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## IMPACT OF IMMIGRATION POLICIES ON HUMAN RIGHTS: A COMPARATIVE ANALYSIS WITH FOCUS ON INDIA

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### I. ABSTRACT

*Growing movement across borders increasingly tests national laws aiming to uphold government authority while meeting global duties to protect people. India, notable for sending many abroad yet also receiving large numbers, faces challenges as its outdated rules fail to match modern patterns of forced or voluntary relocation. Whether present policies secure basic freedoms for those crossing into the nation - be they asylum seekers, displaced individuals without citizenship, or laborers - is explored here through local judicial principles alongside worldwide standards. Beginning with India's present framework under the Immigration and Foreigners Act, 2025, while situating the Foreigners Act, 1946 and related predecessor laws in their repealed historical context, the analysis then turns to the Citizenship (Amendment) Act, 2019 and safeguards embedded within Article 21 of the Constitution. Instead of general assumptions, examination follows structure found across U.S., Canadian, and EU immigration models, then extends into policies practiced by several Middle Eastern nations. Rather than isolated rulings, judgments issued by India's highest court align beside findings from global judicial bodies. Following this path, benchmarks originate in the 1951 Refugee Convention, tied further to foundational agreements drafted under UN authority on human rights. The results indicate that India's laws on migration carry deep-rooted flaws - such as rules frozen in time, uneven application across regions, and shifting conditions for staying - which place at greater risk communities like the Rohingya along with people without legal*

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*status. Although key decisions by the Supreme Court have applied constitutional safeguards under Article 21 even to foreigners, hurdles built into processes still weaken actual ability to claim these protections. This work suggests fragmented court actions fail to address core issues; instead, coherence may emerge through legislation matching national policies to global human rights standards. A single legal structure could reflect such alignment more effectively than scattered rulings.*

## II. KEYWORDS

Human Rights, Non-refoulement, Refugee Law, Citizenship Amendment Act 2019, Comparative Immigration Law.

## III. INTRODUCTION

Migrations around the world now unfold faster than ever, sparked not just by war but also deepening poverty, shifting climates, because of interconnected economies. Such flows alter how countries rely on one another economically, while quietly transforming old power ties since borders face new pressures. Reactions from leaders reveal tensions over fairness, control, belonging - especially when people arrive from afar.

With more than 1.4 billion residents, India finds itself deeply involved in global migration patterns - both sending people abroad and welcoming newcomers. Each year, arrivals come from countries like Bangladesh, Myanmar, Nepal, Sri Lanka, and Afghanistan, driven by needs for security or work opportunities. Yet the system meant to manage entry and stay operates on patchy rules left over from British rule. The Foreigners Act, 1946, the Passport (Entry into India) Act, 1920, and the Registration of Foreigners Act, 1939<sup>4</sup> formerly constituted India's principal immigration-control framework; however, they now operate only as historical predecessors after their repeal by the Immigration and Foreigners Act, 2025. Because these regulations are so old, handling current tasks around borders or safeguarding

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<sup>4</sup> Immigration and Foreigners Act, 2025; Immigration and Foreigners Rules, 2025; Immigration and Foreigners Order, 2025.

vulnerable groups becomes difficult. As a result, efforts to supervise movement across frontiers often fall short.

This research lines up India's way of handling immigration next to the United States, the European Union, Canada, and parts of the Middle East. Unlike many others, India operates without one central law guiding who can enter or stay. Countries like Canada and Australia rely on scoring systems focused on job skills; the EU binds its members through common principles around dignity and fairness when deciding border policies.<sup>5</sup> Over time, American and British authorities have narrowed eligibility, shaped heavily by internal politics and public debate. Looking closely at how these places manage movement highlights gaps in India's method - spotty monitoring, shifting safeguards, unpredictable residency terms. Change does not mean copying what others do, yet it must tackle flaws made visible through side-by-side review.

### **A. Research Objectives**

The purpose of this study is to analyze how immigration policies affect human rights in a comparative context. The primary objective is fourfold:

1. Examine how human rights implications of immigration policies affect access to liberty, equality, and due process;
2. Compare India's immigration system to international standards and the systems of other nations in order to identify any areas of convergence or divergence between Indian immigration law and global norms;
3. Determine the gaps and shortcomings in India's current immigration system, such as the absence of a formal refugee law, the extremely discretionary authority granted to immigration authorities, and the minimal protections provided by law for migrants, and

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<sup>5</sup> United Nations High Commissioner for Refugees, *Global Trends: Forced Displacement* (UNHCR 2023) <https://www.unhcr.org/global-trends> accessed 1 June 2024.

4. Provide concrete recommendations for legal and policy reform that are designed to promote the establishment of an immigration system in India that is more consistent with international human rights standards.

### **B. Research Questions**

1. Whether Indian immigration policies provide adequate protection to the human rights of migrants and refugees?
2. Whether Indian immigration laws are consistent with international human rights standards?
3. What legal reforms are required to balance immigration control with the protection of human rights?

### **C. Research Hypothesis**

India's reliance on colonial-era, security-driven immigration statutes absent any dedicated refugee or asylum law produces systemic human rights deficits (arbitrary detention, refoulement, discriminatory classification) that diverge significantly from rights-based frameworks adopted in the EU, Canada, and (to varying degrees) the US, and that judicial intervention under Article 21 alone cannot adequately remedy.

### **D. Research Methodology**

This paper takes a doctrinal approach, with comparative analysis as the main supporting tool fitting, given that the questions here are about how laws are written, how courts have stepped in (or not), and how India's framework stacks up against other countries' choices, rather than something that calls for surveys or fieldwork.

### **E. Research Design**

The work is built around close reading of primary legal sources statutes, case law, and international instruments alongside secondary material like NHRC and UNHCR reports, academic commentary, and news coverage of recent incidents (the 2025 Rohingya pushbacks, the Calcutta High Court ruling on the six Indians deported to Bangladesh, and so on). The four objectives set out at the start structure the whole paper: first, how immigration rules affect liberty, equality, and due process; second,

how India compares against the US, EU, Canada, and the Middle East; third, what specific gaps exist in India's system (no refugee law, unchecked executive discretion, weak protections); and fourth, what reforms could realistically close those gaps.

The paper moves in stages starting with definitions then building out India's current legal framework under the Immigration and Foreigners Act, 2025, the Citizenship Act, 1955, and the 2019 Amendment, while referring to the 1946, 1920, and 1939 enactments as repealed predecessor statutes, then turning to how international human rights law interacts with that framework, then the comparative section, and finally landing on case law analysis and policy recommendations.

### **1. Data Collection**

Beginning with Indian legislation, primary reference is now made to the Immigration and Foreigners Act, 2025, along with the Immigration and Foreigners Rules, 2025 and Immigration and Foreigners Order, 2025. The Foreigners Act, 1946 and Passport (Entry into India) Act, 1920 are considered only as repealed predecessor instruments. The Citizenship Act of 1955 appears next, along with changes introduced in 2019.

Included also is the proposed immigration framework mentioned within the gaps segment dated 2025. Judicial references emerge through NHRC versus the State of Arunachal Pradesh. Another ruling surface - Md. Rahim Ali's matter. Finally, Mohammad Salimullah against a respondent closes the list. The pending Supreme Court proceedings in West Bengal Migrant Workers Welfare Board & Anr v Union of India & Ors, W.P.(C) No. 768/2025, are also relevant because they concern allegations that Bengali-speaking migrant workers from West Bengal were detained or treated as suspected Bangladeshi nationals without adequate verification.

Following this, a case arises involving Jaynab Bibi against the central authority. Then comes Ktaer Abbas Habib Al Qutaifi, presenting claims before the nation's highest court. Another matter emerges - Mahangu Munda appears in opposition to the Union of India. Each instance reflects distinct individuals facing the state within judicial settings.

Beginning with global standards, reference is made to the Universal Declaration of Human Rights alongside the ICCPR, the 1951 Refugee Convention together with its 1967 Protocol, and the treaty safeguarding migrant workers. Judicial rulings such as *Hirsi Jamaa* against Italy, *B.F. versus Greece*, *Ahani* in relation to Canada, and *Suresh* before Canadian courts also inform the analysis. Across nations, legal frameworks differ - due process under the U.S. Fifth Amendment operates apart from its asylum mechanisms.

In Europe, movement rules stem from the Dublin Regulation while court interpretations of the European Convention shape outcomes. Canada combines a points method for entry with oversight of refugee status decisions through judges. Elsewhere, labor migration in parts of the Middle East follows patterns set by the Kafala arrangement.

Starting elsewhere than statutes, reliance falls upon field-sourced records - UNHCR updates enter alongside Amnesty findings, while Human Rights Watch documentation weaves through, complemented by operational details emerging from Assam's NRC mechanism. The 2019 exclusions surface here, paired with Foreigners Tribunals' 2025 numerical patterns, anchoring doctrine within observable conditions. What appears legally abstract ties firmly to measured outcomes across regions.

## 2. Analytical Tools

A handful of doctrinal techniques carry the analysis:

- **Statutory interpretation:** reading the Immigration and Foreigners Act, 2025, the Citizenship Act, 1955, and the Citizenship (Amendment) Act, 2019 against constitutional guarantees, while using the Foreigners Act, 1946 and Passport (Entry into India) Act, 1920 only for historical comparison, particularly Articles 14 and 21, to identify where the statutory language grants discretion that runs up against rights protections.
- **Case law analysis:** tracing how Indian courts have used Article 21 to fill gaps left by the absence of a refugee law (*NHRC v. Arunachal*

Pradesh, Jaynab Bibi), while also looking at where courts have declined to intervene (Salimullah), to map the inconsistency in judicial protection.

- **Comparative analysis:** setting India's framework against the US, EU, Canada, and Middle Eastern approaches on the same axes (detention, asylum procedure, non-refoulement, judicial oversight), to see what's worked elsewhere and what might transfer.
- **International law analysis:** examining how non-binding instruments (UDHR) and binding ones India has actually ratified (ICCPR) interact with domestic law, especially around non-refoulement as a principle of customary international law that arguably binds India even without Refugee Convention accession.
- **Gap analysis:** pulling together the institutional weaknesses (Foreigners Tribunals, NRC process, lack of an ombudsman) and procedural gaps (no time limit on detention before judicial review, no asylum procedure) to build toward the recommendations in the final section.

### 3. Limitations

As doctrinal work, the paper can't capture lived experience directly though it does draw on documented incidents and reporting (the Rohingya pushbacks, individual case histories) to keep the analysis grounded rather than purely abstract. Because India's immigration law is actively shifting (the 2025 law, ongoing NRC litigation), parts of the analysis reflect a fast-moving situation that may need updating.

#### F. Literature Review

The Article on "The Human Rights of Migrants: A Global Perspective" by François Crépeau examines the relationship between immigration policies and migrant rights. It explains that although states have the authority to regulate migration, such policies must comply with human rights principles. The author highlights problems faced by migrants, including discrimination, detention, and limited access to legal protection.

The study emphasizes the need for a balanced approach that protects national interests while ensuring dignity and equality for migrants. This article provides a useful foundation for analysing India's immigration framework and the need for human rights-based reforms.

#### IV. GLOBAL TRENDS IN MIGRATION

Folks far from home now number close to 280 million - roughly 3.6 percent of everyone on Earth<sup>6</sup> - with paths ranging from university courses to job searches to forced escapes. Because planes fly more often, economies link up via deals across borders, while workplaces keep calling for workers regardless of origin, movement keeps rising.

Nowhere is the pressure of movement clearer than in today's numbers - more than 110 million uprooted by war or fear. <sup>7</sup>Though some migrate by choice, a growing number flee because they must. Violence that refuses to fade - in places like Syria, Afghanistan, Myanmar - pushes families across borders. Some find shelter close by, hosted in nearby nations. Others move much farther, drawn toward societies where danger feels less nearby.

Moving across borders defines much of India's role in human movement worldwide. Around eighteen million Indians live outside their homeland, forming the biggest overseas population on Earth. Yet at the same time, people arrive in India from places like Bangladesh, Nepal, Afghanistan, Sri Lanka, and Myanmar. These arrivals include both migrants and those fleeing hardship. Large flows go in opposite directions, shaping a dual reality few nations experience.

Even so, India does not have specific laws to protect refugees. Historically, India depended on colonial and early post-colonial instruments such as the Foreigners Act, 1946, the Passport (Entry into India) Act, 1920, and the Citizenship Act, 1955. The

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<sup>6</sup> International Organization for Migration, World Migration Report 2024 (IOM 2024) <https://worldmigrationreport.iom.int> accessed 1 June 2024.

<sup>7</sup> UNHCR, Global Trends: Forced Displacement (UNHCR 2023) <https://www.unhcr.org/global-trends> accessed 1 June 2024.

present immigration-control framework, however, is now centred on the Immigration and Foreigners Act, 2025, while refugee protection remains uncodified.<sup>8</sup> These acts hand wide powers to the government regarding who may enter, remain, or be removed. Without tailored legislation, support for people fleeing to India weakens sharply.

## V. HUMAN RIGHTS CHALLENGES IN IMMIGRATION POLICIES

Every person holds core rights, no matter their entry situation. Though borders involve control, state power must respect global standards. Dignity does not depend on paperwork or permission. Fair treatment under law stays intact even at checkpoints. Arbitrary arrest finds no justification in accepted treaties. Legal safeguards apply equally, whether someone arrives legally or not. These principles stem from agreed frameworks like the Universal Declaration and binding covenants. Protection against abuse forms part of shared norms. Authority exists, yet it cannot override basic humanity.

Policies that tighten border control often fall short when applied. Though meant to regulate movement, they leave undocumented people stuck in custody for long stretches. Asylum applicants might get sent back before ever seeing a judge. Access to care or school gets blocked just because someone lacks papers. With little scrutiny over workplaces, employers sometimes take advantage - workers find it hard to push back.

Still facing court scrutiny, India's 2019 citizenship law draws criticism for favouring migrants by religion.<sup>9</sup> Although not bound by the 1951 global treaty on refugees, the country hosts Rohingya who fled violence in Myanmar. Without an official policy to shield them, though, these individuals live in a state of deep legal uncertainty.

When laws do not cover certain situations, Indian courts step in. The Supreme Court paused the forced removal of Chakma refugees in National Human Rights

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<sup>8</sup> Immigration and Foreigners Act, 2025; Citizenship Act, 1955; Citizenship (Amendment) Act, 2019.

<sup>9</sup> Citizenship (Amendment) Act 2019.

Commission v. State of Arunachal Pradesh.<sup>10</sup> Life and personal freedom under Article 21 apply to everyone within India's borders - even non-citizens - according to that decision. Constitutional rights fill gaps left by missing specific refugee laws. Though no law targets asylum seekers directly, court judgments often uphold their protection.

## VI. WHY IMMIGRATION POLICY MATTERS

Immigration laws do not merely make up bureaucratic processes but instead directly affect the lives of millions of people worldwide every day. Under immigration law, when a migrant is able or unable to legally work, to see a doctor, to send his/her child to school, or to claim right to appeal an unjust detention order is determined. The absence of clear representation under the law creates a grey area for migrants where exploitation and abuse can happen without being checked.

Examining how different countries administer immigration also indicates this fact. Many countries have asylum systems and refugee protection systems that (at least in principle) attempt to balance the needs of the state with its humanitarian obligations. India has developed systems based on administrative discretion and executive decision making instead of having a coherent legislative framework.

The gap in India's immigration system has become increasingly more noticeable in the last few years. Ongoing debates regarding the National Register for Citizens, the increase in levels of fear over undocumented immigration from neighboring countries and ongoing refugee crises have all propelled immigration governance to a prominent position within both public and legal dialogue in India. The central question that is being asked through all these discussions is whether India's immigration laws remain current and relevant when measured against Constitution principles and globally accepted human rights laws.

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<sup>10</sup> National Human Rights Commission v State of Arunachal Pradesh [1996] 1 SCC 742 (Supreme Court of India).

## VII. KEY DEFINITIONS IN MIGRATION LAW

Precise definitional clarity is a prerequisite for any substantive analysis of immigration policy and its human rights implications. The following definitions establish the conceptual parameters of this study.

Migration rules in India carry layers that only become clear once definitions are pinned down - yet even then, their real-world effects often tell a different story. What seems straightforward on paper shifts when applied in daily life.

People move across borders for many reasons - some seek improved lives, others wish to reunite with relatives, while a few flee urgent dangers. India previously handled such movements through the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920. After their repeal, entry, stay, movement, registration, and removal of foreigners are principally governed by the Immigration and Foreigners Act, 2025 and its subordinate instruments. Though power to control entry, stay, or exit lies largely with officials under these rules, questions arise when decisions appear unchecked. Over time, concerns grow about how freely authorities act without clear oversight, particularly where personal freedoms are affected.

People may cross borders in different ways, depending on their reasons. What separates a migrant from a refugee or an asylum seeker may be hard to tell at first glance. Moving voluntarily defines most migrants - jobs, schools, or relatives often pull them across lines. Yet others leave without any real option to stay behind. Fear drives those individuals: fear tied directly to who they are or what they believe. International rules, like the 1951 UN agreement, name these cases specifically when danger comes from identity-based threats. Legal rights shift dramatically once that label applies. Protection changes based on how and why someone arrives.

India has not joined the 1951 Refugee Convention or the 1967 Protocol.<sup>11</sup> Yet those escaping war have sometimes settled within its borders - like Tibetans, Sri Lankan

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<sup>11</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

Tamils, and Afghans. Shelter arrives not through law but by decision of officials. Rules shift when leaders change their minds and because no national law defines asylum clearly, officials decide case by case. As a result, uncertainty marks the status of many, especially if they arrived without official permission.

Asylum seekers - people who've requested safety yet await a verdict - face comparable difficulties. National authorities typically manage such cases where official asylum structures exist. Where borders lie distant, the UNHCR often takes charge in India. This approach works in practice yet lacks the stability of codified law. Uneven results emerge, showing their limits despite temporary utility.

Forced removal of non-citizens defines deportation as the strictest tool in border control. While nations may legally send away those violating admission terms, problems emerge when going back risks life or safety. Protection kicks in at that point - non-refoulement prevents returns harm, regardless of signed agreements.<sup>12</sup>

## **VIII. THE RELATIONSHIP BETWEEN IMMIGRATION LAW AND HUMAN RIGHTS LAW**

Though built on control, immigration rules often bump against global standards meant to protect people simply because they exist. Sovereignty drives who gets in, how long they remain, who leaves - that part is clear. Yet another system insists that worth isn't earned through papers or borders but comes by being human. How a person arrived should not erase their standing, according to principles of rights. Tension grows where one framework enforces limits while the other resists conditions on basic respect.

Everyone inside a country's borders holds certain rights, regardless of status. These protections emerged from foundational texts like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>13</sup> Equality under

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<sup>12</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137, art 33.

<sup>13</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

the law stands as one key element. So does protection against being held without cause. The chance to request safety across borders also matters. Such guarantees extend beyond citizens alone. Migrants fall within reach. Refugees do too. Even those lacking official documentation are included. Legal standing does not depend on paperwork. Presence in a nation triggers these entitlements. Boundaries of nationality do not limit them.

Though India lacks specific laws for refugees, its highest court has stepped in where statutes fall short. Life and freedom under Article 21 apply not only to citizens but anyone within the nation's borders. When people flee danger, the judiciary recognizes they too hold rights on Indian soil. A key moment came during the ruling in *National Human Rights Commission v. State of Arunachal Pradesh*.<sup>14</sup> There, judges made clear: removal is impermissible if it risks someone's survival or autonomy. This interpretation acts as a safeguard, especially when legislative silence leaves vulnerable groups exposed.

Still, court decisions have not eased friction between safety demands and duties to protect vulnerable people. Because of the 2019 law altering citizenship rules, arguments grow sharper over faith-based bias in who gains legal status. This shift forces a closer look at whether immigration policies today uphold the Constitution's promise of fairness and equal treatment under the law.

### **A. Key International Legal Instruments**

How countries treat migrants often trace back to global agreements setting baseline rules. These accords become reference points when examining national systems, such as India's approach. Standards agreed upon cross borders influence local policies in quiet but persistent ways.

Though not legally enforceable, the Universal Declaration of Human Rights - adopted December 10, 1948, by the UN General Assembly - influences court decisions

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<sup>14</sup> *National Human Rights Commission v State of Arunachal Pradesh* [1996] 1 SCC 742.

worldwide. From persecution, anyone may flee; that protection appears in Article 14. Equal treatment under law, regardless of status or background, stands in Article 7.

After India acceded to the International Covenant on Civil and Political Rights in 1979, broad human-rights principles assumed binding treaty significance. Article 9 requires protection against arbitrary detention and access to judicial review, while Article 13 requires that lawfully present non-citizens be expelled only pursuant to law and with an opportunity to submit reasons against removal. In *Ahani v. Canada*, the UN Human Rights Committee, not the Ontario Court of Appeal, examined these procedural safeguards in the deportation context and clarified the relevance of effective review where removal may expose an individual to serious harm.<sup>15</sup>

Since coming into force in 2003, the International Convention on the Protection of Migrant Workers (1990) has applied to migrants whether their status is recognized or not. Fair recruitment procedures fall under its scope - so do humane labor environments. Detention without cause or deportation carried out forcibly is banned, even when migration paperwork is missing. Though adopted earlier, enforcement only began in the twenty-first century's third year.

The 1951 Refugee Convention sets out who qualifies as a refugee, while also introducing the rule in Article 33 that stops states sending people back into harm. Following that, the 1967 Protocol did away with earlier limits tied to location or period, extending safeguards globally. Even though India has not formally joined either agreement, judges there still uphold the ban on forced returns under customary international norms. At times, such legal reasoning appears clearly - like in *Ktaer Abbas Habib Al Qutaifi v. Union of India* (1999), where the Gujarat High Court explicitly grounded this duty.<sup>16</sup>

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<sup>15</sup> *Ahani v Canada*, Communication No. 1051/2002, UN Human Rights Committee, UN Doc CCPR/C/80/D/1051/2002, Views adopted 29 March 2004.

<sup>16</sup> *Ktaer Abbas Habib Al Qutaifi v Union of India* (1999) AIR Guj 160 (Gujarat High Court).

## **IX. THE GLOBAL LANDSCAPE OF IMMIGRATION POLICIES**

Much depends on how governments see people crossing borders. Not every country handles it the same way, nor do they stay consistent over time. One place might build strict laws because of workforce needs; other acts due to fear of instability. Economic strength plays a role, yet so does population decline. Even amid rising global connections, control over who enters stays tightly held by national leaders. Decisions unfold differently depending on location - sometimes open, sometimes closed. What drives policy often hides beneath surface-level reasoning. Sovereignty still matters deeply when setting rules about arrival and stay.

Nowhere is the tension more visible than in how modern states manage migration while juggling growth, stability, and safety against international legal duties. Not just a question of internal rules, immigration reveals deeper choices about values and global commitments. One way to understand worldwide approaches involves looking at whether borders lean open or tightly controlled. How frontiers are policed carries real consequences for people on the move, shaping survival chances and dignity alike. Systems that admit refugees differ widely, exposing uneven willingness to offer shelter. Patterns also show richer countries often uphold rights more consistently compared to poorer ones, though exceptions exist across both groups.

### **A. Border Management Policies**

Starting mid-sentence, restrictions on travel emerge through visa rules, monitoring systems, holding centers, plus expulsion processes - each limiting mobility fast. Outcomes shift early, long before any official verdict arrives, sometimes closing paths with little notice.

Facial recognition drives today's border controls, along with machines that gather information automatically while algorithms sort travelers. Systems like those in Europe issue alerts; counterparts across America classify arrivals differently. Down under, Australia runs pentry checks through automated channels instead. Stored records linger far longer than expected - sometimes forever - at a point troubling many observers. Supervision often falls short when decisions happen without clear human

review. Judgments shaped by how someone looks or where they come from appear repeatedly in reports despite claims of neutrality.

Across border areas, deaths are common, especially in the Mediterranean Sea. The tragedy intensifies when nations push back vessels without reviewing. Take the case of *Hirsi Jamaa and Others versus Italy*, decided in 2012.<sup>17</sup> Here, judges ruled that Italy broke human rights rules. Specifically, Articles 3 and 4 were breached during forced returns to Libya. Each person on those boats was denied personal evaluation. This judgment made clear: duties do not stop at national frontiers.

Alongside Nepal, Bhutan, and China, India also touches Bangladesh, Pakistan, and Myanmar across its land edges. Though people move freely between India and Nepal under a 1950 agreement, crossings into Bangladesh and Myanmar meet tougher checks. Stretching beyond 3,400 kilometres, the barrier along the Bangladeshi frontier has raised alarms; groups like Amnesty International and Human Rights Watch point to deadly incidents at entry zones. Legal concerns also arise where people apprehended near border areas are detained, restricted, or removed without reliable proof of nationality and without an individualized procedure. However, unless a full and traceable primary citation is supplied, the unverified reference to *Mahangu Munda v. Union of India* should be omitted from the analysis.

Still, even with stricter measures, waves of displaced individuals keep arriving, pushing India to weigh border enforcement against aid duties.

## **B. Refugee Intake Policies**

What drives international migration policy isn't just control - it's protection. Nations agreeing to the 1951 Refugee Convention, along with the 1967 amendment, take on binding responsibilities for those who meet refugee criteria. Central here stands Article 33, whose rule against *refoulement* blocks sending individuals back into danger.

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<sup>17</sup> *Hirsi Jamaa and Others v Italy* App no 27765/09 (ECHR, 23 February 2012).

Even though some high-income countries set up formal systems for asylum seekers - such as impartial evaluation bodies in places like Germany, the UK, and Canada - decisions often shift depending on how many staff are available, bureaucratic holdups, or government influence. Instead of offering more support, affluent states have quietly reduced intake by tagging certain nations as secure transit zones, limiting relocation numbers, or housing applicants in remote holding facilities. According to UNHCR, these shifts risk weakening protection efforts built over decades.

Though outside the Refugee Convention, India handles displacement via shifting state measures alongside UNHCR partnerships - this body assessing asylum claims from faraway places. Without settled laws on paper, the country still hosts communities uprooted by crisis: nearly one hundred thousand Tibetans found refuge decades ago. More than two lakh Sri Lankan Tamils settled in southern states during conflict years. Afghans arriving later had their cases reviewed by an international agency operating out of the capital city.

Though laws lag, judges fill gaps. From life's guarantee under Article 21, protection arises - so ruled Gujarat's bench in 1999 involving Ktaer Abbas Habib Al Qutaifi.<sup>18</sup> Years later, Delhi's court shielded documented Myanmarese displaced persons, citing fairness when rules offered no cover. Silence in statutes does not erase duty, the judiciary affirms. Each rule stands as a check, built on precedent, shaped by need.

### **C. Human Rights Compliance in Developed versus Developing Nations**

Fundamental rights apply to all people regardless of background, entry status, or legal standing. These protections are legally binding under international instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Rights of the Child.

Even advanced nations fail to consistently protect migrant rights. Courts often under-intervene, legal representation remains scarce, and oversight bodies face political

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<sup>18</sup> Ktaer Abbas Habib Al Qutaifi v Union of India (1999) AIR Guj 160.

limitations. Key examples include family separations at the U.S. border, the UK's Windrush scandal where long-term legal residents were wrongly detained and deported, and Denmark's confiscation of asylum seekers' belongings as expense recovery demonstrating that protections can serve exclusion over safety.

Paradoxically, most displaced people – particularly across Asia and sub-Saharan Africa, find refuge in low-income countries despite limited resources. Weak legal frameworks, underfunded institutions, and inconsistent oversight increase risks of forced labor, unlawful detention, and refoulement in these regions.

India reflects these global pressures. Article 21's guarantee of life and personal liberty remains the primary legal tool protecting non-citizens. In *National Human Rights Commission v. State of Arunachal Pradesh* (1996)<sup>19</sup>, the Supreme Court affirmed basic protection for the Chakma community against deportation a ruling that continues shaping refugee jurisprudence today.

Ultimately, meaningful protection depends less on written law and more on independent judges, accountable institutions, and sustained public pressure ensuring rules are actively enforced rather than ignored.

## X. IMMIGRATION POLICIES IN INDIA

The legal framework for controlling immigration in India is made up of numerous sources of law; there are laws from the colonial period (the time when the British ruled India), as well as laws that have been created for the purpose of defining who are citizens of India after independence. Also, the framework of laws has evolved through rules and regulations that are created through the process of developing laws or creating administrative rules.

Unlike some jurisdictions, India does not have comprehensive legislation regarding immigration or regarding refugees. India's immigration control system uses a general legislative framework that emphasizes the state's ability to control immigration

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<sup>19</sup> National Human Rights Commission v State of Arunachal Pradesh [1996] 1 SCC 742.

(sovereignty) and the need for security more than it emphasizes a system based on people's rights.

The primary legal authority governing the entry, stay, movement, registration, and removal of foreigners in India is now the Immigration and Foreigners Act, 2025. It consolidates the earlier fragmented framework and confers wide powers on the Central Government and immigration authorities, including through the Bureau of Immigration constituted under Section 5 to manage foreigners entering, being present in, and/or leaving the country. It provides for the use of detention, deportation, and restrictions on movement without providing for any minimum due process protection. The fact that this law does not set any legal limits on the government's authority to engage in these actions has raised concerns about how arbitrary the use of these powers can be and how accountable the civil service is for having exercised these powers.

The Passport (Entry into India) Act, 1920 formerly regulated entry into India, but it is no longer the operative statute after repeal by the Immigration and Foreigners Act, 2025. Presently, passport, visa, entry, exit, registration, and related compliance requirements are governed under the 2025 Act, the 2025 Rules, and the 2025 Order. The Citizenship Act of 1955 governs the requirements for acquiring Indian citizenship and for determining whether or not an individual has Indian citizenship. This law has been amended several times, with the most significant being the Citizenship Amendment Act of 2019, which introduced religion-based criteria for certain categories of migrants into India.

Immigration in India is administered by the Bureau of Immigration under the Ministry of Home Affairs. The Foreigners Tribunals, which are quasi-judicial bodies, play a pivotal role in determining an individual's nationality status, especially in the cases arising out of the National Register of Citizens (NRC) process in Assam. However, these tribunals have been criticized for their inconsistent procedures, lack of transparency, and insufficient procedural protections.<sup>17</sup>

One of the major gaps in India's immigration framework remains the absence of a dedicated refugee or asylum law. India is not a party to the 1951 Refugee Convention

or its 1967 Protocol, and refugees continue to be treated within the broad category of 'foreigners' under the Immigration and Foreigners Act, 2025, creating uncertainty regarding residence, employment, and protection from deportation, thus leading to a lack of clarity in the uniformity of <sup>20</sup>refugee protections resulting in uncertainty about their rights – including residence, employment, and protection from deportation

The administrative practices that surround the legal framework also complicate it. Often detention centers are used to house individuals declared illegal migrants for lengthy periods. There are no comprehensive codification of the procedures governing detention and deportation; therefore, the implementation of those procedures varies from one location to another, resulting in the potential for extra-constitutional practices.

Overall, executive discretion plays a central role in shaping India's immigration policy. The framework is effective for controlling migration but lacks clarity and consistency.

## **XI. HUMAN RIGHTS CONCERNS**

India's immigration policy raises a number of issues relating to human rights, including the issue of detention practices; Refoulement, discrimination by immigration authorities and protection for children and families. These issues illustrate the tension between state sovereignty and the obligation to protect fundamental rights.

### **A. Detention and Access to Justice**

One of the key issues raised by immigration policy is the use of administrative detention, which is used for individuals who have been declared illegal immigrants. These individuals can be administratively detained for an indefinite period of time, and frequently without being given a trial. This creates significant problems with the

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<sup>20</sup> Mohsin Alam Bhat, Arushi Gupta and Shardul Gopujkar, *Unmaking Citizens: The Architecture of Rights Violations and Exclusion in India's Citizenship Trials*

provisions of Article 21 of the Constitution, which states that every person has the right to life and personal liberty, including non-citizens.

The lack of statutory limitations on the length of time between detaining someone as an illegal immigrant and receiving their first hearing before a tribunal, combined with the lack of adequate access to judicial remedies, enhances the human rights violations associated with people being detained as illegal immigrants. Additionally, detainees often lack any access to legal counsel and/or are unaware of their rights. The Supreme Court of India has held that the right to a speedy trial is a fundamental right; however, the same principles are not consistently applied in immigration detention.

### **B. Non-refoulement**

Non-refoulement prohibits the expulsion of a person to a country where there is a reasonable possibility that he/she will be subject to persecution, torture or inhuman treatment. Non-refoulement has been generally accepted as part of customary international law despite the fact that India is not legally bound to the 1951 Refugee Convention.

There is no consistent approach to non-refoulement in Indian Courts. The Supreme Court ruled that in the case of *NHRC v. State of Arunachal Pradesh* there are obligations under humanitarian law to protect refugees against being forcibly evicted from the territory of India. However, there are instances in which courts have allowed deportation based on national security. These examples provide evidence of the lack of uniformity in the law of India.

The absence of a statutory framework to protect refugees from non-refoulement creates uncertainty for refugees and makes the application of the principal dependant on the judges who are handling their cases.

### **C. Discrimination**

The major immigration policies in India have been viewed as having the potential to discriminate against certain groups of people. The Citizenship Amendment Act of 2019 is an example of this and has been very controversial because it provides a path to citizenship for specific religious communities while excluding others. Critics of this

type of classification argue that it is a violation of Article 14 of the Constitution, which guarantees the right to equality before the law.

Additionally, individuals from certain ethnic or national backgrounds are often subjected to discrimination in administrative practices, experiencing a higher level of scrutiny or harsher treatment. Such discrimination contradicts the principle of equality of all individuals.

Children's and families' rights have been negatively affected by their detention, as well as by separation from each other. Internationally, there are standards which require that children should not be detained unless it is the only option and for the shortest time possible. In practice, however, many times, a child is detained because their parent is being detained in an immigration detention center.

As a party to the Convention on the Rights of the Child, India must take into account the child's best interest when making any decision about a child. The failure to have child protection in immigration procedures indicates a disconnect between India's legal obligations at the international level and the actual implementation at the national level.

Family unity is also of great concern. To the extent that an individual is detained or deported, the likelihood of their family being separated increases. This poses a major negative effect on the individual and their family socially and psychologically and without clear guidance on how to maintain family integrity, these concerns only become worse.

## **XII. COMPARATIVE IMMIGRATION POLICY STUDY**

Examining how various jurisdictions (the US, EU, Canada and the Middle East) balance state authority with human rights protection yields great information about many strengths and weaknesses in the framework of India relating to immigration policy.

### **A. United States**

The U.S. system for immigration develops its policies using both strict border enforcement along with formal asylum practices. Among U.S. citizens and non-

citizens alike, there are constitutional protections that will provide users with due process; the Fifth Amendment guarantees that every person has these rights regardless of citizenship.<sup>21</sup>

The U.S. immigration system has received much scrutiny due to specific practices that occur when applying for protection in the U.S., such as separating families at borders and detaining people for long periods.

Even though these are concerning issues, the U.S. structured asylum process provides users with a higher level of procedural protections than what India offers; Judicial oversight through its Federal Courts create better defined due process rights for asylum seekers than what exists in the Indian legal system.

### **B. European Union**

The EU is able to establish a regional framework to create harmonized asylum and migration policies within its member countries. The Dublin Regulation provides the basis for countries to determine who is responsible for processing asylum applications as well as guaranteeing the rights of asylum seekers through the EU Charter.<sup>22</sup>

The European Court of Human Rights provides judicial oversight to ensure that the human rights of asylum seekers are protected. The Court continuously emphasizes non-refoulement and protection from inhumane treatment.

Despite challenges relating to irregular migration and burden-sharing, the EU retains a rights-based legal framework. This contrasts with India's present 2025 framework, which consolidates immigration control but still does not create a dedicated asylum procedure or a statutory refugee-status determination mechanism.

### **C. Canada**

Canada's immigration system has long been considered one of the most progressive in the world. This is due largely to its emphasis on economic contributions from

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<sup>21</sup> See U.S. Const. amends. V (“nor be deprived of life, liberty, or property, without due process of law”).

<sup>22</sup> Regulation (EU) No 604/2013 (Dublin III), arts. 3–8.

migrants through a points-based immigration policy and the commitment of Canada to providing humanitarian assistance to refugees based on the principles of humanity. Canada's immigration system offers various methods of obtaining protection from persecution; asylum claims may be made by individuals who fear for their life in their home country and/or through humanitarian and compassionate grounds for requesting permanent residence in Canada. In addition, the judicial review process provides a mechanism for holding decision makers accountable for their decisions in the refugee determination process. Canada has balanced both immigration control and protection of individuals as a result of integrating human rights principles into its immigration law.

#### **D. Middle East**

In contrast, migrant labor is a critical component of the economies in the Middle East; most countries depend on temporary foreign workers to fill job openings that cannot be filled by local workers.

The Kafala sponsorship system, which ties the worker's legal status in the host country to the employer, limits the migrant worker's ability to move from one employer to another, thus creating increased vulnerability to employment exploitation.<sup>23</sup>

Legal protections for migrant workers in the Middle East are generally inadequate compared to other countries; migrant workers may have limited access to legal recourse due to the absence of strong legal protections. The experiences of India and Canada serve as two examples of how excessive control of employees by employers and a lack of adequate legal protections create significant risks to migrant workers.

### **XIII. KEY PROBLEMS GAPS LOOPHOLES**

Paper rules in India seem neat until you meet those tangled in them - a Rohingya woman, say, or someone crossing borders for work. When procedures stall, lives fray at the edges. One stumble here leads to rights slipping away there. Picture moments

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<sup>23</sup> Human Rights Watch, "The Kafala System: Exploitation of Migrant Workers in the Gulf" (2021).

when fairness should step in - but doesn't. Behind calm forms lie real struggles nobody planned to fix.

### **A. When Laws Fail to Keep Up**

Picture running from harm, then arriving somewhere that treats you like any outsider. In India, this isn't rare - it's policy. Approximately 40,000 Rohingya are estimated to live in India, of whom at least 20,000 are registered with UNHCR. Yet, despite their recognized protection needs, India has no dedicated statutory asylum framework to protect them uniformly.<sup>24</sup> The latest immigration law passed in 2025 still groups displaced families, students, and travelers under one name: foreigner. Because of that blanket term, Rohingya individual risk being held without trial, sent away even if danger awaits at home.

Astonishingly, the system demands people prove their citizenship when doubted by officials. Should authorities question someone's status, that person has to show they belong. Imagine living without documents in a remote area - that situation turns fairness upside down. The idea of being innocent unless proved otherwise? Tossed aside. What looks like procedure becomes survival for those with nothing to present.

### **B. Institutional Weaknesses Broken Tribunals Missing Watchdogs**

A system built to serve fairness runs off track. Look at Assam's Foreigners Tribunals. By 2025, research shows close to 166,000 individuals were labeled foreigners - many without solid proof.<sup>25</sup> Yet here's what one tribunal official quietly admitted: staying employed means hitting targets on rulings.

When a Rohingya family got pushed onto a boat toward Myanmar under armed guard, nobody saw it happen. Inside detention facilities, there is still no outside group checking conditions or looking into mistreatment of migrants by officers. The latest law does not set up an ombudsman or any third-party monitor. Without oversight, actions like these go unseen.

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<sup>24</sup> Human Rights Watch, 'India: Scores of Rohingya Refugees Expelled' (28 August 2025); Refugees International, 'Shadow of Refuge: Rohingya Refugees in India' (18 May 2023).

<sup>25</sup> Assam Human Rights Report, "Foreigners Tribunals and Due Process Failures" (2025).

### C. Border Control and Human Rights A Difficult Balance

Heavy silence follows when protection clashes with policy. From May 2025 onward, Indian authorities pushed hundreds of Rohingya across into Bangladesh and Myanmar. One family was turned around by armed guards at the edge; the man raised his voice, then felt a blow strike his ear - now he struggles to catch sounds clearly, months later - warnings followed: speak up, face death. Sending someone back to danger like that breaks global rules, regardless of whether India formally agreed to refugee treaties or not.

It is not only non-citizens who risk harsh treatment. In *Bhodu Sekh v. Union of India & Ors.* and the connected matter *Amir Khan v. Union of India & Ors.*, the Calcutta High Court, by orders dated 26 September 2025, set aside the detention orders dated 24 June 2025 and deportation orders dated 26 June 2025 concerning six West Bengal residents – Sunali Khatun, Danish Sekh, Sabir Sekh, Sweety Bibi, Kurban Sheikh, and Imam Dewan – who had been removed to Bangladesh after an identity-verification drive in Delhi. The Division Bench of Tapabrata Chakraborty and Reetobroto Kumar Mitra JJ. held that the authorities acted in haste and failed to follow the required verification procedure before deportation.<sup>26</sup>

## XIV. CASE LAW ANALYSIS

A courtroom becomes a place of reckoning when distant laws meet personal stories. These examples reveal how rulings - from global benches down to Indian ones - step in when border controls grow harsh or thoughtless, shielding people's worth.

### A. International Courts Rule on Harsh Detention Conditions

An Iranian asylum seeker was detained for just over two and a half months in 2013 at the Kolonos police station in Greece. In *B.F. v. Greece*, the European Court of Human Rights held on 14 October 2025 that the detention conditions violated Article 3 of the

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<sup>26</sup> *Bhodu Sekh v Union of India & Ors*, WPA (H) 50 of 2025 with IA No. CAN 1 of 2025, Calcutta High Court, order dated 26 September 2025, per Tapabrata Chakraborty and Reetobroto Kumar Mitra JJ.; *Amir Khan v Union of India & Ors*, WPA (H) 51 of 2025 with IA No. CAN 1 of 2025, Calcutta High Court, order dated 26 September 2025, per Tapabrata Chakraborty and Reetobroto Kumar Mitra JJ.

European Convention on Human Rights and that the applicant lacked an effective remedy, resulting in a violation of Article 13 read with Article 3.<sup>27</sup> Days passed without any court stepping in to question what was happening.

A small child from Congo, just five years old, spent weeks by herself in a Belgian jail meant for grown-ups. After two months, they sent her back across borders to a place with nobody expecting her arrival. Judges later said Belgium broke the rules - her right to be treated humanely, to belong somewhere, to have help when wronged - all ignored.

Then came a rule - from Geneva - that changed things quietly. Not knowing your charge makes defense impossible, they said plainly. Detention without cause fails even basic fairness, according to those words. A global body had drawn a line, not with force but clarity.

### **B. Indian Courts High Ideals Messy Realities**

Fierce protection pops up now and then in Indian courts when it comes to immigration. At different moments, though, silence takes over instead.

The case of *Md. Rahim Ali @ Abdur Rahim v. State of Assam* illustrates the grave consequences of defective nationality adjudication. The Supreme Court held that the statutory burden on a suspected foreigner does not permit the State to initiate proceedings on a bare or unsupported allegation. Before the burden shifts, the authorities must possess some material basis for suspecting that the person is not an Indian citizen. On the facts, the Court found the tribunal's opinion unsustainable, set aside the earlier orders, and declared Rahim Ali an Indian citizen and not a foreigner.<sup>28</sup> Such truth matters deeply - even if it arrived far too late for Rahim Ali.

Rohingya matters came up too. When the case *Mohammad Salimullah v. Union of India* reached the Supreme Court in 2021, judges declined to halt the return of 150 Rohingya asylum seekers to Myanmar - places where danger waited. Since India

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<sup>27</sup> *B.F. v Greece*, App no 59816/13, European Court of Human Rights, judgment of 14 October 2025.

<sup>28</sup> *Md. Rahim Ali @ Abdur Rahim v State of Assam & Ors*, 2024 INSC 511, Supreme Court of India, judgment dated 11 July 2024, paras 33-35, 50, 54-55.

never ratified the Refugee Convention, the justices claimed no responsibility existed toward these individuals. Although the country did ratify the ICCPR, a treaty forbidding exile into torture, the bench decided rights under Articles 14 and 21 offer no foreigner an entitlement to remain. Experts have pointed out how these clashes with non-refoulement, a rule already set by global practice among nations

Hope remains, although recent protection has often been interim rather than final. In *Jaynab Bibi v. Union of India*, the Supreme Court granted interim protection to an Assam resident who challenged a Foreigners Tribunal declaration and the Gauhati High Court's order dated 17 February 2025. On 24 June 2025, in SLP (Civil) Diary No. 20270/2025 – later registered as SLP (C) No. 17149/2025 – the Court issued notice and directed that Jaynab Bibi should not be deported and that no coercive steps be taken against her until further orders. The matter should therefore be described as a pending proceeding involving interim protection, not as a final rule on citizenship or deportation.<sup>29</sup>

### C. What India Might Take from Other Countries

Something different happened elsewhere. In 2007, Canada's highest court ruled against holding individuals based on hidden security claims. A person locked up this way had to see a version of the proof used. They also needed someone legally trained just for them, ensuring protection during proceedings. Hidden details alone could never outweigh basic justice.

A person cannot be sent somewhere they will face torture, even when accused of terrorism - so said Canada's highest court in *Suresh v. Canada* (2002).

## XV. GUIDELINES AND COMMON APPROACHES

One looks at broken families, locked away without reason, stuck in endless waits, ripped apart by harsh removals - then it hits you. What else is possible. Ideas here

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<sup>29</sup> *Jaynab Bibi v Union of India & Ors*, SLP (C) Diary No. 20270/2025, Supreme Court of India, order dated 24 June 2025; later registered as SLP (C) No. 17149/2025, arising out of Gauhati High Court order dated 17 February 2025 in WPC No. 5531/2018.

grow from real fixes around the world, matched to India's pressing needs, built on care instead of control.

### **A. India's Policy Changes Aim to Repair Flawed Systems**

Recent criticism of India's 2025 immigration framework should be tied to verifiable sources. Amnesty International's 2025 public statement on the Immigration and Foreigners (Exemption) Order, 2025 argues that the Order expands executive discretion and threatens human rights by enabling broad exemptions and unchecked governmental power. The manuscript should therefore rely on this verified source, rather than an untraceable 2026 report title.<sup>30</sup>

Start by building non-refoulement safeguards into removal procedures. Section 12 of the Immigration and Foreigners Order, 2025 empowers immigration authorities to prevent, detect, restrict the movement of, and deport illegal migrants.<sup>31</sup> However, such power should be exercised only after an individualised assessment of identity, nationality, protection claims, and risk of persecution or torture upon return. The provision should therefore be amended or supplemented by binding safeguards requiring legal assistance, a reasoned written order, review before an independent authority, and an express bar on deportation where removal would violate non-refoulement. Such acts violate what's required, not just suggested, by global standards.

Now here's the second point: hidden authorities need to go. Power under Section 5 allows blocking foreigners from exiting India if it somehow affects "public interest" - a phrase that means anything or nothing, with no way to appeal. Then there's Section 10, where creators and reporters must seek permission ahead of time just to make work. Surprise checks like these wear the uniform of visa laws but act like silencing

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<sup>30</sup> Amnesty International, 'India: Immigration and Foreigners (Exemption) Order Threatens Human Rights and Expands Unchecked Government Power', Index No. ASA 20/0530/2025, Public Statement, 26 November 2025.

<sup>31</sup> Immigration and Foreigners Order, 2025, § 12, Ministry of Home Affairs, S.O. 3986(E), 1 September 2025.

gear. Limits on speaking up or moving across borders ought to be open, spelled out clearly, and something you can fight back against in a courtroom.

A fresh start needs a proper asylum rulebook. Right now, India treats every outsider the same way - whether they're here to study, visit, or flee danger. Labels like "foreigner" ignore serious reasons people arrive. Fair screening matters. Legal help must be available when someone asks for shelter. Staying locked up without cause cannot happen under honest rules. A clear law would fix this gap

### **B. Monitoring and Accountability Who Oversees Those in Charge?**

Rules remain ineffective without independent monitoring of how they are applied. Under the EU's 2024 Pact on Migration and Asylum, Member States must establish independent monitoring mechanisms to supervise compliance with fundamental rights during screening at external borders and in asylum border procedures.

Now here's what India could consider. A new body might take shape - one backed by law yet free from political sway, built to watch over immigration matters closely. Picture legal minds alongside advocates for dignity, joined by voices from communities across the country. Without warning, they show up at holding facilities, checking how things run behind closed doors. Each long-term detainee gets another look, their situation weighed carefully. When claims surface about forced returns, thorough probes follow without delay. Findings lead to somewhere - they result in directives others must follow. Reports come out regularly, clear and public, hard to ignore.

Nowhere should doors stay locked to aid workers when people are held inside. Letting UNHCR in does not signal failure - it shows control through openness.

## **XVI. SUGGESTIONS**

- 1. Enact a Dedicated Refugee and Asylum Law:** India's biggest gap is the absence of any standalone refugee legislation. A dedicated law should define "refugee" and "asylum seeker" separately from "foreigner," establish a fair and transparent status determination process, and codify the principle of non-

refoulement. This would replace the current system of judicial improvisation and executive discretion with predictable, rights-based protection.

2. **Accede to the 1951 Refugee Convention:** India hosting over 200,000 refugees while remaining outside the Convention is a fundamental contradiction. Accession – even with reservations on specific clauses would bring India's obligations in line with international standards and give refugees legally enforceable rights rather than protections dependent on which judge hears their case.
3. **Human-Rights Review and Amendment of the Immigration and Foreigners Act, 2025:** Since the Foreigners Act, 1946 has been repealed, reform must now focus on the Immigration and Foreigners Act, 2025 and the Immigration and Foreigners Order, 2025. The 2025 framework usefully consolidates India's earlier fragmented immigration statutes, but several rights-related concerns associated with the repealed regime continue in altered form. Section 16 retains a reverse burden of proof by requiring the person concerned to prove that he or she is not a foreigner; the 2025 Order similarly requires tribunal notices to state that the burden lies on the proceedee. The Order also permits restriction of movement in holding centres pending deportation and detention where the proceedee cannot prove nationality or arrange bail, without expressly prescribing a maximum detention ceiling. Further, the Bureau of Immigration is given centralised functions in relation to immigration control, data custody, and coordination of detection, restriction of movement, and deportation. Accordingly, the Act and Order should be amended to introduce a fixed detention ceiling, mandatory legal aid, reasoned written orders, periodic judicial review, an independent appellate mechanism, and statutory safeguards against refoulement and arbitrary nationality determinations.
4. **Establish an Independent Immigration Oversight Body:** India should create a statutory body insulated from political interference with powers to conduct unannounced inspections, investigate complaints of abuse or forced returns,

and publish regular public reports. UNHCR access to all detention facilities should also be formally guaranteed.

5. **Codify Child and Family Protection in Immigration Proceedings:** India is a party to the Convention on the Rights of the Child but has no immigration-specific child protection rules. Legislation should prohibit detention of children in immigration facilities, require a "best interests of the child" assessment before any deportation affecting a family, and mandate appointment of a guardian for unaccompanied minors.
6. **Align Border Management Practices with Non-Refoulement:** The pushbacks of Rohingya documented in the paper including the May 2025 incidents violate customary international law regardless of India's non-signatory status. A formal Border Management Protocol should be enacted requiring individual assessment of every person before removal, with a prohibition on collective expulsions.

## **XVII. CONCLUSION**

Immigration policies play a significant role in regulating migration and protecting national interests, but they must also uphold fundamental human rights. This research highlights that strict immigration control should not come at the cost of human dignity, equality, and access to justice. Through international conventions, comparative analysis, and judicial decisions, it is evident that a balanced approach is necessary to ensure both border security and humanitarian protection. India and other nations should continue strengthening legal frameworks, improving accountability mechanisms, and adopting rights-based immigration policies to address modern migration challenges effectively.

## **XVIII. BIBLIOGRAPHY**

### **A. Statutes and Legislations**

1. Immigration and Foreigners Act, 2025 (India)
2. Immigration and Foreigners Rules, 2025
3. Immigration and Foreigners Order, 2025

4. Citizenship Act, 1955 (India)
5. Citizenship (Amendment) Act, 2019

#### **B. International Conventions and Legal Instruments**

1. Universal Declaration of Human Rights (UDHR), 1948
2. International Covenant on Civil and Political Rights (ICCPR), 1966
3. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
4. Convention Relating to the Status of Refugees, 1951
5. Protocol Relating to the Status of Refugees, 1967
6. Convention Against Torture (CAT)
7. Convention on the Rights of the Child (CRC)

#### **C. Case Laws**

1. National Human Rights Commission v. State of Arunachal Pradesh (1996)
2. Ktaer Abbas Habib Al Qutaifi v. Union of India (1999)
3. Hirsi Jamaa and Others v. Italy (2012)
4. Ahani v. Canada (2004)
5. Mohammad Salimullah v. Union of India (2021)
6. Suresh v. Canada (2002)
7. B.F. v. Greece (2025)
8. West Bengal Migrant Workers Welfare Board & Anr v Union of India & Ors, W.P.(C) No. 768/2025, Supreme Court of India, pending; orders dated 14 August 2025 and 29 August 2025
9. Jaynab Bibi v. Union of India (2025)

#### **D. Reports and Secondary Sources**

1. United Nations High Commissioner for Refugees (UNHCR) Reports

2. Amnesty International Reports on Immigration and Refugee Rights
3. Human Rights Watch Reports on Border Governance and Migration
4. International migration and refugee statistics reports (UN publications)