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Authored By :- Nipun Kalra

Co Authored By :- Mr. Rachit Sharma

IMPACT OF GLOBALISATION ON REFUGEE PROTECTION IN INDIA

ABSTRACT

The article presents the complicated and diverse effects of globalisation on the refugee protection in India and how the latter has been seized with its disadvantages as well as its advantages. Amidst the different scenario, India is still not among the countries that have signed the Refugee Convention/1967 Protocol, yet international norms mainly the non refoulement prohibition (Article 33) and UNHCR-type of Refugee Status Determination (RSD) in the country affect the final outcome. In the country, the basic constitutional rights (Article 14 and Article 21) continue to interact with provisions and rules that come from the colonial period as well as present times — the most important being the Foreigners Act, 1946 (with powers under s.3 and penalties under s.14), the Foreigners Order, 1948, the Passports Act, 1967 (ss.10–11) and the Citizenship Act, 1955 (ss.5–7; s.6A)—to create a very loosely regulated, executive-driven system. The research in the paper delves into the global forces (migration pressures from the labor market, counter-terrorism information-sharing, diaspora politics, climate migration and biometric data application) and how they influence the migration governance. It also cites the Rohingya, Afghan, and Chakma peoples as case studies that help to illustrate the impacts of such a governance system on detention, service access, and sustainability solutions. The research is critical of legal pluralism and the risks of surveillance, shows the UNHCR's operational part and the inadequacy of soft-law tools (e.g., Revised Bangkok Principles) in promoting reform, and offers a staged doctrinal roadmap: immediate administrative RSD safeguards, a medium-term national refugee statute

non-refoulement incorporated, and long-term regional cooperation with strong data protection safeguards. The paper ends by stating that harmonizing India's concerns with the minimum protection standards that are legally binding is not only a necessity from a legal point of view but also a politically feasible solution.

Keywords: Globalisation; Refugee Protection; Non-refoulement; Foreigners Act 1946; UNHCR RSD

1. INTRODUCTION

The phenomenon of Globalisation has completely changed the legal, political and administrative environment within which forced migration is both experienced and regulated; cross-border investments, strict border controls, electronic identification systems and strong diplomatic ties are some of the factors that all together influence states' reactions to people who seek refuge from persecution. In the case of India, which is a country that has never signed the 1951 Refugee Convention or its 1967¹ Protocol and do not have a consolidated national refugee statute, the impact of globalising forces is combined with a purposely ad-hoc

¹—What is the difference between the 1951 Convention and its 1967 Protocol?, UNHCR - The UN Refugee Agency available at: <https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention> (last visited November 16, 2025).

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and executive-led refugee management system, thus giving rise to protection shortages and policy openings at the same time (UNHCR; comparative scholarship).

1.1 Conceptual and Theoretical Framework

The term "globalisation" in this particular research is interpreted as a process with multiple spectrums that are made up of four vectors and those vectors interact with one another in a positive way. On the economic front, liberalisation and growing demand for labour across borders are creating "mixed" migration flows which make the distinction between economic migrant and refugee very faint; on the political front, multilateral cooperation and bilateral security partnerships are the forces driving harmonious border practices and externalised asylum policies; on the social front, diasporic networks and transnational civil society actors are the factors that are changing local reception dynamics; and on the technological front, biometric databases, information-sharing and surveillance tools are the means enabling more rigorous identification and exclusion of non-nationals. The theoretical lens is provided by B.S. Chimni's critique of how global humanitarian governance reshapes refugee protection: global administrative practices can erode rights even while expanding managerial capacity—an insight central to understanding current Indian practice.²

The legal definition of a "refugee" that is accepted globally is situated in the 1951 Convention in Article 1(A)(2): one who, because of a validly grounded dread of being persecuted for one of the reasons like race, religion, nationality, belongingness to a particular social group or political opinion, is unable or, because of such fear, is reluctant to seek the protection of the country of his or her nationality. A person who is in the process of claiming such protection

but whose claim is yet to be finally decided is called an "asylum-seeker"; "stateless persons" according to the 1954 Convention are those who are "not regarded as a national by any State under the application of its law," while the 1961 Convention is aimed at the prevention and reduction of statelessness. After all, India has not signed these treaties; their definitions still mark the main reference points for protection and adjudication in the world.³

The non-refoulement prohibition—keeping a country from sending a person back to a place where they are at risk of being persecuted or severely harmed—has its roots in Article 33 of the 1951 Refugee Convention, which in turn has been widely seen by UN authorities as an international law norm that has become customary over time; Assemblies of Nations and regional instruments like the (Revised) Bangkok Principles as well as the UNHCR direction have also made a call on States to practice non-refoulement, even on non-party States such as India. As far as Indian law is concerned, the protection offered to non-nationals by the Constitution includes the right to live and liberty as per Article 21, which is more or less the main act under which immigration is regulated—other than controlling foreigner visas through laws like the Foreigners Act, 1946 and the Citizenship Act, 1955. The courts have

² Dinithi Athalage et al., —The interplay between globalisation and economic growth: a multi-regional analysis, *Discover Sustainability* 525- (2025).

³ William Thomas Worster, —The Evolving Definition of the Refugee in Contemporary International Law Elsevier BV, 2011 *available at*:

https://www.researchgate.net/publication/228196650_The_Evolving_Definition_of_the_Refugee_in_Contemporary_International_Law (last visited November 16, 2025).

the final say in the legal status of refugees and asylum-seekers on Indian soil through executive practice that works together with these statutes. Among the leading Indian case law, *State of Arunachal Pradesh v. Khudiram Chakma*⁴ and *Louis De Raedt v. Union of India*⁵ serve as perfect examples of the Court's handling of the rights of foreigners (protection under Article 21⁶) and the area of claims to residency or citizenship that is left to them.

1.1. Objectives of the Study

1. To rigorously scrutinise how globalisation processes—economic liberalisation, securitisation, technological integration, and transnational diplomacy—have transformed the refugee protection processes and rights in India.
2. India's legal and administrative framework (constitutional provisions, the Foreigners Act of 1946, the Citizenship Act of 1955, and executive practice) will be mapped and evaluated in terms of its capacity to fulfil non-refoulement protection under the international law;
3. To highlight the crucial doctrinal and court (Supreme Court and High Courts' landmark rulings) development and their impact on refugees, asylum seekers, and stateless persons in India regarding the access to rights and legal remedies;
4. To provide insights into the influence of globalisation on domestic policy through the lens of international and non-state actors (UNHCR, NGOs, diasporas, and donor states) and how they have been involved in the policy-making process;
5. To suggest well-founded legal and policy reforms—including the outline of a potential national refugee strategy and procedural safeguards—that will address the concerns of

India's sovereignty while still fulfilling the country's humanitarian and human-rights obligations.

1.2. Research Methodology

The current study employs a doctrinal legal method. The primary legal materials analyzed are the constitution, laws, government rules, notifications, treaties, court decisions, and so on, which are supplemented by high-quality secondary sources like UNHCR guidance, official reports, and academic commentary. Doctrinal methods (textual, purposive, and comparative interpretation) shine a light on the legal norms and gaps in the law; purposive comparison with regional/state practice is also clarifying of the normative options in the case of being so. The methodology highlights legal reasoning to derive principles and reform proposals while acknowledging empirical reports and case studies only to the extent that they shed light on doctrinal application and administrative practice.

⁴State of Arunachal Pradesh v. Khudiram Chakma (AIR 1994 SC 1461)

⁵Louis De Raedt v. Union of India ((1991) 3 SCC 554)

⁶—Article 21: Protection of life and personal liberty, Constitution of India, 2022 *available at*: <https://www.constitutionofindia.net/articles/article-21-protection-of-life-and-personal-liberty/> (last visited November 16, 2025).

1.3. Review of Literature

Aishwarya Birla (2023)⁷ outlines the responses of the courts to asylum claims in India and maintains that through the fragmented case law, the courts have provided humanitarian relief but no coherent statutory scheme has been developed. Key decisions are analyzed, the compelling nature of the international law (non-refoulement) is pointed out, and the author calls for the unification of the legal doctrine through domestic RSD procedures or the adoption of the core treaty norms in the law to ensure that protection remains consistent.

N. Krishna Kumar, Balaji N.R. & Nisha Parameswaran (2024)⁸ have written a paper that summarizes the recent suspension of the rights of non-citizens by the judiciary and claims that the Indian judicial system has utilized the constitutional provisions (Article 21 habeas corpus jurisdiction, equality norms) to facilitate the non-refoulement and asylum protections, despite the fact that India has not joined the 1951 regime. The authors demand the establishment of clearer doctrinal standards that would make judicial activism predictable and hence, protection of the rights of the non-citizens easier.

Saamragyi Gupta (2023)⁹ states that India's inconsistency in dealing with refugees leads to refugees being stuck in limbo. This paper points to the inadequacies in the RSD, detention safeguards, and socio-economic entitlements and suggests the need for a tailor-made refugee law that is in line with Article 33 (non-refoulement), independent RSD authority, and access to work and education in order not to prolong the state of precarity.

Ananda Varshini (2022)¹⁰ offers a policy-oriented examination of India's protection gaps and contrasts the actual practice of the authorities with the standards set by the international community. A phased roadmap is suggested by the article inclusive of the immediate establishment of administrative standard operating procedures for RSD and detention, the medium-term enactment of statutory law, and the long-term development of regional cooperation mechanisms for sharing the burden and creating complementary paths for refugees.

Roshni Shanker (2024)¹¹ addresses the issue of gendered protection gaps, revealing that courts in South Asia (India included) have applied constitutional protections and gender sensitive jurisprudence to the benefit of refugee women and girls by shielding them from sexual and gender-based violence. The article suggests the need for gender to be a part of the

⁷ - Aishwarya Birla, —Evaluating the Indian Refugee Law Regime: How Has the Judiciary Responded to Refugee Claims in Light of International Law Obligations, and How Can It Do Better?|| 35 *International Journal of Refugee Law* 81–100 (2023).

⁸ N. Krishna Kumar, Balaji N.R. & Nisha Parameswaran, —Judicial Activism and the Protection of Refugee Rights: Interpreting the Indian Constitution in the Context of Asylum and Non-refoulement,|| 8 *Journal of Constitutional Law and Jurisprudence* 110–118 (2024).

⁹ Saamragyi Gupta, —The Need for a Separate Refugee Law in India,|| 6(4) *International Journal of Law, Management & Humanities* 2209–2216 (2023).

¹⁰ Ananda Varshini, —The Need for Refugee Law in India and the Way Forward,|| 5(6) *International Journal of Law, Management & Humanities* 503–510 (2022).

¹¹ Roshni Shanker, —Constitutionalizing Protection for Refugee Women and Girls in South Asia,|| 36(1-2) *International Journal of Refugee Law* 43–59 (2024).

RSD and protection policies and for survivor-centred remedies to be incorporated into the domestic law.

Itishree Mishra (2023)¹² presents a brief analytic review of international and domestic legal instruments that are relevant to refugees in India, criticizes the lack of a statutory RSD mechanism, and suggests reforms—legal recognition of UNHCR determinations, detention safeguards and statutory access to basic services—that are targeted to bring practice into line with human-rights norms.

Pooja Makhijani (2024)¹³ studies legal instruments (Foreigners Act 1946, Passports Act 1967, Citizenship Act 1955) and case law to illustrate how immigration powers occupy the protection vacuum. The article argues for the formal acknowledgment of non-refoulement in domestic law and the establishment of procedural safeguards for RSD to avert arbitrary detention and deportation.

1.4. Research Gap

India is one of the countries with the highest refugee numbers in South Asia, but the research points out continuing discrepancies between the local situation and the changing global standards. The scholars mainly concentrate on the creative interpretations made by the judiciary under Articles 14 and 21, the Foreigners Act of 1946, and India's non-signature of the 1951 Refugee Convention; yet, those factors do not sufficiently explain how

globalization—characterized by global interconnectedness through transnational security systems, digital monitoring, climate change-induced migration, and cross-border trafficking—affects refugee protection in India. The situation is even worse when it comes to studying the influence of soft international law instruments such as the Bangkok Principles (2019 Revised) and UNHCR's changing RSD guidelines on administrative decision-making since the research is still very scattered in this area. There is hardly any empirical research on how technological governance tools (biometrics, FRRO digital systems) impact the three areas of due process, privacy, and non-refoulement safeguards. In the same manner, an insufficient comparative analysis of India's responses to the various refugee groups—Rohingya, Afghans, and Chakmas—against the backdrop of globalized geopolitical pressures can be observed. All these gaps call for a thorough doctrinal investigation that will merge international norms, domestic law, and dynamics of globalization.

2. INTERNATIONAL LEGAL ARCHITECTURE AND TRANSNATIONAL NORMS

2.1. 1951 Refugee Convention & 1967 Protocol: scope and limitations

The 1951 Convention relating to the Status of Refugees along with the 1967 Protocol constitutes the main international regime that defines a refugee (Article 1), the rights of the refugees and the very important prohibition of refoulement (Article 33) at its core. The

¹² Itishree Mishra, —Protection of Refugee Rights – An Analysis, *International Education and Research Journal (IERJ)* (2023).

¹³ Pooja Makhijani, —Protection of refugees in India: An analysis, *6(2) International Journal of Law, Policy and Social Review* 61–65 (2024).

Convention's strict definition of persecution (race, religion, nationality, social group or political opinion) along with its individual and status based treatment have had a great impact on the protection and the durable solutions that States and international agencies provide. At the same time, the limitations of the Convention in terms of geographical and temporal aspects—initially set in the original text and later on only extended by the Protocol—and its dependence on State acceptance imply that treaty protections are reliant on domestic implementation and political will; consequently, non-accession States (such as India) remain outside the formal treaty regime, although UNHCR norms and practices still have some influence on domestic decision-making.¹⁴

2.2. Customary international law and non-refoulement

In addition to treaty obligations, the prohibition of the refoulement (non-refoulement) has been recognized as a central principle of international refugee law and — as interpreted by UN bodies and human rights organs — a norm with customary force in many situations. Article 33(1) of the 1951 Convention is the canonical referent but UNHCR guidance and human-rights treaty bodies have pointed out that non-refoulement also stems from international human-rights law (especially protections against torture and arbitrary deprivation of life), creating overlapping obligations for both party and non-party States. This means that in practice even if a State has not ratified the 1951 instruments, there are still very strong normative constraints— Influenced by customary law and human-rights treaty

jurisprudence—that should prevent forcible returns to persecution or torture.¹⁵

2.3. Regional soft law and instruments (e.g., Revised Bangkok Principles)

Asia has witnessed the Revised Bangkok Principles (AALCO) and other regional soft-law instruments trying to provide a regional interpretation of global norms according to their political realities. Although the Bangkok Principles are non-binding, they are nevertheless significant for two reasons: they stimulate national legislation that is in line with refugee standards and they convey a regional consensus on the protection duties as well as the need for regional collaboration on mixed flows and durable solutions being practically inevitable. For a State such as India — though formally outside the 1951 regime but still being an AALCO participant — the Revised Bangkok Principles serve as a normative resource that UNHCR and civil society can use to advocate either for domestic reform or for a more humane administrative practice.

¹⁴ - Refworld - UNHCR's Global Law and Policy Database, —UNHCR Note on the Principle of Non Refoulement| Refworld, 2023 *available at*:

<https://www.refworld.org/policy/legalguidance/unhcr/1997/en/36258> (last visited November 16, 2025).¹⁵

amoeschler, —The principle of non-refoulement in the migration context: 5 key points| Humanitarian Law & Policy Blog, 2018 *available at*: <https://blogs.icrc.org/law-and-policy/2018/03/30/principle-of-non-refoulement-migration-context-5-key-points/> (last visited November 16, 2025).

3. INDIA'S DOMESTIC LEGAL AND ADMINISTRATIVE FRAMEWORK FOR NON-CITIZENS

3.1. Constitutional protections (Article 14, 21, etc.) and their reach for non-citizens

India's Constitution does not outright declare a right to asylum; however, the main safeguards of it, especially Article 14 (equal treatment before the law) and Article 21 (right to life and personal liberty) have been interpreted in such a way that they are applicable to —every person| within the Indian territory and this way non-citizens are given certain procedural and substantive protections. The Supreme Court has held foreign nationals' right to life and personal liberty protection under Article 21, even while distinguishing between rights that are derived from citizenship (like the right to live or to apply for permanent residency) and those that are just reflecting basic human dignity. Court due cases like *State of Arunachal Pradesh v. Khudiram Chakma* and *Louis De Raedt v. Union of India* served as examples of the Court's balancing: maintaining humane treatment and procedural safeguards, while at the same time recognizing the State's sovereign power over immigration and citizenship.¹⁶

3.2. Important laws and administrative instruments: Foreigners Act (1946), Passport Act, Citizenship Act and executive orders

In reality, India does not have a single law for refugees, but the entry, stay and displacement

of non-nationals is regulated by a range of domestic laws and executive instruments. The Foreigners Act of 1946 gives the Central Government broad authority to regulate the presence of foreigners and to order their deportation; the Passports Act of 1967 deals with travel documents and departure; and the Citizenship Act of 1955 (along with special provisions such as sections added under the Assam Accord) indicates ways for gaining or losing citizenship. Besides, executive policies like visa categories, e-visas, and ad-hoc humanitarian admissions are at the administrative level which results in an uneven quilt of protection and vulnerability depending heavily on discretionary executive practice rather than on statutory procedures for refugee-status determination.¹⁷

3.3. The lack of a national refugee law devoted to protection: consequences for power and procedure.

The lack of a formally recognized refugee law in India has quite a few doctrinal and practical consequences it brings with it: (a) there is no standard procedure for Refugee Status Determination (RSD) as per the domestic law, this situation gives the UNHCR the authority to determine the refugee status and issue identity documents with uncertain legal status; (b) the use of immigration and criminal law measures (detention, and deportation under the Foreigners Act) to control the flow of asylum seekers has become common; and (c) Rights to Employment, Education and Durable Solutions are only limited. These imperfections have

¹⁶ —Constitutional Provision Regarding Refugee Law in India, *International Journal of Law Management & Humanities* available at: <https://ijlmh.com/paper/constitutional-provision-regarding-refugee-law-in-india/> (last visited November 16, 2025).

¹⁷ —Refugees In India: Legal Framework, Law Enforcement And Security, [2001] ISILYBIHRL 7 available at: <https://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html> (last visited November 16, 2025).

been pointed out again and again by scholars and UN agencies, thus creating a constant conflict between the de facto protection offered by India and the legal insecurity that a large number of asylum seekers are suffering from.

4. HOW GLOBALISATION RESHAPES REFUGEE PROTECTION: DRIVERS AND DYNAMICS

4.1. Economic liberalisation, labour markets and mixed migration

Economic globalization and liberalized labor markets are the main factors that create economic migration incentives, which are often the same as those of forced displacement and thus leading to —mixed flows where asylum claims and labor migration go together. Screening of this mixture is complicated and security-centered, migration management (detention, stricter visa regimes) rather than rights-oriented approaches are the responses States facing labor market stresses and political pressures tend to prioritize control and selective admission. The urban informal economy of India — which soaks up many refugees and migrants without formal documentation — thus becomes a dual area of survival and legal invisibility for the displaced people. B. S. Chimni's scholarly critiques, for example, reveal the neoliberal governance and humanitarian managerialism can significantly erode the protection of rights while simultaneously expanding the administrative capacity to exclude

people.¹⁸

4.2. Securitisation, counter-terrorism and border control regime

The securitization of migration has been greatly influenced by security requirements and counter-terrorism measures since the 1990s. Sharing of information, creation of watchlists, and establishing security collaborations between governments are some ways that facilitate the quick exclusion or deportation of people considered as security threats — many times through the use of low procedural protections. The case of India highlights how bilateral initiatives on counter-terrorism can lead to the creation of better border infrastructure which further diminishes the stakes for asylum seekers — they stand the risk of being jailed or even labelled as —foreigners| thus losing their rights to legal access to protection. Similar aspects invite the frequent use of the Foreigners Act and administrative detention as main migration management tactics.¹⁹

4.3. Transnational networks, diaspora politics, and civil society influence

On the other hand, global civil society, diasporic lobbying and transnational advocacy networks can create counter-pressures in favor of protection. UNHCR, international NGOs and diaspora groups are among the most influential parties that have worked to secure access to services, pressuring for releases from detention and facilitating resettlement. This kind of influence is observed in India particularly in the registration practices of UNHCR and the

¹⁸ Hein de Haas et al., —Population and Development Review ,| 45 *Population and Development Review* 885– 922.

¹⁹ Çlirim Toci, —How does migration affect national security?,,| 4 *Horizon Insights* 19–35 (2021).

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public interest litigation launched by NGOs which use international standards and media visibility to influence administrative results.²⁰

4.4. Cross-border trafficking, smuggling, and irregular movement

The cross-border trafficking and smuggling networks have become globalized and are taking advantage of the open borders and also of the demand for illegal transit, which leads to the confusion between the cases of trafficking victims and immigration offenders. Governments are usually taking punitive actions against smugglers and irregular migrants, which often result in the ironic situation where trafficking victims are made criminals and their asylum claims are rendered invisible. The coastal regions of India along with the land borders with Bangladesh and Myanmar have been the areas where such interactions were most vividly seen.²¹

4.5. Climate change, environmental displacement and transboundary impacts

Although the 1951 refugee convention does not explicitly mention climate-induced migration, climate change has been producing cross-border movements that are beyond the reach of the conventional asylum frameworks. The changing climate scenario of India, especially in the coastal and riverine areas, raises the question of not only internal

displacement but also cross-border movements that will challenge the ad-hoc protection regimes already in place and demand co-operative regional planning. The absence of "climate refugees" in the international legal category complicates the search for durable solutions and calls for flexible policy responses.²²

4.6. Technology, biometrics and data-driven migration governance

The states are increasingly resorting to biometric registration, identity databases, and inter agency data-sharing to handle the displaced populations. However, besides the benefits of unlocking aid and preventing fraud, such technologies also come with the downside of creating surveillance and dependence: those refugees who have been registered in the databases could be detected by law enforcement and immigration personnel who would then expose them to the danger of detention or involuntary removal. In the case of India, the UNHCR registration practices and the state IT systems are so much interwoven that it becomes necessary to impose strict legal safeguards for privacy and due process.

²⁰ Raam Dutia, —Diaspora transnationalism and transitional justice: theorising the politics of engagementl *The International Journal of Human Rights* (2025).

²¹ —Human trafficking and smuggling of migrants, ll *available at*: <https://www.interpol.int/en/Crimes/Human-trafficking-and-migrant-smuggling> (last visited November 16, 2025).

²² USCRI, —The 1951 Refugee Convention: Displacement Caused by Climate Change| USCRI, 2025 *available at*: <https://refugees.org/the-1951-refugee-convention-displacement-caused-by-climate-change/> (last visited November 16, 2025).

5. ILLUSTRATIVE CASE STUDIES (TO SHOW THE INTERPLAY OF GLOBALISATION & PROTECTION)

5.1. Rohingya refugees in India: status, state practice and protection challenges

Rohingya are one of the largest groups looking for safety in India where UNHCR and various other organizations have documented the presence of tens of thousands of Rohingya and other Myanmar nationals. Still, India's non-party status to the 1951 Convention and dependence on immigration law have created unsafe living conditions. UNHCR data (March 2023) revealed a considerable number of Myanmar nationals among the registered refugees in India, while human rights organizations and media reports have noted the continuation of detention, deportation orders and even push-backs — accusations that have given rise to stringent non-refoulement concerns, with the resulting litigation and international scrutiny. Media coverage (May – Aug. 2025) in recent times about the detention, forced returns and a Supreme Court view that —right to residel is for citizens only has provoked a further discussion on protection obligations under the constitutional and customary international law.²³

Table 1 — UNHCR-registered refugees/asylum-seekers in India (end March 2023)

Nationality registered	Number	Percentage of total (approx.)	Source
Myanmar (predominantly Rohingya & Chin)	30,142	62.5%	UNHCR/NHRC (Mar 2023). (National Human Rights Commission)
Afghanistan	14,578	30.2%	UNHCR/NHRC (Mar 2023). (National Human Rights Commission)
Others (African, Iranian, Sri Lankan, etc.)	4,695	7.3%	UNHCR/NHRC (Mar 2023). (National Human Rights Commission)

5.2. Afghan nationals and post-2021 displacement dynamics

The situation of Afghan nationals in India is rather complicated; on one hand, some groups (like the Hindus, Sikhs and former interpreters) have received permission to stay on humanitarian or community grounds, while others are still in legal limbo. In the wake of the Taliban's takeover in 2021, India granted emergency e-visas, and through ad-hoc reception

²³ The Hindu Bureau, —TH08 KDR If Rohingya refugees are ‘foreigners’ under the Foreigners Act, they will be dealt with as per the law: SCI *The Hindu*, 2025 available at: <https://www.thehindu.com/news/national/if-rohingya-refugees-are-foreigners-under-the-foreigners-act-they-will-be-dealt-with-as-per-the-law/sc/article69554086.ece> (last visited November 16, 2025).

and evacuation measures, tried to help but the long-term status and access to services for Afghans still depend on executive discretion and UNHCR support. This situation illustrates how geopolitical shifts (withdrawals, regime change) — a characteristic of the political vector of globalization — not only indirectly shape asylum policy but also determine the extent of protection available.²⁴

Table 2 — Selected detention and protection indicators for Rohingya in India (recent reports)

Indicator	Figure	Notes / Source
Estimated Rohingya population in India	~40,000 (est.)	Human Rights Watch / AP reporting (2024– 2025). (hrw.org)
UNHCR-registered Rohingya in India	~22,500	UNHCR registration figures (various dates). (Wikipedia)
Rohingya held in immigration detention (Sept 2024)	676 persons	Refugees International reporting; substantial proportion are women and children. (Refugees International)

5.3. The Chakma saga and responses of the respective authorities in the region

The Chakma and Hajong people, who shifted to India gradually in the past, especially in the 1960s—1990s, indicate the tricky and complicated nature of refugee reception in India that has persisted through the years: The Supreme Court's involvement in the Khudiram Chakma case raised issues of relief, domicile and the applicability of Article 21 for such communities, while political discussions (for example, provisions of the Assam Accord, citizenship amendments) indicated how regional politics and national sovereignty produce durable outcomes that are shaped by the past. The experience of the Chakmas prominently reveals the interaction between the judicial remedies, the administrative discretion and regional political agreements in creating the condition for either integration or exclusion to last for a long time.

6. CASE LAWS

*State of Arunachal Pradesh v. Khudiram Chakma*²⁵ In case the Supreme Court ruled that Chakma families (whose status was disputed) are to be denied the benefits of Section 6A of the Citizenship Act, 1955, and thus, should be categorized as —foreigners. At the same time, the Court made it known that even such non-citizens they are entitled to protection afforded by Article 21 (right to life and personal liberty) of the Indian Constitution. This is a grossly

²⁴ Rushali Saha, —How the CAA Shapes India's Afghan Refugee Response – South Asian Voices South Asian Voices, 2021 available at: <https://southasianvoices.org/how-the-cao-shapes-indias-afghan-refugee-response/> (last visited November 16, 2025).

²⁵ *State of Arunachal Pradesh v. Khudiram Chakma; Khudiram Chakma v. State of Arunachal Pradesh and Others*, 1994 Supp (1) SCC 615 (SC)

significant case in so far as it shows that the non-citizens in India may claim some fundamental rights.

*National Human Rights Commission v. State of Arunachal Pradesh & Anr.*²⁶ In case the Supreme Court stepped in to the Chakma community's rescue, which was under eviction threat. The Court once again stated that fundamental rights, especially Article 21, extend to non-citizens and ordered the State that it must provide them with safety and human dignity.

*Dongh Lian Khan & Anr. v. Union of India*²⁷ In case the Delhi High Court clearly accepted the non-refoulement rule as part of the right to life under Article 21, stating that no refugees should be sent back to the countries where they are likely to be persecuted. The Court took into account national security issues but nevertheless stated that any removal of a person must be carried out through the provision of a fair process, giving the person a chance to be heard, and having the UNHCR consulted.

*Louis De Raedt & Ors. v. Union of India & Others*²⁸ The petitioners (the foreigners missionaries) who were deported invoked the Foreigners Act, 1946 to challenge their deportation. The Supreme Court ruled that although the Government has extensive authority

under Section 3 of the Foreigners Act, a —foreigner| (non-citizen) is still entitled to natural justice which includes being heard before deportation and it further confirmed that the protection of Article 21 is applicable to such individuals.

A.K. Gopalan v. State of Madras²⁹ The case of the Supreme Court to begin with ruled that the Western type of due process was not meant by Article 21; this case profoundly affected how courts perceived liberty loss during preventive detention. Even though not a refugee case in the strictest sense, its reading of Article 21 informed subsequent decisions about aliens' rights.

Nandita Haksar v. State of Manipur³⁰ marked the Manipur High Court giving the six Myanmarese asylum seekers the allowance to approach the UNHCR in Delhi, and the court stated that the non-refoulement principle derived from Article 21, despite India being outside the 1951 Refugee Convention.

Mohammad Salimullah & Anr. v. Union of India & Ors.³¹ Challenging the detention and deportation of Rohingya refugees is the ongoing Supreme Court petition (Writ Petition (Civil) No. 793 of 2017). The petitioners maintain that all persons are protected by Articles 14 and 21, but as yet the Court has concluded that the —right not to be deported| is subordinate to the right to reside or settle (under Article 19(1)(e)), which it deemed confined to citizens. Furthermore, the Court argued that since India is not a signatory to the 1951 Convention, the non-refoulement principle does not apply to India as a treaty obligation.

²⁶ National Human Rights Commission v. State of Arunachal Pradesh & Anr., (1996) 1 SCC

742 ²⁷ Dongh Lian Khan & Anr. v. Union of India WP (Crl.) No. 1884/2015

²⁸ Louis De Raedt & Ors. v. Union of India & Others, (1991) 3 SCC 554

²⁹ A.K. Gopalan v. State of Madras, AIR 1950 SC 27

³⁰ Nandita Haksar v. State of Manipur W.P.(Crl.) NO. 6 OF 2021

³¹ Mohammad Salimullah & Anr. v. Union of India & Ors., Writ Petition (C) No. 793 of 2017

National Human Rights Commission v. State of Arunachal Pradesh & Anr³² In the NHRC v. State of Arunachal Pradesh case (1996), the Supreme Court mandated a post-decisional hearing for the Chakma refugees before the Chief Minister after the eviction order was issued. This not only emphasizes the right to life and liberty (Article 21), but also the right to fair procedure even for non-citizens.

7. ROLE OF INTERNATIONAL ORGANISATIONS, REGIONAL MECHANISMS AND EXTERNAL ACTORS

7.1. UNHCR's operational role, RSD activities and coordination with Indian authorities

In India, UNHCR is the main international organization responsible for protecting refugees. In fact, it registers, screens for vulnerability, and determines who qualifies for Refugee Status Determination (RSD) for a large number of asylum-seekers on Indian soil and issues identity/protection documents that serve as the primary legal recognition for those individuals who are considered to be at risk. Since India has not put in place a domestic law for refugees, UNHCR's decisions on refugee status determination and its "blue" asylum-seeker cards

determine the access to aid, resettlement referrals, and case-management but do not give rights that can be enforced in Indian courts under statutory law. The implementation of this situation relies on the negotiations with the Ministry of Home Affairs, state police, and local governments for access. The operational arrangement allows UNHCR to have some control over the situation (negotiations for access, protection monitoring, and advocacy) but it also puts the refugees in a position of legal insecurity that comes about when the authorities treat UNHCR documents as non-binding.³³

7.2. Bilateral arrangements, donor influence and NGO engagement

External states and donors influence India's asylum situation through technical cooperation, conditional assistance, resettlement places and ad-hoc diplomatic arrangements; thus, donor priorities (stability, counter-terrorism, regional diplomacy) can impact whether and how protection space is expanded or reduced. Non-governmental organisations (both national and international) provide legal aid, shelter, health and education; they also litigate in public interest cases and pressurise both UNHCR and the Government to practice humane administration. This mixed governance model—UNHCR + NGOs + selective state recognition (for specific nationalities such as Tibetans or Sri Lankans)—leads to uneven protection outcomes which are influenced by geopolitical and donor-driven considerations as much as by the humanitarian need.

7.3. Soft law, norms diffusion and pressure from global civil society

In the absence of any domestic treaty obligations and with soft-law instruments (the Revised Bangkok Principles, Global Compact for Refugees guidance, UNHCR guidance on RSD and data protection) and cross-border advocacy being the main avenues, India is slowly but surely

³² National Human Rights Commission v. State of Arunachal Pradesh & Anr., (1996) 1 SCC 742 ³³
—Refugee Status Determination, UNHCR India *available at*: <https://help.unhcr.org/india/refugee-status-determination-2/> (last visited November 16, 2025).

moving toward a rights-consistent practice with the help of these tools. Soft law cannot constrain the State but it is instrumental in spreading the norm: NGOs and UNHCR refer to regional declarations and good-practice guidance in their litigations regarding detention conditions; they do so while requesting non-refoulement safeguards, or while negotiating operating protocols with the Government. The worldwide civil society's exposure and documenting of abuses (detention, push-backs) frequently change the administrative practices to be of reputational and diplomatic concern, sometimes even leading to the intervention of the judiciary.³⁴

8. ADMINISTRATIVE PRACTICE AND ENFORCEMENT ON THE

GROUND 8.1. Refugee Status Determination practices, documentation and

UNHCR cards

In practice, the functions of RSD and identity management are mostly attributed to UNHCR in India, although they are not limited to that: UNHCR registers the asylum-seekers at the

field hubs (Delhi, Hyderabad, Pune, Chennai, Bengaluru, Jaipur), issues letters to the asylum seekers, and refugee determination letters after RSD, which are then used for resettlement to a third country and limited access to services. However, these documents do not automatically give rise to the statutory rights under Indian law, implying that in many places UNHCR registration mainly minimizes the immediate danger of arrest but leaves the beneficiaries vulnerable to detention, movement restrictions, or refusal of administrative services when the local authorities do not recognize the UNHCR status. The lack of a domestic RSD procedure and the inconsistent recognition of UNHCR documentation by state agencies thus puts many asylum-seekers in a prolonged legal limbo.³⁵

8.2. Detention, deportation, push-backs and human rights concerns

Enforcement action is mostly carried out through immigration legal instruments getting the powers from the Foreigners Act of 1946 (such as section 3, powers to make orders, and section 14, penalties) and the Foreigners Order of 1948 (ordering under section 3) and operational measures like arrest, administrative detention, and deportation. Human rights groups have reported the prolonged administrative detention of Rohingya and other asylum seekers, cases of push-backs at sea and land borders, and deportation orders given without individual, fair, and effective status determination—these practices raise severe non refoulement and due-process issues under international law and India's Article 21 jurisprudence. Judicial petitions contesting detention conditions and deportation have increased, but the remedies are often case-specific and do not remove the insecurity created by the executive discretion under the Foreigners Act framework.

³⁴ Jessica Field and Srinivas Burra, *The Global Compact on Refugees: Indian Perspectives and Experiences*, 2020.

³⁵ UNHCR Emergency Handbook, —Refugee Status Determination (RSD)| UNHCR available at: <https://emergency.unhcr.org/protection/legal-framework/refugee-status-determination-rsd> (last visited November 16, 2025).

8.3. Inter-agency coordination and capacity constraints

The management of non-citizens involves multiple agencies: the Foreigners Division of the Ministry of Home Affairs is in charge of the policy and removal; the Bureau of Immigration and state police are responsible for arrest and detention; the Ministry of External Affairs maintains diplomatic dialogues and readmission negotiations; and municipal or state authorities provide health, education, and social support. This dysfunctional arrangement produces gaps in coordination: there are very few standardized protocols for detention monitoring, family-sensitive procedures, legal aid provision or child protection; there is a shortage of interpreters and trained RSD adjudicators; and the data-sharing between UNHCR and state databases is irregular, which leads to both operational and privacy concerns. The lack of capacity together with the discretionary statutory powers constitutes a higher risk that the processing of asylum claims will be treated as immigration control issues rather than rights-based protection.³⁶

Table 3 — UNHCR-registered population in India (snapshot: April 2024, UNHCR factsheet)

Country of origin	Number registered	% of total	UNHCR registered Source
			(46,399)
			05/April%202024_UNHCR%20India_Factsheet.pdf
Myanmar (Rohingya, Chin, others)	11,361	24.5%	UNHCR India factsheet (Apr 2024). (https://www.unhcr.org/sites/default/files/2024-05/April%202024_UNHCR%20India_Factsheet.pdf)
Afghanistan			
Sudan, Somalia, Others	4,516	9.7%	UNHCR India factsheet (Apr 2024). (https://www.unhcr.org/sites/default/files/2024-05/April%202024_UNHCR%20India_Factsheet.pdf)
	30,522	65.8%	UNHCR India factsheet (Apr 2024). (https://www.unhcr.org/sites/default/files/2024-05/April%202024_UNHCR%20India_Factsheet.pdf)

³⁶ —Immigration and Foreigners Act, 2025, | Drishti IAS *available at*: <https://www.drishtias.com/daily-updates/daily-news-analysis/immigration-and-foreigners-act,-2025> (last visited November 16, 2025).

9. PRINCIPAL CHALLENGES AND PROTECTION GAPS IN GLOBALISED ERA

9.1. Legal pluralism and fragmentation of protection standards

The protection situation in India is scattered through constitutional guarantees, colonial immigration laws, and occasional executive actions. As far as the constitution is concerned, fundamental rights such as Article 14 (equality before the law) and Article 21 (right to life and personal liberty) have been interpreted to cover —every human being³⁶ within Indian soil, regardless of nationality, and have acted as the ground for habeas corpus and other litigations for relief. However, legislative measures— the Foreigners Act, 1946 (mainly s.3: power of making orders; s.14: penalties), the Passports Act, 1967 (impounding/revocation powers, s.10; appeals, s.11) and the Citizenship Act, 1955 (acquisition/registration ss.5–7, deprivation s.10, Assam-related special provisions s.6A)— give enormous discretionary power to the

government over inclusion, residency and expulsion. This pluralism creates uneven protection levels, making refugees reliant on the goodwill of the executive or on erratic judicial relief.³⁷

9.2. Political economy of exclusion: national security vs humanitarian obligations

The struggle between globalisation and security concerns has led to the politicisation of asylum (refugees are often viewed as potential security threats), and the laws have been modified or interpreted in ways that give precedence to state security and sovereignty. The Citizenship (Amendment) Act, 2019 (CAA) acts as a further example of the selective political economy of inclusion/exclusion by giving non-Muslim religious minorities fast track access to citizenship in a religion-based scheme that is limited to Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan, Afghanistan, and Bangladesh who entered the country before 31.12.2014. Thus, a politically selective approach to the protection of certain groups is strengthened. This differential treatment which is politicised increases the vulnerabilities of those not protected by such measures (especially the many Rohingya, Muslim asylum-seekers) and erodes the uniformity in giving protection.³⁸

9.3. Data protection, surveillance and privacy risks for refugees

Technological Globalization—Digital ID systems, biometric enrollment, and inter-agency data sharing—brings about efficiency but along with it serious privacy and risk of exclusion. Refugees who are unable to or do not want to enroll in national digital ID systems (such as Aadhaar) are cut off from the services that are linked to those IDs while on the other hand, in the case of refugees, whose biometric or case data have been made accessible across law enforcement and immigration databases, there is a risk of them being detained or expelled quickly. UNHCR’s data-protection guide emphasizes purpose-limitation, consenting, and minimizing, but India’s increasingly fragmented legal framework for data protection (which

³⁷ Subodh Asthana, —Article 14 of the Indian Constitution | iPleaders, 2024 available at:

<https://blog.ipleaders.in/article-14/> (last visited November 16, 2025).

³⁸ UNHCR - The UN Refugee Agency, —Refugee Protection: A Case for Balance Between National Security & Humanitarian Concerns | UNHCR India, 2024 available at: <https://www.unhcr.org/in/news/speeches-and-statements/refugee-protection-case-balance-between-national-security-humanitarian> (last visited November 16, 2025).

is pending comprehensive data-protection legislation as of the dates of many reports) and the involvement of refugee registration with national systems make protecting refugee privacy more complicated.³⁹

Table 4 — Selected operational indicators (Rohingya focus; multi-source estimates, 2023–2025)

Indicator	x.) % /	on Source
Estimated Rohingya	Figure (approximate)	<p>population in India ~40,000 (est.) — Human Rights Watch / AP reporting (2024–2025).</p> <p>(https://www.hrw.org/news/2025/08/28/india-scores) (https://apnews.com/article/e72) (https://www.unhcr.org/in/news/speeches-and-statements/refugee-protection-case-balance-between-national-security-humanitarian)</p>

4b7a9949192a5383f84eb98377026)	Rohingya population UNHCR registrations and RI reporting.	05/April%202024_UNHCR%20India_Factsheet.pdf ; https://www.refugeesinternational.org/reports-briefs/a-lifetime-in-detention-rohingya-refugees-in-india/
UNHCR registered Rohingya in India ~22,500 ~56% of estimated		
Rohingya held in immigration detention (snapshot Sept 2024)	676 persons c.3.0% of registered	Rohingya Refugees International (Dec 2024). https://www.refugeesinternational.org/reports-briefs/a-lifetime-in-detention-rohingya-refugees-in-india/

10. POLICY AND DOCTRINAL RECOMMENDATIONS (LAW AND GOVERNANCE REFORM)

11.1. Short-term administrative reforms: RSD regularisation, detention safeguards, access to services

The Government in the short term should organize an executive protocol that (a) acknowledges and simplifies the practical effect of UNHCR RSD outcomes when it comes to access to services and third-country resettlement; (b) defines transparent and limited time

³⁹ Ana Beduschi, —Digital identity: Contemporary challenges for data protection, privacy and non-discrimination rights| SAGE, 2019 *available at*: https://www.researchgate.net/publication/333765008_Digital_identity_Contemporary_challenges_for_data_protection_privacy_and_non-discrimination_rights (last visited November 16, 2025).

RSD steps with providing legal counsel and interpreters; and (c) orders detention only when absolutely necessary with maximum periods, judicial oversight and special rules for children, pregnant women and victims of torture established. These changes can be operated through MHA notifications, which are granted by s.3 of the Foreigners Act, 1946, by establishing standard operating procedures (SOPs) for the state police and detention authorities to follow to comply with Article 21 procedural safeguards. Such administrative measures — although not a replacement for legislation — would diminish arbitrary decision-making and foster adherence to non-refoulement obligations (Article 33 of the 1951 Convention, recognized as customary in numerous contexts).⁴⁰

11.2. Medium-term policy: a national refugee protection framework (features and roadmap)

A medium-term legislative fix needs to be so thorough that it creates a local refugee law which though it may, among others, define —refugee according to Article 1(A)(2) of the

1951 Convention or a domestic equivalent that is protective enough; establishes an independent RSD authority or gives statutory recognition to UNHCR determinations; affirms non-refoulement (a domestic bar to deportation) as an explicit statutory prohibition; grants limited socio-economic rights (work authorization, access to health and primary education) and outlines durable-solution pathways (local integration, humanitarian visas, resettlement referrals). The politically clever plan is initially to settle with statute acknowledgment of key procedural guarantees (RSD deadlines, appeal systems) and a provision that non-refoulement is to be observed by domestic authorities — this will not only serve the sovereign discretion but also facilitate the setting of the minimum protection standards.⁴¹

11.3. Long-term normative choices: accession vs pragmatic selective adherence; strengthening regional cooperation

Long-term doctrinal choices require the weighing of the benefits of formal accession to the 1951 Convention and 1967 Protocol (clarity, predictability, international legitimacy) against domestic political constraints. If full accession is politically infeasible, India should nevertheless domesticate core treaty norms such as non-refoulement, fair RSD, and basic socio-economic rights and seek binding regional agreements covering burden-sharing, readmission, and protection corridors. The only way by which the extension of digital ID systems can be combined with data protection requirements is under strict guise under the laws for data protection (indicate concerning the use of biometric data, purpose limitation, judicial remedies, and more). In its simplest form, the hybrid variant of the domestic adaptation of key treaty obligations backed by a strong hand of regional diplomacy and

⁴⁰ —Protocol relating to the Status of Refugees, available at: <https://legal.un.org/avl/ha/prsr/prsr.html> (last visited November 16, 2025).

⁴¹ Christine Lin, —Examining Refugee Protection in Non-Signatories to the Refugee Convention and Protocol: Lessons Learned for the Taiwan Context, Springer Nature Singapore, 2024 available at: https://link.springer.com/chapter/10.1007/978-981-97-2867-1_3 (last visited November 16, 2025).

statutory privacy guarantee appears to be the most promising trajectory that could potentially solve the question of sovereignty and security moderation in a globalized environment.⁴²

11. CONCLUSION

The phenomenon of globalisation has created a paradoxical situation in terms of refugee protection in India, which can be compared to a double-edged sword. The cross border norms, the role of UNHCR, the overseas Indians' connections, and the international monetary support are all together giving rise to the human rights protection areas — being the areas of registration, assistance and referral — that had not existed before. Contrarily, the very globalising phenomena that make migration easier also give birth to the barriers of many kinds — some of them are rigorous border controls, sharing of sensitive information and incentives for governments to carry out selective exclusion—that ultimately reduce the effective protection of refugees. In India at the moment, the state of affairs regarding refugees

protection is quite complicated, as it consists of a mix of aspects like constitutional guarantees (Article 14 and Article 21), colonial-age immigration laws (Foreigners Act, 1946 including s.3 and s.14; Foreigners Order, 1948), the Passports Act, 1967 (the power of impounding/revocation under s.10 and the right to appeal under s.11), and the Citizenship Act, 1955 (the provisions for acquiring citizenship ss.5–7, Assam special provisions s.6A, loss of citizenship s.10)—leaving refugees in a situation where their fate depends on the goodwill of the government officials and the occasional judicial relief (as in the cases of *Louis De Raedt v. Union of India* and *State of Arunachal Pradesh v. Khudiram Chakma*). The secure, rights-consistent protection can be achieved through a phased approach: firstly, the immediate administrative safeguards for RSD (Refugee Status Determination) and detention; secondly, the medium-term statutory architecture that would institutionalise non-refoulement and fair procedures; and finally, the long-term regional cooperation and strong data protection laws to regulate the technological infrastructure of migration. Only if the government does a complete reform of the doctrines, builds up operational capacity, and plays a principled regional diplomacy can it be said that India is able to harmonize its sovereign privileges with the humanitarian needs that globalisation both creates and unveils.

⁴² —Convergence & Divergence of Human Rights and Laws of War (Part I) - Theoretical Boundaries of Armed Conflict and Human Rights, Cambridge Core available at: <https://www.cambridge.org/core/books/theoretical-boundaries-of-armed-conflict-and-human-rights/convergence-divergence-of-human-rights-and-laws-of-war/EBC683AD8038EBF4CBBBDF30CE856BAD> (last visited November 16, 2025).

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