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Refugee protection in India: the need for a domestic refugee law in light of international standards

MUKESH KUMAR¹, MOHAMED ASIF²

¹ST YEAR LLB(HONS), CHETTINAD ACADEMY OF RESEARCH AND EDUCATION,

¹ST YEAR LLB(HONS) CHETTINAD ACADEMY OF RESEARCH AND EDUCATION, KELAMBAKKAM, CHENNAI, INDIA

ABSTRACT :

Refugee protection in India is a pressing humanitarian and legal concern, particularly because the country does not have a specific domestic law to govern the rights and status of refugees. India is home to diverse refugee populations from countries such as Myanmar, Afghanistan, Sri Lanka, and Tibet. Despite this, India is not a party to the 1951 United Nations Refugee Convention or its 1967 Protocol. Instead, it relies on a combination of constitutional provisions, judicial decisions, and executive policies to address refugee-related issues. This fragmented approach often results in inconsistent treatment, legal uncertainty, and a lack of procedural safeguards for refugees.

International standards on refugee protection, especially the principle of non-refoulement, guarantee that refugees should not be returned to a country where they face persecution. Though Indian courts have occasionally upheld this principle, its application remains inconsistent due to the absence of binding legislation. Refugees often face significant challenges in accessing education, healthcare, employment, and legal aid, as their rights are not clearly defined under Indian law.

This paper argues for the urgent need to adopt a comprehensive domestic refugee law in India that aligns with international standards while respecting national security and socio-economic realities. A national framework would provide clear guidelines for refugee status determination, protect fundamental rights, and reduce administrative discretion. Such legislation would also promote accountability, transparency, and uniformity in the treatment of refugees.

In conclusion, a dedicated refugee law is essential for ensuring legal protection, upholding human dignity, and strengthening India's global commitment to humanitarian values. Establishing such a law would not only support vulnerable populations but also enhance India's reputation as a democratic nation committed to justice and human rights.

Keywords: Refugee protection in India, Domestic refugee law, international refugee standards, non-refoulement Principles, Human rights and refugees, United Nations 1951 Refugee Convention, 1967 Refugee Protocol, Legal status of refugees in India, Refugee status determination (RSD), Constitutional safeguards for refugees, Judicial interpretation in refugee cases.

INTRODUCTION

Refugees represent one of the most vulnerable groups in the world, often forced to flee their homes due to war, persecution, political instability, or human rights violations. As a nation surrounded by conflict-prone regions, India has historically been a destination and refuge for displaced people from countries such as Tibet, Myanmar, Sri Lanka, Afghanistan, and Bangladesh. Despite its long-standing tradition of sheltering refugees on humanitarian grounds, India does not have a dedicated domestic refugee law. Nor is it a signatory to the 1951 United Nations Refugee Convention and its 1967 Protocol, which are the primary international legal instruments that define the rights of refugees and the obligations of states. This has created a legal vacuum in the country's approach to refugee protection.

In the absence of a comprehensive legal framework, refugee issues in India are addressed through a mixture of constitutional provisions, judicial decisions, and ad hoc executive policies. Articles 14, 21, and 32 of the Indian Constitution guarantee equality before the law and the right to life and personal liberty to all persons, including non-citizens. The judiciary, particularly the Supreme Court, has played an important role in interpreting these rights to extend protection to refugees. However, this approach lacks uniformity and fails to provide a clear and consistent mechanism for refugee status determination, legal rights, and long-term integration.

International standards emphasize key principles such as the protection against refoulement (forced return to a country where one may face danger), access to fair asylum procedures, and the right to live with dignity. While India informally follows some of these principles, the absence of a codified

refugee law leads to inconsistencies in their application. Refugee groups often experience unequal treatment depending on their nationality, political context, or relations between India and their country of origin.

The growing number of displaced persons and evolving geopolitical challenges make it crucial for India to adopt a domestic refugee law that balances humanitarian concerns with national security. A structured legal framework would help ensure transparency, accountability, and uniformity in dealing with refugees. It would also clarify the roles of government agencies, define the rights and duties of refugees, and align India's practices with international legal standards.

This research explores the need for a domestic refugee law in India in light of international norms. It examines the gaps in the current system, evaluates the role of constitutional protections, and assesses how a formal legal framework could contribute to better management and protection of refugees. By analyzing legal perspectives, policy challenges, and international best practices, this study aims to contribute to the ongoing dialogue on refugee protection in India and the importance of aligning humanitarian commitments with legal standards.

RESEARCH OBJECTIVES

- To examine the existing legal and policy framework for refugee protection in India
- To evaluate international refugee standards and their relevance to the Indian context
- To propose the need and framework for a comprehensive domestic refugee law in India

REVIEW OF LITERATURE

B.S. Chimni (2000), a renowned scholar in international refugee law, argues that India follows a "strategic ambiguity" approach toward refugees. He states that although India has historically sheltered displaced communities, the absence of a formal legal framework leads to discriminatory and inconsistent treatment. Chimni emphasizes the need for a rights-based domestic refugee law aligned with international norms.

Siddharth Narrain (2014) highlights the role of the Indian judiciary in protecting refugees through constitutional interpretation. He explains how courts have used Articles 14 and 21 of the Constitution to uphold the principles of equality and the right to life for refugees. However, he also notes that judicial protection alone is insufficient without statutory legislation.

Professor Ranabir Samaddar (1999) focuses on the political and humanitarian aspects of refugee issues in South Asia. He argues that refugee policies in India are often influenced by diplomatic relations, ethnic ties, and security concerns rather than legal obligations. Samaddar stresses the importance of creating a uniform and humane policy rather than relying on ad hoc practices.

Vandana Menon (2018) discusses the role of international bodies like UNHCR in India. She notes that UNHCR plays a key role in refugee status determination for non-registered groups but faces limitations due to the absence of national legislation. Menon advocates for greater cooperation between the Indian government and UNHCR for more structured refugee management.

Roshni Shukla (2020) examines international legal standards, especially the principle of non-refoulement, and argues that India informally respects this principle despite not signing the 1951 Convention. However, she warns that without codified law, refugees remain vulnerable to deportation and denial of basic rights.

RESEARCH QUESTIONS

1. What legal provisions, judicial interventions, and administrative practices currently govern refugees in India?
2. How do international refugee norms such as non-refoulement and the 1951 Convention apply to India?
3. How do international refugee norms such as non-refoulement and the 1951 Convention apply to India?

RESEARCH METHODOLOGY

The research follows a qualitative and doctrinal method. Primary sources: Constitutional provisions, court judgments, international treaties, government notifications. Secondary sources: Books by scholars like B.S. Chimni and Ranabir Samaddar, journal articles, UNHCR reports, and policy documents. Comparative analysis is used to study practices in countries like South Africa and Germany, which have dedicated refugee laws.

EXPECTED CONTRIBUTION

This study aims to show that although India has a humanitarian tradition, the absence of a domestic refugee law causes inconsistency, legal uncertainty, and unequal treatment among refugee groups. The proposed legal framework would ensure transparency, fairness, and alignment with international standards while protecting national interests.

FINDINGS

The research reveals that refugee protection in India operates without a clear legal structure, which leads to inconsistency and uncertainty. India has provided shelter to refugees for decades, yet it still lacks a dedicated refugee law. Instead, refugees are managed through constitutional provisions, judicial decisions, and executive policies. This results in uneven treatment, as some refugee groups receive better protection due to political or cultural ties, while others face detention, deportation threats, and denial of basic services. The study finds that although India is not a signatory to the 1951 Refugee Convention or the 1967 Protocol, many international principles especially the doctrine of non-refoulement—are indirectly practiced through court judgments and humanitarian policies. However, because these principles are not guaranteed by law, their application is neither uniform nor enforceable. The research also highlights significant gaps in India's current refugee management system. There is no standardized refugee status determination (RSD) process, which creates confusion between refugees and other foreigners such as illegal migrants. Access to basic rights like education, healthcare, employment, and legal aid varies widely across states and communities. Another key finding is that the role of the United Nations High Commissioner for Refugees (UNHCR) in India is limited and dependent on government permission. This restricts its ability to monitor and protect refugees effectively. Finally, the research concludes that a domestic refugee law would bring clarity, accountability, and uniformity. Such legislation could help balance national security concerns with humanitarian responsibilities, define the rights and duties of refugees, and establish legal procedures for protection, deportation, and integration.

SUGGESTIONS

To ensure better protection of refugees in India and to bring the system in line with international standards, several practical suggestions can be implemented. First, India should consider enacting a comprehensive domestic refugee law. This law must clearly define who is a refugee, the procedure for determining refugee status, and the legal rights and responsibilities of both refugees and the State. It should include provisions for protection against forced return (non-refoulement), access to healthcare, education, shelter, and legal aid. A clear legal framework will bring consistency and reduce arbitrary decisions. Second, the government should establish a central Refugee Status Determination (RSD) authority. This body should operate transparently, follow fair procedures, and work in coordination with state governments and the UNHCR. This will help differentiate genuine refugees from illegal immigrants while ensuring humane treatment. Third, training programs for police, border forces, and local administrators should be introduced. These officials should be educated about refugee rights, humanitarian principles, and the difference between refugees, migrants, and security threats. Such training can prevent harassment and improve ground-level implementation. Fourth, India should strengthen its cooperation with UNHCR and international organizations. By allowing them to assist in documentation, relief work, and rehabilitation efforts, the process becomes more transparent, organized, and rights-based. Fifth, state governments should adopt uniform policies, especially in areas like housing, livelihood support, education of refugee children, and health services. This will reduce unequal treatment between states. Lastly, community integration and skill development programs should be promoted to help refugees become self-reliant and reduce economic burden on the host country.

CONCLUSION

Refugee protection in India stands at a critical crossroads. Although the country has a long history of providing shelter to people fleeing persecution and conflict, the absence of a specific domestic refugee law has resulted in a fragmented and uncertain system. Refugees in India are currently governed by a combination of constitutional rights, court decisions, executive orders, and international humanitarian practices. While this informal framework has offered some level of protection, it lacks consistency, transparency, and legal enforceability. The study clearly shows that India informally follows international principles such as non-refoulement, yet their application depends largely on judicial discretion and government policy rather than binding legislation. This leads to unequal treatment of different refugee groups, depending on political relations, nationality, or regional interests. The absence of a uniform refugee status determination process further creates confusion between refugees, migrants, and illegal entrants. Given the growing number of displaced people and emerging security challenges, India requires a comprehensive and balanced approach. A domestic refugee law would not only provide legal clarity but also help safeguard human rights, ensure accountability, and uphold India's tradition of compassion. Such legislation should include clear procedures for refugee recognition, protection of basic rights, integration support, and mechanisms to address security concerns. In conclusion, adopting a national refugee law is both a humanitarian necessity and a legal priority. It would reflect India's commitment to justice, dignity, and global responsibility. By combining constitutional values with international standards, India can set a strong example for other nations facing similar challenges. This research therefore emphasizes that a structured legal framework is essential to ensure fairness, security, and dignity for refugees living within the Indian borders.

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