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**BEYOND BORDERS AND EQUALITY:
RETHINKING REFUGEE RIGHTS
THROUGH A COMPARATIVE
ANALYSIS AND INDIA'S LEGAL
APPROACH**

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Abstract:

The rights of refugees have become highly relevant in international law. In relation to contemporary conflicts, refugee rights outline the vital attributes of equality, justice, and freedom vis-à-vis basic human rights. However, significant gaps persist between the theoretical framework and the realities on the ground for refugees. The central argument of this article is that while international law, through instruments such as the Universal Declaration of Human Rights (UDHR), international conventions, and United Nations mechanisms, defines a robust set of rights for refugees, the enforcement and practical realisation of these rights are frequently undermined by political, legal, and structural inconsistencies. The article questions the extent to which international legal norms protect refugees in practice, and how national approaches, such as India's, illuminate the strengths and limitations of the contemporary system. This article explores the distinct yet relevant dimensions of international law and its branches, and examines the operative human rights law and refugee law, their implications, legitimacy, and perspectives. International law, by virtue of the Universal Declaration of Human Rights (UDHR), international conventions, and the United Nations Organisation (UNO), delineates the rights and laws governing refugees. Nonetheless, the conditions of life of many refugees are not fulfilled due to dire circumstances and execution imbalances. This article aims to identify the impact of international law on the rights of refugees, employing a qualitative approach informed

by theoretical frameworks. Furthermore, this study identifies the refugee crisis worldwide, examines the application of international law in such situations, and suggests mechanisms and enforcement frameworks that harmonise responses to the crisis while adhering to basic rights. With the global situation of war, it is of paramount importance to acknowledge and address the problems faced by millions of refugees, upholding the innate human rights.

Keywords: International law, refugee law, Universal Declaration of Human Rights (UDHR), international conventions and United Nations agencies.

Introduction:

“Human Rights violations are a major factor in causing the flight of refugees as well as an unstable to their safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum.”

-Sadako Ogata.¹

It is believed that shaping one's life by virtue of establishing a settlement in this world is one of the sole purposes of every human being. Having said that, year after year, masses of people are in a position to abandon their homelands to seek safety elsewhere owing to war, oppression, victimisation, despotism and numerous other forms of tyranny. This results in the separation of families, loss of ancestral land, economic adversities, starvation, conditions of extreme fear and loss of the prime years of one's life. This treatment of individuals has further become the genesis of refugee law, a branch of international law that concerns the rights and duties of the state in relation to refugees.

Under such circumstances, it is of vital importance to have a set of international principles governing nation-states in perpetuating global peace, justice, and equality, and in asserting basic human rights for all,

¹ MANIK CHAKRABORTY, HUMAN RIGHTS AND REFUGEES Problems, Laws and Practices 5

(Deep & Deep Publications PVT. LTD., 1998). [hereinafter “MANIK”]



and, in the present context, for refugees. This article attempts to establish the link between the aforesaid laws in their various instances. However, it also considers the constraints of international law and their implications for the rights of refugees, and ascertains whether these rights have been sustained by various nation-states since their inception.

1. Evolution of the Global Refugee Crisis: A Historical Overview

In English, the term refugee comes from the root word 'refuge', which in Old French means 'hiding place' and from the Latin 'fugere', meaning 'to flee'.² The idea of seeking sanctuary in a holy place was known to the ancient Greeks and Egyptians, and in medieval Europe, among them Ovid and Voltaire, who experienced political exile. However, as ideas like nationalism and chauvinism developed, identifying with a nation became inevitable.³

Then, with the outbreak of the First World War, people were forced to flee their homes in search of refuge, with only one goal: survival. This was followed by years of war, torment and persecution when the High Commissioner for Refugees was instituted by the League of Nations in 1921 as the first international body of refugee affairs. This commission was entrusted with assisting refugees who fled the Bolshevik Revolution of 1917 and the Armenian Genocide of 1915-1923, and was later succeeded by the Nansen International Office for Refugees, which issued the Nansen passport (basically a travel document for refugees).⁴

However, with the rise of Nazism, the directive of the Commission widened to the refugees of Nazi Germany, Austria, Sudetenland (present Czechoslovakia), which consisted of about 255,000 Jews who sought refuge in France and Palestine, along with 500,000 Spanish refugees during their defeat by the nationalists in the Spanish Civil War of 1939. The

number of refugees was astronomical, and in 1943, the Allies of World War II organised the United Nations Relief and Rehabilitation Administration (UNRRA) to provide assistance to the liberated areas of the Axis powers, which, in turn, resulted in more than 40 million refugees in Europe. The return of more than 7 million refugees to their homelands and the establishment of displaced persons camps for about 1 million refugees who refused repatriation were coordinated by the United Nations Relief and Rehabilitation Administration (UNRRA).⁵

In 1948, Israel welcomed over 650,000 Jewish refugees after its independence. Moreover, the International Refugee Organisation (IRO) was founded by the United Nations General Assembly (UNGA) in 1946, replacing UNRRA and assuming a mandate to repatriate or resettle refugees. It was dissolved and replaced by the United Nations High Commissioner for Refugees (UNHCR) in 1951. Additionally, the term 'refugee' had undergone several variations of definitions from Article 1 of the Convention Relating to the Status of Refugees of 1951 in Geneva, defining a refugee as-

"A person as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such

² Online Etymological Dictionary, <https://www.etymonline.com/word/refugee> (Apr. 7, 2026).

³ Wikipedia, <https://en.wikipedia.org/wiki/Refugee> (Apr 7, 2026).

⁴ Britannica, <https://www.britannica.com/topic/refugee> (Feb. 23, 2026).

⁵ Wikipedia, <https://en.wikipedia.org/wiki/Refugee> (Apr 7, 2026).



events, is unable or owing to such fear, is unwilling to return to it.”⁶

However, the 1967 Protocol, adopted in Oct 1967, amended the geographic and time-based constraints, “events occurring before 1 January 1951”, making it universally applicable. Subsequently, the Organisation of African Unity (OAU), in 1969, the Refugee Convention and the Cartagena Declaration of 1984 outlined distinct elements within its definitions.⁷ Indeed, international commissions and conventions have advanced in asserting refugees’ rights, taking into account deliberations and agreements.

2. Determining Refugee Status

Refugee status is granted by a contracting state or the UNHCR, for which a person must have applied for asylum, thereby making him an asylum seeker. In the hope of receiving refugee status, one has to undergo the Refugee Status Determination (RSD) process, supervised by the government of the country of asylum or the UNHCR in consonance with international, regional or national laws.⁸

A person gains refugee status only if the state or the UNHCR recognises protection needs. According to the UNHCR Refugee Population Statistics Database, there are 117.3 million forcibly displaced people worldwide. Of these, 37.9 million are refugees. About 67% come from the Syrian Arab Republic, Venezuela, Ukraine, and Afghanistan.⁹

3. Theoretical Foundations of International Refugee Law

The rights of refugees are protected by numerous international laws, which safeguard their rights and liberties. Correspondingly, refugees retain

a) The right to life, liberty and the security of a person under Article 3 of the Universal Declaration of Human Rights (UDHR), enabling them to lead a meaningful life.

b) The right to relief from torture or cruel, inhuman or degrading treatment or punishment under Article 5.

c) Equality before law and equal protection against any discrimination under Article 7.

d) The right to freedom of movement and residence and the right to leave any country, including their own, under clauses 1 and 2 of Article 13, respectively.

e) The right to seek and to enjoy in other countries asylum from persecution under clause 1 of Article 14.

f) The right to a nationality under clause 1 of Article 15.

g) The right to freedom of thought, conscience and religion under Article 18.

h) The right to freedom of opinion and expression under Article 19.

i) The right to social security through national effort and international co-operation under Article 22.

j) The right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment under clause 1 of Article 23.

k) Right to education for all, thereby asserting that education shall be free, in the elementary and fundamental stages under clause 1 of Article 26 of the Universal Declaration of Human Rights (UDHR) 1948.¹⁰

Right to return home: The Pinheiro Principles have presented the notion that people have the right to return home and also to the same property.¹¹ This

⁶ OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees> (Apr 8, 2026).

⁷ MANIK, *supra note 1*, at pp. 32-34.

⁸ UNHCR, <https://help.unhcr.org/india/refugee-status-determination-2/> (Apr. 2, 2026).

⁹ UNHCR – The UN Refugee Agency, <https://www.unhcr.org/refugee-statistics> (Nov, 4, 2025).

¹⁰ MANIK, *supra note 1*, at pp. 248-252.

¹¹ UNHCR – The UN Refugee Agency, <https://www.unhcr.org/media/principles-housing->



emphasises the return to their pre-conflict status quo that refugees maintained.

Right to family re-unification: This right is the only means to ensure that separated families are re-united, mainly spouses, children or parents after forced displacement. This right was derived from the basic human rights principles set out in Article 16(3) of the Universal Declaration of Human Rights.

Right to non-refoulement: The right to non-refoulement protects refugees from expulsion or return to the country where they fear persecution.¹² This right is considered the crux of international refugee law.

The aforementioned rights safeguard the interests of refugees, thereby placing all people on an equal footing, regardless of their social, economic, or political factors. Nevertheless, the question arises concerning the actuality of these theoretical milieus and the veracity of these rights in changing the lives of refugees worldwide.

4. Global Displacement and the Crisis of Protection

4.1 The Syrian Crisis: The Largest Displacement of the Modern Era

The Syrian refugee crisis has become one of the largest displacement crises in the world. According to the 2023 population planning figures, Syrian refugees and asylum seekers in Egypt, Iraq, Jordan, Lebanon, and Türkiye are estimated at 12.3 million, with 6.9 million internally displaced persons. The UNHCR's 2022 return intention survey found that about 58% of Syrian refugees intended to return at some point. The Regional Refugee and Resilience Plan (3RP) was co-led by UNHCR and UNDP to address the Syria crisis by integrating humanitarian and development efforts; however, according to UNDP, humanitarian needs

have increased in the affected country following the 2023 earthquakes.¹³ It must be noted that the UNHCR was committed to delivering aid and providing resources to resolve the Syrian refugee crisis.

4.2 The Palestinian Refugee Crisis: A Protracted Humanitarian Crisis

The Gaza Strip faces a humanitarian crisis as of March 2026, as they face shortages of basic necessities like food, water and medical needs, even though the ceasefire was declared in Oct 2025. The United Nations for the Coordination of Humanitarian Affairs and the UN Relief and Works Agency have reported that the displacement crisis continues, with an increase in overcrowding and restricted humanitarian access due to blocked aid deliveries. Between October 2023 and March 2026, 72,253 Palestinians were killed, and 71,912 were injured in Gaza.¹⁴ In this context, protracted displacement is essentially a failure of execution, not of law itself. The legal principles persist, but chronic refugee crises in Gaza expose the gap between norms on paper and political realities on the ground.

4.3 Ukraine and the Politics of Emergency Protection

Ukrainian refugees are one of the EU's largest humanitarian crises, with more than 6.5 million displaced since the Russian invasion in 2022. However, the Temporary Protection Directive of the EU granted Ukrainian refugees the right to work, study, reside and access healthcare across EU countries till March 2026.¹⁵ This mechanism enabled swift, harmonised access to rights, bypassing lengthy asylum proceedings and providing protection as a legal status coordinated across all member states. In contrast, refugees from other recent crises, such as those fleeing conflicts in Gaza or Afghanistan, have

and-property restitution-refugees-and-displaced-persons-pinheiro (Apr. 9, 2026).

¹² DR. S. R. MYNENI, PUBLIC INTERNATIONAL LAW 347 (2nd ed. 2021).

¹³ UNHCR – The UN Refugee Agency, <https://www.unhcr.org/emergencies/syria-emergency> (Dec., 2025).

¹⁴ UNRWA,

<https://www.unrwa.org/resources/reports/unrwa-situation-report-214-humanitarian-crisis-gaza-strip-and-occupied-west-bank> (Mar. 25, 2026).

¹⁵ HIAS, <https://hias.org/statements/three-years-activation-temporary-protection-directive-emergency-longer-term-solutions/> (Mar. 4, 2025).



not benefited from similar supranational legal frameworks within Europe. Instead, their protection relies on traditional asylum procedures, which vary by member state, often result in delays, and sometimes lead to inconsistent outcomes in terms of rights to residence, work, and family reunification. This explicit disparity highlights how legal frameworks, such as the Temporary Protection Directive, can fundamentally alter the refugee experience depending on nationality and geopolitics. While the EU's unity and solidarity in the Ukrainian case have been celebrated, the differential application of these legal tools underscores broader challenges in achieving consistent refugee protection. Thus, the Ukrainian example reveals both the potential and the limitations of regional legal responses when compared to the protracted, fragmented processes faced by refugees from other regions, exposing systemic inequities within international refugee law.

4.4 Refugee Realities in Iran

The Israel-Iran war of Feb 2026 has displaced about 3.2 million people, with refugees seeking asylum in its neighbouring countries like Turkey, Armenia and Central Asia.¹⁶ Unlike Ukraine, there is no regional legal safety net, so protection will rely on ad hoc national decisions and UNHCR's emergency operations. The UNHCR continues to assist through contingency planning and emphasises the urgent need to protect civilians, maintain humanitarian access, and ensure that borders remain open to those seeking safety, in line with international obligations. With the large Afghan population hosted by Iran and the persisting economic and social pressures, there is an imbalance in protection in the Global South and also the current dire situation affecting Afghan refugees in Iran.

Moreover, the High Commissioner of the UNHCR emphasised to the Security Council that the number of refugees in 2024 has significantly increased. Filippo

Grandi added that humanitarians were at a breaking point, and respect for the basic rules of war has almost become non-existent. In Gaza, Syria, Myanmar, the Democratic Republic of Congo, Sudan and Ukraine, more than 10 million refugees are displaced. Among the heart-wrenching images in Israel-Hamas conflict, the images of desperate people trapped and often killed, more than 3 million people are displaced in Myanmar, violence against women and gun violence is becoming common in the Democratic Republic of Congo, international humanitarian law gets violated every day in Ukraine and the international community continues to neglect the pledging over \$2 billion at a conference in Paris as aid activities are only funded at 15%. The High Commissioner urged the council to step up its efforts to save millions and provide assistance to the millions who were forcibly displaced.¹⁷ Thus, it may be rightly said that the UNHCR recognises human rights as the foundation of peace, justice, and democracy, as it continues to strive to establish global peace and justice.

5. Refugee Protection in India

Although India is not a signatory to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol, the Indian Government manages refugee matters in accordance with humanitarian considerations. It is one of the Asian countries that has sheltered millions of refugees since its independence. However, under customary international law, India is bound to render minimum standards of treatment that respect the fundamental rights of the refugees.¹⁸ Under clause c) of Article 51 of the Indian Constitution, "the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another."

A critical assessment of India's approach reveals both strengths and weaknesses inherent in its non-signatory model. Among its strengths is the flexibility to respond to diverse refugee groups through ad hoc

¹⁶ Aljazeera, <https://www.aljazeera.com/news/2026/3/17/irans-neighbours-prepare-for-fallout-as-war-threatens-new-refugee-crisis> (Mar. 17, 2026).

¹⁷ UN Press, <https://press.un.org/en/2024/sc15713.doc.htm> (May 30, 2024).

¹⁸ MANIK, *supra note 1*, at 124.



administrative measures, allowing for humanitarian protection even in the absence of a formal legal framework. India's tradition of hospitality and cultural principles, as reflected in its national practices, has enabled it to provide refuge to populations from neighbouring conflict zones, often irrespective of their nationality, religion, or ethnicity.

However, the absence of dedicated refugee legislation leads to several limitations. Decision-making on refugee status and rights is largely discretionary and can be inconsistent, varying between groups and over time. This lack of a codified legal process can result in uncertainty for refugees regarding their legal status, right to non-refoulement, and access to essential services. Scholars also highlight challenges such as instances of arbitrary detention, restricted freedom of movement, and occasional deportations despite international customary obligations. Case law is mixed, as in the Supreme Court's 2021 ruling upholding the deportation of Rohingya refugees to Myanmar despite non-refoulement concerns, reflecting the tension between sovereign interests and humanitarian commitments.

Overall, while India's model demonstrates a pragmatic and humanitarian approach, the absence of a formal refugee law potentially undermines the procedural safeguards and consistency needed for robust refugee protection, as recognised by leading legal scholarship.

- a) Equality before law and equal protection of law under Article 14.
- b) The right to life and personal liberty under Article 21.
- c) Protection under arbitrary arrest and detention under Article 22.
- d) The right to freedom of religion under Article 25.
- e) Free access to courts under Articles 32 and 226, irrespective of the fact that he is a refugee.¹⁹

Through numerous schemes, rehabilitation centres, facilities, and regional organisations, India has sought to provide the best possible measures for refugees

knocking on its doorstep. Even with its increasing population and nationwide diversity, it has managed to establish harmony between the citizens and refugees, which is an achievement in itself.

The Indian framework in relation to refugees delineates giving humanitarian assistance and protection to millions of refugees who came from Tibet, Bangladesh, Pakistan, Sri Lanka, Afghanistan and Myanmar. India has always welcomed refugees at their hour of distress with open arms and has upheld the principles of "the guest is god" (Atithi Devo Bhava) and "the world is one family" (Vasudhaiva Kutumbakam), embedding them in its global outlook.

5.1 The Tibetan Community in India

After the communist victory of China, the troops invaded Tibet and began to colonise it by setting up machinery and institutions to control the country. In 1959, the 14th Dalai Lama, along with his 13,000 followers, fled to India because of the Chinese oppression.¹³ The Ministry of External Affairs extended medical assistance and other basic necessities to the refugees which later augmented to long term rehabilitation programmes after the Sino-Indian War of 1962.¹⁴ The headquarters of the Central Tibetan Administration (CTA) in Himachal Pradesh, The Tibetan Schools Society¹⁵ for education to refugee children in New Delhi, the Tibetan Refugee Self-help centre at Darjeeling, the Tibetan Refugee Handicraft Centre in Dalhousie, were established by the Indian Government.²⁰

5.2 The Sri Lankan Tamil Refugee Crisis

Between 1983 and 1987, India granted refuge to the Sri Lankan Tamils as refugees in a political sense owing to the turmoil between the Sinhalese community and the Sri Lankan Tamils. After the 1987 Indo-Sri Lankan Accord, 42,000 refugees were repatriated in collaboration with the UNHCR. Further, under a bilateral agreement between the Indian Government and Sri Lanka in 1992, about 40,000 refugees were repatriated after the UNHCR verification of 'voluntary nature of repatriation'. The

¹⁹ INDIA CONST. art. 14, 21, 22, 25, 36 and 226.

²⁰ MANIK, *supra note 1*, at pp. 146-150.



UNHCR provided assistance to these refugees for reintegration, income-generating projects, and education. India supplied the basic necessities to around 1,10,000 refugees inside and outside the transit camps in Tamil Nadu.²¹

5.3 The Chakma Refugee Issue

In 1986, more than 70,000 tribals fled from the Chittagong Hill Tracts of South East Bangladesh to secure refuge in Tripura and Mizoram of India. A majority of these refugees are Chakma, along with nine other indigenous tribes. About 55,000 refugees are housed in the camps of Tripura state as a result of religious and social persecution of tribals and acquisition. They were granted refuge under international law on the condition that they could not be associated with any political activities during their stay in India. They were rehabilitated in land-based sectors, agro-industry-based sectors, and handicraft-based settlements in the states of Jammu and Kashmir, Himachal Pradesh, Uttar Pradesh, Sikkim, West Bengal, Orissa, Madhya Pradesh, Karnataka, and Arunachal Pradesh. The Indian Government and the Tripura state government incurred expenditure of 49 crores and over 2.5 crores, respectively, for the relief and shelter of these refugees. Moreover, these relief measures were scarce and under improvement, which might be owed to the fact that these foreigners settled in north-east Indian states (highly sensitive states). Nevertheless, in 1994, the voluntary repatriation process took place after long negotiations between the refugees, the government of Bangladesh and the Indian Government.²²

6. Bridging Gaps in International Refugee Law: Reform Pathways

While international refugee law claims universality, real protection is moulded, oftentimes, by political situations, geographical conditions and state capacities, as is evident in Western situations and non-signatory models like India. However, an attempt can be made to expand the scope of sharing responsibility among nations, thereby ensuring that it is not only the developing states that bear the weight of refugee

crises. A responsibility-sharing mechanism may address the disproportionate responsibility on the developing states, upholding equal global participation.

In addition, a uniform, immediate protection mechanism under the UNHCR may be established to create a global system that activates during refugee crises and ensures that basic rights, such as residence, entry permission, and basic needs, are met temporarily until the conflict situation subsides. This reduces disparities caused by geopolitical opinions by ensuring basic requirements.

Furthermore, while India's flexible approach supports contextual decision-making, a uniform law and the legal status of the national refugee law framework provide continuity and consistent treatment, with procedural safeguards upholding basic rights. To advance this, India could enact a comprehensive national refugee law that clearly defines the process for granting and revoking refugee status, codifies the principle of non-refoulement, guarantees access to education, healthcare, and livelihood opportunities, and establishes independent appeal mechanisms for denied applications.

In addition, adopting transparent criteria for refugee registration and harmonising coordination between central and state authorities would promote consistency and procedural fairness. Empowering an independent Refugee Rights Commission to oversee implementation and monitor compliance could bolster accountability. On a global level, international legal reform could focus on establishing binding responsibility-sharing agreements, strengthening enforcement mechanisms for refugee rights, and developing a rapid response protocol under the UNHCR to protect refugees during emerging crises. These legal and policy reforms would help bridge the gap between principle and practice in both national and international refugee protection.

²¹ *Id.* at pp. 168-169.

²² *Id.* at pp. 169-177.



7. Conclusion

In the changing stances after World War II, the Cold War era, and regional civil wars, the refugee crisis has indeed become the nucleus of international law. While many of the previously mentioned countries have served as pillars of comfort to refugees at various stages, there are circumstances in which aid could not be provided. Needless to say, international organisations have revitalised the refugee crisis on a global scale on multiple occasions by virtue of their agencies and by fortifying the principles of human rights. Nevertheless, it is the need of the hour to establish a structural foundation which does not view the said crisis as a result of political or economic outcomes of the countries.

The analysis of the global refugee crisis reveals structural deficiencies in the current legal framework, where selective protection can be transformed into a global mechanism, equitable distribution can replace the burden of refugee responsibility on one state, and domestic legal reform can codify the refugee law framework into uniform consistency. Furthermore, an attempt must also be made to ensure the 'voluntary repatriation' of the refugees to their countries is undertaken, asserting their right to non-refoulement. Refugees are often the victims of inhuman acts and are, unfortunately, caught in the turmoil of distinct war zones. Therefore, it is the responsibility and obligation of international nation-states to render humanitarian assistance aimed at solving issues through agreements and bilateral dialogues.
