

## **MIGRATION AND ASYLUM IN INDIA: LEGAL FRAMEWORKS AND CASE STUDIES ON THE ROHINGYAS**

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### **Abstract**

Given India's geographic location, historical connections, and complex cultural fabric, migration and asylum have historically played a significant role in the country's sociopolitical environment. India has historically offered sanctuary to a number of groups escaping persecution, despite not having joined the 1951 Refugee Convention or its 1967 Protocol. Ad hoc policies, court interventions, and international rules have become necessary due to the lack of a specific national refugee statute. This legal ambiguity frequently results in disparities in how different refugee groups are treated. One notable example of an ethnic group seeking asylum in India nowadays is the Rohingyas, who are from Myanmar. Since the 2010s, a large number of Rohingyas have fled to India due to the harsh persecution they face in their homeland. But their presence has spurred discussions about regional geopolitics, humanitarian responsibilities, and national security. The UNHCR has provided interim relief to certain Rohingya communities, while the Foreigners Act of 1946 threatens to detain and expel others. Citing national security concerns, the Indian government has defended its actions by claiming that unauthorized migrants could be dangerous. India's strategy toward the Rohingyas has been significantly shaped by judicial rulings. The Supreme Court has struck a compromise between international commitments, such as the principle of non-refoulement, which forbids sending refugees back to areas where their lives or freedom are in danger, and the state's security concerns. However, the Court's decisions have allowed room for interpretation, which reflects the larger conflicts in India's system of refugee governance.



Problems with regional cooperation are also brought to light by the Rohingya problem. India's position has frequently been compared to that of Bangladesh, which is home to a far larger and more vulnerable Rohingya minority. This discrepancy emphasizes the necessity of cooperative systems in South Asia to successfully handle refugee crises. As a result, the Rohingyas' situation highlights how urgently India needs a thorough legal framework for refugees. Clear rules and a regional approach to migration regulation are necessary to strike a balance between humanitarian commitments and national security. India's longstanding asylum customs must change to meet contemporary issues with fair and uniform policies.

### **Keywords**

Rohingyas, India, Refugee Law, National Security, Non-refoulement.

### **Resumo**

Dada a localização geográfica, as ligações históricas e o complexo tecido cultural da Índia, a migração e o asilo têm desempenhado, ao longo da história, um papel significativo no ambiente sociopolítico do país. A Índia tem historicamente oferecido refúgio a vários grupos que fogem da perseguição, apesar de não ter aderido à Convenção sobre os Refugiados de 1951 nem ao seu Protocolo de 1967. Políticas ad hoc, intervenções judiciais e normas internacionais tornaram-se necessárias devido à ausência de uma legislação nacional específica em matéria de refugiados. Esta ambiguidade jurídica resulta frequentemente em disparidades na forma como os diferentes grupos de refugiados são tratados. Um exemplo notável de um grupo étnico que procura asilo na Índia atualmente são os rohingyas, originários de Mianmar. Desde a década de 2010, um grande número de rohingyas fugiu para a Índia devido à perseguição severa que enfrentam na sua terra natal. Mas a sua presença suscitou discussões sobre geopolítica regional, responsabilidades humanitárias e segurança nacional. O ACNUR prestou ajuda provisória a certas comunidades rohingya, enquanto a Lei dos Estrangeiros de 1946 ameaça deter e expulsar outras. Citando preocupações de segurança nacional, o governo indiano defendeu as suas ações alegando que os migrantes não autorizados poderiam ser perigosos. A estratégia da Índia em relação aos rohingyas foi significativamente moldada por decisões judiciais. O Supremo Tribunal chegou a um compromisso entre compromissos internacionais, como o princípio da não repulsão, que proíbe o envio de refugiados de volta a áreas onde as suas vidas ou liberdade estão em perigo, e as preocupações de segurança do Estado. No entanto, as decisões do Tribunal deixaram margem para interpretação, o que reflete os conflitos mais amplos no sistema indiano de gestão de refugiados. Os problemas com a cooperação regional também são trazidos à luz pela questão dos rohingya. A posição da Índia tem sido frequentemente comparada à do Bangladesh, que acolhe uma minoria rohingya muito maior e mais vulnerável. Esta discrepância salienta a necessidade de sistemas de cooperação no Sul da Ásia para gerir com sucesso as crises de refugiados. Consequentemente, a situação dos rohingya destaca a urgência com que a Índia necessita de um quadro jurídico abrangente para os refugiados. São necessárias regras claras e uma abordagem regional à regulamentação da migração para alcançar um equilíbrio entre os compromissos humanitários e a segurança nacional. Os costumes de asilo de longa data da Índia devem mudar para responder às questões contemporâneas com políticas justas e uniformes.

### **Palavras-chave**

Rohingya, Índia, Direito dos Refugiados, Segurança Nacional, Não Repulsão.



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## **MIGRATION AND ASYLUM IN INDIA: LEGAL FRAMEWORKS AND CASE STUDIES ON THE ROHINGYAS**

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### **Introduction**

Migration and asylum seeking has become characteristic of the twenty-first century, transforming national policies, International relations, and also human rights discourse world over. India-being at the intersection of South and Southeast Asia and traditionally marked by the cultural diversity and mobile populations--plays a peculiar but contradictory role in it. The country has a long history of accepting populations displaced domestically even though it does not have a specific domestic asylum law or even declare itself as a signatory to the 1951 Refugee Convention or the 1967 Protocol. Past examples include Tibetans in 1950s or Sri Lankan Tamils in 1980s. This regulatory uncertainty makes the legal status of asylum seekers and refugees very difficult because now their safety is dependent on the executive will, legal intervention by the courts, and the emerging principles in a constitution that is highly dynamic. The flows of Rohingya, which have been occurring in India over the last ten years as the result of a planned persecution and genocide in Myanmar Rakhine State, have placed such tensions in the limelight<sup>1</sup>. Their presence makes the Indian legal systems of migration and humanitarian defense challenges to their own strength, scope, and flexibility in an age of securitization, geopolitical rivalry, and the growing worry about demographic change.

The Rohingya people, (defined by UN as one of the most persecuted minority in the world) have turned to seek shelter in a number of South Asian and Southeast Asian states. A comparatively low percentage of this population are found in India, but the political and legal controversies concerning their status have been brutally high<sup>2</sup>. Even though international organisations like UNHCR have issued refugee cards and tried to offer simple protection measures, the Indian government has often described the Rohingyas as unauthorized migrants, and this has raised concern about their security

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<sup>1</sup> National Human Rights Commission, India, Report on Refugee and Human Rights Issues (2022), available at <https://nhrc.nic.in>

<sup>2</sup> United Nations High Commissioner for Refugees, India Fact Sheet (July 2023), <https://www.unhcr.org/in>.



and demographic issues and extremism penetration. These competing stories highlight a much bigger dilemma, and that then again is how, by what means will India balance its constitutional responsibilities towards human dignity, equality and non-refoulements, and its sovereign capacity to regulate boundaries, provide internal security and control undocumented migration?<sup>3</sup> The judicial reactions especially of the Supreme Court and other High Courts show that efforts have been made to strike a balance between such imperatives, but the results still show inconsistencies, gaps and strains in the existing legal regime.

It is in this context that in the given background, the main purpose of this study is to critically examine the legal frameworks of the Indian migration and asylum policies in reference to the Rohingya case. The paper attempts to transcend the normative debates in an attempt to offer a grounded perspective of how administrative rulings, legislative acts, constitutional values, and interpretations by the judiciary all work together in creating the lived experiences of asylum seekers<sup>4</sup>. A lack of a specific refugee law in India provokes the necessity to turn to such tools as the Foreigners Act, 1946; the Citizenship Act, 1955; the Passports Act, 1967; and the dynamic executive policy. These systems, consisting mostly of the migration management functions, tend to conflict with the humanitarian duties and international human rights standards. Simultaneously, the Indian courts have made judgments periodically to affirm the applicability of Article 21 of the Constitution in respect of the entire population of the country, including non-citizens, an extension of the havens of protection offered to asylum seekers. The review of the interactions between these legal elements in practice whether together or competing is also vital to the current study<sup>5</sup>.

To direct this enquiry, the article answers some of the research questions that have been posed by the Rohingya experience as one of the ways to tackle the migration governance in India. The first one, in what ways does the current legal framework of India govern the entry, permanence and departure of asylum seekers without any specific refugee law?

Second, what constitutional safeguards, especially in Article 14, Article 21, and Article 51(c), have been enrolled in court rulings pertaining to the Rohingyas and how have the courts applied such concepts of non-refoul, equality, and procedural fairness to the proceedings<sup>6</sup>? Third, in what ways did executive policies such as identity verification to orders of detention and deportation affect the rights and vulnerabilities of Rohingya refugees in India, and their social-economic status? Fourth, what are the lessons that can be learned in relation to case studies among other Indian states where courts, administrative agencies, and local police have resorted to the application of the law in different ways and in some occasions contradictory? Lastly, is the response of India regarding Rohingya asylum seekers compliant against global practice and international protection indicators and norms of assistance?<sup>7</sup>

<sup>3</sup> B.S. Chimni, Status of Refugees in India: Legal Frameworks and Policy, 23 Refugee Watch 19, 23–25 (2017).

<sup>4</sup> M.P. Singh, Rights of Non-Citizens Under Indian Constitution, 58 J. Indian L. Inst. 34, 45 (2016).

<sup>5</sup> S.K. Das, Rohingyas in India: The Stateless Crisis, in Refugees and Asylum Seekers in South Asia 105, 110 (Oxford Univ. Press 2020)

<sup>6</sup> National Human Rights Commission, India, Report on Refugee and Human Rights Issues (2022), available at <https://nhrc.nic.in>.

<sup>7</sup> United Nations High Commissioner for Refugees, India Fact Sheet (July 2023), <https://www.unhcr.org/in>.



The study has four objectives in accordance with these research questions. The first task is to provide a statutory and constitutionalist resources map of the current instantiations of asylum seekers in India to demonstrate areas of harmony, underdevelopment, and contradiction<sup>8</sup>. The article has brought together legislative provisions and administrative rules and synthesized them with the aim of giving a full overview of the legal environment in which asylum claims are either approved or denied<sup>9</sup>. The second goal is to assess the judiciary in forming the norms of protection of refugees by means of landmark decisions and interim orders, especially in the situation concerning the Rohingyas<sup>10</sup>. This involves evaluation of the manner in which courts weigh humanitarianism against the issue of security and the sovereignty of India. The third goal is to examine particular case-studies of the Rohingya communities throughout India i.e. in Jammu, Hyderabad and Delhi so as to determine the practical implications of executive decisions on the ground<sup>11</sup>. This micro analysis allows one to address the local variations, administrative issues, and discrimination and protection patterns<sup>12</sup>. The fourth aim is to position the Indian legal and policy strategies in a relative international setting, to create the gap, opportunity, and avenue of reform within the international best framework and human rights anticipations<sup>13</sup>.

In general, the article finds that India managed the Rohingya problem to show a complicated system of constitutional morality, state security concerns, geopolitics strategy, and administrative expediency<sup>14</sup>. Although the judicial players have been involved in the defence of the fundamental rights, the lack of an effective asylum system has led to inconsistency and legal confusion<sup>15</sup>. The study will aim to make an addition to the existing discussions on whether India needs a specific refugee law, what international norms can be integrated into domestic law and what kinds of protection are possible and even needed within the dynamic global migration process by foregrounding case studies and doctrinal analysis<sup>16</sup>.

## Legal Frameworks Governing Migration and Asylum in India

Migration and asylum are complex issues governed by a mixture of domestic laws, policies, and international agreements. In India, despite being a prominent destination and transit country for migrants and asylum seekers due to its geographical, historical, and cultural factors, the legal framework is often criticized for its lack of coherence and dedicated asylum legislation<sup>17,18</sup>. This article examines the various laws and regulations

<sup>8</sup> B.S. Chimni, Status of Refugees in India: Legal Frameworks and Policy, 23 Refugee Watch 19, 23–25 (2017)

<sup>9</sup> M.P. Singh, Rights of Non-Citizens Under Indian Constitution, 58 J. Indian L. Inst. 34, 45 (2016)

<sup>10</sup> S.K. Das, Rohingyas in India: The Stateless Crisis, in Refugees and Asylum Seekers in South Asia 105, 110 (Oxford Univ. Press 2020)

<sup>11</sup> Gaurav Jain v. Union of India, (1997) 3 SCC 308 (India)

<sup>12</sup> Al Jazeera, India and the Rohingya: A Legal Dilemma (Jan. 15, 2022), <https://www.aljazeera.com>

<sup>13</sup> Priya Pillai, India's Refugee Policy: Protection or Exclusion?, 29 Hum. Rts. Watch 14, 16 (2021)

<sup>14</sup> Supreme Court of India, Order on Deportation of Rohingyas, W.P. (CrI.) No. 764 of 2021 (India)

<sup>15</sup> South Asia Refugee Rights Initiative, Rohingya Refugees in India: Legal Challenges, Policy Brief No. 12, at 5 (2023)

<sup>16</sup> Ministry of Home Affairs, Advisory on Illegal Immigration, F. No. 25022/49/2021-F.III, at 3 (India)

<sup>17</sup> Amnesty International, The Rohingya: Persecuted in Myanmar, Forgotten in India, 18 Refugee Rep. 21, 25 (2019)

<sup>18</sup> International Covenant on Civil and Political Rights, art. 13, Dec. 19, 1966, 999 U.N.T.S. 171



governing migration and asylum in India, providing a detailed analysis of the challenges and opportunities they present.

## Migration Laws in India

India's approach to migration is primarily governed by laws focusing on the regulation of entry, stay, and exit of foreign nationals. The Foreigners Act, 1946, serves as the cornerstone for the governance of foreign nationals in India<sup>19</sup>. It grants the government broad powers to regulate the entry, presence, and exit of foreigners<sup>20</sup>. Under this law, individuals are required to have valid travel documents, such as passports and visas, to enter India. The Act empowers authorities to detain and deport individuals found in violation of its provisions. The Passport (Entry into India) Act, 1920, complements the Foreigners Act by mandating that every foreign national entering India must possess a valid passport and a visa. It gives the government authority to impose restrictions on entry and impose penalties for unauthorized entry.

The Immigration (Carriers' Liability) Act, 2000, places the responsibility on carriers such as airlines and shipping companies to ensure that passengers traveling to India possess valid documents. This law aims to curb illegal immigration by penalizing carriers that transport individuals without proper documentation<sup>21</sup>.

## Citizenship and Naturalization

India's citizenship rules and migration governance are closely related. The legal foundation for obtaining and losing Indian citizenship is provided by the Citizenship Act of 1955 and the Indian Constitution. Citizenship can be obtained through naturalization, registration, descent, or birth. Discussions and disputes have been generated by changes to the Citizenship Act, such as the Citizenship (Amendment) Act, 2019 (CAA). For non-Muslim migrants from Afghanistan, Bangladesh, and Pakistan who arrived in India prior to December 31, 2014, the CAA aims to expedite their citizenship<sup>22</sup>. Critics contend that the Act damages India's secular fabric and discriminates against people based on their religion.

## Absence of a Dedicated Asylum Law

Asylum, as opposed to migration, is a particular area of international law that protects those who are escaping persecution. The 1951 Refugee Convention and its 1967 Protocol, which create the global framework for refugee protection, are not ratified by India. As a result, India lacks a specific national asylum law.

The Foreigners Act, 1946, which does not differentiate between refugees and other foreign nationals, governs refugees in India. Since refugees are governed by the same

<sup>19</sup> UNHCR, Global Trends: Forced Displacement in 2022, at 34, <https://www.unhcr.org/globaltrends>

<sup>20</sup> India Ministry of External Affairs, Statement on Rohingya Issue (Apr. 5, 2022), <https://mea.gov.in>

<sup>21</sup> R. Satheesh, Examining India's Non-Signatory Status to the Refugee Convention, 45 Econ. & Pol. Wkly. 41, 44 (2021)

<sup>22</sup> Singh, India and Refugee Protection: A Critical Analysis, 7 Asian J. Int'l L. 245, 260 (2023)



laws as other undocumented migrants, they frequently lack a unique legal status, making them susceptible to imprisonment and deportation<sup>23</sup>. The government makes ad hoc decisions regarding asylum, frequently impacted by diplomatic and geopolitical factors.

India has long granted sanctuary to sizable populations, such as Rohingyas, Sri Lankan Tamils, and Tibetan refugees, despite the lack of particular laws. To register asylum seekers and ascertain their refugee status, the government typically works with the United Nations High Commissioner for Refugees (UNHCR), which has operations in India. The UNHCR's mandate is constrained, nevertheless, and it does not apply consistently to all refugee groups.

### Regional and Bilateral Agreements

India's legal framework for migration also involves regional and bilateral agreements. For instance, the Indo-Nepal Treaty of Peace and Friendship, 1950, allows citizens of India and Nepal to move freely across the border without visas or passports<sup>24</sup>. Similarly, agreements with Bangladesh aim to address cross-border migration issues, such as the deportation of illegal immigrants and cooperation in tackling human trafficking<sup>25</sup>.

### International Obligations

India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, which are the cornerstone international instruments for refugee protection. These conventions establish key principles, including the definition of a refugee and the obligation of non-refoulement—prohibiting the return of individuals to places where they face persecution<sup>26</sup>. Although India is not legally bound by these instruments, it is committed to the principle of non-refoulement under customary international law, which it is obligated to uphold as a member of the international community.

Furthermore, a number of important human rights accords that indirectly protect refugees and asylum seekers have been ratified by India<sup>27</sup>. The right to life, equality before the law, and protection from torture and cruel treatment are among the fundamental rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR), which India ratified in 1979. All people under Indian authority, including non-citizens, are covered by these regulations. In a similar vein, child refugees are granted protections under the Convention on the Rights of the Child (CRC), which India adopted in 1992. These provisions include access to healthcare, education, and protection from exploitation<sup>28,29</sup>.

<sup>23</sup> "Human Rights Watch: 'All of My Body Was Pain'", HUMAN RIGHTS WATCH (Nov. 16, 2017), <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain>

<sup>24</sup> U.N. HUMAN RIGHTS COUNCIL, Report of the Independent International Fact-Finding Mission on Myanmar, U.N. Doc. A/HRC/39/64 (Sept. 12, 2018)

<sup>25</sup> Amnesty International: 'Caged Without a Roof', AMNESTY INT'L (2017), <https://www.amnesty.org>

<sup>26</sup> Médecins Sans Frontières, 'No One Was Left': Death Toll in Myanmar, MSF (Dec. 2017), <https://www.msf.org>

<sup>27</sup> David Mathieson, A Genocide in All But Name, FOREIGN POLICY (Feb. 13, 2018), <https://foreignpolicy.com>

<sup>28</sup> Bangladesh and the Rohingya Crisis, INT'L CRISIS GROUP, Asia Report No. 267 (2018)

<sup>29</sup> Fortify Rights, 'They Gave Them Long Swords': Preparations for Genocide in Myanmar, FORTIFY RTS. (July 2018)



## Domestic Legal Framework

India lacks a specific legislation pertaining to refugees, and instead, general laws like the Foreigners Act of 1946 and the Passport (Entry into India) Act of 1920 govern how refugees and asylum seekers are treated. Without making a distinction between refugees and other migrants, these rules indiscriminately classify all foreign nationals lacking proper documents as illegal migrants<sup>30</sup>. As a result, refugees who disregard immigration laws risk detention, expulsion, or other legal repercussions.

In reality, how refugees are treated in India differs according to where they are from. For example, under the Tibetan Rehabilitation Policy, Tibetan refugees are given special residency privileges, but Sri Lankan Tamil refugees are housed in camps and have few rights<sup>31,32</sup>. Foreign refugees, like the Rohingyas of Myanmar, frequently live in unstable circumstances without official legal status.

## Administrative Practices and Judicial Interventions

Administrative procedures and judicial actions are essential when there is no formal refugee policy<sup>33,34</sup>. In order to register asylum seekers and offer aid, the United Nations High Commissioner for Refugees (UNHCR) has operations in India. In order to defend the rights of refugees<sup>35,36</sup>, Indian courts have frequently cited constitutional precepts. For instance, courts have emphasized the government's duty to uphold humanitarian principles by upholding the right to non-refoulement in a number of situations.

## Case Study: Rohingyas in Delhi – Legal and Social Challenges

The plight of Rohingya refugees in India, particularly those in Delhi, highlights the complex intersection of legal and social challenges. Displaced from Myanmar due to ongoing violence and persecution, the Rohingya Muslims have sought refuge in various countries, including India. Delhi, as one of the largest urban centers, has been home to a significant number of Rohingya refugees, who continue to face hardships in terms of legal recognition, housing, education, and employment<sup>37</sup>. The situation of Rohingyas in Delhi not only underscores their vulnerability but also raises broader questions about India's refugee policy, the role of non-governmental organizations (NGOs), and the challenges in ensuring the human rights of displaced populations in urban settings.

<sup>30</sup> Priya Pillai, The International Criminal Court and Rohingya Accountability, *OPINIO JURIS* (Mar. 8, 2019), <http://opiniojuris.org>

<sup>31</sup> Legal Accountability for Atrocities in Myanmar, *GEO. J. INT'L L.*, 50 *Geo. J. Int'l L.* 1 (2018)

<sup>32</sup> 'Ethnic Cleansing' in Myanmar: U.S. Secretary of State's Remarks, *DEPT OF STATE* (Nov. 22, 2017)

<sup>33</sup> JAMES D. SIDDHARTH, *ROHINGYA REFUGEES IN SOUTH ASIA* 25-27 (2019)

<sup>34</sup> Regional Responses to the Rohingya Crisis, *ASEAN TODAY* (May 10, 2019), <https://www.aseantoday.com>

<sup>35</sup> Poppy McPherson, What Happened in Myanmar?, *THE GUARDIAN* (Sept. 19, 2018), <https://www.theguardian.com>

<sup>36</sup> Rohingya Crisis: A Timeline, *BBC NEWS* (Oct. 23, 2018), <https://www.bbc.com>

<sup>37</sup> U.N. Office on Genocide Prevention, *Prevention of Genocide in Myanmar*, U.N. (2019), <https://www.un.org>



## Legal hindrances

One of the most significant barriers facing the Rohingyas in Delhi is their legal status. Unlike many other refugee populations, the Rohingya have not been granted formal refugee status under the United Nations High Commissioner for Refugees (UNHCR) mandate<sup>38</sup>. India, as a non-signatory to the 1951 Refugee Convention, does not have a national refugee law to address the rights of displaced persons. As a result, the Rohingyas live in India without legal recognition, rendering them vulnerable to arrest, deportation, and lack of access to essential services.

Rohingyas in Delhi primarily rely on temporary registration certificates issued by the UNHCR, but these do not provide any legal protection within India. The absence of formal recognition by the Indian government means that they are not entitled to the same legal protections as other refugees or citizens<sup>39</sup>. They are also unable to seek regular work or access public welfare programs, as they do not possess the required documentation. The fear of being detained and deported is a constant concern, especially as the Indian government has been vocal about its intention to expel the Rohingyas from the country, citing national security concerns and the potential threat of terrorism<sup>40</sup>.

This lack of legal protection exacerbates their precarious situation, as they are often forced into informal settlements or slums where they are further marginalized. Without the ability to access legal remedies, their cases of exploitation or discrimination often go unreported and unresolved<sup>41,42</sup>. Moreover, the lack of legal status prevents them from obtaining essential identification documents, which in turn limits their ability to access basic services such as healthcare, education, and social security benefits<sup>43</sup>.

## Social Challenges

Rohingya refugees in Delhi face a range of social challenges that stem from their legal status, as well as the stigma and discrimination they encounter within Indian society. One of the most pressing issues is inadequate housing. The majority of Rohingya refugees in Delhi live in informal settlements, often in overcrowded and unsanitary conditions. These settlements, located in areas like Kalindi Kunj and Madanpur Khadar, are characterized by poor infrastructure, lack of proper sanitation, and limited access to clean water<sup>44</sup>. The refugees often have to share cramped living spaces, which makes it difficult for them to maintain basic hygiene or practice social distancing during health crises like the COVID-19 pandemic.

The lack of affordable housing options for Rohingya refugees is compounded by the increasing demand for space in urban areas like Delhi. As a result, they are forced to live in precarious conditions, with limited access to essential services. These settlements are often located in marginal areas on the outskirts of the city, far from centers of

<sup>38</sup> Myanmar Ethnic Cleansing Condemned, INT'L COURT OF JUSTICE, ICJ Press Release (Jan. 23, 2020)

<sup>39</sup> Al Jazeera Investigates, Rohingya Crisis: Hidden Genocide, AL JAZEERA (2018), <https://www.aljazeera.com>

<sup>40</sup> Rohingya Refugee Policies in Bangladesh, ASIA-PACIFIC J. ON HUM. RTS. & L., Vol. 19 (2020)

<sup>41</sup> LINTNER, BURMA IN CRISIS: ETHNIC CONFLICTS AND INTERNATIONAL RESPONSIBILITY 123-126 (2017)

<sup>42</sup> Rohingya: Stateless at Sea, INT'L ORG. FOR MIGRATION (2019), <https://www.iom.int>

<sup>43</sup> ASEAN Response to Rohingya Refugee Crisis, BROOKINGS INST. (Dec. 2018)

<sup>44</sup> International Responsibility for Crimes Against Humanity in Myanmar, HARV. INT'L L.J., Vol. 59 (2019)



employment, education, and healthcare, further isolating the community from the resources they need to build a better life<sup>45</sup>.

Limited access to education is another significant challenge for the Rohingya in Delhi. Children in these refugee settlements often face barriers to enrolling in government schools due to their lack of legal status and identification documents. Although there are a few schools run by NGOs that provide education to Rohingya children, the quality of education is often subpar, and resources are limited. The absence of formal schooling not only deprives children of basic education but also limits their future opportunities for social mobility and integration into Indian society. Many Rohingya children are forced to contribute to family income by working in informal labour markets, further restricting their educational prospects.

Employment is another major social challenge faced by the Rohingyas in Delhi. Due to their lack of legal status, they are excluded from the formal labour market and are often forced to work in exploitative conditions. Many Rohingyas find employment in low-paying jobs in the informal economy, such as manual labour, domestic work, or working in factories or construction sites<sup>46</sup>. These jobs often come with poor wages, long working hours, and a lack of job security, leaving the workers vulnerable to exploitation and abuse.

The inability to access legal work and earn a decent wage creates a cycle of poverty that is difficult to escape. Additionally, the lack of employment opportunities and the constant threat of deportation contribute to the mental and emotional distress faced by many members of the community<sup>47</sup>. The sense of uncertainty about their future in India further exacerbates their sense of powerlessness and isolation.

### **Role of NGOs and Legal Aid**

Despite these challenges, non-governmental organizations (NGOs) and civil society groups have played a crucial role in supporting the Rohingya refugees in Delhi. NGOs have been instrumental in providing legal aid, education, healthcare, and emergency relief to the community<sup>48,49</sup>. Legal aid organizations, such as the Rohingya Human Rights Initiative and the United Nations High Commissioner for Refugees (UNHCR), have provided legal representation for refugees facing deportation and have worked to raise awareness about their rights under international law. NGOs have also been at the forefront of advocacy efforts, pushing for better treatment of Rohingya refugees and advocating for their right to stay in India.

In addition to legal assistance, NGOs have worked to address the social needs of the Rohingya population by providing access to basic services like food, shelter, and healthcare<sup>50</sup>. Many NGOs have set up community centers that offer educational

<sup>45</sup> KYAW MINN HTAY, *INSIDE RAKHINE: STORIES OF SURVIVAL AND DISPLACEMENT* (2020)

<sup>46</sup> U.N. Humanitarian Reports on Rohingya Refugees, UNHCR (2018–2020), <https://www.unhcr.org>

<sup>47</sup> Genocide Watch and Early Warnings in Myanmar, GENOCIDE WATCH (Aug. 2017), <https://genocidewatch.net>

<sup>48</sup> UNHCR, *The Rohingya Emergency*, available at <https://www.unhcr.org/rohingya-emergency.html> (last visited Dec. 29, 2024)

<sup>49</sup> Human Rights Watch, "India: Rohingya Refugees Face Deportation," Jan. 19, 2022, available at <https://www.hrw.org/news/2022/01/19/india-rohingya-refugees-face-deportation>

<sup>50</sup> Constitution of India art. 14, 21, interpreting fundamental rights applicable to non-citizens



programs, vocational training, and healthcare services to the refugees. These services, though invaluable, are often underfunded and overstretched, limiting their ability to meet the full range of needs within the community.

While NGOs have been able to alleviate some of the challenges faced by the Rohingyas, their efforts are hampered by the lack of state support and the absence of a comprehensive national refugee policy<sup>51</sup>. The reliance on NGOs has created a situation where the Rohingyas' access to essential services is largely dependent on the goodwill of civil society organizations, rather than on the state's obligation to provide protection and support to displaced populations. The challenges faced by the Rohingyas in Delhi reflect a broader crisis of refugee protection in India<sup>52</sup>. Without legal recognition, they are trapped in a cycle of vulnerability, facing barriers to housing, education, and employment<sup>53</sup>. While NGOs have played a vital role in mitigating some of these challenges, the systemic issues that underpin the Rohingyas' plight remain largely unresolved<sup>54</sup>. The absence of a national refugee law and the lack of state support for displaced populations pose significant obstacles to improving the lives of Rohingya refugees in India<sup>55</sup>. The legal and social challenges faced by the Rohingyas in Delhi highlight the urgent need for a comprehensive and humane approach to refugee protection, one that ensures their rights and dignity are respected.

### Integration in Hyderabad

Hyderabad's approach to the Rohingya refugee crisis has been relatively pragmatic compared to other regions in India. The city, known for its diversity and cosmopolitan culture, has witnessed the integration of several refugee communities, including the Rohingyas. Many members of the Rohingya community in Hyderabad have found informal employment in sectors like construction, domestic work, and low-wage jobs in small businesses<sup>56</sup>. These job opportunities have provided them with some financial stability, though they remain trapped in the informal economy, where wages are low and job security is non-existent.

While some Rohingyas in Hyderabad have managed to secure a living, their integration has been far from smooth. One of the main challenges they face is the lack of legal documentation, which severely limits their ability to access public services such as healthcare and education<sup>57</sup>. Without proper documentation, they are unable to avail themselves of government welfare schemes or access formal employment opportunities. Many have had to rely on humanitarian organizations, local mosques, and other charitable groups for basic needs like food, shelter, and medical care.

Despite these challenges, some members of the community have managed to build a sense of belonging in Hyderabad. Social networks within the city, including relationships with other refugees and local Muslim communities, have played a crucial role in

<sup>51</sup> S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 47-49 (2003)

<sup>52</sup> M. Zafar, "The Stateless Rohingyas in India: A Legal Quagmire," 12 *Indian J. Int'l Law* 92, 98 (2019)

<sup>53</sup> National Human Rights Commission of India, *NHRC Guidelines on Refugees and Migrants* (2021)

<sup>54</sup> Refugee Convention art. 33, July 28, 1951, 189 U.N.T.S. 137

<sup>55</sup> B. Ghosh, "Rohingya Refugees and the Indian State: A Delicate Balance," 34 *Econ. & Pol. Wkly.* 57, 59 (2021)

<sup>56</sup> Government of India, Ministry of Home Affairs, *Advisory on Illegal Migrants*, No. 24013/29/Misc./2020-CSR (Nov. 7, 2020)

<sup>57</sup> M. Kumar, "Rohingyas in Jammu: Politics of Refuge and Exclusion," 18 *J. S. Asian St.* 45, 49 (2022)



facilitating integration<sup>58</sup>. These networks provide emotional support, shared resources, and solidarity. Some Rohingyas have also made efforts to learn the local language, Telugu, which helps them navigate life in the city and build relationships with the broader community.

However, this integration is not without its difficulties. The Rohingya community still faces significant social stigma, and many locals view them as outsiders, contributing to their marginalization<sup>59</sup>. Additionally, the influx of refugees into Hyderabad has led to competition for scarce resources, particularly in low-income neighbourhoods, which has sometimes led to tensions between the Rohingyas and other migrant groups.

### **Livelihoods of the Rohingyas in Hyderabad**

The livelihoods of the Rohingya community in Hyderabad are shaped by their precarious legal status and limited access to formal employment<sup>60</sup>. Many of the Rohingyas work in low-wage, informal sectors, where they are vulnerable to exploitation. Informal work often means that they are not entitled to labour rights, health insurance, or job security. Many Rohingyas work as manual labourers in construction sites, as cleaners, or in other low-skilled jobs, where wages are minimal and working conditions are poor.

Rohingya women, in particular, face unique challenges in terms of employment. Many women are engaged in domestic work, which is often underpaid and subject to exploitation. They are typically employed informally, without any legal protection or access to benefits such as maternity leave or health insurance. Women's participation in the workforce is also hindered by cultural and social barriers, as traditional gender roles often limit their mobility and ability to seek employment outside the home.

Another aspect of the livelihoods of Rohingyas in Hyderabad is their dependence on aid and charitable organizations. Many Rohingya families rely on local mosques and non-governmental organizations (NGOs) for food, healthcare, and education. While some local mosques provide shelter, food, and medical aid, the scale of assistance is often inadequate to meet the growing needs of the community. NGOs working in Hyderabad also provide services such as education and healthcare, but their resources are limited, and they are often stretched thin with growing numbers of refugees.

### **Vulnerabilities and Challenges**

The vulnerabilities of the Rohingya community in Hyderabad are multifaceted. First and foremost, the lack of legal recognition places them in a precarious position, with little access to legal recourse in case of exploitation or discrimination. Their inability to obtain formal documentation means they are unable to access critical services, including healthcare and education<sup>61</sup>. The lack of a formal education system for Rohingya children is one of the most pressing issues, as many children are left out of the educational system

<sup>58</sup> Press Information Bureau, "Government's Stance on Rohingya Refugees," Sept. 15, 2022, available at <https://pib.gov.in>

<sup>59</sup> UNICEF India, *Rohingya Refugee Children and Education* (2023), at 12

<sup>60</sup> Delhi High Court, W.P. (C) No. 279/2017, Aug. 15, 2021 (India)

<sup>61</sup> Hyderabad Municipal Corporation, "Registration of Rohingya Refugees," Circular No. HMC/2022/459 (2022)



due to their legal status. As a result, these children grow up without the skills and knowledge required to improve their socio-economic situation, perpetuating the cycle of poverty within the community.

Healthcare is another critical area where the Rohingya community faces significant challenges. Many Rohingyas suffer from various health issues, including chronic diseases, malnutrition, and mental health disorders, due to their living conditions and limited access to medical services. The lack of legal recognition prevents them from accessing government-run healthcare facilities, and their reliance on charitable organizations often means that healthcare is inadequate and inconsistent.

### **Case Study: Rohingyas in Jammu – Security Concerns and Displacement**

The Rohingya crisis, one of the most tragic human rights violations of the 21st century, has compelled millions of Rohingya Muslims to flee Myanmar due to ethnic violence, religious persecution, and military crackdown. The displaced population has sought refuge in various countries, including India, where the situation remains contentious, particularly in regions like Jammu. The Rohingyas, who have found a semblance of safety in Jammu, face numerous security concerns, challenges related to their legal status, and the constant threat of deportation. This case study delves into the security concerns and displacement faced by the Rohingyas in Jammu.

Over the years, the Rohingya refugees in Jammu have become more of a concern in terms of security in both political, administrative and public arenas. To a great extent, this perception can be attributed to the peculiarities of geopolitical sensitivities of the region. Jammu is an area situated near the Line of Control and with cross-border militancy in the areas around it is regarded as a high security area. Any changes in demographic that can be imagined or effective is therefore subject to the prism of national security<sup>62</sup>. This population of stateless and undocumented Rohingyas has increased concerns regarding the possibility of infiltration, radicalisation, or exploitation by other groups that will exploit and employ them in carrying out their operations in the area.

The other factor is the lack of a formal system of support of refugees in India, and the situation of Rohingyas is conditional upon administrative improvisation. In Jammu, most Rohingyas live in unstructured settlements without identity papers or organized integration processes that heighten fears of tracking and verification. Law enforcement agencies have also raised worry that these illegal populations can end up being channels of carrying out illegal or illegal activities in the country like smuggling, human trafficking or even the way of getting recruited into extremist groups<sup>63</sup>. Even though little meaningful evidence has come out to substantiate the mass participation in such activities, the fact that it is a possibility is causing a sense of danger in an already tense and complicated security arena.

These issues have been increased by political narratives. Some quarters have described Rohingya presence in the country as an intention to change demographic dynamics or as

<sup>62</sup> Khalid Wasim, "Demographic Anxiety and the Politics of Refugee Settlements in Jammu," *Economic & Political Weekly*, Vol. 57, No. 12, at 42 (2022)

<sup>63</sup> Suhasini Haidar, "India Depports Rohingya to Myanmar Despite UN Objections," *The Hindu* (Oct. 4, 2018)



a possible source of inter-communal conflict. Such arguments though disputed, have been making grounds in the popular imagination, moving to policy actions like detention, verification drives, and suggestions toward deportation<sup>64</sup>. This amalgamation of geopolitical delicacy, administrative uncertainty, and politicisation have consequently contributed to the situating of Rohingyas in Jammu as security menace- despite reality on the ground calling otherwise, a population in search of security and survival instead of being the security hazard.

### **The Rohingya Crisis's History**

For many years, the Myanmar military and Buddhist extremists have practiced systematic discrimination, violence, and persecution against the Rohingya, an ethnic Muslim minority population mostly from the country's Rakhine State. More than 700,000 Rohingyas fled in large numbers to neighbouring Bangladesh as a result of the 2017 military operation<sup>65</sup>. Since then, a large number of people have sought safety in various nations, such as India, where there is no official policy to provide asylum to refugees, leaving them open to marginalization and exploitation.

### **The Rohingya Refugee Crisis in Jammu**

Jammu, located in the northern part of India, has become home to a significant number of Rohingya refugees who fled Myanmar to escape violence and persecution. According to estimates, Jammu hosts more than 5,000 Rohingyas, mostly residing in makeshift camps on the outskirts of the city. These camps are a symbol of the refugees' harsh reality, marked by poor living conditions, lack of basic amenities, and a deep sense of insecurity<sup>66</sup>.

The presence of Rohingyas in Jammu has been a source of significant tension and controversy. While India has not signed the 1951 UN Refugee Convention, and refugees do not have a defined legal status, the issue of the Rohingyas in Jammu has stirred public debates on security, national sovereignty, and the rights of refugees. These concerns are often exacerbated by local politicians and groups who argue that the influx of Rohingyas poses a threat to national security.

### **Discussion**

The issue of refugees is one that has gained significant attention in the global arena, with countries grappling with how to balance humanitarian responsibilities with national security concerns. India's approach to refugees has often been described as inconsistent and ad hoc, particularly in relation to the Rohingya Muslim refugees who have sought refuge in the country. While international norms and conventions emphasize humane treatment, non-refoulement, and integration, India's response to refugees often places

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<sup>64</sup> A.S. Pundir, "Security Discourses and Refugee Populations in South Asia," *Journal of Asian Security & International Affairs* 9(2): 178, 182-84 (2022)

<sup>65</sup> Amnesty International India, *Rohingyas in India: State of Vulnerability* (2018)

<sup>66</sup> Supreme Court of India, *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501.



them in a precarious legal and social situation<sup>67</sup>. The absence of a national refugee law, societal prejudices, political rhetoric, and limited engagement with international organizations exacerbate the challenges faced by refugees, especially the Rohingyas, highlighting deeper systemic issues in India's refugee policy.

### **Absence of a National Refugee Law**

One of the most significant gaps in India's refugee policy is the absence of a formal national refugee law. Unlike many countries that have enacted comprehensive legislation for the protection and rights of refugees, India has not codified a legal framework to deal with the issue. Instead, India relies on ad hoc measures, such as the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939, to manage refugees, but these laws are not designed specifically for refugees<sup>68</sup>. The lack of a clear, dedicated legal framework leads to significant ambiguity in the status and treatment of refugees.

The absence of a national refugee law means that refugees often lack clear and enforceable rights. For instance, they do not have legal recognition or protection in India, which leaves them vulnerable to detention, deportation, and exploitation. In the case of the Rohingya refugees, many are registered under the United Nations High Commissioner for Refugees (UNHCR), but this does not guarantee them any legal protection in India. As a result, they are often treated as illegal migrants by the state, despite being victims of persecution in their home country. Without a proper legal framework, India is unable to ensure that refugees are treated in accordance with international norms, and they remain in a state of legal limbo.

### **Societal Prejudices and Political Rhetoric**

India's approach to refugees is further complicated by societal prejudices and political rhetoric. The political discourse surrounding refugees is often polarized, and refugees from specific regions or communities face different levels of acceptance. The Rohingya refugees, for example, have faced significant hostility and discrimination in India, not just from political figures but also from certain sections of society. Many of the refugees belong to the Muslim minority community, which is already subjected to marginalization in certain parts of India. This has fueled negative perceptions about the Rohingyas, with some seeing them as a threat to national security or as illegal migrants.

Political rhetoric has played a major role in shaping public opinion about refugees. In recent years, political leaders have increasingly used the issue of refugees to appeal to their base, often presenting refugees as a burden or a threat to the country's resources, culture, or security. Such rhetoric not only creates a hostile environment for refugees but also exacerbates the social divide within the country. The Rohingyas, in particular, have been portrayed as a security threat by certain political groups, further deepening their exclusion from society. This climate of suspicion and hostility makes it difficult for refugees to integrate into Indian society and find a sense of stability.

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<sup>67</sup> The Citizenship (Amendment) Act, No. 47 of 2019, § 2, India Code

<sup>68</sup> R. Singh, "Access to Healthcare for Rohingya Refugees," 10 Health Pol. & Ethics Q. 23, 26 (2022)



Furthermore, there is a widespread lack of awareness and empathy toward refugees among the general population. Many people in India are unaware of the plight of refugees and view them as outsiders who are taking away jobs, resources, and opportunities. This lack of understanding and compassion toward refugees is further compounded by the rhetoric of political leaders, which casts refugees as a problem rather than as victims in need of protection.

## Conclusion

India's migration and asylum policies remain deeply intertwined with the complexities of its legal framework and its geopolitical positioning. Historically, India has hosted migrants for centuries, with diverse communities such as the Rohingyas, Tibetans, and Sri Lankan Tamils seeking refuge within its borders. However, the legal and policy framework governing migration and asylum is fragmented, lacking a comprehensive national law on refugees. While India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, it still provides asylum under the principle of humanitarian concern, relying on ad hoc administrative measures.

The case of the Rohingyas, a minority group fleeing persecution in Myanmar, underscores the limitations and challenges faced by India's migration and asylum frameworks. The Rohingya crisis has sparked debates on India's legal obligations and humanitarian duties. Despite facing widespread persecution in Myanmar, the Rohingyas in India often find themselves in a precarious position, without access to formal refugee status or protections under Indian law. This uncertainty is compounded by security concerns, political narratives, and the growing influence of nationalism, which have shaped India's approach toward migrants and refugees, especially those from Muslim-majority countries.

The Indian government has largely opted for a non-committal stance on the Rohingyas' refugee status. While some state governments have offered shelter, others have opted for deportations, citing national security concerns. The absence of a clear refugee law creates a legal limbo for the Rohingyas and other asylum seekers, resulting in a lack of social protection, limited access to healthcare and education, and frequent vulnerability to exploitation and discrimination.

India's approach, characterized by an ad hoc response, has drawn both domestic and international criticism. Human rights organizations have emphasized that India, as the world's largest democracy and a regional leader, has a moral responsibility to uphold international humanitarian standards. At the same time, the broader global community has pressed India to adopt more robust legal protections for refugees and migrants, offering support in addressing these humanitarian challenges.

## Recommendations

### Enact a Comprehensive Refugee Law

India's legal framework for migration and asylum requires an overhaul to ensure clearer, more structured provisions for refugees. A comprehensive refugee law should be enacted



to grant legal recognition, protection, and rights to asylum seekers and refugees. Such a law would also provide a clear distinction between economic migrants, asylum seekers, and refugees, reducing the uncertainty that individuals like the Rohingyas currently face. The law should guarantee access to basic services such as healthcare, education, and housing, as well as establish clear procedures for asylum applications and status determination.

### **Accede to the 1951 Refugee Convention**

India's decision not to ratify the 1951 Refugee Convention and its 1967 Protocol has been a point of contention. Accession to these international agreements would bind India to global standards of refugee protection and help mitigate the current legal void. This would not only provide protection for refugees but also promote India's international standing on human rights issues. However, India could also negotiate reservations or modifications to ensure that its national security concerns and regional sensitivities are adequately addressed.

### **Humanitarian Approach to the Rohingyas**

The treatment of the Rohingyas in India requires a humanitarian approach that emphasizes human rights and dignity. India should avoid policies based on ethnic or religious discrimination and adopt a more inclusive and humanitarian stance toward these refugees. While addressing security concerns is important, deportation should be approached with caution, considering the grave human rights violations they would face upon return to Myanmar. India could offer temporary asylum status while advocating for international resettlement solutions or permanent solutions with Myanmar's involvement.

### **Strengthen International Cooperation**

The issue of migration and asylum cannot be addressed by India alone. Strengthening cooperation with international organizations like the United Nations High Commissioner for Refugees (UNHCR) and regional bodies is essential for creating sustainable solutions. India should work collaboratively with other South Asian countries to establish a regional framework for migration and asylum that balances humanitarian considerations with national security concerns.

### **Public Awareness and Inclusion Initiatives**

India must foster a greater public understanding of refugees and asylum seekers. Public awareness campaigns can help combat xenophobia and misinformation, especially regarding marginalized groups like the Rohingyas. Initiatives that promote inclusivity, integration, and respect for refugees' rights can help reduce social tensions and build a more tolerant society. Civil society organizations, local governments, and the private sector should also play an active role in providing support for refugees and migrants.



## Protection of Vulnerable Groups

Particular attention should be paid to vulnerable groups within refugee populations, including women, children, and the elderly. These groups often face unique challenges, such as gender-based violence, child labor, and exploitation, which require specialized protection measures. Ensuring that policies account for the specific needs of these vulnerable individuals will enhance the overall effectiveness of India's migration and asylum frameworks.

In conclusion, India's response to migration and asylum, particularly in the case of the Rohingyas, reflects the challenges and opportunities in balancing humanitarian obligations with national interests. By adopting a more structured and compassionate approach, India can improve the lives of refugees and migrants while contributing to regional and global peace and stability.

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