

Article

Beyond Ad Hocism: Towards Rights based Refugee protection in India

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Abstract

India's absence of a national refugee law entrenches discriminatory and securitised governance of displaced populations. Despite hosting over 200,000 refugees from Tibet, Sri Lanka, Afghanistan, and Myanmar, India relies on ad hoc policies under immigration statutes like the Foreigners Act (1946), creating hierarchies of protection. This paper critiques India's "strategic ambiguity" through comparative case studies of three groups: state-supported Sri Lankan Tamils (Category I), UNHCR-recognised Afghans (Category II), and criminalised Rohingya Muslims (Category III). It reveals how geopolitical interests—not vulnerability—determine rights access, with Muslim refugees systematically excluded. Legal limbo denies refugees socio-economic entitlements: Rohingya in Delhi/Jammu lack documentation for schools, healthcare, and formal work, violating constitutional guarantees. Concurrently, securitisation frames refugees as security threats, justifying deportations (e.g., MHA's 2017 Rohingya policy) and religious exclusion under the Citizenship Amendment Act (2019). The analysis employs securitisation theory (Buzan et al.) and "crimmigration" (Stumpf) to argue that India's policy asymmetry enables state-sanctioned discrimination. Recommendations include enacting a rights-based refugee law enshrining non-refoulement, regional cooperation via SAARC, and learning from Mizoram's local integration of Chin refugees. Without structural reform, India's selective humanitarianism will continue violating international norms and marginalizing the most vulnerable.

Keywords: Forced migrations, Refugees, Issues Securitization, Discrimination, Socio-economic Rights, Non-refoulement

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INTRODUCTION

Forced migration within one's own country is not a modern phenomenon. Historical accounts trace the origins of internal displacement to ancient times. As Atle Grahl-Madsen notes, the movement of refugees has been a feature of human society since its earliest records (Tuitt, 1999). In pre-modern societies, before the establishment of nation-states and formal borders, many cultures extended hospitality and protection to those in need, often facilitated by religious institutions such as churches, temples, and pagodas (Smyser, 1985). Wars—whether foreign or domestic—along with natural disasters have consistently acted as catalysts for forced migration, particularly in states with limited capacity to manage such crises. Throughout human history, individuals and communities have been involuntarily displaced due to a wide range of systemic injustices and structural crises. Political persecution, ethnic and religious discrimination, and violent conflict have long compelled people to flee their homes in search of safety, dignity, and basic human rights. In the contemporary era, displacement continues to occur predominantly in regions plagued by state failure or institutional collapse due to internal or external conflicts. Afghanistan, Syria, Sudan, the Democratic Republic of Congo, and Myanmar are among the most prominent examples.

Armed factions assaulted people, utilising forced recruitment, sexual brutality, and further methods that intensified the trauma of displacement (Boås, 2005). In the contemporary era, despite significant advancements in global governance and the proliferation of international legal frameworks, the scale and complexity of forced

migration have only intensified due to the armed conflicts between nations. The persistence of these global phenomena underscores the ongoing challenges in ensuring adequate protection for displaced populations.

Today, millions continue to be driven from their places of origin due to the denial of fundamental rights, including access to education, healthcare, employment, and freedom of movement. Additional contributing factors such as internal armed conflicts, political instability, environmental degradation, and the broader impacts of climate change often intersect, creating complex humanitarian crises. These interlocking causes frequently leave affected populations with limited or no viable options for remaining in their home regions, resulting in large-scale displacement across and within national borders.

Despite the rise of an interconnected and ostensibly advanced global society, large segments of the global population continue to face displacement and statelessness. While international conventions such as the 1951 Refugee Convention and its 1967 Protocol provide a legal framework for the protection of those crossing international borders, a substantial portion of displaced individuals remain within their own countries. These individuals, classified as internally displaced persons (IDPs), often lack access to the same rights and protections afforded to refugees under international law on the other hand refugees who are displaced to other nations face crises too.

The vision of Sustainable Development Goals 2030 endorsed by all 193 UN Member States was to “Leave No One Behind,” focusing specifically on “vulnerable populations,” including refugees, internally displaced individuals, and migrants. Nonetheless, as highlighted by the International Rescue Committee (IRC) (2019) in their report “Missing Persons: Refugees Left out and Left Behind in the SDGs,” and recognised by the United Nations High Commissioner for Refugees (UNHCR), refugees and other forcibly displaced individuals were effectively marginalised, overlooked, and disregarded (UNHCR, 2019). According to the United Nations High Commissioner for Refugees (UNHCR, 2023a; 2023b), the number of forcibly displaced individuals globally has reached a record high of 110 million. These individuals have been uprooted by a combination of persecution, conflict, violence, human rights violations, and events that severely disrupt public order. Notably, approximately 40 percent of this displaced population is under the age of 18, signalling the profound intergenerational impacts of forced migration. Between 2018 and 2022, an estimated 385,000 children were born into refugee status each year—emphasising the enduring and cyclical nature of displacement and the necessity for comprehensive long-term solutions. Refugeehood is not simply a legal status to be resolved, but a lived experience that persists through labels, attitudes, and unmet commitments (Durodola, 2025).

The influx of refugees into India has been prompted by multiple circumstances, including armed wars in adjacent nations, persecution based on race or religion, and natural catastrophes. India, since gaining independence, has historically served as a destination for those seeking asylum. According to the UNHCR, over 200,000 refugees reside in India, originating from countries such as Tibet, Afghanistan, Sri Lanka, Bangladesh, Myanmar, Eritrea, Iran, and Iraq (Koizumi & Hoffstaedter, 2015; UNHCR, 2023a; 2023b). Despite this longstanding tradition of hosting displaced populations, India has not acceded to the 1951 Refugee Convention or its 1967 Protocol. Nor does it possess a comprehensive national legislative framework dedicated specifically to refugee protection.

This has imposed considerable pressure on the current infrastructure and resources, necessitating a thorough evaluation of India’s refugee policy (Borah & Das, 2024). Despite the absence of policies, India hosts refugees which can be broadly categorised: Category I refugees, such as Tamil refugees from Sri Lanka, receive comprehensive support directly from the Indian government. Category II refugees mainly Afghans—are recognised and protected by the UNHCR under the principle of non-refoulement. Category III refugees, including the Chin community from Myanmar residing in the Indian state of Mizoram, lack formal recognition by either the Indian government or the UNHCR but have nonetheless been absorbed into local communities.

Table 1: *refugee categories/rights*

Refugee Category	Examples	Recognition By	Key Rights/Access	Primary Challenges
Category I (State-Supported)	Sri Lankan Tamils	Indian Government	Camps, education, IDs	Long-term integration
Category II (UNHCR-Mandated)	Afghans	UNHCR	<i>Non-refoulement</i> , aid	No state documentation
Category III (Unaided)	Rohingya, Chin	None	Local ad hoc support	Detention, deportation

India's refugee response reveals hierarchies of protection:

- *Sri Lankan Tamils* (Category I): Receive government-funded camps, ID cards, and education access—rooted in ethno-political solidarity with Tamil Nadu's majority (ActionAid Association & National Human Rights Commission, 2024, P-20).
- *Tibetans*: Granted quasi-citizenship via Registration Certificates, with self-governed settlements and schooling (Koizumi & Hoffstaedter, 2015).
- *Rohingya Muslims* (Category III): Vilified as 'infiltrators' (MHA, 2017), denied documentation, and subjected to mass deportations despite UNHCR status (HRW, 2020).

Although India has ratified several international human rights treaties, its approach to refugee management is primarily governed by domestic legislation intended for foreigners. Key legal instruments include the Foreigners Act of 1946, the Foreigners Order of 1948, and the Registration of Foreigners Act of 1939. In the absence of a dedicated refugee law, these statutes regulate the treatment of asylum seekers and refugees, alongside broader legal frameworks such as the Indian Penal Code, the Indian Evidence Act, and the Code of Criminal Procedure. Above all, one of the central challenges in India's refugee law is the absence of a clear and comprehensive definition of the term 'refugee'. This lack of definition has resulted in ambiguity regarding the legal status of refugees in the country. As a result, refugees often face difficulties accessing basic rights and protections, including access to education, healthcare, and employment (Tiwari, 2024). This disparity stems not from vulnerability but from political utility Groups aligning with India's strategic interests (e.g., Tibetans as anti-China symbols) receive protection; Muslim minorities face securitization.

For asylum seekers not directly supported by the Indian government, the process of obtaining refugee status involves application through the UNHCR, which operates in India with the government's acknowledgement. This arrangement has created a parallel system of refugee protection, albeit without legislative backing. Refugees and asylum seekers are still legally classified as "foreigners" under Indian law, and in the absence of a specific refugee statute, their rights and legal status are assessed on a case-by-case basis by the Indian judiciary, often through the lens of general laws applicable to foreigners and undocumented immigrants. This absence of a well-defined refugee law results in refugees being subject to arbitrary government policies which often fail to adequately implement constitutional and judicial safeguards of refugees' rights and entitlements (Bhattacharjee, 2008). Consequently, refugees are forced to rely on an ad hoc, and case-to-case implementation of their rights. This article argues that India's absence of a dedicated refugee law enables state-sanctioned discrimination, disproportionately harming Muslim refugees. Section 2 details the legal vacuum; Section 3 compares refugee group experiences; Section 4 analyses socio-economic exclusion; Section 5 critiques securitisation dynamics.

METHODOLOGY AND ANALYTICAL FRAMEWORK

This study employs a critical policy analysis framework to examine India's refugee governance. Primary data includes parliamentary debates (Lok Sabha Archives), judicial rulings (e.g., Nandita Haksar v. State of Manipur), and government notifications (MHA, 2017). Secondary sources comprise UNHCR reports (2022–2023) and human rights documentation (HRW, 2020; UNHCR, 2022). Triangulation of these sources reveals patterns of institutional discrimination, with a focused comparison of Rohingya, Sri Lankan Tamil, and Tibetan refugee experiences to illustrate differential treatment.

Some of those are as follows:

- Passport (Entry into India) Act, 1920
- Passport Act, 1967
- Registration of Foreigners Act, 1939
- Foreigners Act, 1946
- Foreigners Order, 1948

Passport (Entry into India) Act, 1920:

This act regulates the entry and exit of individuals to and from India. It requires that individuals entering the country hold a valid passport. The Central government possesses the authority to formulate regulations

under this Act, resulting in the establishment of the Passport (Entry into India) Rules, 1950. Entry into India is restricted for individuals lacking a passport; however, refugees are exempt from this stipulation based on the principle of non-refoulement. In *Nandita Haksar v. State of Manipur*, the court determined that Article 21 of the Indian Constitution includes the principle of non-refoulement, which prohibits the return of refugees to their countries of origin in the absence of travel documents and prevents their exclusion from India when seeking protection. The court highlighted that applying domestic legal penalties to individuals requiring life protection would be “palpably inhuman” (*Nandita Haksar v. State of Manipur*, W.P. (Crl.) No. 6 of 2021).

Passport Act, 1967:

This act controls the departure from the nation of Indian citizens and outsiders as well as the issuing of passports and travel papers. The several types of passports accessible to different groups of people are described in this paper. The Act criminalises the furnishing of misleading information meant for passport acquisition. The Act’s Article 20 gives the Central government authority to provide passports to non-citizens if judged essential for public interest. Under particular circumstances, this clause lets the government grant passports to immigrants and asylum seekers, therefore enabling their worldwide travel free from restrictions.

Registration of Foreigners Act, 1939:

This law requires foreign residents of India to register. The Central government is authorised to create rules requiring foreign arrivals, presence, movements, departure, and proof of identification submission to assigned authorities. The Act mandates people who routinely interact with foreigners to report their activities. Section 4 of the Act places the burden of proof on the individual questioned regarding their foreigner status, posing significant challenges for refugees and asylum seekers. Individuals frequently encounter challenges related to documentation requirements and the burden of proof, with authorities responsible for evaluating the credibility of applicants based on their unique circumstances.

Foreigners Act, 1946:

This act confers extensive authority to the central government regarding foreign nationals in India. The government is empowered to impose restrictions on foreigners, including the issuance of orders for specific categories of individuals. The Act grants authorities’ significant powers, including the ability to detain individuals, expel them from the country, and employ force as needed to ensure compliance. This law’s scope poses considerable challenges for refugees and asylum seekers, potentially resulting in prolonged detentions or severe penalties. The legal framework was affirmed in *Hans Muller Nuremberg v. Superintendent Presidency Jail* (1955), wherein the court reiterated the government’s power to forcibly expel foreigners if necessary.

Foreigners Order, 1948:

This order defines the standards for either approval or rejection of admission into India, which is published by the Central government under Section 3 of the Foreigners Act, 1946. Refugees could be labelled as illegal immigrants and, in some cases, held in transit zones. Authorities are urged to assess the circumstances of refugees on compassionate grounds, as their situations frequently differ markedly from those of other foreign nationals

ISSUES PERTAINING TO POLICY

Theorising India’s Refugee Governance Gap

India’s ad hoc refugee management reflects what scholars’ term *strategic ambiguity* (Chimni, 2003)—a state tactic enabling discretionary control. This analysis engages securitization theory (Buzan et al., 1998), where refugees like the Rohingya are framed as existential threats to justify rights violations. Concurrently, *crimmigration* (Stumpf, 2006) elucidates how immigration laws (e.g., Foreigners Act, 1946) criminalize forced migrants. These frameworks expose how policy asymmetry serves geopolitical interests while undermining humanitarian norms.

Legal Uncertainty and Statelessness of Refugees in India

India’s refugee management operates in a legal vacuum due to the absence of a national refugee law, leaving refugee populations in a state of chronic legal uncertainty. Unlike many nations, India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol and instead addresses refugee matters under general

immigration laws such as the Foreigners Act, 1946, which fails to distinguish between refugees, asylum seekers, and undocumented migrants. This has led to a scenario where refugees—particularly those from marginalised groups such as Rohingya Muslims and certain Afghan minorities—are frequently treated as illegal immigrants, subject to detention and deportation without due process (Chimni, 2003). The lack of legal recognition results in statelessness, wherein refugees are denied documentation, legal status, and pathways to citizenship or long-term residency. India has a commendable history of providing asylum to individuals escaping persecution, and the Indian judiciary has generally been effective in protecting the rights of refugees. Nonetheless, humanitarian support and a favourable judicial position towards refugees are inadequate (Lal, 2019). This ambiguous legal landscape not only violates humanitarian norms but also entrenches the systemic marginalisation of refugees, making them invisible within India's socio-political and legal frameworks.

Discriminatory and ad hoc treatment of refugees in India

India's refugee governance is characterised by discretionary and ad hoc responses, resulting in unequal treatment of different refugee groups based on their ethnic, religious, and geopolitical backgrounds. In the absence of a codified refugee law, refugee status and access to rights are determined not by legal principles, but by political considerations and the government's strategic interests (Chimni, 2003). For instance, while Tibetan refugees and Sri Lankan Tamils have historically received relatively structured assistance, including long-term settlement camps, access to education, and identity documentation, Rohingya Muslims and certain Afghan groups have been subjected to systemic exclusion and vilification (Human rights watch, 2020). The Citizenship Amendment Act (CAA), 2019, further institutionalised religious discrimination by offering fast-tracked citizenship only to non-Muslim refugees from neighbouring countries, thereby excluding Muslim groups like the Rohingya, despite their well-documented persecution in Myanmar (Sudheer & Banerjee, 2021). This selective humanitarianism reflects state-sanctioned hierarchies, where the right to refuge is extended to some based on religious affinity, while others are criminalised as "illegal immigrants." Such unequal treatment not only violates international human rights norms but also contributes to deepened marginalisation, legal precarity, and societal alienation among excluded groups (Kaunert & Khan, 2024).

Denial of socio-economic rights of refugees in India

In the absence of a national refugee law or formal integration policy, refugees in India are denied access to fundamental socio-economic rights, such as education, employment, healthcare, and housing. While India has hosted a significant number of refugees from countries such as Myanmar, Sri Lanka, Afghanistan, and Tibet, their access to welfare and state services remains deeply restricted. Numerous deficiencies exist in the refugee policy framework, and the government has not implemented a specific statute pertaining to refugees. Although India has often welcomed refugees, it has frequently neglected to offer the necessary care and support, resulting in their suffering and impoverished existence. India must develop comprehensive legislation on refugees to address the associated concerns more efficiently and effectively (Tavakolinia, 2019). For example, Rohingya refugees in Delhi and Jammu live in makeshift settlements with limited access to clean water, sanitation, or education for children (Human Rights Watch, 2020). The lack of legal work permits also means that even skilled refugees are forced into daily-wage labour, often at substandard wages and under exploitative conditions. Moreover, UNHCR-issued identity cards, while recognised in Delhi, are ignored by local authorities in other regions, leaving refugees without any formal means to access essential services (Kaunert & Khan, 2024). This systemic exclusion violates not only basic human rights but also India's constitutional promise of equality and dignity for all persons residing within its borders.

Limited access to education and health of refugees in India

Refugees in India face significant barriers to accessing essential services such as education and healthcare, largely due to the absence of a legal framework that ensures socio-economic inclusion. While international law recognises the rights of refugees to basic services, Indian policy does not extend these guarantees uniformly, leading to exclusion driven by bureaucratic and systemic constraints (UNHCR, 2022). For instance, refugee children are often denied admission to public schools due to lack of documentation such as birth certificates, transfer certificates, or citizenships. As a result, many are forced into informal or community-run learning centres with limited resources and no state recognition. The situation is particularly dire for Rohingya refugees, whose children in Delhi and Jammu experience frequent school dropouts due to poverty, discrimination, and lack of educational infrastructure (Kaunert & Khan, 2024). Although their refugee status is acknowledged by the

UNHCR, their legal status lacks government endorsement. This translates into difficulty on the ground, wherein their access to amenities falls to the mercy of local authorities or other service providers (Sudheer & Banerjee, 2021). Similarly, access to healthcare remains restricted; refugees are not covered by public health schemes like Ayushman Bharat, and they often face language barriers, prejudice, and high out-of-pocket expenses at hospitals (Human Rights Watch, 2020). Although the UNHCR and NGOs provide some health and educational support, their reach is limited to urban clusters such as Delhi, leaving thousands in semi-urban and rural areas without reliable services. This denial of basic human development rights further entrenches the marginalisation of refugees in India.

Securitisation and criminalisation of refugees in India

In recent years, the discourse around refugees in India has shifted from one of humanitarian concern to one rooted in national security, resulting in the securitisation and criminalisation of vulnerable refugee populations. This shift is particularly evident in the treatment of Rohingya Muslims, who have been repeatedly portrayed by political leaders and security agencies as potential threats to internal stability. The Ministry of Home Affairs in 2017 publicly declared Rohingyas a “security threat,” citing alleged links to extremist networks, despite the lack of credible evidence (Human Rights Watch, 2020). Such framing has been used to justify aggressive policies, including arbitrary arrests, detentions, and forced deportations, in violation of the international principle of *non-refoulement* (Mitra & Şahin-Mencütek, 2024). The Citizenship Amendment Act (2019) further institutionalised this securitised approach by excluding Muslim refugees from fast-tracked citizenship, thereby reinforcing a religious and political bias in refugee governance (Kaunert & Khan, 2024). Media narratives and political rhetoric often conflate refugees with illegal migrants or terrorists, especially in states like Assam and Jammu, where communal tensions are high. As Kaunert and Khan (2024) note, this strategy not only delegitimises refugee claims but also dehumanises their existence, reducing them to instruments within domestic political debates. The securitisation of refugee identities thus facilitates state surveillance, social alienation, and the erosion of legal protections, effectively turning victims of persecution into perceived threats.

CONCLUSION

India’s current approach to refugee governance, marked by the absence of a codified legal framework, has created a deeply fragmented and inequitable environment for displaced populations. Refugees in India live in a state of legal limbo, governed not by rights-based legislation but by discretionary administrative practices that fail to ensure consistency or accountability. The discriminatory and ad hoc treatment of refugee communities—privileging certain ethnic and religious groups while marginalising others—undermines the very principles of neutrality and universality that humanitarian protection is built upon. This is further compounded by systemic denial of socio-economic rights, with refugees lacking access to formal employment, public education, healthcare, and welfare services, which are fundamental to any form of dignified existence. The securitisation and criminalisation of vulnerable groups, especially Muslim refugees like the Rohingya, reflect an alarming trend where national security narratives are used to justify exclusionary practices and even violations of international law, such as non-refoulement. Together, these conditions reinforce a cycle of marginalisation, invisibility, and deprivation for refugees.

India must transcend ad hocism through:

1. **National Refugee Law:** Incorporating *non-refoulement*, asylum procedures, and socio-economic rights—aligned with the International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. **Regional Cooperation:** Leading SAARC in adopting a Model Refugee Framework, as proposed by the Eminent Persons Group (2017).
3. **Federal-State Coordination:** Leveraging Mizoram’s absorption of Chin refugees as a best practice for local integration.

Feasibility requires depoliticising refugee governance: divorcing humanitarian protection from electoral calculus and security narratives (Kaunert & Khan, 2024).

LIMITATIONS OF THE STUDY

1. **Regional Narrowness:** Focuses heavily on Rohingya in Delhi/Jammu and Sri Lankan Tamils in Tamil Nadu.

Lacks in-depth analysis of refugees in Northeast India (e.g., Chin in Mizoram) or Afghan communities in other states.

2. **Lack of Refugee Voices:** Relies on policy/judicial analysis and NGO reports. Missing first-hand ethnographic data or refugee narratives to contextualize socio-economic exclusion.
3. **Security Narrative Origins:** Critiques securitization but does not fully explore *why* security framings gain traction (e.g., historical communal tensions in Jammu, electoral politics).
4. **Gender Dynamics:** Overlooks gendered impacts of discrimination (e.g., access to healthcare for refugee women, exploitation risks).
5. **Climate Displacement:** Does not address how climate-induced migration intersects with refugee flows (e.g., Bangladeshi migrants in bordering states).

FUTURE RESEARCH DIRECTIONS

1. **Subnational Variations:** Compare refugee integration in states like Mizoram (Chin), Tamil Nadu (Sri Lankan Tamils), and Delhi (Rohingya/Afghans).
2. **Refugee-Led Research:** Center refugee voices through participatory methods to document lived experiences of exclusion.
3. **Intersectional Analysis:** Investigate how caste, gender, and ethnicity compound vulnerabilities (e.g., Rohingya women vs. Tibetan women).
4. **Longitudinal Studies:** Track impacts of policies like CAA (2019) on Muslim refugee communities over time.
5. **Climate Refugees:** Examine India's ad hoc response to climate-displaced populations (e.g., from Bangladesh/Sundarbans).
6. **Digital Securitisation:** Analyse how surveillance technologies (Aadhaar, detention databases) target refugees.

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Declaration of Conflict

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Clinical Trial Number

Not applicable.

Human Ethics and Consent to Participate

The study did not involve any clinical interventions or experiments requiring formal ethical approval.

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