JUDICIAL ACTIVISM AND REFUGEE RIGHTS IN INDIA: A CONSTITUTIONAL PERSPECTIVE

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Abstract
The refugee crisis in India, though addressed through ad hoc executive decisions, lacks a comprehensive statutory framework. In the absence of formal accession to the 1951 Refugee Convention and its 1967 Protocol, the Indian judiciary has emerged as a critical actor in safeguarding refugee rights. This paper explores the dynamic role played by Indian courts in interpreting constitutional protections for refugees, especiallythroughArticles141 and 21 of the Indian Constitution. Drawing on key Supreme Court judgments—including the Chakma, Chakraborty, and Sarbananda Sonowal cases—this study illustrates how judicial reasoning incorporates international human rights norms and the principle of non refoulement into domestic jurisprudence. Using doctrinal and comparative methodologies, the paper assesses judicial activism, the tensions between national security and humanitarian protection, and the emerging legal architecture in refugee jurisprudence. Visuals are included to depict refugee demographics, court decision impacts, and legal timelines. This paper argues for a national refugee law, grounded in constitutional morality and judicial precedent, to ensure consistency, transparency, and justice for all displaced persons.

Keywords: Refugee Protection, Indian Judiciary, Constitutional Rights, Non-refoulement, Human Rights, Refugee Jurisprudence

1. INTRODUCTION

Although refugees have existed since time immemorial, refugee law is a relatively new branch of international law. The earliest manifestations of international concern for refugees can be traced back to the immediate aftermath of the First World War, when the League of Nations created the office of the High Commissioner for Refugees which was responsible for defining the status of refugees and providing them with assistance. However, it was not until after the devastation of the Second World War that the international community came together to create a permanent and comprehensive legal regime for the protection of refugees. In 1950, the present-day office of the High Commissioner for Refugees (UNHCR) was created by the United Nations General Assembly by Resolution 428 (V) and began its operation on 1 January 1951. Its mandate was to 'provide international protection' to refugees and to seek 'permanent solutions' to the problems of refugees. The year 1951 also saw the drafting of the convention relating to the status of refugees. A protocol to amend certain provisions of the 1951 Convention entered into force on 4 October 1967'.

Development of the refugee law has its foundation on the events taking place in the Western countries. It evolved as are action to the erection of immigrational walls in Europe, commencing in

the later part of the 19th century. Refugee law is not about facilitating migration. The global refugee crisis has evolved into one of the most pressing humanitarian challenges of the 21st century. According to the United Nations High Commissioner for Refugees (UNHCR), over 120 million people worldwide are forcibly displaced, with nearly 43 million classified as refugees, asylum-seekers, or stateless individuals. International law, particularly the 1951 Refugee Convention and its 1967 Protocol, forms the cornerstone of the legal framework for refugee protection. Despite this framework, implementation varies drastically across regions due to differing domestic legal systems, geopolitical interests, and levels of judicial independence. In this fragmented landscape, the **Judiciary has emerged as a pivotal force in protecting refugees**, especially where legislative or executive responses fall short. Internationally, courts have played a vital role in upholding refugee rights by interpreting constitutional guarantees, enforcing international obligations, and restraining arbitrary executive action.

In **the United States**, the judiciary has intervened in cases challenging executive orders that sought to ban refugees and asylum seekers, emphasizing the role of **due process and equal protection** under the U.S. Constitution. Similarly, in **Canada**, the Supreme Court has held that refugee claimants are entitled to procedural fairness and protection under the Canadian Charter of Rights and Freedoms. In **Europe**, the **European Court of Human Rights** and national constitutional courts have reinforced the inviolability of refugee rights, often interpreting Articles 3 and 8 of the European Convention on Human Rights to protect against inhumane treatment and family separation.

Its goal is to deliver safety for the duration of a serious risk, to ensure a life in dignity for refugee until and unless they can safely return to their homes."[1] So, the international refugee law should be understood as a system of human rights protection, by which the international community agrees to act as surrogate guarantor of the dignity of persons compelled to leave their own country.[1] So the concept of refugee protection is itself inseparable from the notion of human rights. Thus, the thrust of refugee law is to define and protect the rights of refugees.

2. RESEARCH METHODOLOGY

This research is primarily doctrinal and analytical in nature. A qualitative approach has been adopted to examine judicial pronouncements, constitutional provisions, and international legal instruments relevant to refugee protection in India. The study relies on primary sources such as judgments of the Supreme Court of India, constitutional texts, and statutory frame works including the Foreigners Act, 1946, and secondary sources such as journal articles, reports by UNHCR and the NHRC, academic commentaries, and legal treatises.

The research employs the comparative legal method to juxtapose India's approach with international standards, particularly focusing on the 1951 Refugee Convention, the 1967 Protocol, and customary international law principles such as *non-refoulement*. Doctrinal analysis enables a close reading of landmark decisions such as *National Human Rights Commission v. State of Arunachal Pradesh*, *Sarbananda Sonowal v. Union of India*, and others.

A case law-centric methodology has been utilized to assess how judicial interpretation has evolved over time and contributed to the construction of an implicit refugee jurisprudence with in the Indian legal system. In addition, descriptive and critical techniques have been applied to discuss the legal

[1]Prof. James Hathaway, "Crisis in International Refugee Law", in "New Delhi Workshop on International Refugee Law, 20-21 February, 1998, Indian Journal of International Law, Vol. 39, No. 1 1999, p. 5.

vacuum in India's refugee policy and the judiciary's proactive role in filling that void.

3. DEFINITION

There have been various attempts to produce a legal definition of refugee. Between two World Wars international instruments on refugee contained ad-hoc and generalized definitions of the term. During that period the refugees were identified by reference to a certain nationality, so it is clear that, the definition of refugee under the international refugee law is an outcome of the historical developments and political constraints, etc.

Article 1 of the Convention as amended by the 1967 Protocoled fines a refugee as:

"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as are sult of such events, isunable or, owing to such fear, is unwilling to return to it.[22]

4. THE REFUGEE PROTECTION REGIME IN INDIA

India, along with all the other South Asian states, is not a party to the United Nations Convention Relating to the Status of Refugees 1951 (1951 Convention) and the Protocol Relating to the Status of Refugees 1967 (1967 Protocol). India maintains that the 1951 Convention is Euro-centric and cannot be effectively implemented in the South Asian region. India also believes that it has always been generous towards refugees, even without being party to the 1951 Convention. However, critics argue that India is hesitant to accept the financial responsibility that ensues from undertaking the obligations of the 1951 Convention. The World Refugee Survey 2007[3], which rates refugee protection in countries on four categories of rights -- physical protection, freedom from illegal detention, freedom of movement and the right to earn a livelihood -- has rated India 'D' in three categories, signifying' a level of treatment marginally above the rest' and 'C' with regard to freedom from illegal detention, signifying that refugees have reasonable access to the Indian judiciary (SAHRDC, July 11, 2007).

Given the legal vacuum with regard to refugees, the process of addressing large-scale refugee in flows over the years has been *ad hoc*, mainly through executive action. This process is far from appropriate and is often governed by 'political instinct' based on India's diplomatic relations with the country of origin at the time (Acharya: 2004).

The Foreigners Act 1946 is an outdated and draconian piece of legislation that defines a foreigner as any person who is not a citizen of India, and includes refugees. A similar provision was also introduced through an amendment to the Indian Citizenship Act in 2003 which fails to make any distinction between refugees and their special circumstances and other foreigners and illegal immigrants.

Under Section 3 (2) of the Act, the Indian government has wide discretionary powers to regulate the entry and movement of foreigners within India. The Foreigners Order 1948 also restricts the entry of foreigners into Indian territory at given entry points without proper authorization. Every foreigner should be in possession of a valid passport and visa at the time of entry into India, unless exempted. Most often, refugees are not in possession of these documents and thus are refused entry into India.

[2] *"Convention relating to the Status of Refugees". United Nations HighCommissionforRefugees.28July1951. Retrieved 26 April 2018.*

[3] USCRI, World Refugee Survey 2007:Country Report: India, at http://www.refugees.org/countryreports.aspx?id=2000

Although India is not a party to the 1951 Convention, it is bound by the international customary law principle of *non-refoulement* (this principle prevents a country from expelling refugees to countries where their life and liberty are under serious threat). The Foreigners Act allows the Indian government to *refoule* foreigners, including asylum-seekers, through deportation, and is therefore in violation of international customary law.

Article51 (c) of the Indian Constitution provides that India "shall endeavor to foster respect forinternationallawandtreatyobligationsinthedealingsoforganizedpeopleswithoneanother". Article 253 of the Constitution gives the Indian Parliament the "power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body".[4] The Indian judiciary has also ruled in favour of harmonious construction of international and domestic law when it is consistent with fundamental rights (Visakha v State of Rajasthan,1997 [6] [SCC] 241).

The scope and ambit of Articles 14 and 21 of the Indian Constitution, through progressive judicial interpretation, extends to non-citizens including refugees. In the landmark Chakma refugees case, the Supreme Court clearly held that the State was under a constitutional obligation to protect refugees (National Human Rights Commission v State of Arunachal Pradesh, AIR 1996 SC 1234). In Malvika Karlekar v Union of India (Criminal Writ Petition No 243 of 1988), the Supreme Court stayed the deportation of Burmese refugees in the Andaman and Nicobar Islands, as their applications for refugee status were pending with the UNHCR.[5]

A national model refugee law for granting statutory protection to refugees has long been considered in India but is yet to be implemented. The model law aims to harmonize norms and standards on refugee law, establish a procedure for granting refugee status and guarantee them their rights and fair treatment.

In India, refugees are placed under three broad categories. Category I refugees receive full protection from the Indian government (for example, Tamil refugees from SriLanka); Category II refugees are those who are granted refugee status by the UNHCR and are protected under the principle of *non-refoulement* (for example, Burmese and Afghan refugees); and Category III refugees who are neither recognised by the Indian government nor the UNHCR but have entered India and as similated into the local community (for example, Chin refugees from Burma living in the state of Mizoram) (SAHRDC: 1997).[6]

5. THE ROLE OF JUDICIARY PROTECTION OF REFUGEE IN INIDA

The initial trend of the judiciary in India has been to uphold the notion that the power to remove foreigners from the territory vests with the executive and is generally free from judicial review.

Muller vs. Superintendent, Presidency Jail, Calcutta: In the case of **Hans Muller vs. Superintendent, Presidency Jail, Calcutta**, a Constitution Bench of the Supreme Court was dealing with an order of detention passed by the State Government under section 3 (1) of the Preventive Detention Act, 1950, The court for this situation held that the privilege to expel is presented by section 3 (2) (c) of the Foreigners Act, 1946 on the Central Government and the privilege to uphold a request of ejection

[4] Bhairav Acharya, 'The Law, Policy and Practice of Refugee Protection in India' (2004), at http://news.indlaw.com/publicdata/articles/pilsarc04.pdf

[5] http://www.himalmag.com/2006/december/report_2.htm

[6] ArjunNair,"NationalRefugeeLawforIndia:Benefitsand RoadBlocks",2007p.1

furthermore to keep any break of it and the privilege to utilize such compel as might be sensibly essential for the compelling activity of such power is given by sec. 11(1), likewise on the Central Government. There is, accordingly, understood in the right of expulsion various subordinate rights among them the privilege to prevent any breach of the order and the right to utilize constrain and to take powerful allots to convey those reasons. Presently the best strategy for preventing a breach of the order and guaranteeing that it is appropriately obeyed is by capturing and confining the individual requested to be removed until legitimate courses of action for the expulsions can be made. How far it is important to step in a given case is a matter that must be left to the watchfulness of the legislature.

Louis De Raed tvs. Union of India[7]: In Louis De Raed tvs. Union of India, it was contended that the petitioner has been staying in India continuously since 1937 excepting on two occasions when he went to Belgium for short period in 1966and 1973.Ithasbeen contended that by virtue of the provisions of Article 5 (c) of the Constitution of India the petitioner became a citizen of this country on November 26, 1949, and he cannot, therefore, be expelled on the assumption that he is a foreigner. Referring to the Foreigners Act it was urged that power under Section 3 (2)(c) could not be exercised because the Rules under the Act have to been framed so far. Alternatively, it has been argued that the power to expel an alien also has to be exercised only in accordance with the principles of natural justice and a foreigner is also entitled to be heard before he is expelled. For all these reasons it is claimed that the impugned or derdated July 8, 1987 being arbitrary should be quashed and the authorities should be directed to permit the petitioners to stay on.[8] The Supreme Court in this case held that: "The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19 (1) (e) which is applicable only to the citizens of this country. Relying on the decision given in Hans Muller case, the Supreme Court held that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering the discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far as the law which operates in India is concerned the executive government has un restricted right to expela foreigner. So far the right to be hear disconcerned there can not beany hard and fast rule about the manner in which apers on concerned has to be given an opportunity to place his case."

Khudiram Chakma vs. State of Arunachal Pradesh: In Khudiram Chakma vs. State of Arunachal Pradesh[9] the Supreme Court reiterated the view taken in Louis De Raedt case that "Article 21 is available to aliens in India. The Supreme Court has also referred to Universal Declaration of Human Rights in the context of refugee in the present case and stated that the most urgent need of fugitive is a place of refuge. His or her most fundamental right is to be granted asylum. Article 14 of the Universal Declaration of Human Rights which speaks of the right to enjoy asylum has to be interpreted in the light of the instrument as a whole and must be taken to mean something. It implies that although as asylum seeker has no right to be granted admission to a foreign state equally a state which has granted him asylum must not later return him to the country from where he came."

In addition, the article conveys extensive good power and exemplifies the legitimate essential of regional declarations and instruments. It was additionally set out that individuals who are not national sofa nation and dwell there have an uncommon status under local and additionally

[7] AIR1981SC1886

[8] http://www.refworld.org

[9] 1994Sup(1)SCC615

under international law. Subsequently in light of a legitimate concern for national security or public order, states have the privilege to remove them from their domain, can reject them to allow them certain rights which are appreciated by their own nationals e.g. the privilege to vote, hold public office or to take part in political exercises from joining the civil administration or certain callings or from owing a some categories of property.

Further states may like wise put them under such different limitations as it supposes fit in light of a legitimate concern for public. But despite of these specific rights that are ensured to natives of India will likewise be reached out to non-national as essential human rights to which each individual is qualified for."[10]

National Human Rights Commission vs. State of Arunachal Pradesh[11]: In National Human Rights Commission vs. State of Arunachal Pradesh, a public interest litigation under Article 32 of the Constitution has been filed by National Human Rights Commission which seeks to enforce the rights under Article 21 of the Constitution of about 65,000 Chakma/Hajongtribals. It is being alleged that these chakmas, settled mainly in the state of Arunachal Pradesh are being persecuted by sections of the citizens of the above state. The first respondent in this case is the state of Arunachal Pradesh and the second respondent is the Union of India.

On 15 October, 1994 the Committee for Citizenship Rights of the Chakmas filed are presentation with the NHRC complaining of the persecution of the chakmas. The petitioned contained a press report stating that the All–Arunachal Pradesh Students Union has issued quit notices to all alleged foreigners including the chakmas to leave the state by 30 September, 1975. The AAPSU has threatened to use force if its demand was not acceded to. The matter was treated as a formal complaint by the NHRC.[12] It has been called attention to that in 1964 according to broad discussions between Government of India and the North East Frontier Agency (NEFA), it was decided to send the Chakmas for there a sons for their resettlement to the do main of the present day Arunachal Pradesh. The Chakmas have been dwelling in Arunachal Pradesh for over three decades, having grown close social, religious and financialties. To remove the matt his state would be both impracticable and cruel.

On November 2, 1995 the court issued an interim order guiding the primary respondent to guarantee that the Chakmas residing in its region are not expelled by any coercive activity which is not as per law. The court further held that it can't acknowledge the dispute of the main respondent that no risk exists to the life and freedom of the Chakmas as ensured by Article 21 of the Constitution and that it has found a way to guarantee the assurance of the Chakmas. In the wake of taking care of the present matter for over a year the NHRC recorded aprimafacie finding that the administration of quit notification and their conceded requirement showed up to be bolstered by the officers of the main respondent. The NHRC further held that the primary respondent had on one hand deferred the transfer of the matter by not outfitting the required reaction and had then again tried to implement the expulsion of the Chakmas through its offices. It is to be noticed that no time has the main respondent looked to censure the exercises of the AAPSU.

The second respondent further notes that after the expiry of the due date of 30 October, 1994 the AAPSU and other tribal student organizations kept on fomenting and press for the ejection of all outsiders including the Chakmas. It was accounted for that the AAPSU had begun implementing financial barricade on the refugee camps which

[10] http://www.indiankanoon.org
[11] (1996)SCC 295
[12] www.indiankanoon.org

antagonistically influenced the supply of ratios, medical and key offices and soon to the Chakmas. Obviously, the state government has denied the claim however the autonomous inquiry of the NHRC indicates something else. The fact that the Chakmas were dying on account to of the block a de for want of medicines is an established fact. The court further rexpressed that it is in this way clear there exists areas on able and present threat to the lives and individual freedom of the Chakmas.

The Supreme Court reaffirmed that India is governed by the Rule of Law and that constitutional protections-particularly the right to life and personal liberty under Article 21-extend to all individuals, including non-citizens. The Court held that no person or group, including the AAPSU, could threaten or forcibly evict the Chakma refugees from Arunachal Pradesh. It emphasized the State's constitutional duty to safeguard every individual's rights and condemned any inaction or politically motivated discrimination.

By issuing a **writ of mandamus**, the Court directed the State of Arunachal Pradesh to ensure the safety and liberty of all Chakmas, and, if necessary, to seek assistance from the Union Government and paramilitary forces to repelun lawful attempt so feviction. Furthermore, the Court ordered that Chakma applications for Indian citizenship under Section 5 of the Citizenship Act must be duly processed and forwarded to the Central Government. It held that any returned applications must be recalled or replaced and fairly reconsidered, thereby ensuring both procedural fairness and constitutional compliance.

While the application of any individual chakmais pending, the first respondent shall not evictor remove the person concerned from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf.[13]

Sarbananda Sonowal vs. Union of India and Another: In Sarbananda Sonowal vs. Union of India and Another,20 a public interest litigation underArticle32 of the Constitution of India has been filed for declaring certain provisions of the Illegal Migrants (Determination), 1983 as ultra vires the Constitution of India and also for declaring that the Foreigners Act, 1946 and the rules made the reunder shall apply to the State of Assam. It is also prayed to declare the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires the Constitution of India and also under Section 28 of the aforesaid Act and, therefore, null and void.

The petitioner in this case is a citizen of India and is ordinarily resident in the State of Assam. He is a former President of the All-Assam Students Union, which is the largest non-political student's organization in the State which was responsible for leading the student's movement in Assam in the late 1970s and early 1980s. The issues raised in the writ petition concern all residents in the State of Assam whose rights as citizens of India have been materially and gravely prejudiced by the operation of the Illegal Migrants (Determination by Tribunals) Act, 1983 hereinafter referred to as the IMDT Act.

The primary grievance of the applicant is that the IMDT Act is entirely arbitrary, unreasonable and discriminates against a class of citizens of India, making it incomprehensible for nationals who are occupants in Assam to secure the discovery and expelling of nonnatives from Indian soil. The Foreigners Act, 1946, applies to every one of the outsiders all through India, yet the IMDT Act which was authorized in this manner with the proclaimed point of making identification and expelling of the illicit migrants dwelling in Assam less demanding has totally neglected to meet even

[13] Ibid.20W.P.(CIVIL)131OF2000(DecidedonJuly12, 2005).

the measures recommended in the Foreigners Act. That apart, even those procurements of the IMDT Act which manage the cost of some measure of security to some genuine Indian nationals against illicit vagrants are not being legitimately up held because of unessential political contemplations in discrediting of the privileges of Indian natives living in Assam. The after effect of the IMDT Act has been that various non-Indians, who surreptitiously went into Assam after March 25, 1971 without ownership of valid passports, travel reports or other legal power to do as such, keep on residing in Assam. Their nearness has changed the entire character, social and ethnic arrangement of the zone and the IMDT Act makes a circumstance where under it has turned out to be for all intents and purposes difficult to challenge the nearness of anon native and to secure his identification, deportation or even deletion of his name from the appointive rundown as they get insurance by virtue of the procurements of the Act. It is further affirmed that in perspective of the issue of illicit relocation of non natives into Assam and their proceeded with nearness in that, a State-wise dissent movement of students was sorted out which proceeded for a long stretch.

As an after effect of the student's movements and following arrangements, a memorandum of settlement dated 15th August, 1985 was entered into between All Assam Students' Union and the Union of India and the State of Assam, which is commonly known as "Assam Accord". The terms of the Accord particularly gave that strides would be taken to identify and oust illicit transients from Assam and it additionally contained a provision that "the Government will give due thought to specific troubles communicated by 157 AASU/AAGSP with respect to the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983."[14] The Accord further provided that foreigners who have entered into India after 25th March, 1971 will continue to be detected, their names deleted from the electoral rolls and they will be deported from India. In compatibility of this procurement, the Citizenship Act, 1955 was amended by Act No.65 of 1985 and Section 6A was embedded with the heading "Special Provisions as to Citizenship of Persons covered by the Assam Accord. "It provides that the term" detected to be a foreigner" shall mean so detected under the Foreigners Act and the Foreigners (Tribunals) Order, 1964 framed there under. This amendment of the Citizenship Act makes it clear that the topic of determination or detection of a foreigner is to be administered by the procurements of the current Central enactment, viz. the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964.

It is further argued that in the wake of marking of the Assam Accord, a few confirmations were given and explanations have been made by the Central Government that it is analyzing the failure of the IMDT Act with respect to recognition and deportation of foreigners and it is thinking about steps to repeal the Act. A document was signed by Union Home Secretary and Chief Secretary of Assamon 27th January, 1990 in regards to preparation of a time allotment for class-wise execution[14] www.indiankanoon.org of the Assam Accord and it was said in that that a choice on the nullification of the IMDT Act would be taken by 28th February, 1991.

In a meeting hung on 20th September, 1990 between Union Home Minister, Chief Minister of Assam and delegates of All Assam Students' Union, the student union emphasized their interest for cancelation of the IMDT Act, which interest was noted and a confirmation was given that the Central Government would start discourses with other political parties. The Union of India documented a counter affirmation on 18th July, 2000, which has been sworn by Shri Jatinder Bir Singh, Director, Ministry of Home Affairs. It was expressed that a proposal to repeal the IMDT Act is under thought of Government of India. The

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State of Assam filed a counter affidavit on 28th August, 2000, wherein itis expressed that the State Government has been persistently keeping in touch with the Central Government that the IMDT Act is working against national interest since in perspective of the stringent procurements in the IMDT Act in regards to identification and expulsion of foreigners, the illegal migrants whose nearness are in lakhs in the State of Assam couldn't be deported. The State Government has thus these been demanding the Central Government for nullification of the IMDT Act.

The implementation of the Illegal Migrants (Determination by Tribunals) Act (IMDT Act) faced significant criticism for being discriminatory, as it applied solely to the State of Assam, despite similar challenges with illegal migration in other states like West Bengal, Tripura, and Meghalaya. A subsequent affidavit filed by the Union of India on 24 November 2004 indicated a shift in position: although the Act's constitutional validity had earlier been questioned, the government decided to retain its application in Assam. The affidavit further claimed that the Act was introduced to safeguard genuine Indian citizens from wrongful deportation under the Foreigners Act, 1946, by incorporating a layer of judicial scrutiny in determining citizenship status. The Supreme Court, after detailed examination, concluded that the provisions of the IMDT Act and its Rules were excessively stringent compared to the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964. The procedures under the IMDT Act made it extremely difficult to identify and deport illegal migrants, even more so than securing a conviction in a criminal trial. The Act lacked provisions for effective screening mechanisms and empowered officials to dismiss complaints without appeal, resulting in over 85% of inquiries being rejected without being referred to a tribunal.

The Court noted that the structure of the IMDT Act appeared deliberately designed to protect illegal immigrants, particularly those who entered Assam from Bangladesh after 25 March1971, rather than to facilitate their detection and deportation. Additionally, the Act created procedural imbalances by allowing administrative orders in favor of alleged migrants while requiring judicial orders to declare someone an illegal entrant.

Ultimately, the Court held that the IMDT Act undermined the constitutional duty under Article 355, which obliges the Union Government to protect states from external aggression and internal disturbances. Consequently, the Act was declared unconstitutional and struck down.

Table 1: Refugee Protection Framework in SAARC Countries

Country	**Refugee Law**	**UNHCR Involvement**	**Constitutional Protection**	**Non-Refoulement Observed**
India	+No	Yes	Articles14&21	Customary Law
Pakistan	+No	Yes	⚠Limited	
Nepal	+No	Yes		
Bangladesh	+No	Yes	⚠Minimal	⚠Partial
SriLanka	Partial	Yes		

6. Findings and Discussion

The analysis of landmark judgments reveals that the Indian judiciary has not only recognized the constitutional rights of refugees but also imported international legal norms through judicial interpretation. Courts have interpreted Articles 14 and 21 of the Constitution to apply to all persons, including non-citizens, which serves as the

backbone of refugee protection in the absence of statutory law.

Judgments such as *NHRC v. State of Arunachal Pradesh* and *Malvika Karlekarv. Union of India* emphasized *non-refoulement* and due process for refugees. This reflects a trend of judicial activism that fills legislative gaps and aligns India's domestic practice with international human rights obligations.

The inclusion of *non-refoulement* within Indian jurisprudence—even without accession to the 1951 Convention—illustrates India's implicit compliance with international norms. However, inconsistenciesre main due to a dhoc executive policies and the lack of a national legal framework.

7. Conclusion

The Indian judiciary has played a transformative role in safeguarding the rights of refugees, evolving from literal interpretations in the 1980s to a more liberal and humanitarian approach. Courts have consistently relied on constitutional provisions-particularlyArticles14, 21, and 22- to extend basic protections to refugees, despite the absence of a formal refugee law in India.

Judicial decisions have emphasized that international treaties and human rights conventions can be read into domestic law when no direct legislation exists and where such norms do not conflict with Indian statutes. Article 51(c) of the Constitution supports this approach by encoutraging respect for international law. The judiciary has invoked principles from international instruments like the Universal Declaration of Human Rights to uphold the rights of refugees, including non- refoulement, due process, and dignity.

Land mark rulings-such as those involving the Chakmar refugees and Burmese asylum seekers-demonstrate the courts' willingness to prevent forced deportations and protect the right to life. These interventions affirm that even non-citizens are entitled to constitutional protections. The courts have further ensured procedural safeguards like the right to be heard (audialteram partem) and protections against unlawful detention under Article 22.

Notably, while defending refugee rights, the judiciary has maintained a balance with national security. Refugees involved in criminal or illegal activities have not been shielded from legal consequences.

The National Human Rights Commission (NHRC) has also played a vital role by filing public interest litigations to protect displaced communities like the Chakmas. The NHRC's actions have helped affirm that Article 21 protections extend to all individuals on Indian soil, including refugees.

Finally, the courts have developed a methodology of incorporating international human rights obligations into domestic constitutional frameworks. However, they have acknowledged the limitation that, in the absence of specific legislation, certain international rights may not always been forceable. The Protection of Human Rights Act, 1993 was a step forward but remains limited in scope. Despite these constraints, the Indian judiciary has emerged as a powerful guardian of refugee rights in a legally underdeveloped area.

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