



When borders blur: Constitutional silence and the refugee question in contemporary India

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Abstract

This paper critically examines the paradox within India's constitutional and legal framework regarding refugee protection, highlighting the tension between humanitarian commitments and sovereign discretion. Despite India's long-standing tradition of hosting displaced populations and its engagement with key international human rights instruments, the absence of a dedicated refugee law has resulted in an inconsistent, ad hoc approach to asylum governance. The study analyses the principle of non-refoulement and its partial judicial recognition under constitutional guarantees of life and liberty, while exposing its uneven application in practice, particularly in cases involving Rohingya refugees. It further interrogates the selective and politically contingent treatment of different refugee groups, demonstrating how executive discretion often overrides normative humanitarian standards. By drawing parallels with internal displacement crises such as the Manipur conflict, the paper underscores a broader structural deficiency in India's legal response to displacement. Ultimately, it argues for the urgent need to establish a uniform, rights-based asylum framework that reconciles constitutional values, international obligations, and national security concerns, thereby transforming India's current legal ambiguity into a coherent and principled refugee protection regime.

Keywords: Refugee law in india, non-refoulement, constitutional silence, asylum, human rights

Introduction

The constitution of India clearly showcases the foundation of pluralism, secularism and humanitarian values on which it is based. In light of those values, India has always hosted a considerable number of refugees from its neighbouring countries. Despite this, it was absent from the 1951 Refugee Convention and its 1967 Protocol. A major reason for this is believed to be the convention's Eurocentric approach and its inability to create policies more suitable for third-world countries. But non-involvement does not mean that India remained absent from all global initiatives relating to refugees; rather, India has ratified the UDHR-1948, International Convention on the Elimination of All Forms of Racial Discrimination-1968, International Covenant on Civil and Political Rights-1979, and Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment-1997.

However, in contemporary India, the status, position and rights of refugees still remain unsettled as neither the Indian constitution (the governing law of our land) has any provision relating to the rights of refugees nor does there exist any statutory law. With the geopolitical and humanitarian concerns in the present time, the borders of countries are not as rigid as before. Hence, in this essay, we have explored the situation of refugees in particular and how far India adheres to the Principle of Non-Refoulement, in the wake of the crisis at the borders and why there is a growing need for a uniform regulatory framework.

1. Who Are Refugees – A Global Definition

Article 1 of the Convention Relating to the Status of Refugees, 1951, provides a clear definition for the term "refugee,"

"A person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or,

owing to such fear, is unwilling to avail [themselves] of the protection of that country [1]."

This definition has both legal and moral weight as it tells the story of people who leave their home, their country and their whole life behind, not by choice but due to fear of persecution.

2. Principle of Non-Refoulement

The principle of non-refoulement is a cornerstone of international law, prohibiting countries from forcibly returning individuals to a place where they face serious threats to their life, freedom, or fundamental human rights, such as persecution, torture, or cruel treatment, regardless of their migration status. There are International Obligations to which India is a signatory, which are as follows:

UDHR -1948- Article 14, (1) states that, "Everyone has the right to seek and to enjoy in other countries asylum from persecution [2]."

Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, states that;

1. " No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture;
2. For the purposes of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights [3]."

In *Dongh Lian Kham v. Union of India* [4], the Hon'ble Delhi High Court observed as under para "30. The principle of "non-refoulement", which prohibits expulsion of a refugee, who apprehends threat in his native country on account of his race, religion and political opinion, is

required to be taken as part of the guarantee under Article 21 of the Constitution of India, as “non-refoulement” affects/protects the life and liberty of a human being, irrespective of his nationality.” This protection is available to a refugee, but it must not be at the expense of national security.

Regardless of the pivotal role played by the judiciary in encouraging humanitarian assistance, there have been events in recent years where India has violated the principle of non-refoulement. It has been criticised for using modes of non-entrée such as ‘international zones’ to escape responsibility. The instances complained of arose mainly in light of the status of the Rohingyas from Myanmar, which we will look at precisely.

3. Between the Lines: The Dangerous Gaps in India's Constitutional Framework

The Indian Constitution, celebrated for its comprehensive enumeration of fundamental rights, paradoxically offers no explicit recognition of refugees or their rights. While Article 14 guarantees equality before the law to “any person” and Article 21 protects the life and personal liberty of all individuals within Indian territory, the absence of specific refugee legislation leaves this vulnerable population in a state of legal ambiguity.

Apart from these fundamental rights, Refugees in India are also governed by the jurisdiction laid down under the Indian Foreigners Act, 1946 and India’s Citizenship Act, 1955, amended several times thereafter, most recently in 2019. The Act created a pathway to citizenship for persecuted minorities from Pakistan, Bangladesh, and Afghanistan—but explicitly excluded Muslims. This religiously selective approach to refugee protection marked a departure from India’s secular constitutional ethos and raised fundamental questions about equality and non-discrimination.

In the case of *Louis De Raedt and Ors v Union of India* ^[5], it was held that the GOI’s power to expel foreigners is absolute and unlimited, and there is no provision in the Constitution fettering this discretion. Rebutting the argument that foreigners enjoy fundamental rights under the Constitution, the Court held that the fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in India, under Article 19(1)(e).

A critical phase came in 2017, when the Government’s directions to deport Rohingya refugees caused a huge upsurge, as apparent from media reports and in the writ petitions filed to the Supreme Court, where the advocates filing the SLP contended that:

“By virtue of the obligations of due process and the universal principle of non-refoulement, India cannot carry out collective expulsions, or return people to a place where they risk torture or other serious infractions of human dignity ^[6].”

Moreover, the Interlocutory order passed in the case of *Mohammad Salimullah and ors vs. Union of India and Orz* ^[7]. The Supreme Court pronounced under para. -

“12. There is no denial of the fact that India is not a signatory to the Refugee Convention. Therefore, serious objections are raised as, whether Article 51(c) of the Constitution can be pressed into service, unless India is a party to or has ratified a convention. But there is no doubt that the National Courts can draw inspiration from International Conventions/Treaties, so long as they are not in conflict with the municipal law.

13. It is also true that the rights guaranteed under Articles 14 and 21 are available to all persons who may or may not be citizens. But the right not to be deported is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1)(e).

14. Two serious allegations have been made in reply to the Union of India. They relate to (i) the threat to internal security of the country, and (ii) the agents and touts providing a safe passage into India for illegal immigrants, due to the porous nature of the land borders.

15. Therefore, it is not possible to grant the interim relief prayed for. However, it is made clear that the Rohingyas in Jammu, on whose behalf the present application is filed, shall not be deported unless the procedure prescribed for such deportation is followed.” It can be validly concluded that even Judicial Protection by application of Constitutional Principles is case-specific.

4. Manipur's Burning Question: When Citizens Become Refugees In Their Own Land

Identity politics has fueled intense ethnic conflict in many northeast states, and Manipur is one of them. It challenges the fabric of society and governance. The violence in Manipur primarily stems from ongoing tensions between two major ethnic groups: the predominantly Hindu Meitei and the Kuki communities. As of 3rd May 2024, this conflict has resulted in 221 deaths and the displacement of 60,000 people ^[8]. Manipur's complex ethnic tapestry includes thirty-three Scheduled Tribes and Scheduled Castes, each with its own cultural identity and historical claims ^[9]. It highlights the need for an approach to governance and policymaking that considers the complex historical and social context of different communities.

The crisis in Manipur shows India’s favorability towards executive discretion rather than codified law in order to manage mass displacement. It indicates the failure to establish a legislative framework for refugees, not just an isolated policy gap but part of a broader “politics of asylum” where the state deliberately maintains a legal vacuum to preserve its administrative flexibility at the expense of human security.

Despite being citizens, these internally displaced people live like refugees and are subjected to a form of suspended citizenship, surviving on relief items without any basic rights or amenities.

The situation prevailing in the state of Manipur for the last three years forces our consciousness to wonder if Indian citizens can suffer because of the lack of a displacement law; imagine the vulnerability of non-citizens without an asylum law. While those displaced due to ethnic violence in Manipur are internally displaced persons and do not qualify as refugees under international law, the Manipur crisis is relevant as it exposes India’s inability to respond to displacement through a coherent legal framework. The absence of codified standards for relief, rehabilitation, and protection in Manipur exactly mirrors the legal vacuum faced by refugees from Myanmar.

Modern governments, to achieve immediate political feasibility and administrative ease, ignore their very purpose to protect human life. National borders were originally conceived to simplify the organisation of human welfare, yet they are increasingly used to exclude those in greatest need. Legislative measures taken by the government should not be majority-centric but human-centric.

5. When Neighbours Burn: Myanmar's Collapse and the Refugee Ripple Effect

India currently hosts diverse refugee communities, including Tibetan refugees who arrived following the 1959 uprising, Sri Lankan Tamils fleeing civil war, Rohingya Muslims escaping persecution in Myanmar, and, most recently, Afghan nationals seeking safety after the Taliban takeover. Each group faces differential treatment based on political considerations rather than humanitarian principles or legal standards.

1. Tibetan Refugees

The Tibetan refugees have received relatively favourable treatment, with the establishment of settlements and the Central Tibetan Administration operating from Dharamshala. This community remains the most protected, governed by the Tibetan Rehabilitation Policy. They are issued Registration Certificates (RCs) and Identity Certificates (ICs), which serve as near-equivalent travel and residence documents, allowing them legal access to land, education, and social sector schemes ^[10].

2. Sri Lankan Tamils

Sri Lankan refugees, primarily Tamils fleeing the civil war, have sought refuge in India, mainly Tamil Nadu, since the 1980s. Though mostly recognised by the state, this group is largely confined to camp-based living in Tamil Nadu. Through an order in 2025, by the Ministry of Home Affairs (MHA), those who arrived before January 9, 2015, are exempted from "illegal migrant" status, ensuring basic relief and subsidised rations, yet they still lack the broad integration pathways granted to Tibetans.

3. Afghan Refugees

Afghan refugees in India, primarily concentrated in Delhi's Lajpat Nagar, Malviya Nagar, and Bhopal, face significant challenges with documentation, work rights, and uncertain futures, despite India hosting thousands fleeing convicts, especially after the 2021 Taliban takeover, with many hoping for resettlement to Western countries but often finding themselves in bureaucratic limbo. In 2026, many Afghans continue to navigate a two-tier system: those who are non-Muslim may access fast-tracked citizenship via the Citizenship Amendment Act (CAA), while Muslim Afghans remain dependent on UNHCR registration and discretionary Long-Term Visas (LTVs) that offer inconsistent access to the labour market.

Rohingya Refugees

The Rohingya refugees face precarious conditions, living in informal settlements with no access to education, healthcare, or livelihood opportunities. This differential treatment highlights the absence of a uniform, rights-based approach to refugee protection. Four years after a military coup ousted the democratic government in Myanmar, political turmoil and instability have devastated the country. According to the Armed Conflict Location and Event Data's (ACLED) Conflict index, the Myanmar crisis is one of the top ten complex crises of the world that will likely evolve in the coming years ^[11].

The country has experienced one of the most violent conflicts in the past few years, struggling with fierce disputes between the military junta and resistance groups, with little indication of an end in sight. Unlike the Russo-

Ukraine War and Israel-Hamas conflict in the Middle East, the lack of rapid, large-scale material support from international actors such as the United States and European Union, and an economic downturn have contributed to a humanitarian catastrophe in Myanmar. Resistance groups comprising ethnic insurgents and the People's Defence Force militias achieved significant territorial gains last year. However, the military junta's aerial superiority plunged Myanmar into an unprecedented crisis. Since April 2, 2025, the Myanmar military's launching of nearly 243 attacks, including 171 airstrikes on civilian territories, uprooted approximately 6.3 million people and clearly demonstrated that the conflict will likely continue for the foreseeable future. Peace and stability remain a distant dream for 51.1 million Burmese people. Myanmar's security situation deteriorated after the military toppled its democratically elected government in 2021. Myanmar's geographical proximity to South and Southeast Asian powers like India and China, along with Bangladesh, Laos, and Thailand, coupled with its strategic positioning in the Bay of Bengal, makes the ongoing turmoil a concern for regional and global stability.

In sharp contrast to other refugees, the Rohingyas are frequently categorised as "illegal immigrants" rather than refugees. Despite possessing UNHCR protection cards, they face heightened securitisation, arbitrary detention, and the constant threat of deportation, as the state selectively prioritises the Foreigners Act over international customary norms.

While the Supreme Court has issued interim orders regarding procedural safeguards, the definitive adjudication on the constitutionality of mass Rohingya deportation remains sub judice, with the next consolidated hearing scheduled for January 13, 2026 ^[12].

6. NEED FOR A UNIFORM ASYLUM LAW

India is surrounded by ethnic violence in Sri Lanka and Myanmar, conflict in Afghanistan, and political and ethnic suppression in China, which makes it the centre of refugee movements.

In 2026, it continues to manage refugees through a fragmented legal system that attempts to balance constitutional protections against stringent national security imperatives. The Immigration and Foreigners Act of 2025 has consolidated several colonial-era laws into a more modern statutory framework, but continues to rely heavily on executive discretion instead of establishing a consistent, uniform refugee status.

There is a clear moral and humanitarian case for distinguishing refugees from other categories of foreigners, but the current legal position does not draw such a line. Refugees, therefore, fall under the same general and special laws that govern all foreign nationals in India. As a consequence, refugee status is not formally granted through a uniform legal process but is instead determined on a case-by-case basis ^[13].

The central government has authority to deal with foreigners, which includes issuing orders imposing various restrictions on foreigners, such as to compel compliance, arrest and detain individuals, the right to expel, enforce expulsion orders, and use force, if necessary. are upheld by the courts. As a result, refugees and asylum seekers may face severe penalties or prolonged detention under such legislation.

Therefore, the development of a domestic legal framework on refugees would be beneficial for India. It will allow India to gain international legitimacy as a country that provides asylum based on humanitarian and legal principles, not political preference ^[14].

Henceforth, it is necessary to formulate and implement a uniform Asylum Law to address the issue by providing transparent procedures for status determination and thereby reducing the conflict between Domestic Laws, the Application of Constitutional guardrails and International Customary Law.

Conclusion

The blurring of borders in contemporary South Asia, whether through conflict, persecution, or environmental disasters, has made the refugee question unavoidable for India. The constitutional silence that once seemed like a strategic approach to sovereignty concerns now appears as a glaring omission that leaves vulnerable populations without adequate protection and India without clear policy direction. As a democracy committed to human rights and dignity, India must move beyond ad hoc responses and politically profane arguments revolving around national security, geopolitical location, and vulnerability to cross-border militancy as obstructions to the formation of a national refugee law. Filling the constitutional void with comprehensive refugee legislation would not only fulfil India's humanitarian obligations but would further strengthen its democratic credentials. The question is no longer whether India should address refugee rights, but how quickly it can transform constitutional silence into constitutional recognition, ensuring that when borders blur, humanity remains clear.

References

1. Convention Relating to the Status of Refugees, 1951, art. 1.
2. Universal Declaration of Human Rights, 1948, art. 14.
3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 3.
4. *Dongh Lian Kham v. Union of India* 226 (2016) DLT 208.
5. *Louis De Raedt v Union of India* (1991) 3 SCC 554
6. *Raushan Tara Jaswal v. Union of India*, W.P.(C) No. 886 of 2017 (Supreme Court of India).
7. *Mohammad Salimullah v. Union of India*, W.P.(C) No. 793 of 2017 (Supreme Court of India).
8. CA, Athul, *Ethnic Conflict in Manipur: Historical Roots, Current Tensions, and the Challenge of Identity Politics* SSRN Working Paper No. 5557860, 2025
9. Arora, Vibha, and Ngamjahao Kipgen. "The Politics of Identifying with and Distancing from Kuki Identity in Manipur.", (Sociological Bulletin) Sage Journals, 2017:61(3):429-449.
10. Ministry of Home Affairs, *The Tibetan Rehabilitation Policy*, 2014 (Government of India, 2014). https://www.mha.gov.in/sites/default/files/2022-08/FFR_ANNEXURE_A_17092019%5B1%5D.pdf (Accessed: January 10, 2026)
11. ACLED, *Conflict Index Results: December 2024*, available at: <https://acleddata.com/report/conflict-index-results-december-2024> (Accessed: January 10, 2026).

12. Shah, Tanishka. "The Rohingya Question before the Supreme Court of India." *The Leaflet*, December 18, 2025.
13. World Legal Information Institute. "Refugees In India: Legal Framework, Law Enforcement And Security - [2001] ISILYBIHRL 7." *ISIL Year Book of International Humanitarian and Refugee Law*. <https://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html>. (Accessed: January 10, 2026)
14. Shivangi Seth. "Why India Needs a Refugee Law." *The Interpreter* by Lowyinstitute, July 25, 2022. <https://www.lowyinstitute.org/the-interpreter/why-india-needs-refugee-law>. (Accessed: January 10, 2026)