Coup" *Reuters* (May 2, 2024) <<https://www.reuters.com/world/india/india-deports-myanmar-refugees-who-fled-2021-coup-2024-05-02/>> accessed June 4, 2026

they were promised and left to depend on Supreme Court intervention for basic protection. Rohingya refugees were categorised as a security threat faced active deportation and blanket criminalisation without individual assessment. Myanmar refugees received bifurcated treatment across states.

This pattern of differential treatment based on political rather than legal criteria creates a structural accountability gap, as there is no mechanism through which a refugee can challenge the denial or withdrawal of protection, no standard against which executive conduct can be measured and no obligation the state is legally required to fulfil.

The role of judiciary has provided some corrective measures in the absence of legislative protection. However, judicial intervention is reactive rather than preventative, it is costly and inaccessible for the most vulnerable, and ultimately dependent on the court's willingness to extend constitutional protection to non citizens, that cannot always be assumed.

India's historical engagement with the 1971 Bangladesh influx, its accommodation of Tibetan refugees and Mizoram's aid for the Myanmarese all attest to capacity of humanitarian response. The problem is not the absence of Humanitarian instinct but the absence of legal institutionalisation, protection grounded in policy rather than legal entitlement remains inherently uncertain, as it depends on the continued willingness of the state rather than on obligations that refugees can enforce as a matter of right. India's continued reliance on ad hoc executive responses is structurally inadequate, and the adoption of a formal refugee framework is not merely desirable but necessary.<sup>65</sup>

#### IV. The Existing Legal Framework Governing Refugees in India

Although India has hosted diverse refugee populations for decades, it does not possess a dedicated refugee law or a formal asylum framework. Instead, refugee protection is governed through a combination of constitutional guarantees, general legislation regulating foreigners, executive policies, judicial decisions, and selective engagement with international legal principles. This fragmented approach has enabled the State to respond flexibly to different refugee situations, but it has also resulted in inconsistencies in the recognition, rights, and treatment of refugees.

##### 4.1 The Foreigners Act, 1946 and the Foreigners Order, 1948

The Foreigners Act, 1946, is the primary legislation governing the entry, presence and departure of non citizens, where foreigners were simply defined as “ a person who is not a citizen of India”, it vests the central government with powers to regulate the movement of foreign nations with minimal judicial oversight under Section 3 of the Act.<sup>66</sup> The Foreigners Orders, 1948 issued under the Act further regulates the condition under which the foreigner may enter and remain in India.<sup>67</sup>

The main issue with the act being there is no specific categorisation made under the act to distinguish between refugees and other non citizens, a person fleeing persecution, a tourist, and an economical migrant are all treated identically under the Act as foreigners subject to the same detention and deportation power. There is no procedure for asylum claim or refugee status determination.

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<sup>65</sup> “Refugee Recognition Challenges in India” (*Forced Migration Review*, November 4, 2020) <<https://www.fmreview.org/recognising-refugees/shanker-vijayaraghavan/>> accessed June 4, 2026

<sup>66</sup> Foreigners Act 1946.

<sup>67</sup> Foreigners Order 1948 .

Section 9 of the Act places the burden of proving nationality to the foreigner themselves, which in cases of refugees who flee due to forced displacement and do not have access to documentations makes the burden of proof fundamentally incompatible.

The Act's colonial origins are also significant as it was drafted to control the movement during wartime, it was designed for security and border control than humanitarian protection. The Act being used as a primary legal instrument governing refugees in India after seven decades of Independence reflects the structural inadequacy of India's approach to forced displacement.<sup>68</sup>

#### 4.2 The Registration of Foreigners Act, 1939

The Registration of Foreigners Act, 1939 requires all foreigners to register with the Foreigners Regional Registration Officer in their state of residence within a specific period after arrival, failure to do so constitutes a criminal offence.<sup>69</sup>

For refugees, this creates an issue as the registration requires valid documentation and visas which only of the refugees do not have access to due to the severity of the situations they face while fleeing, their undocumented status renders them liable to criminal prosecution and detention rather than a protection response. The Act thus criminalises the very act of seeking refugee when it involves entry without documentation.

The Act predates the framework of international refugee law and contains no provision accommodating the specific circumstances of forced migrants. Its continued application to refugees without any statutory modification or exception reflects India's failure to adapt its colonial era legal infrastructure to the requirement of contemporary refugee protection.<sup>70</sup>

#### 4.3 The Passport (Entry into India) Act, 1920 and the Passports Act, 1967

The Passport (Entry into India) Act, 1920, requires all persons entering India to hold valid travel documents. Section 5 of the Act empowers authorities to deport undocumented foreigners.<sup>71</sup> The Passports Act, 1967, governs the issuance of Indian passports and travel documents but is primarily relevant to citizens rather than refugees.<sup>72</sup>

Together, these instruments reinforce the documentary requirements that render refugees legally vulnerable in India. Since refugees frequently flee without valid passports or travel documents, their entry into India is technically unlawful under the 1920 Act, exposing them to deportation powers from the moment of arrival. No exception exists for persons fleeing persecution, and no procedure is established for regularising the status of those who enter without documents but have valid protection claims.

This legislative framework effectively penalises the act of flight itself — the very condition that defines a refugee's situation. International refugee law, including Article 31 of the 1951 Convention, explicitly prohibits states from imposing penalties on refugees on account of their illegal entry or presence. India's

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<sup>68</sup> Singh A, "A Critique of the Foreigners Act, 1946: A Legislation de Jure or de Facto?" <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1989060](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989060)> accessed June 4, 2026

<sup>69</sup> Registration of Foreigners Act 1939.

<sup>70</sup> India's Refugee Protection and Border Control: Some Reflections on State Practice' in *Asian Yearbook of International Law*, Volume 28 (Brill 2024)

<sup>71</sup> Passport (Entry into India) Act 1920.

<sup>72</sup> Passports Act 1967.

domestic legislation not only fails to incorporate this prohibition but actively contradicts it, treating undocumented entry as a deportable offence regardless of the circumstances.<sup>73</sup>

#### 4.4 The Citizenship Act, 1955 and the Citizenship (Amendment) Act, 2019

The Citizenship Act, 1955 governs the acquisition or termination of Indian citizenship through birth, descent, registration and naturalisation. For naturalisation a continuous residence of 11 years is required but for refugees this is inaccessible as they do not possess the documentation and legal status required to satisfy the requirement.<sup>74</sup>

The Citizenship Amendment Act, 2019 introduced a new framework. The CAA provides citizenship to six religious communities: Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, who fled religious persecution from Afghanistan, Bangladesh and Pakistan and entered into India on or before 31 December 2014.<sup>75</sup> Yet Muslims are explicitly excluded from the act's scope.<sup>76</sup>

It represents the religion based differentiation in Indian citizenship law, departing from the secular framework of the Constitution, drawing widespread criticism from human rights organisations and constitutional scholars. It enhances India's selective and politically driven approach to refugee protection, extending citizenship to religious and politically favoured groups.<sup>77</sup> The CAA excluded Sri Lankan Tamils, Rohingyas and other major refugee groups in India without any legal framework demonstrating that the legislation was driven by political considerations rather than any principled humanitarian framework.<sup>78</sup>

#### 4.5 Standard Operating Procedures

The Ministry of Home Affairs in 2011, issued a Standard Operating Procedure (SOP) to deal with foreign nationals claiming refugee status in India. The SOP provides that foreign nationals who claim refugee status on the basis of a well founded fear of persecution on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social or political group may be recommended by the state government to the MHA for the grant of a Long Term Visa (LTV), allowing them to seek employment in private sectors and access educational institutions.<sup>79</sup>

<sup>73</sup> "REFUGEE LAWS IN INDIA" (*The Amikus Qriae*, June 6, 2024)  
<<https://theamikusrqiae.com/refugee-laws-in-india/>> accessed June 4, 2026

<sup>74</sup> Citizenship Act 1955.

<sup>75</sup> Citizenship (Amendment) Act 2019.

<sup>76</sup> Imran M, "The Citizenship (Amendment) Act, 2019: Beginning of Selective Humanitarianism & Citizenization Of Persecuted Victims in India" (*Elsevier BV*, January 1, 2020)  
<[https://www.researchgate.net/publication/350519108\\_The\\_Citizenship\\_Amendment\\_Act\\_2019\\_Beg\\_inning\\_of\\_Selective\\_Humanitarianism\\_Citizenization\\_of\\_Persecuted\\_Victims\\_in\\_India](https://www.researchgate.net/publication/350519108_The_Citizenship_Amendment_Act_2019_Beg_inning_of_Selective_Humanitarianism_Citizenization_of_Persecuted_Victims_in_India)> accessed June 4, 2026

<sup>77</sup> "India Activates Discriminatory Citizenship Law" (*Human Rights Watch*, March 15, 2024)  
<<https://www.hrw.org/news/2024/03/15/india-activates-discriminatory-citizenship-law>> accessed June 4, 2026

<sup>78</sup> "Stateless Inside: Sri Lankan Tamils and India's Refugee Gap" (*CPLAN*, December 30, 2025)  
<<https://cplan.in/stateless-inside-sri-lankan-tamils-and-indias-refugee-gap/>> accessed June 4, 2026

<sup>79</sup> Ministry of Home Affairs (India), Standard Operating Procedure for Dealing with Foreign Nationals Claiming to be Refugees (MHA 2011).

While the SOP is an administrative acknowledgement it is not a legal framework but a executive instrument with no statutory backing it can be amended, suspended, or withdrawn at anytime. It does not cover all refugee groups equally, its application has been inconsistent and selective, as it creates no enforceable legal rights a refugee whose LTV is denied has no legal recourse. The application has been overridden for Rohingya refugees claiming them as a national security risk and deporting them.<sup>80</sup>

The SOP is not a refugee protection framework but an administrative convenience enabling the executive to manage refugee population as a discretionary basis while maintaining the flexibility to exclude or deport those whose presence it considers politically inconvenient.

#### 4.6 The Role of UNHCR in India: An Operational Presence Without Statutory Anchor

Since 1981, UNHCR has maintained an operational presence in India. In the absence of any domestic refugee law or government administered refugee status determination for most groups, UNHCR performs a quasi governmental function registering asylum seekers, conducting refugee status determination interviews, issuing refugee certificates and providing protection and assistance services, it currently operates across eleven locations with the support of implementing partners.

For refugees from non neighbouring states like Afghanistan, Myanmar, Somalia, UNHCR conducts refugee status determination in accordance with the 1951 Convention and its own internal guideline, sharing its list of recognised refugees with the MHA. For refugees from neighbouring South Asian countries like Sri Lanka, Bangladesh, the government itself administers a separate process. This bifurcation reflects India's politically sensitive relationship with its immediate neighbours rather than any principled distinction in protection needs.<sup>81</sup>

While the role of UNHCR is significant, the refugee certificates issued carry no statutory force under Indian domestic law, a recognised refugee remains a foreigner under the Foreigners Act and is liable to detention or deportation. UNHCR's ability to access asylum seekers in detention is not guaranteed and its advocacy for alternatives to detention has had limited impact on state practice.

UNHCR's presence in India substitutes for the lack of a domestic legal framework, in this system the protection of refugees depends on operational capacity and continued presence of an international agency rather than an enforceable domestic legal obligation.<sup>82</sup>

#### 4.7 Critique of the Indian Framework

The most fundamental structural deficiency is the absence of a refugee specific legal framework. India is the only major democracy and one of the world's largest refugee hosting states to have neither acceded to the 1951 Convention nor enacted domestic refugee legislation. Refugees in India have no legally defined status, no enforceable rights, and no procedural safeguards specific to their situation. They exist, in legal term, as foreigners, subject to the same detention and deportation that apply to any documented non citizen regardless of the severity of their protection claim.

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<sup>80</sup> "Shadow of Refuge: Rohingya Refugees in India" (*Refugees International*, May 18, 2023) <<https://www.refugeesinternational.org/reports-briefs/shadow-of-refuge-rohingya-refugees-in-india/>> accessed June 4, 2026

<sup>81</sup> Law R-UG and Database P, "UNHCR Submission for the Universal Periodic Review - India - UPR 27th Session (2017)" (*Refworld*, November 4, 2023) <<https://www.refworld.org/policy/upr/unhcr/2017/en/119203>> accessed June 4, 2026

<sup>82</sup> "Refugee Recognition Challenges in India" (*Forced Migration Review*, November 4, 2020) <<https://www.fmreview.org/recognising-refugees/shanker-vijayaraghavan/>> accessed June 4, 2026

The existing framework is structurally incapable of distinguishing between refugees and other categories of non citizens. The Foreigners Act, The Registration of Foreigners Act, and the Passport Entry Act collectively treat all undocumented non citizens identically, with no provision for asylum claims, no refugee status determination process, and no protection against refoulement. A person fleeing genocide and a person overstaying a tourist visa face the same legal consequences in India a situation that is incompatible with any understanding of refugee protection and directly contradicts the customary non refoulement of international law.<sup>83</sup>

India's treatment of various refugee groups has varied dramatically, not according to the severity of persecution faced or the credibility of protection claims, but according to the political utility of the group in question, their country of origin, ethnic or religious affinity. This inconsistency is a structural feature of a system that vests the executive with unrestrained discretion and has no legal standard against which its exercise can be measured or challenged.

The role of judiciary has provided some corrective measures in *NHRC v State of Arunachal Pradesh*. However, *Mohammad Salimullah v UOI* demonstrated how judicial willingness to extend constitutional protection to non citizens is not guaranteed, as the Supreme Court's acceptance of the government's security arguments without requiring individualised assessment represents a significant retreat from the rights based approach that refugee protection demands, Judicial intervention is therefore an inadequate substitute for legislative protection.

The Standard Operating Procedure of 2011 and UNHCR's operation presence through administrative and international channels are both inadequate. As the SOP creates no enforceable rights and is subject to politically motivated override, while UNHCR's presence creates a system of protection that is legally unanchored.

The Citizenship Amendment Act 2019 introduced a religion based differentiation into India's citizenship law, extending protection to some persecuted groups while explicitly excluding others, instead of moving towards a universal, need based refugee protection framework.<sup>84</sup>

India's existing framework is not merely incomplete but structurally inadequate, It cannot be remedied through administrative adjustment or judicial oversight but the adoption of a formal domestic refugee law framework. India's geographic scale, demographic diversity, and unique regional challenges, accession to the 1951 Convention may not be sufficient. Any future refugee framework should be adapted to Indian realities and may draw upon broader regional approaches like the Cartagena Declaration and the OAU Convention, which extend protection beyond the Convention's traditional definition of refugeehood.

## V. India and the International Refugee Regime

India's position within the international refugee regime is characterised by a complex relationship between engagement and non-participation. Although India has consistently hosted and assisted refugee populations, it has declined to accede to the 1951 Refugee Convention and its 1967 Protocol, arguing that these instruments are ill-suited to its regional realities and security concerns. Nevertheless, India's refugee policy has been influenced by a range of international legal principles, customary norms, and human rights obligations that intersect with refugee protection. An examination of India's relationship

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<sup>83</sup> Sethuraman B, "India's Refugee Policy: Implications of an Ambiguous Approach" (February 15, 2026) <<https://thepeninsula.org.in/blog/indias-refugee-policy-implications-of-an-ambiguous-approach>> accessed June 4, 2026

<sup>84</sup> Dipankar Sarkar, 'India's Refugee Policy And Human Rights Concerns: A Critical Analysis' (2025) 13(9) International Journal of Creative Research Thoughts <<https://www.ijert.org/papers/IJCRT2509108.pdf>> accessed June 4, 2026.

with the international refugee regime is therefore essential to understand the legal and policy considerations underlying its continued resistance to a formal refugee framework.

### 5.1 Reasons for Non-Accession to the 1951 Convention and 1967 Protocol

While India has never formally addressed the reason behind its decision to not accede the 1951 Convention, it has emerged through a combination of administrative practice and political discourse.

In UNHCR Executive Committee in 2003, a representative stated that the Convention's definition fails to recognise the fundamental factors that give rise to refugee movements, and that most refugees in South Asia are directly related to widespread poverty and deprivation rather than the individualised persecution grounds. India has argued that the convention is a Eurocentric instrument, designed to address specific displacements of post war Europe, and is ill suited to the mass displacement situation of South Asia which are driven by a combination of economic, environmental and political factors that resist neat categorisation.<sup>85</sup>

India has stated concerns about sovereignty as Article 35 of the Convention requires state parties to cooperate with UNHCR in the exercise of its supervisory functions an obligation India has resisted claiming it would constitute external interference in domestic affairs. India has maintained that refugee management is a matter of bilateral relations between states and has preferred to manage it through diplomatic negotiations with countries of origin rather than international refugee law framework due to India's policy of bilateralism and non interference that has defined its international relations since Independence.<sup>86</sup>

It has also claimed resource constraints and national security as it is a densely populated developing country with porous borders with multiple neighbouring countries experiencing political instability. The government has argued that formal accession to the Convention would create legally enforceable obligations to admit and protect refugees that India's infrastructure and resources cannot bear sustainably. Security concerns regarding infiltration of militants and anti national elements through open borders, has been mentioned in relation to Rohingya refugees.<sup>87</sup>

India's history of partition displacement of 14 to 15 million people in 1947 was managed entirely outside any international legal framework, and the displaced persons were absorbed as citizens rather than refugees. This experience established a domestic precedent of managing mass displacement through political and administrative means rather than legal frameworks, and created an institutional culture in which refugee law was seen as unnecessary rather than inadequate.<sup>88</sup>

### 5.2 Critique of the Reasons for Non-Accession

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<sup>86</sup> Kumar P, "Why India Hasn't Signed International Refugee Conventions • PolSci Institute" (*Political Science Institute*, October 21, 2025) <<https://polsci.institute/global-politics/why-india-hasnt-signed-refugee-conventions/>> accessed June 5, 2026

<sup>87</sup> "India's Unsigned Obligation: The 1951 Refugee Convention Absence and Its Impact on Asylum Protection." (*CPLAN*, November 4, 2025) <<https://cplan.in/indias-unsigned-obligation-the-1951-refugee-convention-absence-and-its-impact-on-asylum-protection/>> accessed June 5, 2026

<sup>88</sup> Indira Boutier, The non-ratification of the 1951 Convention on Refugees: An Indian Paradoxical Approach to Human Rights, Hors-série juin 2021 *Revue québécoise de droit international* 115, 2021 CanLIIDocs 1690, <<https://canlii.ca/t/t9gs>> accessed June 5, 2026

The argument that the Convention's argument is too narrow is not without basis as it was made for a specific European context, and its individual persecution model is poorly suited to mass displacement situations. However, if the Convention's definition is inadequate the appropriate response would be to supplement it as Africa did through 1969 OAU Convention and Latin America did through 1984 Cartagena Declaration. India's non accession has not produced a broader or more appropriate definition of who deserves protection, it has produced no definition at all, leaving the determination of who receives protection entirely to executive discretion.<sup>89</sup>

The Article 35 of the Convention requires cooperation with UNHCR's supervisory functions but UNHCR already operates in India and conducts refugee status determination independently. India therefore already submits to a degree of UNHCR involvement in its refugee governance but without the accountability mechanisms and legal obligations that formal accession would entail. The sovereignty argument achieves the worst outcome external involvement without legal obligation, discretionary governance without accountability.

The resource argument misunderstands what accession would require the Convention establishes minimum standards of treatment for those who are admitted. India already hosts hundreds of thousands of refugees, formal accession would not significantly increase that number but would establish enforceable standards for their treatment.

The security argument as seen in *Mohammad Salimullah v UOI* shows India has applied blanket security characterisations to entire refugee populations without individual assessment, precisely what a formal legal framework would prevent.

The 1947 displacement was unique in character a bidirectional movement of populations within a newly divided subcontinent, managed in the immediate aftermath of independence. It provides no useful template for the governance of subsequent refugee situations involving persons fleeing persecution in neighbouring states. The fact that India managed partition displacement without a legal framework does not demonstrate that a legal framework is unnecessary — it demonstrates that political will can substitute for legal obligation in exceptional circumstances. It cannot substitute for it consistently, across decades, and across the diverse and complex refugee situations that India has faced and will continue to face.

### 5.3 India's Commitments under Allied Instruments: ICCPR, CAT, CRC, ICERD, UDHR

India's non accession to the 1951 Convention does not place it entirely outside the framework of international human rights obligations relevant to refugee protection. India is party to several core human rights instruments whose provisions overlap significantly with refugee protection and whose obligation Indian state is legally bound to respect.

The International Covenant on Civil and Political Rights was ratified by India in 1979. Article 6 protects the right to life, Article 7 prohibits torture and cruel, inhuman or degrading treatment, and Article 13 provides procedural safeguards against the arbitrary expulsion of aliens. The UN Human Rights Committee has interpreted Articles 6 and 7 as implying non-refoulement obligations a state party may not deport a person to a country where they face a real risk of death or torture.<sup>90</sup>

The Convention on the Rights of the Child, ratified by India in 1992, imposes obligations directly relevant to refugee children the largest and most vulnerable demographic within refugee populations.

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<sup>89</sup> Maja Janmyr, The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda, *International Journal of Refugee Law*, Volume 33, Issue 2, June 2021, Pages 188–213, <https://doi.org/10.1093/ijrl/eeab043>

<sup>90</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, ratified by India 10 April 1979, arts 6, 7 and 13

Article 22 specifically addresses refugee children, requiring states to ensure that a child seeking refugee status receives appropriate protection and humanitarian assistance.<sup>91</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by India in 1968 prohibits discrimination based on race, colour, descent, or national or ethnic origin.<sup>92</sup>

The Convention Against Torture, was signed by India in 1997 but has never been ratified. Its non-refoulement provision under Article 3 which prohibits return to a country where there are substantial grounds for believing the person would be in danger of being subjected to torture is therefore not a binding treaty obligation for India.<sup>93</sup>

The Universal Declaration of Human Rights, while not a binding treaty, is widely regarded as an authoritative interpretation of the UN Charter's human rights obligations. Article 14 of the UDHR proclaims the right to seek and enjoy asylum from persecution. India, as a founding member of the United Nations and a state bound by the UN Charter, is subject to the UDHR's interpretive authority even in the absence of treaty ratification.<sup>94</sup>

Drawing upon the historical, legal, and comparative analysis presented, such a framework should include, at a minimum: a statutory definition of "refugee" broader than the 1951 Convention definition, drawing upon the expanded formulations of the OAU Convention and the Cartagena Declaration; a formal refugee status determination procedure administered by a specialised domestic body rather than delegated to UNHCR; statutory codification of the principle of non-refoulement as a binding domestic obligation; procedural safeguards including the right to legal representation, interpretation, and appeal; a framework of minimum rights for recognised refugees including access to education, healthcare, employment, and freedom of movement; and specific protections for vulnerable groups including women, children, and stateless persons. The passage of the Immigration and Foreigners Act, 2025, which modernised India's immigration architecture while leaving the refugee protection gap entirely unaddressed, makes the case for a separate, dedicated refugee statute more urgent than ever.<sup>95</sup>

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<sup>91</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, ratified by India 11 December 1992, art 22 [[1](#)]

<sup>92</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, ratified by India 3 December 1968

<sup>93</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, signed by India 14 October 1997, not ratified, art 3

<sup>94</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III), art 14

<sup>95</sup> D Sarkar, 'India's Refugee Policy and Human Rights Concerns: A Critical Analysis' (2025) 13(9) International Journal of Creative Research Thoughts <https://www.ijcrt.org/papers/IJCRT2509108.pdf> accessed 5 June 2026.