

## Refugee Protection at the Crossroads: A Comparative Study of Indian and United States Legal Frameworks

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### ABSTRACT

Recent deportations in the United States (US) have caused considerable uncertainty regarding the future of refugees. The dynamics of US Refugee Laws have evolved notably in the aftermath of the September 11, 2001, terror attack. While the United States has established a robust legislative framework regarding refugees, India's legal approach has been ambivalent. India faces significant challenges in managing its refugee population, given its non-signatory status to the 1951 Refugee Convention and lack of a comprehensive domestic refugee law. These challenges include a lack of security, difficulty accessing basic amenities, limited employment opportunities and a time-consuming identification process. The distinction in legal frameworks and geopolitical positions makes a favourable comparison between the two democracies. This paper explores the legal framework governing refugee protection in the United States and India and the evolution of refugee legislation in the two nations. The discussion also reveals how far the refugee legislation in India and the US are in consonance with their international obligations. The paper adopts a doctrinal method of legal research to analyse statutory frameworks, judicial decisions, and international legal obligations governing refugee protection.

**Keywords:** Constitutional Protection, International Legal Framework, Refugee Rights, United States, India Refugee Legislation.

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### 1. INTRODUCTION

Recent high-profile deportations in the United States of America demonstrate a long-term structural shift in the refugee policies from humanitarian protection to security-driven exclusion. This shift has raised significant concern among human rights organisations. It further prompts the question of whether the United States (U.S.) refugee law will remain normatively compatible with its treaty obligations and constitutional commitments.

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By contrast, India responded to the refugee influx through ad hoc executive and judicial measures rather than a coherent legal framework, establishing a recurring pattern of selective protection and legal uncertainty.<sup>1</sup> The paper argues that the resulting ‘patchwork’ regime, when compared to the United States framework, showcases how both the democracies fall short, albeit in different ways, of the standard they claim to uphold.

## 2. HISTORICAL EVOLUTION OF REFUGEE LAWS

Indeed, the U.S ranks only Fourteenth globally when it comes to the number of refugees hosted, but its early ratifications of the ‘1951 convention’ and ‘1967 protocol’ and later the enactment of the ‘Refugee Act of 1980’, position it as a norm-producing jurisdiction whose later turn towards securitisation exerts an immense influence on global standards.

The US has been a signatory to the 1951 Refugee Convention, adopted in Geneva, Switzerland, and its 1967 Protocol.<sup>2</sup> In accordance with its commitments, it has also introduced the Refugee Act of 1980.<sup>3</sup> In the aftermath of the ‘9/11 terrorist attacks’ that shook the world, the US brought various legislative amendments in its refugee frameworks, such as the ‘USA Patriot Act’ (2001), which barred individuals with any suspected associations with such groups defined as ‘terrorist organisations’ from obtaining asylum or seeking refugee status.<sup>4</sup> And the Homeland Security Act (2002), which shifted the nation’s humanitarian approach to national security and border control, and dismantled the Immigration and Naturalisation Service (INS).<sup>5</sup>

India has a long history of hosting diverse refugee communities, despite its refusal to enact a standalone refugee law, which generates a paradoxical regulatory landscape: practice often mirrors humanitarian considerations, but the legislative vacuum entrenches discretion, minimal oversight and fragmented rights safeguards.<sup>6</sup> Since India lacks specific national legislation, there is always legal uncertainty. In the absence of any dedicated legislative text, the Indian government uses the 1951 convention and 1967 protocol selectively by allowing some groups

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<sup>1</sup> Ranabir Samaddar, *Refugees and the State: Practices of Asylum and Care in India, 1947-2000* (Sage Publications 2003)

<sup>2</sup> UNHCR, ‘States parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol’ (2015) <<http://unhcr.org/au/sites/en-au/files/legacy-pdf/3b73b0d63.pdf>> accessed 10 December 2025

<sup>3</sup> US Citizenship and Immigration Services, ‘Refugee timeline’ <<https://www.uscis.gov/about-us/our-history/stories-from-the-archives/refugee-timeline>> accessed 10 December 2025

<sup>4</sup> USA Patriot Act 2001

<sup>5</sup> Homeland Security Act 2002

<sup>6</sup> Harshit Rai and Vaibhav Dwivedi, ‘Constitutional Provision Regarding Refugee Law in India’ (2021) 4 (3) IJLMH <<https://ijlmh.com/paper/constitutional-provision-regarding-refugee-law-in-india>> accessed 10 December 2025

of refugees to enter its territorial area while rejecting others.<sup>7</sup> This reliance on general immigration law has allowed the executive to tailor responses to political contingencies. Still, it has simultaneously undermined legal certainty, data management, and any principled distinction between refugees and other non-citizens.

In this regard, the judiciary plays an important role in interpreting refugee protection laws through its judgments. A landmark judgment in relation to refugees is ‘Ktaer Abbas Habib Al Qutaifi and Ors. Vs. Union of India (UOI) and Ors.’<sup>8</sup> In this case, it was held that the state government has the power to deport or relocate foreign nationals residing illegally in India, and that the state endorsed Non-Refoulement. Another landmark case in this regard is *Suhas Chakma v. Union of India and Ors.*<sup>9</sup> In this case, K.V. Vishwanathan held that prisoners, regardless of nationality, should be treated well in prison and that legal aid is their fundamental right under Article 21 of the Constitution of India, which guarantees the right to life and personal liberty.

### 3. NATIONAL REFUGEE GOVERNANCE: INDIA AND THE UNITED STATES IN CONTRAST

In the U.S., documents such as Form I-94,<sup>10</sup> Access to a Social Security Number (SSN) provides a formalised route to employment and social welfare protection. K-12 education had also been made free and compulsory for refugee children in *Plyler v. Doe* (1982).<sup>11</sup> These status-conferring mechanisms reveal that, despite security-driven admission policies, the post-admission structure remains normatively aligned with integration and not containment.

The United States has a specialised framework, administered by the ‘U.S. Citizenship and Immigration Services (USCIS)’, that governs asylum policy through a formal asylum process. It screens refugees and, through interviews, determines whether the individual has a credible fear of being harmed in their country of origin on any basis, such as nationality, race, religion, or other characteristic, and whether the person is eligible for asylum through an exhaustive process.<sup>12</sup> Once granted refugee status, people receive assistance from resettlement agencies to be settled and integrated into society.

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<sup>7</sup> Convention relating to the Status of Refugees 1951

<sup>8</sup> *Ktaer Abbas Habib Al Qutaifi v Union of India* Cr.L.J. 919

<sup>9</sup> *Suhas Chakma v Union of India* SCC Online SC 3031

<sup>10</sup> US Citizenship and Immigration Services, ‘Form I-94, Arrival/Departure Record: Information for completing USCIS forms’ <<https://www.uscis.gov/forms/all-forms/form-i-94-arrivaldeparture-record-information-for-completing-uscis-forms>> accessed 10 December 2025

<sup>11</sup> *Plyler v Doe* 457 U.S. 202 (1982)

<sup>12</sup> US Citizenship and Immigration Services, ‘Asylum’ <<https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum>> accessed 10 December 2025

In India, the lack of a legal status distinct from ‘foreigner’ structurally deprives refugees of stable access to education, healthcare and authorised employment. In most instances, the state defends its restrictive policies on refugees by citing the constraints of administrative capabilities and social resources. Although these assertions are made as objective, fact-based issues, they often act as an excuse to make discretionary decisions and with that, the government has the capacity to restrict refugee protection instead of having a coherent, rights-driven allocation process. The other reason is that India has no formal process of asylum, besides the fact that there is no formal legislation governing the number of refugees that are being allowed into its country, and as a result, many refugees are left in a state of legal uncertainty. The bifurcated registration system, domestic registration of Sri Lankan Tamils and Tibetans and UNHCR registration of all others, creates a two-level system of protection that gives people in fundamentally different situations significantly varying levels of state responsibility. This institutional fragmentation affects both equality and exposes the similarly placed refugees to different administrative regimes, and it also affects the ability of India to develop a consistent national asylum policy in accordance with the constitutional values and international standards, as well as provides predictable and rights-based protections.

Although every individual who doesn’t hold Indian citizenship is considered a ‘Foreigner’ under Indian law, there is an important legal distinction between a foreigner and a refugee. A foreigner broadly refers to any person who is not a citizen of the country and whose entry and stay are governed by general immigration laws. A refugee, however, is a specific category of non-citizen who is compelled to leave their country of origin owing to a well-founded fear of persecution based on factors such as race, religion, nationality, political opinion, or membership in a particular social group.<sup>13</sup> This difference is an essential aspect of the situation, and refugees need protection-driven legal systems instead of the usual regulatory tools that are used towards other groups of foreigners.

#### **4. INDIA’S DUALIST APPROACH VERSUS US TREATY COMMITMENTS**

The Geneva Convention of 1951 is termed a milestone in the history of refugee law, as it established the framework and guidelines that highlight international human rights. This was

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<sup>13</sup> Convention Relating to the Status of Refugees 1951, art 1A(2)

succeeded by the 1967 Protocol, which removed the geographical and time restrictions of the original convention.

The U.S formally committed itself to the 1957 convention and protocol of 1967. India, on the contrary, takes a dual approach, which is that of partial convergence to international norms, even though it is not a ratifier of the core instruments. This divergence is not symbolic; it shapes the justiciability of international norms in the domestic courts and conditions the degree to which refugees may rely on treaty-derived rights against the state.<sup>14</sup>

Under the 1951 Refugee Convention, states that have ratified it may not discriminate against any individual or group of refugees.<sup>15</sup> Moreover, there are strict regulations governing the principle of non-refoulement, which acts as a barrier to the forced eviction of refugees by any state. While the US has consistently opted for the Refugee Convention, India has undergone a complex evolution. If we investigate the history of refugee protection in India, then we will come across several cases where India has welcomed refugees and granted permanent asylum to Tibetan refugees after the 1959 Tibetan rebellion and to Sri Lankan Tamil refugees after the Sri Lankan civil war. Conversely, the Rohingya refugees have been treated in a much more restrictive way over the last couple of years, and have even resorted to deportation measures. These instances demonstrate that the protection of refugees in India has been greatly at the mercy of the executive as opposed to a consistent statutory system.

A major difference between India's approach to Rohingya refugees and Tibetan exiles unveils how, in the absence of binding treaty obligations or a comprehensive national legal statute, refugee policy is animated less by rights-based commitments and more by geopolitical calculus.<sup>16</sup> Such selectivity highlights structural weaknesses of relying on the so-called soft constitutional values and non-binding international standards, which do not have the legal force to secure stable protection of refugees.

Since India does not have any particular laws that regulate refugee protection, the role of the judiciary is significant in offering any relief to refugees through judicial activism. This has been expressed throughout the lines of a number of Supreme Court and High Court rulings that have attempted to safeguard the treatment and rights of refugees. This was demonstrated in a

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<sup>14</sup> Pooja, 'India's refugee policy' (*Indian National Bar Association*)

<<https://www.indianbarassociation.org/indias-refugee-policy>> accessed 10 December 2025

<sup>15</sup> Convention Relating to the Status of Refugees 1951, art 3

<sup>16</sup> Amnesty International, 'India: Stop unlawful deportations and protect Rohingya refugees' (19 June 2025)

<<https://www.amnesty.org/en/latest/news/2025/06/india-stop-unlawful-deportations-and-protect-rohingya-refugees>> accessed 10 December 2025

case in which the Supreme Court rescued the lives of Chakma refugees who had been displaced in force in *National Human Rights Commission v State of Arunachal Pradesh*. It stressed that the state was to guard the life and liberty of all human beings within its territory. Similarly, in *Ktaer Abbas Habib Al Qutaifi v Union of India*, the Gujarat High Court accepted the concept of non-refoulement as a principle encompassed in the right to life under Article 21 of the Constitution of India. These judicial interventions demonstrate how Indian courts have relied on constitutional guarantees and international human rights principles to extend limited protection to refugees despite the absence of a comprehensive statutory framework. The Indian Constitution, through Article 21, guarantees certain fundamental rights to foreigners, including the right to life and personal liberty.

## 5. CURRENT POLICY SHIFTS AND CONTESTATIONS

Executive Order 13769 and the admission trends that followed show how contemporary U.S. refugee policy operationalises security concerns through radically coded logics, extending preferential treatment to some groups while disproportionately targeting others for suspicion.<sup>17</sup> This, in turn, raises a deeper constitutional inquiry: whether these forms of differentiated treatment are compatible with domestic equal protection principles and the non-discrimination obligations that bind the state under international law.<sup>18</sup>

In recent years, foreign students and visa holders entering the United States have also faced heightened immigration scrutiny at ports of entry. For instance, the implementation of Executive Order 13769<sup>19</sup> In 2017, the “travel ban” introduced stricter screening procedures for nationals of certain countries and created uncertainty for many international students and scholars seeking entry into the United States. These changes have caused great fear among international students, whose academic and career opportunities are tied to the validity of their immigration status.

Moreover, in the scenario of India, where the fast-track citizenship has been extended to only some of the non-Muslim communities in the neighbouring states, this has been highly criticised. The CAA brings religion into the definition of nationality in India, which is a sharp

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<sup>17</sup> Donald J. Trump, ‘Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States’ (*The White House*, 27 January 2017) <<https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states>> accessed 10 December 2025

<sup>18</sup> Jonathan Blitzer, ‘Trump Makes America’s Refugee Program a Tool of White Racial Grievance’ (*The New Yorker*, 9 June 2025) <<https://www.newyorker.com/magazine/2025/06/09/trump-makes-americas-refugee-program-a-tool-of-white-racial-grievance>> accessed 10 December 2025

<sup>19</sup> Protecting the Nation From Foreign Terrorist Entry Into the United States 2017

contrast to previous secularism. Read together with the waywardness of an overarching refugee law, such a design creates a chain of deservingness that is uncomfortable with constitutional secularism and with the supposedly non-discriminatory rationale of the 1951 convention.

Moreover, even after CAA implementation, India lacks various security-driven narratives, as it is still unable to provide basic amenities to its refugees.

## 6. NORMATIVE AND INSTITUTIONAL GAPS IN US REFUGEE POLICY

The contemporary U.S refugee system hinges heavily on pre-emptive security screening, a framework that is applied unevenly and tends to burden racialised applicants. Recalibrating the system meaningfully means recognising that security and humanitarian duties can reinforce one another rather than pull in opposite directions. This would require establishing non-discrimination, proportionality, and individual risk assessment as legally enforceable safeguards against unbounded executive authority.<sup>20</sup>

The ‘International Committee of the Red Cross’ (ICRC) lays out comprehensive regulations regarding the same humanitarian approach that the US currently lacks.<sup>21</sup> A wholesale transplantation of the EU model is neither required nor desirable; however, U.S. law could incorporate specific components, including common reception guarantees and uniform procedural protections, to mitigate arbitrary inconsistencies in refugee treatment. In the same vein, recentring the 1951 convention in U.S. adjudication would entail using its non-refoulement and procedural fairness norms as authoritative interpretive standards against which the legality of restrictive federal actions must be assessed.

The focus of refugee policies of the US shall be on improving the living standards of refugees and their integration into American society. Also, discrimination in the asylum-granting stages based on race shall be addressed and strictly prohibited. Any such act shall be penalised, and the concerned officer shall undergo a thorough enquiry to maintain strict enforcement of equal and fair asylum granting.

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<sup>20</sup> UNHCR India, ‘Refugee protection: A case for a balance between national security & humanitarian concerns’ (UNHCR, 4 February 2024) <<https://www.unhcr.org/in/news/speeches-and-statements/refugee-protection-case-balance-between-national-security-humanitarian>> accessed 26 June 2025

<sup>21</sup> International Committee of the Red Cross, ‘ICRC brings together experts to explore how upholding rules of war can help facilitate peace’ (20 March 2025) <<https://www.icrc.org/en/news-release/icrc-brings-together-experts-explore-how-upholding-rules-war-can-help-facilitate-peace>> accessed 26 June 2025

## 7. TOWARDS A COHERENT REFUGEE REGIME IN INDIA

The harmonisation of the Foreigners Act, Passport Act, and many other administrative tools into one, consolidated statute on refugees would do much more than the administrative tidying up. It would radically change the way Indian refugees are governed to an alternative system based on rights-based legality rather than one built on executive discretion. An organized legal framework would also define who is a refugee, articulate their rights and procedural protections and have a simple process to determine status, and appeal and periodic review that will also assist us in precise registration, data-based supervision, and inter-agency coordination to ensure that protection of refugees operates under a consistent legal framework, rather than under a pair of control lines of executive orders.

Moreover, the definition of a refugee under the 1951 Refugee Convention primarily focuses on individuals who are compelled to flee their country because of a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group.<sup>22</sup> As a result, persons fleeing purely economic hardship or structural poverty generally fall outside the Convention's legal protection framework. This limitation has been widely discussed in refugee law scholarship, where scholars have argued that the Convention's definition reflects the historical and political circumstances of the post-Second World War period rather than the broader realities of contemporary displacement.<sup>23</sup> Consequently, many individuals who migrate due to severe economic vulnerability or environmental and structural pressures are not formally recognised as refugees under international law. Furthermore, the living conditions of refugees vary significantly across jurisdictions, and both developed and developing countries have faced criticism regarding the adequacy of protection and integration mechanisms available to refugee populations.

In principle, India can, in fact, make differentiations between groups of refugees, such as based on some differences in protection requirements, or expected length of residence, when these distinctions are grounded in clear statutory norms, and when they are open to strong judicial review. Selective incorporation of the 1951 convention, adjusted to national circumstances, would assist in balancing the sovereignty issue with a floor of protection, which is minimal and

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<sup>22</sup> Convention Relating to the Status of Refugees 1951, art 1A(2)

<sup>23</sup> James C Hathaway, *The Rights of Refugees under International Law* (2nd edn, Cambridge University Press 2021) 73-75; Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007)

enforceable. It will also demonstrate that India adheres to global regulations, which aligns with Article 51A of the Indian Constitution.

Furthermore, India should consider involving more of the civil society organisations and non-governmental organisations (NGOs) in the management of refugees. These organisations significantly contribute to humanitarian activities, conditional services, and community assistance to displaced people, such as the provision of shelter and welfare. They also provide access to education and development opportunities to the refugee children. In addition, the majority of NGOs have found themselves in the legal aid services and advocacy services, especially in India, where no national law exists to cover refugees comprehensively.

## **8. CONCLUDING REFLECTIONS: CONSTITUTIONAL VALUES AND THE FUTURE OF REFUGEE PROTECTION**

“Eventually, the way a country treats its refugees is an exposition of its constitutional values”. This analysis shows that the USA, despite having refugee laws and adherence to several international rules and regulations, still faces complex challenges in regulating refugees within its territory. While the USA tried to regulate refugees through its own national legislation, the same could not be proved to be very effective. However, with the evolving global dynamics, Refugees’ concerns will increase soon. Thus, the USA should give greater policy attention to its refugee laws and reform them in a manner that enables the protection and accommodation of individuals fleeing persecution in their home countries.

Finally, the comparative analysis shows that both the United States and India have much in common regarding their structural challenges in developing coherent refugee protection regimes. Although the United States has a clear legislative system, recent policy changes have been more oriented toward security issues than to humanitarian protection. India, by contrast, still relies on its fragmented system of executive discretion and judicial intervention despite the existence of a national refugee law.

These shortcomings demonstrate that the two jurisdictions should strengthen their systems for protecting refugees through clear legal guidelines, enhanced institutional responsibility, and policies grounded in constitutional and international human rights provisions. In the case of India, this would mean adopting an organised, statutory approach to recognise the rights of refugees and to strike a balance between acceptable state interests. In the United States, the core of the reform would be to ensure that security considerations do not compromise the humanitarian obligations inherent in international refugee law.

Finally, the protection of refugees is not merely a temporary humanitarian measure but a regular legal obligation grounded in the rule of law and the dignity of human beings. Not only would a rights-based and predictable framework enhance the protection of displaced persons, but both democracies would be better placed to contribute more credibly to the emerging global regime for the protection of refugees.

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