

NEED FOR A REFUGEE LAW IN INDIA: A CRITICAL ANALYSIS

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BEST CITATION – R. RAMPRAKASH & SREE LAKSHMI.B, NEED FOR A REFUGEE LAW IN INDIA: A CRITICAL ANALYSIS, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (7) OF 2026, PG. 771-772, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

India has historically been a major host to refugees, offering shelter to diverse populations fleeing persecution and conflict. Despite this humanitarian tradition, the absence of a dedicated refugee law has resulted in an inconsistent and discretionary framework governed primarily by the Foreigners Act, 1946. This paper critically examines the legal vacuum in India's refugee protection regime, the role of constitutional provisions and judiciary, and the necessity for a comprehensive statutory framework. It argues that a codified refugee law is essential to ensure uniformity, protect human rights, and balance national security with humanitarian obligations.

Keywords: Refugee Law, India, Non-Refoulement, Human Rights, Foreigners Act, Article 21

1. Introduction

Refugees constitute one of the most vulnerable groups globally, often forced to flee their home countries due to persecution. India hosts a significant refugee population including Tibetans, Sri Lankan Tamils, Rohingyas, and Afghans.

However, India lacks a specific legal framework defining and protecting refugees. They are treated under general laws such as the Foreigners Act, 1946, leading to legal ambiguity and risks like detention and deportation.

2. Legal Framework and Existing Gaps India's refugee management is governed by:

- The Foreigners Act, 1946
- The Registration of Foreigners Act, 1939
- Articles 14 and 21 of the Constitution

These laws do not distinguish refugees from illegal migrants, leading to inconsistency and discretionary decisions.

3. Role of the Judiciary

The judiciary has interpreted Article 21 to protect refugees, ensuring protection against arbitrary deportation and recognizing non-refoulement in some cases.

4. Research Problem and Objectives

The absence of a uniform refugee law leads to inconsistent protection.

Objectives:

- Analyze inadequacy of laws
- Examine constitutional safeguards
- Evaluate international standards
- Highlight need for refugee law

5. Research Methodology

Doctrinal and analytical approach using statutes, case law, and international conventions.

6. Key Issues

- No legal definition
- Ad hoc policies
- Risk of refoulement
- Limited access to rights
- Security concerns

7. International Perspective

The 1951 Refugee Convention outlines key protections like non-refoulement and asylum rights.

8. Need for Law

- Legal clarity
- Human rights protection
- Prevent arbitrariness
- Improve security
- Administrative efficiency
- Global credibility

9. Findings

- Policy is inconsistent
- Laws are inadequate
- Judiciary gives limited relief

10. Conclusion

India needs a comprehensive refugee law to ensure fairness, protection, and efficiency.

Suggestions:

- Enact refugee law
- Create RSD procedure
- Include non-refoulement
- Strengthen global cooperation

