



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2026 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Beyond Ad Hocism: Towards a Codified Asylum Law in the Wake of India's Eastern Refugee Crisis

Ritika Pal^a Shreya Ghosh^b

^aSt. Xavier's University, Kolkata, India ^bSt. Xavier's University, Kolkata, India

Received 20 December 2025; Accepted 21 January 2026; Published 27 January 2026

The eastern borders of India have traditionally been affected by the movements of refugees caused by partition, regional conflicts, ethnicity, and instability in the neighbouring countries of Bangladesh, Sri Lanka, and Myanmar. Despite their long track record of compassion in providing refuge and relief to refugees, India continues to deal with refugees in a piecemeal fashion by executive action rather than having a comprehensive law in place. The current refugee crisis caused by asylum-seekers from Myanmar in Manipur in the northeast, particularly in the context of ethnicity and military violence in that country, has once again revealed the shortcomings of refugee management in India. Refugees in India continue to lack legal security, are vulnerable to discrimination in all walks of their lives, lack access to the labour market, education, and proper healthcare, and are constantly threatened with detention and deportation based on a generic foreigners' law. While there exists a safeguard based on Constitutionally guaranteed rights under Articles 14 and 21, in theory supplemented by a judicial interpretation in recognition of the principle of 'non-refoulement' in keeping with international human rights laws in favour of refugees, unfortunately, this safeguarding mechanism remains less relevant in coping with the refugees' predicament in India. Moreover, the lack of a refugee law has also caused friction in intergovernmental relations between the Centre and the States bordering refugee-spewing countries, with States facing a proper refugee management dilemma without any timely constitutionalistic authoritative guidance. This paper argues that an international refugee law in India remains a constitutional imperative rather than a moral requirement. This paper will identify the constitutional imperatives in terms of the present refugee crisis in the eastern part of India based on regional conflicts in asylum-seeking countries of Bangladesh, Sri Lanka, and, more recently, in Myanmar, causing refugees in Manipur and other north-eastern states of India. Furthermore, it proposes that a codified refugee law based on international human rights in favour of refugees can improve leadership in constitutional governance

rather than a crisis-prone refugee management in a universally humane society in which predictability assists a refugee in search of asylum in any modern nation-state.

Keywords: *refugee law, eastern refugee crisis, asylum policy, non-refoulement.*

INTRODUCTION

India has sheltered a large number of people escaping mistreatment from neighbouring countries.¹ Presently, more than 240,000 refugees of various origins live in India, which is a clear sign of the country's pledge to provide protection and help. One of the examples from history is the coming of Tibetan refugees in 1959, for whom the Indian government helped in terms of land, cultural preservation, and education through schools and community centres.² Similarly, the refugees from Sri Lanka, who were affected by the war since 1983, got help in their housing, food, medical care, and education.

Lately, people from Myanmar have come to India to apply for asylum because they want to get away from the violence caused by the ethnic and political conflict and are mostly settling in the north-eastern states like Manipur, Mizoram, and Nagaland. On the other hand, refugees in India face a lot of difficulties, like discrimination and poor access to employment, schooling, and health services.³ They do not have a strong legal system to protect their rights; the current laws treat them the same as foreigners.

The Indian Constitution recognises some rights for all persons, including the rights of refugees, but it does not provide direct protection.⁴ The creation of a single refugee law is vital for bringing about precision, improvement of the existing mechanisms of protection, and the process of integration of refugees into the Indian society, where both legal and humanitarian obligations are reinforced.

¹ B S Chimni, *International Refugee Law: A Reader* (1st edn, Sage India 2000)

² His Holiness Tenzin Gyatso the Dalai Lama, *Freedom in Exile: The Autobiography of the Dalai Lama* (Hodder & Stoughton Ltd 1990)

³ Ranabir Samaddar, *Refugees and the State: Practices of Asylum and Care in India, 1947-2000* (Sage India 2003)

⁴ Foreigners Act 1946; Passport (Entry into India) Act 1920

MAPPING THE EASTERN INFLUX: POLITICAL, SOCIAL AND HUMANITARIAN REALITIES

India, a secular state and the second-most populous country in the world, has significantly impacted the history of refugees escaping environmental, political, and regional wars.⁵ India's refugee crisis is intricate and multifaceted due to its non-ratification of the 1951 Refugee Convention and the 1967 Protocol. Still, the various groups of refugees manage to come here to be protected.⁶ Refugees encounter no end of hardships, such as social discrimination, medical problems, unstable politics, and barriers to their joining the community.⁷ The differences in languages create major communication barriers that not only prevent refugees from receiving their basic needs but also make their fight for survival more difficult. Furthermore, the issue of getting a job arises since refugees are usually seen as non-citizens and therefore can only work in low-paid positions, which further downtrodden their living conditions. Lack of adequate housing and limited educational opportunities are directly affecting women and children. Moreover, children of refugees find it difficult to secure a place in higher studies due to a lack of proper documentation. The Tamils of Sri Lanka have an uncertain legal status and face difficulties in getting aid, as opposed to the Tibetans, who are mostly without papers and are excluded from the services and the job market despite the cultural preservation activities. The 2019 Citizenship Amendment Act further marginalises Rohingya refugees of Myanmar, as it not only strips them of their right to citizenship but also delivers them into a regime of no legal rights, making them easily exploitable.⁸

LEGAL AND POLICY GAPS IN INDIA'S REFUGEE PROTECTION FRAMEWORK

Even now, India has not devised any specific laws concerning the refugees' protection that could be classified as the non-existence of regulations of this kind is a source of dread as to whether the diverse refugee populations in India will be accorded the proper protection that

⁵ Chimni (n 1)

⁶ Samaddar (n 3)

⁷ *THE STATE OF THE WORLD'S REFUGEES: In Search of Solidarity* (The Office of the United Nations High Commissioner for Refugees 2012)

⁸ 'India: Citizenship Amendment Act is a blow to Indian constitutional values and international standards' (*Amnesty International*, 14 March 2024) <<https://amnesty.org/en/latest/news/2024/03/india-citizenship-amendment-act-is-a-blow-to-indian-constitutional-values-and-international-standards/>> accessed 17 December 2025

is due to them.⁹ Amongst other things, the nation has been involved in the refugee dilemma, notably by the continuous arrival of Tibetan refugees after the 1962 Indo-Sino war¹⁰ and the escape of the Sri Lankan Tamils as a result of the killings linked with the LTTE,¹¹ including that of India's former Prime Minister Rajiv Gandhi. Moreover, it should be pointed out that India is not a signatory to the 1951 Refugee Convention and 1967 Protocol, which together set the minimum international standards for the protection of refugees and outline the states' responsibilities towards those who seek shelter from persecution. The principal objective of international refugee law is to provide a haven for those who are fleeing violence based on their religion, nationality, or race. In this regard, it grants them the right to go to a country for asylum and, more crucially, forbids their repatriation to a place where they are at risk ('non-refoulement'). The United Nations High Commissioner for Refugees recognises only around 46,000 refugees in India, while a significant number of others remain without any documentation and, therefore, insecure. Despite the fact that the Indian Constitution provides certain Fundamental Rights to everybody, the rights are still not properly meeting the specific demands of the refugees.¹² Thus, to rectify this, India will have to acquire a legal framework to protect the rights of refugees and provide them with access to education, employment, and freedom of movement very soon.

CENTRE- STATE DYNAMICS: COOPERATION, CONFLICT AND CONSTITUTIONAL TENSIONS

India's response to people coming from countries and seeking refuge on its eastern borders is really complicated. This is because the way India is set up with the government and the individual states is a complex system. The central government and the states have to work, and this is what shapes India's response to refugees coming from its eastern borders. The Union is in charge of refugee policy and foreign affairs because these things are included in Entry 10, which is about foreign affairs and Entry 14, which is about making treaties and agreements with other countries, as per the Union List. The daily problems that come with refugee movements, like keeping law and order, public health, housing, and employment, are mainly the responsibility of the states or are shared between the states and the Union, as

⁹ Samaddar (n 3) 27–35

¹⁰ Myron Weiner, 'Rejected Peoples and Unwanted Migrants in South Asia' (1993) 28(34) *Economic and Political Weekly* 30–34 <<https://www.jstor.org/stable/4400049>> accessed 17 December 2025

¹¹ S D Muni, *Pangs of Proximity: India and Sri Lanka's Ethnic Crisis* (Sage Publications 1993) 112–118

¹² *National Human Rights Commission v State of Arunachal Pradesh & Anr* AIR 1996 SC 1234

stated in the Constitution of India. Refugee policy is a deal, and the Union has to handle it, but refugee movements also affect the daily lives of people in the states, so the states have to deal with the consequences of refugee movements, too. The way things are set up has caused a lot of problems. It leads to friction. People do not always follow the rules in the same way. This is especially true in some states in India, like West Bengal, Assam, Tripura and Mizoram.

The refugee movements from the East, the people who came from East Pakistan, which is now called Bangladesh, have been a big problem. This happened during the Partition in 1947, the Liberation War in 1971 and other times when the government was not stable. The States that are on the border have had to deal with a lot of these refugees from East Pakistan, Bangladesh, and it has been very tough for them. These States have said over and over that the Union makes the decisions about who can come in, who has to leave and who they talk to, but the States have to deal with the people who are affected by this. They have to help the people who are struggling and make sure they have what they need. This is not fair because the States are left to handle all the problems that come with a lot of people being displaced. The States are unhappy about this, and they want money to help them. They want to be able to make their own decisions, and they want to know what is going on with the people who are seeking refuge. The States are asking for these things because they feel like they are shouldering the burden of helping these people, and they need support from the Union. The law says one thing. The situation on the ground is different. For example, in the case of *Sarbananda Sonowal v Union of India*, the Supreme Court said that illegal migration is a threat to the safety of the country, which means the central government has the power to control the borders and deport people. However, when the central government makes security decisions, it often does not think about the problems that States face when dealing with refugees. Refugees have been living in some States for a time and have become a part of the local community.

The problem is that there are no rules about asylum, so States have to follow what the government tells them to do, rather than following the law. This means that States have to negotiate with the government rather than knowing exactly what they can and cannot do, which is not a good way to handle the situation of refugees and migration and asylum and refugees. The idea of federalism, which the Supreme Court often talks about as a key principle, is not really used when it comes to refugees. Unlike when there are disasters or

health emergencies, there is no system in place that requires the central government and states to work together on helping refugees. This means that different places do different things to help refugees. Some places are pretty relaxed about it. Try to help them while others are really strict and try to keep them out. Refugee protection and integration are not really talked about in a way between the central government and the states.

A codified asylum law could mitigate these constitutional tensions by clearly delineating the respective roles of the Union and the States. Such legislation could provide for shared responsibility, financial burden-sharing, and consultative mechanisms, thereby harmonising national security concerns with State-level humanitarian governance. Without such codification, Centre-State dynamics in eastern refugee management will continue to be characterised by uncertainty, conflict, and episodic cooperation rather than a stable, rights-based framework.

HUMAN RIGHTS AND INTERNATIONAL NORMS IN INDIA'S REFUGEE POLICY WITH THE CRISIS OF MANIPUR AND MYANMAR

India's refugee policy does not have a set of laws in the country. It has always been guided by the idea of human rights and what is acceptable to the world. This is very clear when we look at what happened during the Manipur crisis, and when many people came to India from Myanmar as refugees. India's refugee policy is still based on human rights principles and international norms. India does not follow the 1951 Refugee Convention or its 1967 Protocol. India has to follow some international rules that are about human rights. These rules are the Universal Declaration of Human Rights, the International Covenant on Political Rights, and the Convention on the Rights of the Child.¹³ All these rules say that India has to protect the life and dignity of the Refugee Convention and the principle of non-refoulement. The Refugee Convention and its rules are important for India to follow. India has to make sure that it protects the life and dignity of people, and that is what the Universal Declaration of Human Rights and the International Covenant on Political Rights are all about. The Convention on the Rights of the Child is also important for India to follow because it is about protecting children. The rule of not sending people to a place where they will be in danger,

¹³ Universal Declaration of Human Rights 1948; International Covenant on Civil and Political Rights 1976; International Covenant on Economic, Social and Cultural Rights 1976; Convention on the Rights of the Child 1990

which is now a part of international law that most countries follow, says that people should not be sent back to a country where they will be killed or lose their freedom. Indian courts have accepted this rule without saying it by using the Constitution, especially the parts that talk about equality and the right to life, which are in Articles 14 and 21.¹⁴

There is a lot of unrest and violence in Myanmar, especially after the military took over in 2021. Many people, mostly from the Chin community, have run away to the north-eastern parts of India, like Manipur and Mizoram.¹⁵ In Manipur, things have become more difficult because of the fighting between the Meitei and Kuki-Zo communities. This fighting has caused a lot of people to leave their homes. It has led to a big humanitarian problem.¹⁶ People are also very worried about who gets to use the resources and who gets to say what it means to be from Manipur.

People who have come from Myanmar often have the ethnicity and culture of the local tribes in Manipur, and they even have family ties. This makes it hard to tell the difference between the people who have come from Myanmar and the people who have always lived in Manipur. The government of Manipur has not dealt with this situation constantly, and sometimes it has treated it like a security problem, which is the situation with the refugees from Myanmar and the ethnic kin in Manipur. The Union Government is really focused on keeping the borders safe and secure. They want to find and send back people who are in the country without the right papers. But the state governments and local groups are being more kind and helpful, they are giving people a place to stay and some basic things they need. This shows that there is no one law for people who are seeking refuge, and it is a problem because the government wants to be in control. They also have to think about the rights of people. The Union Government and refugee law are not working well together. This is causing tension between what the government wants to do and what is right for people. Refugees should be treated with kindness. Given the things they need to survive, like food and shelter. They should also be protected from being put in jail without a reason or sent back to their

¹⁴ Constitution of India 1950, arts 14, 21; *National Human Rights Commission v State of Arunachal Pradesh & Anr* AIR 1996 SC 1234

¹⁵ 'Myanmar: Another Wave of Atrocity Crimes in Chin State' (*Human Rights Watch*, 29 August 2021) <<https://www.hrw.org/news/2021/11/04/myanmar-another-wave-atrocity-crimes-chin-state>> accessed 17 December 2025

¹⁶ Praveen Donthi, 'Ethnic Clashes Roiling Manipur Pose Test for India's Modi' (*International Crisis Group*, 26 July 2023) <<https://www.crisisgroup.org/qna/asia-pacific/india/ethnic-clashes-roiling-manipur-pose-test-indias-modi>> accessed 17 December 2025

home country against their will. In Manipur, refugees do not know what will happen to them, and they do not have the right papers. This makes them easy targets for people who want to take advantage of them. Sometimes, courts in India help refugees by giving them protection. This shows that the courts are trying to make sure that India follows the rules as the rest of the world does when it comes to treating refugees fairly. Refugees in Manipur need to be treated like everyone and given the same rights.

The Indian courts are helping to make this happen by following the rules of rights that everyone in the world should follow. Refugees should be treated with dignity and respect. Given the protection they need. The Manipur crisis shows us that we cannot think about protecting refugees without thinking about people who have been displaced within their own country and conflicts between different ethnic groups. The Manipur crisis and the situation with refugees from Myanmar are connected because they are both caused by the same problems. The government is not doing a good job of including everyone and protecting their rights.¹⁷ The way India is handling refugees from Myanmar is an example of this. In a system that is based on laws and rights, the government is making decisions on a case-by-case basis. The Manipur crisis and the situation with refugees from Myanmar are both examples of what happens when the government does not have a system in place to protect the rights of the Manipur crisis refugees and the refugees from Myanmar. While India's constitutional framework and judicial pronouncements provide a foundation for aligning refugee policy with international human rights norms, the situation in Manipur demonstrates the urgent need for a clear, consistent, and humane refugee law that balances legitimate security concerns with India's moral, constitutional, and international obligations.

THE CASE FOR A CODIFIED ASYLUM LAW: RATIONALE AND PROPOSED FEATURES

Humanitarian Reality at India's Eastern Border: The situation for people along the border of India, especially in Manipur, is getting really bad. This is because of the lasting violence between different ethnic groups and the military being very harsh in Myanmar. A lot of people from the Chin and Kuki communities have had to leave their homes because of

¹⁷ 'UNHCR's Engagement in Situations of Internal Displacement: Progress, Challenges, and the Road Ahead' (UNHCR, 30 October 2024) <<https://www.unhcr.org/blogs/unhcrs-engagement-in-situations-of-internal-displacement-progress-challenges-and-the-road-ahead/>> accessed 17 December 2025

fighting, being treated unfairly, and having their human rights ignored. They are looking for a place in India. These people are not just moving to India by chance. The Chin and Kuki communities have strong connections to the people who live in Manipur because of their shared ethnicity, culture and family ties that go back a long time, even before the countries had their current borders. Asylum seekers in India are really vulnerable. They do not have any laws to protect them. This means asylum seekers in India are open to things happening to them. They can be taken advantage of. They do not feel safe. The state can also do things to asylum seekers in India without a reason. Asylum seekers in India need to be protected from these things.

Legal Vacuum and Ad Hoc Governance: India does not have a law that's just for people who are seeking asylum or refuge. It is also not a part of the 1951 Refugee Convention, because of this, people who are seeking asylum are treated according to old laws like the Foreigners Act from 1946.¹⁸ The government gets to decide what to do with them, which is not always fair. In the state of Manipur, this has caused a lot of problems for people who have been displaced. They are often treated badly, which includes being put in detention, not being given basic things they need, and being sent back to where they came from without being given a chance to say anything. The treatment of asylum seekers in Manipur is really inconsistent and often very harsh. Asylum seekers in Manipur are not given the protection they need. The thing is, when we do not have procedures in place, it is really bad for people who are seeking asylum. They do not get to be a part of the decisions that affect their lives. This is not fair. It goes against what India is supposed to stand for, which is being fair and following the law. Asylum seekers are the ones who are hurt the most by this. Asylum seekers need to be treated and allowed to participate in the decisions that affect their lives.

Impact on Social Cohesion and Internal Stability: The situation in Manipur is really bad because people do not know the difference between asylum seekers and illegal migrants. This has caused a lot of problems, like people not getting along with each other and politicians arguing. Asylum seekers are people who are running away from violence. They are often seen as a threat to the community, which makes people very nervous. If we had a law about asylum seekers, it would help everyone understand who is who and stop people from spreading false information. This law would also make sure that people who need help

¹⁸ Foreigners Act 1946

get it without causing problems for others. We really need to protect asylum seekers with a law so that people in Manipur can live together in peace, and we do not have problems because of people being displaced from their homes. Asylum seekers need our help and protection, and a law would make a difference for asylum seekers and the community.

Constitutional and Moral Imperatives: The Indian Constitution, Article 21, says that every person has the right to life and freedom, no matter where they are from.¹⁹ The Indian courts have always said that people who are not citizens should also be protected from the government doing anything to them. If India had a law about giving asylum to people, it would really make sure that the Indian Constitution is followed, particularly in places like Manipur that are affected by conflict. This way, the Indian Constitution and a clear asylum law would help people who have been forced to leave their homes. They would be treated with dignity, fairness and humanity, as the Indian Constitution and a clear asylum law intend for displaced persons to be treated.

Balancing Security with Humanitarian Protection: People often say that helping refugees is not an idea because of national security. The thing is, not having a system in place to deal with refugees actually makes us less safe. If we had a law that said how to handle people who are seeking asylum, we could check each person individually. Keep track of them. This way, we would not have to suspect every refugee, but instead we could make informed decisions about each person. Refugee protection and national security are not opposing ideas. In fact, they work well together when we have rules to follow. Refugee protection and national security can actually help each other when we have a system in place.

Proposed Core Features of an Asylum Law: We need a law that helps people who are seeking asylum. This law should say who is an asylum seeker and who is a refugee. It should also talk about people who are being treated badly because of their ethnicity, religion or what they think about the government, like what's happening in Myanmar. The law must make sure that people who are seeking asylum are not sent back to a place where they will be hurt. We need a system that can quickly and fairly decide who is a refugee and who is not. This system should also let people appeal if they do not agree with the decision. Asylum seekers should get some things like a place to stay, medical care and education while they are

¹⁹ Constitution of India 1950, art 21; *National Human Rights Commission v State of Arunachal Pradesh & Anr* AIR 1996 SC 1234

waiting. To make all of this work, the central government and states, like Manipur, need to work together.

Strengthening India's Regional Leadership: At a time when Myanmar's crisis shows no immediate resolution, adopting a codified asylum law would enhance India's constitutional governance, international credibility, and regional leadership. A rights-based, rule-of-law approach is essential for long-term stability in sensitive border regions.

CONCLUSION

The establishment of a humane and stable asylum framework is a prerequisite for a democratic society and the maintenance of constitutional, moral, and humanitarian standards.²⁰ India's present scheme of handling asylum cases on a casual basis is not adequate, considering the continuous wars, ethnic cleansing, and climate migrations that are affecting populations such as those from Myanmar and Manipur, India. A consistent policy should not only take over these temporary measures but should also implement a rights-based, predictable, and transparent system for asylum. It is very important to see asylum seekers as people in need of protection and not as illegal offenders. This involves the provision of basic rights, such as protection against arbitrary detention, and access to healthcare, education, and job opportunities, which is in line with the constitutional principles of equality and the right to live with dignity in India.²¹ A sound asylum governance model is of great importance for national security and administrative efficiency, which calls for a legislative framework that outlines the steps for registration and determination of refugee status very clearly.²² Such a framework would ensure that refugee inflows are managed in an orderly manner, which would reduce the pressures on border states and improve coordination between the authorities. Ultimately, the taking of such steps will enhance the state's sovereignty by bringing domestic laws in line with international human rights standards while also promoting a fair and just asylum system and a

²⁰ Constitution of India 1950, arts 14, 21

²¹ *Jeeja Ghosh and Anr v Union of India & Ors* (2016) 7 SCC 761; Constitution of India 1950, arts 14, 21

²² Illegal Migrants (Determination by Tribunal) Act 1983 (repealed); UN Refugee Convention 1951, arts 31, 34; Protocol Relating to the Status of Refugees 1967

compassionate and secure approach to the issues of human migration.²³ This will consequently result in the reinforcement of a just and resilient asylum system in India.

²³ Vienna Convention on the Law of Treaties 1969, art 26; Universal Declaration of Human Rights 1948; *Minerva Mills Ltd & Ors v Union of India & Ors* AIR 1980 SC 1789