REFUGEE OR ILLEGAL MIGRANTS? INDIA'S MISSING FRAMEWORK

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ABSTRACT

India has a long history of receiving people feeling persecution, conflict and political instability. However, the country lacks a dedicated national law that comprehensively regulates refugee recognition and protection. Instead, refugees and other foreign nationals are governed through immigration legislation, executive policies and judicial decisions, creating uncertainty regarding their legal status and protection against deportation. This piece explores the distinction between refugee and illegal migrants and examines the challenges arising from the absence of a uniform refugee framework in India. It discusses Article 14 Right to Equality and Article 21 Right to Personal Life and Liberty of the Indian Constitution, which protects persons irrespective of citizenship and Article (19)(e), which grants citizens the right to reside and settle in India. Decisions such as National Human Rights Commission v. State of Arunachal Pradesh, Louis De Raedt v. Union of India highlights the relationship between constitutional rights, deportation and national security. The discussion also examines non-refoulment, the principle of protecting individuals from return to places where they face serious threats to their life and freedom. It highlights the need to distinguish irregular migration from genuine protection claims. Balancing National Security with constitutional safeguards and human dignity remains a central challenge in developing a fair and consistent refugee protection framework in India.

Key Words: - *Refugee Protection, Indian Refugee Law, Constitutional Rights, Principle of Non-Refoulement, National Security and Human Rights.*

INTRODUCTION

Two people cross the same border on the same night, both escaping from violence in their home countries. One is treated as a person who needs protection, while the other is detained as 'illegal migrant'. Why are they treated differently? Sometimes, the difference depends on religion, nationality or the government policies. India does not have a separate law that clearly defines who qualifies as refugees as often made on case-by-case basis.

This paper argues that India must protect people from being sent back to a country where they face a serious risk of persecution. Article 21 of the Indian Constitution guarantees the right to life and personal liberty to every person, not just Indian citizens. Therefore, the protection of human life should not depend entirely on whether a person has been officially recognized as a refugee. The real challenge is to find a balance between India's national security, its control over immigration and its responsibility to protect people fleeing persecution. A clear refugee law could help India achieve this balance by making decisions fairer, more consistent and more humane.

2. ABSENCE OF A COMPREHENSIVE REFUGEE LAW IN INDIA

India is neither a member of the 1951 Refugee Convention nor its 1967 protocol. It also does not have a separate law that deals specifically with refugees. Instead, foreigners are governed through the Immigration and Foreigners Act, 2025, which has replaced earlier laws such as the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920. These laws mainly focus on whether a person has entered India with valid documents, they do not properly consider why someone has left their country. As a result, a person escaping genocide or violence may face similar legal treatment to someone who has simply overstayed their visa.

In the absence of proper refugee law, India deals with different refugee groups through government policies and arrangements. For example, Tibetans and Sri Lankan Tamils have received specific forms of support, while the United Nations High Commissioner for Refugees (UNHCR) registers some asylum seekers. The Citizenship (Amendment) Act, 2019, also provides a faster route to citizenship for

certain religious minorities from three neighboring countries. However, this law covers only selected groups based on their religion and country of origin. It does not apply to all refugees and excludes groups such as the Rohingya. Therefore, refugee protection in India largely depends on government decisions rather than a clear legal right. Such decisions can change, leaving refugees uncertain about their future and the protection available to them.

3. CONSTITUTIONAL PROTECTION OF REFUGEES IN INDIA

Although India does not have a separate law for refugees, the Indian Constitution provides some protection to people who come to India seeking safety. Article 14 guarantees equality before law to "any person", while Article 21 protects the life and personal liberty of every person. Neither of these rights is limited to Indian citizens. However, Article 19(1)(e), which gives the right to reside and settle anywhere in India, is available only to citizens.

The importance of these constitutional rights can also be seen in court decisions dealing with the protection of foreigners. In *National Human Rights Commission v. State of Arunachal Pradesh*, the Supreme Court held that the government must protect the life and liberty of Chakma refugees, even though they were not Indian citizens. Similarly, in *Louis De Raedt v. Union of India*, the Court clarified that foreigners do not have the fundamental right to reside and settle in India, but they are still protected by Article 21 of the Indian Constitution which protects the life and personal liberty of every person.

The Gujarat High Court went a step further in *Ktaer Abbas Habib Al Qutaifi v. Union of India*, linking the principle of non-refoulement with Article 21 of the Indian Constitution. This principle means that a person should not be sent back to a country where they face a serious risk of persecution.

Along with Article 21, Article 14 of the Indian Constitution also plays an important role in protecting refugees from unfair treatment. It requires the government to treat people equally and ensures that differences in treatment have a reasonable basis. If the government protects certain groups of foreigners but excludes others facing similar

persecution, there must be a valid reason for this difference. Providing protection to some persecuted groups based only on their religion, while excluding others facing similar dangers, can raise questions about discrimination and arbitrary government action.

4. NATIONAL SECURITY, DEPORTATION AND THE ROHINGYA CASE

However, the protection offered by the Constitution raises an important question: do these rights protect refugees in practice, especially when the government considers them a security threat? This question becomes particularly important in the case of the Rohingya, a stateless Muslim minority who fled Myanmar and sought safety in India. The government estimates that tens of thousands of Rohingya live in India and has described them as a potential security threat.

In *Mohammad Salimullah v. Union of India*, the Supreme Court refused to stop the deportation of Rohingya refugees detained in Jammu. The Court stated that deportation must follow the procedure established by law. It also observed that the right not to be deported is connected to the right to reside and settle in India, which is available only to citizens under Article 19(1)(e).

This reasoning can be questioned for two main reasons. First, it confuses the right to remain safe from persecution with the right to settle in India. A person facing deportation to a country where they may be persecuted is not necessarily asking for the right to live permanently in India. They are asking not to be sent back to a place where their life or liberty may be at a risk. This concern falls under Article 21 of the Indian Constitution, which protects every person including foreigners, rather than right to reside and settle under Article 19(1)(e).

Second, the reasoning raises questions about what counts as a fair legal procedure. In *Maneka Gandhi v. Union of India*, the Supreme Court held that a procedure affecting personal liberty must be fair, just and reasonable. Therefore, deportation decisions should consider the risks a person may face on returning to their country.

5. BALANCING NATIONAL SECURITY WITH HUMAN RIGHTS

The Rohingya case shows the need to balance national security with human rights. India has valid concerns about border security and illegal entry, but these concerns should not mean treating every refugee as a threat. A clear refugee law could help achieve this balance through individual screening, fair criteria based on the risk of persecution, and independent review of detention and deportation decisions. Even when a person is not allowed to stay permanently in India, their risk of persecution should be considered before deportation.

Although bills proposing a separate asylum law have been introduced in Parliament, none has become law. As a result, refugee protection in India continues to depend largely on government policies and individual decisions rather than a clear and uniform framework.

6. CONCLUSION

India needs a proper Refugee Law based on Article 14 Right to Equality and Article 21 Right to Personal Life and Liberty of the Constitution and the principle of non-refoulment. Although India has the right to regulate immigration and protect its border, it must also consider the risks faced by people fleeing persecution.

At present, refugee protection largely depends on government policies and individual decisions, creating uncertainty about the rights and protection available to refugees. A clear legal framework could ensure fairer and more consistent decisions by establishing proper procedures for assessing asylum claims and reviewing deportation decisions. Refugee protection does not mean unrestricted entry or an automatic right to citizenship. It means ensuring that genuine protection claims are considered fairly while addressing legitimate security concerns. Ultimately, the question is whether India cando so while upholding constitutional values, human dignity and its humanitarian responsibility.

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