
WHERE DO THEY BELONG? THE QUESTION INDIA'S LAW STILL CAN'T ANSWER

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ABSTRACT

India has always been more inclined to show compassion towards cross-border displacement rather than to respond through codified laws. The country has been a refuge for Tibetan refugees, Sri Lankan Tamils, Afghan nationals, and most recently the Rohingya, even though it does not have a formal refugee protection regime. However, this dependence on the discretionary powers of the executive and political goodwill has, on the other hand, brought about situations where those seeking safety or stability within Indian borders face legal uncertainty, inconsistency, and vulnerability. In this paper, I analyse the structural gaps in India's refugee and immigration framework and point out that compassion, if not backed by legal clarity, is vulnerable to being broken. Currently, India does not have a statute that deals solely with refugees and, therefore, all non-citizens, including refugees, asylum seekers, and voluntary migrants, are governed under a fragmented set of laws such as the Foreigners Act, 1946, the Citizenship Act, 1955, and the Passport Act, 1967. The framework does not discriminate between forced and voluntary migration. As a result, it leaves refugees without any legal identity and mishandling of immigrants by exposing them to overlapped bureaucratic controls. The paper demonstrates that such a legal vagueness results into infringement of equal rights to different groups of people, usage of arbitrary powers by the administrative authorities, and increased vulnerability to arrest or expulsion, particularly in the case of politically controversial groups. By means of a doctrinal and policy analysis, this paper reviews the way India has been handling the issue so far and examines the tension between national security concerns on the one side and humanitarian commitments on the other. Besides, it evaluates how international refugee standards, constitutional safeguards and the internal governmental machinery of India have contributed to the development of refugee policies in India. The paper advocates for a comprehensive overhaul of the refugee legislation, either by means of a single refugee and immigration code or by

powerful statutory changes, which will unequivocally spell out legal status, rights and duties. When India discharges its responsibilities, among which rights enforcement is the most significant, it will no longer be simply responding to the needs of those who seek refuge, but will have established a principled, rights, based migration system that is a balance between sovereignty and the respect of human dignity.

Key Words: - Rural Access to Justice, Legal Aid, Constitutional Rights, Gram Nyayalayas, Justice Delivery System.

INTRODUCTION

The night Noor crossed the border, she didn't have much with her: a small bag; her children's birth certificates; a little rice tied up in cloth. Her house in Myanmar had been reduced to ash, her husband missing and her town deserted. India was never her destination; it was her only hope. Five years later, she resides in an overcrowded settlement near Delhi, her children old enough to ask questions for which she has no answers: "Are we safe here?" "Can we go to school?" "Will we ever go home?"

To India's laws, Noor is nota refugee. She's just an undocumented, unseen and unprotected foreigner. And still she is just one of thousands who have crossed borders in search of the safety that should be guaranteed by law but isn't.

India has opened its doors to many like her whether they are Tibetans, Sri Lankan Tamils, Afghans, and now Rohingya who guided by compassion more than codified law. But compassion, however noble, is fragile when it stands alone. And that's where India's refugee and immigration story begins in the gap between humanity and legality.

INDIA'S LEGAL FRAMEWORK: BETWEEN BORDERS AND BUREAUCRACY

Noor's story isn't an exception. It is echoing in camps and rented corners throughout India from Tamil refugees in Tamil Nadu to Afghan families in Delhi to Tibetan settlements of Dharamshala. The same quiet uneasiness pervades each story: What would the law say about people like them?

The answer, surprisingly, is almost nothing. India does not have a refugee-specific law. All non-citizens whether they come fleeing war or for work are governed under one colonial-era law: the

Foreigners Act, 1946. It was enacted before independence and gives the government sweeping powers to detain or deport any “foreigner.” It makes no distinction between those who choose to cross borders and those forced to flee them.

This lack of differentiation blurs a deeply humane line between immigrants and refugees. The first group arrives in pursuit of opportunity; the second, fleeing violence and yet both are processed within a single outdated legal framework in which rights depend on administrative discretion rather than codified law.

India is also not a signatory to the 1951 UN Refugee Convention and its 1967 Protocol, which determines who a refugee is, and outlines their rights. India has long argued that its tradition of hospitality makes a formal refugee law unnecessary. In reality, that leaves refugees dependent on political goodwill rather than binding law. There are a few groups such as Tibetans and Sri Lankan Tamils who have received organized help through settlements, schools and some work privileges. Others, mainly Rohingya Muslims, live under constant threat of detention or deportation, their lives hinging on shifting diplomatic winds.

Simultaneously, India’s immigration governed under the Citizenship Act, 1955, Passport Act, 1967 and Visa Regime is equally fragmented. There’s not one clear policy for residency or citizenship. Most immigration cases are handled individually, leaving students, workers, and families stuck in bureaucratic uncertainty. As a result, both refugees and immigrants live under laws that have not caught up to India’s global role. What began as a border-control framework in the 1940s now struggles to manage the human realities of movement in the 21st century. India’s legal system still treats migration whether voluntary or forced as something to be controlled, not governed with empathy and clarity.

CORE CHALLENGE: COMPASSION WITHOUT CLARITY

India’s attitude toward those who cross its borders has always depended more on compassion than codified law; a legacy of sheltering over the years; Tibetan refugees, Sri Lankan Tamils, Afghans and even Poles during World War II. But compassion, when left unstructured, can’t withstand political shifts or administrative confusion. Without formal rules, India treats refugees and immigrants differently based on their identity, origin, and the political climate. This leads to a patchwork of uneven, unpredictable rulings; generous in some cases, murky in others.

The first major challenge is legal ambiguity. Refugees do not have a formal legal status, and immigrants are subject to overlapping, confusing laws. A Tibetan refugee, a Bangladeshi worker and an Afghan student each exist under separate rules, with no assured future or rights. This confusion endangers refugees for potential deportation and prevents talented immigrants from winding up in legal status.

The second is inconsistency. And policies differ widely depending on a migrant's nationality like Tibetans and Sri Lankan Tamils are sheltered, but Rohingyas can be detained. Visa and residency rules also differ by region and sector, leaving migrants and employers unsure of compliance. Then there's the security–humanity balance. Governments worry that lenient refugee or immigration policies could be an invitation to illegal migration or represent a security threat. But in a paradoxical twist of fate, it is lack of appropriate laws that leads to misuse. Where people are forced to live in the shadows, the state has no oversight which is bad for protection as well as security.

Finally, it is further compounded by administrative fragmentation. Refugee affairs come under the Home Ministry, foreign students under Education, labour migration under External Affairs with minimum coordination. For both refugees and immigrants, this means delays, conflicting orders, and no clear authority. In short, India's border governance runs on “case-by-compassion” and “policy-by-exception.” It works only until a crisis tests it and by then, the law is already behind the human need.

THE WAY FORWARD: FROM REACTION TO REFORM

For a country that takes pride in being both compassionate and democratic, India's next move must be to translate empathy into actionable rights. Reforming the laws that govern those who cross its borders whether out of hope or desperation is not just a legal necessity, but a moral one.

The first is writing clear laws. India badly needs either one complete Refugee and Immigration Law or proper updates to fix the current mess. This law should officially define who refugees and migrants are, explain their rights and duties, and set simple, transparent rules for entering, staying, and leaving the country. Clear laws would make things predictable and protect genuine asylum seekers without risking national security.

Second, India should consider adopting global norms on refugees; there is no need to sign the 1951 UN Refugee Convention; we can still integrate its decent humanitarian principles into our domestic policies. This would enhance India's global image and match the moral leadership it has always shown in the Global South.

Third, we must have more clearly defined responsibilities within government. Currently refugee matters are divided at many ministries, incurring duplication and delays. A single coordinating body maybe under the Home Ministry or a new Refugee and Migration Commission could speed up decisions and keep things consistent.

Fourth, document and digital identity systems should be expedited and humanized Furthermore, the time it took to get a business registered or receive a passport could also be rationalized. Tying refugee registration to Aadhaar could make it easier to track movement, offer basic services and prevent misuse while continuing to give respect and space for the human dignity of the people involved, as well as protecting their data.

Fifth, there is an urgent need to overhaul India's citizenship laws and visa policies. The 2019 Citizenship Amendment Act sparked heated controversy over religion-based entry, but the bigger issue is this: There is no simple and fair path to permanent residency or citizenship in India for bona fide migrants.

Finally, India needs to understand that migration isn't a passing trend but here to stay. Climate crises, conflict and poverty will continue to push people across borders. The aim, then, should be shifting from scattered, individual responses to a compassionate rights-based framework; one that views migration not as a threat, but as part of our interconnected human story.

CONCLUSION: THE HOPE BEYOND BORDERS

When Noorsees herchildren playing outside their small shelter, she doesn't think about conventions orclauses; only about belonging. For her,and for many others like her, belonging isn't just a matter of land or language; it's about being seen by the law, counted by a country and allowed to live without fear. India has consistently been at the crossroads of compassion and principle. It has proven, from hosting strangers in the past to influencing global debates today, it has shown that empathy and strength can coexist. But compassion without clarity is fragile as it

fades with time, politics, and uncertainty. The world is calling and so must India make the correct response to rewrite its refugee and immigration laws: turning-point in fixing the imbalance in our migration law, it's not simply a matter of passing new legislation; it's about remembering who we really are as a country. A free country filled with freedom, and yet compassionate. A country that protects its borders, but never forgets the real people crossing them; fathers and mothers in search of a safer place to raise their families; hardworking men and women striving for a better life. Maybe, when that day comes, Noor's children will no longer ask where they belong because the law itself will finally have an answer.

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