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## NAVIGATING HUMANITARIANISM AND SECURITY: A LEGAL ANALYSIS OF THE ROHINGYA CRISIS IN INDIA

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### ABSTRACT

*The international framework of refugee protection is rapidly eroding under a global wave of sovereign restrictionism. This article provides an extensive legal analysis of the Rohingya crisis in India, examining the state's deliberate shift from ad hoc humanitarianism to statutory exclusion. Through a critical evaluation of the Citizenship (Amendment) Act of 2019, the Immigration and Foreigners Act of 2025, and the newly operationalized Immigration and Foreigners (Exemption) Order of 2025, the article demonstrates how India has weaponized citizenship and codified religious discrimination. By invoking constitutional doctrines such as non-retrogression and legitimate expectation, the analysis highlights the severe constitutional violations inherent in the state's policies. Furthermore, it interrogates the Supreme Court of India's recent judicial abdication—marked by the Salimullah interim order and alarming rhetoric from the Chief Justice categorizing refugees as “intruders”, which functionally neuters the jus cogens norm of non-refoulement. Ultimately, the article argues that India's “selective humanitarianism” poses a catastrophic threat to universal human dignity and the rule of law.*

**Key Words:** - Rule of Law, Human Rights, Discrimination, and Citizenship

## INTRODUCTION

The framework of international refugee protection is fraying under a new tide of sovereign restrictionism. In 2024, the United Nations High Commissioner for Refugees recorded a first-of-its-kind document finding 123.2 million forcibly displaced individuals worldwide.<sup>1</sup> Across the globe, nations are redefining their relationships with asylum seekers, increasingly prioritizing the securitization of borders over humanitarian obligations. The situation of the Rohingya, a primarily Muslim ethnic minority from Myanmar's Rakhine State, is a prime example of manufactured statelessness within this global paradigm. More than a million Rohingya have sought refuge overseas to escape state-sponsored brutality that possesses the well-documented characteristics of genocidal intent.

India currently hosts an estimated 40,000 Rohingya refugees.<sup>2</sup> However, the way this extremely disadvantaged minority is treated reveals a significant divergence from constitutional morality. By means of a well-planned mix of judicial abdication and legislative engineering, the Indian state has established a system of "selective humanitarianism."<sup>3</sup> This approach assesses an asylum seeker's claim based on subjective, politicized religious identity criteria rather than objective persecution grounds.

## THE ARENDTIAN PARADOX AND JURIDICAL ERASURE

The Rohingya crisis embodies Hannah Arendt's philosophical concept of the "right to have rights."<sup>4</sup> According to Arendt, human rights are essentially nonexistent outside of a sovereign political community's protective framework. The Rohingya have been routinely excluded from political life after Myanmar stripped them of their citizenship. Their vulnerability is exponentially increased when they enter India since they arrive completely devoid of a recognized legal identity.

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<sup>1</sup>United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2023* 2 (UNHCR, Geneva, 2024).

<sup>2</sup>Daniel P. Sullivan and Priyali Sur, "A Lifetime in Detention: Rohingya Refugees in India", *Refugees International* (2024).

<sup>3</sup>Tutku Ayhan and Gunes Murat Tezcur, "Selective Humanitarianism in Asylum Policies: Yazidi Refugees in Germany and France" 46 *Nationalities Papers* 1 (2025).

<sup>4</sup>Hannah Arendt, *The Origins of Totalitarianism* 296 (Harcourt, Brace, Jovanovich, New York, 1951).

Under the colonial-era Foreigners Act of 1946, and its contemporary statutory successors, the state categorizes them uniformly as “illegal migrants.”<sup>5</sup> Because India is not a party to the 1951 Refugee Convention, this classification legally collapses the distinction between voluntary economic migrants and forcibly displaced victims of persecution. By depriving individuals of their “right to have rights” and making their existence a matter of state convenience, this classification criminalizes their arrival and forces them into a perpetual state of legal invisibility.

### **LEGISLATING EXCLUSION: THE CAA AND THE 2025 ARCHITECTURE**

With recent legislative changes, India’s refugee policy transitioned from ad hoc ambiguity to defined, statutory exclusion based on religion. The Citizenship (Amendment) Act (CAA) of 2019, operationalized by new regulations in 2024, offers illegal migrants from six specific religious minorities who fled Afghanistan, Bangladesh, and Pakistan an expedited route to Indian citizenship.<sup>6</sup> Importantly, the CAA specifically prohibits Muslims from entering its protective ambit and omits severely oppressed minorities from other neighboring countries, such as the Rohingya.

This legal architecture of selective humanitarianism was further entrenched by the sweeping Immigration and Foreigners Act, 2025, and its subsequent executive instrument, the Immigration and Foreigners (Exemption) Order, 2025.<sup>78</sup> Similar to the religious groups covered by the CAA, this executive order exempts certain vulnerable non-Muslim groups from passport and visa requirements, granting them immediate legal relief.<sup>9</sup>

Conversely, for those excluded by these religious criteria, the 2025 Order codifies a draconian reality. It mandates extensive biometric data collection and explicitly directs the establishment of nationwide detention camps, formalizing what was previously an ad hoc administrative practice.<sup>10</sup> These rules weaponize citizenship and create a pervasive system where Muslims are

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<sup>5</sup>The Foreigners Act, 1946 (Act No. 31 of 1946).

<sup>6</sup>The Citizenship (Amendment) Act, 2019 (Act No. 47 of 2019).

<sup>7</sup>The Immigration and Foreigners Act, 2025 (Act of 2025).

<sup>8</sup>The Immigration and Foreigners (Exemption) Order, 2025 (MHA Notification, 2025).

<sup>9</sup>Central Government notifies Immigration and Foreigners (Exemption) Order, 2025, *DD News* (Sep. 2, 2025).

<sup>10</sup>Citizens for Justice and Peace (CJP), ‘India’s New Immigration Order 2025: Consolidation or Continuity of Exclusion?’ (2025).

in constant danger of being detained, an anxiety heavily magnified by the impending threat of a nationwide National Register of Citizens (NRC) that could leave millions stateless.<sup>11</sup>

### CONSTITUTIONAL MORALITY, LEGITIMATE EXPECTATION, AND NON-RETROGRESSION

The legislative assault on the Rohingya presents a profound existential challenge to India's constitutional framework and its historical jurisprudence regarding fundamental rights. Article 21 of the Constitution, which protects life and personal liberty, applies universally to all persons within the territory of India, regardless of their citizenship.<sup>12</sup> Historically, Indian High Courts and the Supreme Court interpreted this provision dynamically to encompass the customary international law principle of *non-refoulement*, thereby protecting refugees from forced repatriation into zones of active terror and persecution.<sup>13,14</sup>

The deliberate, statutory stripping away of these protections via the 2025 legislative overhaul directly violates the constitutional “doctrine of non-retrogression.” As articulated by the Supreme Court, this doctrine dictates that the State must not take measures that deliberately lead to retrogression in the progressive enjoyment of fundamental rights.<sup>15</sup> The transition from a historically accommodating posture to a draconian regime of mass detention under the 2025 Act represents a severe and calculated backward step.<sup>16</sup>

Furthermore, this abrupt pivot violates the administrative law “doctrine of legitimate expectation.”<sup>17</sup> For decades, the Indian state's tacit acceptance of United Nations High Commissioner for Refugees (UNHCR) status determinations created a legally binding expectation that vulnerable asylum seekers holding UNHCR documentation would not be arbitrarily detained or deported without exhaustive due process.<sup>18</sup> The government's unilateral move to bypass these protections and mandate indefinite detention constitutes a profound breach

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<sup>11</sup>Uma Menon, “India's National Register of Citizens Threatens Mass Statelessness” *Princeton Journal of Public and International Affairs* (2023).

<sup>12</sup>*National Human Rights Commission v. State of Arunachal Pradesh*, AIR 1996 SC 1234.

<sup>13</sup>*Ktaer Abbas Habib Al Qutaifi v. Union of India*, 1999 Cri LJ 919 (Gujarat HC).

<sup>14</sup>*Zothansangpuii v. State of Manipur*, Civil Rule No. 981 of 1989 (Guwahati HC).

<sup>15</sup>*Navej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>16</sup>Impact Policies, “Immigration and Foreigners (Exemption) Order, 2025: Human Rights and Policy Dilemma” (2025).

<sup>17</sup>*State of M.P. v. Hazarilal*, (2008) 3 SCC 273.

<sup>18</sup>*Navjyoti Coop. Group Housing Society & Ors. v. Union of India & Ors.*, (1992) 4 SCC 477.

of this expectation, rendering the state's actions manifestly arbitrary under Article 14 of the Constitution.

## JUDICIAL ABDICATION AND THE “INTRUDER” NARRATIVE

In functional democracies, the constitutional court acts as a safeguard against executive overreach. However, recent Supreme Court jurisprudence reveals a significant systemic abandonment. In its April 2021 interim order in *Mohammad Salimullah v. Union of India*, the Supreme Court declined to stop the deportation of detained Rohingya in Jammu.<sup>19</sup> Stating that the right to reside is a right granted exclusively to citizens, the Court essentially detached the act of expulsion from the fundamental right to life, functionally neutralizing the customary international law concept of *non-refoulement* within its domestic domain.<sup>20</sup>

This degradation of jurisprudence has recently morphed into overt rhetorical animosity from the bench. During a December 2025 hearing for a habeas corpus suit (*Priyali Sur v. Union of India*) concerning the custodial disappearance of five Rohingya individuals registered with the UNHCR, the Chief Justice of India reportedly referred to the refugees as “intruders.”<sup>21</sup> The bench vigorously questioned whether individuals who cross the border illegally should be given a red-carpet welcome, putting urgent constitutional infractions aside in favor of majoritarian national security narratives.<sup>22</sup> This judicial posturing actively sanitizes ongoing human rights violations and pre-emptively forecloses the equitable application of Article 21.

## CONCLUSION

The systematic marginalization of the Rohingya in India poses a serious ethical and legal dilemma. India demonstrates a catastrophic commitment deficit to international human rights by distorting statutory definitions of citizenship and permitting its highest court to figuratively compare victims of confirmed genocide with invading intruders. The fundamental tenet of universal human dignity is fatally undermined if sovereign nations unilaterally reject customary international law, including *jus cogens* norms, and legally redefine refugees to support prolonged

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<sup>19</sup>*Mohammad Salimullah v. Union of India*, 2021 SCC OnLine SC 296.

<sup>20</sup>Gautam Bhatia, “Complicity in Genocide: The Supreme Court’s Interim Order in the Rohingya Deportation Case” *Indian Constitutional Law and Philosophy* (2021).

<sup>21</sup>“If an Intruder Comes, Do We Give Them a Red Carpet Welcome?: CJI Surya Kant on Rohingyas” *The Wire*, Dec. 3, 2025.

<sup>22</sup>“Red carpet for intruders? Supreme Court’s sharp stance on Rohingya plea questions legal basis” *Times of India*, Dec. 3, 2025.

detention and extra-legal deportations.<sup>23</sup> Maintaining the democratic and rights-affirming principles of the international legal system requires that the Rohingya be emancipated from their juridical erasure, granted shelter, and afforded equitable legal recognition.

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<sup>23</sup>Cathryn Costello and Michelle Foster, “Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test” 46 *Netherlands Yearbook of International Law* 273 (2015).