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Refugee Rights and National Security: Reconciling Humanitarian Obligations with State Sovereignty in India

ABSTRACT

Protecting refugees is a complicated legal and policy problem since it necessitates the State to strike a balance between humanitarian duties with regard to protection of those who have fled persecution, conflict and severe human-rights abuses of their sovereign duty to control entry, presence and removal of foreigners. India stands in a unique place regarding the protection of refugees internationally. India is the country that, despite being historically the shelter of great numbers of refugees, is not Part of the Convention of 1951 on the status of refugees and the 1967 Protocol and, decades after that, lacked an overall domestic refugee law. The way of governance was therefore to a great extent based on executive policy and the courts and in general laws of immigration to govern the refugees. The adoption and the coming into effect of the Immigration and Foreigners Act, 2025 has streamlined and unified the Indian immigration system, yet it is not a full-fledged refugee-protection system. The relationship between refugee rights, national security and State sovereignty in India is critically analyzed in this paper. It also examines constitutional guarantees of Articles 14 and 21, the doctrine of non-refuge, international law of India and the policy of non-refuge by the executive and the new statutory framework within the Immigration and Foreigners Act, 2025. Special consideration is brought to the decisions of the courts. The paper concludes by arguing that national security is a constitutional and justifiable State interest, but cannot be used as an opportunity to treat refugees to arbitrary or indiscriminate treatment. India needs refugee regime based on rights, including the screening of security, personal evaluation, procedural protections, temporary protection and judicial checks and balances. This sort of framework can guard the sovereignty of India and at the same time the humanitarian duties and basic rights are not compromised.

KEYWORDS

Refugees, National Security, State Sovereignty, Article 21, Immigration Law, Human Rights, Asylum.

1. INTRODUCTION

The migration of the human beings across the international frontiers due to war, religious persecution, ethnic violence, “political persecution and

other grave threat to life and liberty have been listed by the international law to be one of the major challenges in modern international law. The refugees are placed in a very disadvantageous position since they cannot or will not go back to their country of origin due to a well-founded fear of being persecuted or severely harmed, as compared to ordinary migrants. The lack of good protection by the country of nationality provides a legal and humanitarian duty of the international community.¹

India has had a pragmatic and humanitarian policy towards refugees. India is the recipient of Tibetans, Sri Lankan Tamils, Afghans, Myannese and other displaced people that came since the time of independence. Nevertheless, a wholesome refugee statute has not accompanied this humanitarian practice. India is not signatory to 1951 Refugee Convention or the 1967 Protocol. The United Nations High Commissioner for Refugees (UNHCR) so reports that India lacks a national framework on refugee's matters, despite it continuing to host a number of refugees groups and having given the UNHCR the mandate of carrying out refugees-status determination of some groups of asylum-seekers.

Lack of a specific refugee law creates a legal harshness. On the one hand, the State has the sovereign right to decide who has the right to enter its state, under what circumstances and with whom a foreign state can stay. The Indian Constitution on the other hand safeguard equally some fundamental rights of every so called person including non-citizens. Article 14 includes equality before the law, equality before the law with equal protection, whereas Article 21 includes the prohibition of the deprivation of life or personal liberty without procedures laid down in the law.²

The Indian courts have therefore been pertinent in building up a narrow constitutional guideline in regard to refugee protection. The Supreme Court in the case of National Human Rights Commission v. State of Arunachal Pradesh³, did recognise the right of the Chakma refugees to right to life and personal liberty. In Gujarat High Court in Ktaer Abbas Habib Al Qutaifi v. Union of India⁴, the Court went even beyond to acknowledge the principle of non-refoulement as yet another aspect of Article 21, although under national-security concerns.

This issue is further complicated as refugee protection borders on national security. There are legitimate reasons that governments can have to include terrorism, cross-border crime, trafficking, counterfeited

¹ B.S. Chimni, *International Refugee Law: A Reader* 125 (Sage Publications, New Delhi, 2000).

² The Constitution of India, 1949, Articles 14 and 21.

³ (1996) 1 SCC 742.

⁴ 1999 Cri LJ 919.

documents, militant infiltration, strains in population and unchecked migration. These issues are especially important to India due to its long and even porous land borders. This conflict is shown in the Rohingya refugee situation. The Supreme Court in the case *Mohammad Salimullah v. Union of India* discussed the deportation of Rohingya refugees proposed against the background of the national-security interests and the doctrine of non-refoulement. The Court did not provide any blanket ban on deportation but said that deportation could only be done in a manner prescribed in the procedure.

Whether India should balance between national security and refugee protection or not is not therefore the central question. Instead, the question is how the two aims can co-exist in a constitutional democracy. The paper will insist that sovereignty cannot be seen as an unconditional ability to assume humanitarian duties off the hook. On the same note, the rights of refugees cannot be construed to imply the development of an absolute right to stay in India irrespective of any actual security threats. The relevant strategy is that of proportionality, individualised evaluation/assessment, procedural fairness and judicial review.

2. CONCEPTUALISING REFUGEE RIGHTS, SOVEREIGNTY AND NATIONAL SECURITY

2.1 Meaning of a Refugee

Article 1A (2) in the 1951 Refugee Convention includes the traditional international definition of who a refugee is. A refugee is considered to be normally a person who owing to a well-founded fear of persecution due to reasons like race, religion, nationality or membership of a certain social group or political opinion is not within the country of nationality and he cannot or where he cannot take the protection of that country.

Non-refoulement is the most essential rule of the international refugee law. Article 33(1) of the Convention on the refugees forbids such expulsion or repatriation of a refugee to territories in which his/her life or liberty would at risk based on a Convention reason. UNHCR defines non-refoulement as the principle of key principle of refugee protection, and calls international human-rights and refugee law. Refugees thus cannot be subjected to treatment like normal migrants. Movement can take the form of migration due to economic, or educational reasons or personal reasons, whilst refugee movement is directly linked with a failure to protect in the country of origin.

2.2 State Sovereignty

The Sovereignty traditionally comprises the power of a State to regulate the territory and the cases of entry and residence of foreigners in it.

Territorial sovereignty is the concept that is closely related to control over immigration.

In India, the judiciary has traditionally acknowledged a significant amount of executive power in relation to foreigners. In *Louis De Raedt v. Union of India*, the Supreme Court determined that foreigners were not within the benefit of the fundamental right in the Article 19(1)(e) that provided the right to reside and settle in India since foreigners only had a right as one of its citizens. The Government was also recognised to have the authority to deport foreigners by the Court.

This does not however imply that sovereignty is exercised beyond constitutional constraints. Article 14 and Articles 21 apply to a foreigner physically present in India as a person. Therefore, the control of immigration has to take place within the legal and constitutional protection.

2.3 National Security

National security does not arise out of normal military threats. Examples in the refugee setting may include terrorism, espionage, organised crime, trafficking, acts of militancy, identity fraud and threat to the maintenance of peaceful coexistence. Nevertheless, the national security cannot be automatically associated with the existence of refugees. Refugees are people who have been persecuted, there is the risk of collective punishment and discrimination by considering as a security threat a whole population of refugees.

It is now a matter of differentiating between justifiable immigration control, protection of refugees, individual security threats, and generalised beliefs about refugee populations. This is critical towards crafting a constitutionally valid refugee-security system.

3. INDIA'S INTERNATIONAL LEGAL POSITION

This is a unique situation in India as the country traditionally received refugees and it has not become a signatory to the main international refugee documents.

3.1 1951 Refugee Convention and 1967 Protocol

India is neither a signatory to the 1951 Refugee Convention, nor the 1967 Protocol. Therefore the Convention does not directly enforce the treatment of India as it is the case of States Parties to treaties. UNHCR acknowledges the lack of party status in India and the lack of a national framework of refugee protection.

Non-membership does not, however, imply that the Indian law does not

have any relevance to the refugee protection. India is a party to some international human-rights instruments, such as International Covenant on Civil and Political Rights (ICCPR). In cases where the international law conforms to the domestic law, the international law may inform the constitutional interpretation as well.

3.2 Article 51(c) of the Constitution

Article 51(c) instructs the State to strive to create respect of international law of contacts with treaties when engaging in contacts with organised peoples. Although Article 51 is a Directive Principle which is not to be enforced separately, the international conventions were also interpreted as extrinsic guidelines by Indian courts when the international convention did not subject to conflict with domestic law.

In *Visakh Case v. State of Rajasthan*, the Supreme Court ruled that in a situation where there was no domestic legislation relating to international conventions as well as norms, it could be used as a reference point to interpreting constitutional guarantees. The principle is relevant to the law of the refugees since it offers some constitutional mechanism by which the international human-rights standards would have an impact on the domestic adjudication.

3.3 Non-Refoulement

Non-refoulement principle is placed in the centre of the refugee-protection debate. It is particularly important in the case of *Ktaer Abbas Habib Al Qutaifi v. Union of India*⁵, is especially significant. The Court made the case of Iraqi refugees detained in Gujarat, and held that non-refoulement was included in Article 21, noting also that the protection did not apply so long as the presence of the refugee is not harmful to the national security of India.

The judgment is significant since it is trying to balance the humanitarian protection with the sovereignty. It did not attribute non-refoulement to be an unchanging limitation of State power. It, on the contrary, has been able to appreciate security as a qualification that is legitimate.

4. CONSTITUTIONAL PROTECTION OF REFUGEES IN INDIA

4.1 Article 14

Article 14 stipulates that the State is not to deprive a person of any right to equality before the law or similarity of protection by the laws in the Indian land. The expression "person" is broader than "citizen". As a result, the foreigners are safeguarded by the Constitution against

⁵ 1999 Cri LJ 919.

arbitrary action of the State.

This is a principle that is significant when the refugee communities are faced with discriminatory treatments based solely on their nationality, ethnicity or refugee status. Whatever classification there is must have a reasonable purpose and meet constitutional requirements of reasonableness.

4.2 Article 21

Article 21 gives a solution of depriving no one of his life or of personal liberty except by way of procedure determined by law. The Supreme Court always gives Article 21 a broad meaning. Notably, the coverage is not only to foreigners.

At Louis de Raedt⁶, the Supreme Court clearly acknowledged Article 21 protection of foreigners but differentiated it with that of the right of citizens as in the Article 19(1)e.

The significance of Article 21 to the refugee protection can thus not be overemphasized. A refugee who is in fear of persecution, his death in case he goes back can claim a constitutional safeguard of life and liberty as well as his individual freedom even though the refugee is not entitled to a periodical residence in India.

4.3 Article 19

The rights of article 19 are mostly limited to citizens. Thus, the refugees would not be able to assert the right of Article 19(1)(e) that says that they can reside and settle in any part of India simply because they are physically present in the country.

This differentiation formed the center of both the litigation of Louis De Raedt⁷ and later on in the Rohingya litigation.

One can thus conclude the constitutional position as follows:

- 76 refugees are not entitled to an un-limited constitutional right to stay in India;
- they do have security of life and individual freedom;
- State action in respect of them should be lawful;

⁶ (1991) 3 SCC 554.

⁷ (1991) 3 SCC 554.

- Arbitrary arrest and deportation can be reviewed by the judiciary; and
- Claims made in the name of national security should be examined in the context of the Constitution.

5. INDIA'S STATUTORY FRAMEWORK: FROM THE FOREIGNERS ACT TO THE IMMIGRATION AND FOREIGNERS ACT, 2025

Over decades, the immigration system in India was based on the Foreigners Act, 1946. That act considered foreigners more as a group to be regulated by immigration policy than as a separate group of people who were a needy group.

A significant law change happened in the year 2025 with the passing of Immigration and Foreigners Act, 2025 (Act No. 13 of 2025). Act (2025) was assented to by the President, 4 April 2025, and came into effect 1 September 2025. It repealed four previous laws such as the Foreigners Act, 1946, and united powers of immigration under a single legislation.

The new Act governs issues of immigration, passports and travel documents, visas, registration of foreigners, the immigration officers, the accommodation providers, offences and removal of foreigners. The Act, however, is not a comprehensive refugee law. And it is still a statute of immigration-control. The differentiation of an asylum-seeker, refugee and a regular foreigner is thus not yet well maturing in Indian statutory law. This is among the main flaws of the existing framework.

5.1 Advantages of the 2025 Framework

The 2025 bill has a number of benefits. To begin with, it unites disjointed immigration laws. Second, it liberalises the legal system that regulates entry and stay as well as exit of foreigners. Third, it provides the Central Government with more definite institutional authorities in managing immigration. Fourth, it could possibly augment the national-security frameworks through the registration and verification and regulation of foreigners. These benefits, however, should be countered by the fact that there are no refugee-specific guarantees.

5.2 The Missing Refugee Category

There should be a refugee specific jurisdiction that is able to tell the difference between the tourists, students, the migrant workers, the undocumented migrants, the asylum-seekers, the recognised refugees, and those who represent demonstrable security risks.

The inability to make a difference between these categories may bring

about two contradictory issues. Authentic refugees can be considered as regular immigration violators whereas those with the real danger to the security can even take advantage of refugee procedures. Both of these issues can be resolved with the help of a special refugee law.

6. JUDICIAL APPROACH TOWARDS REFUGEE RIGHTS IN INDIA

Constitutional adjudication has established the biggest protection principles to refugees in Indian courts.

6.1 *Louis De Raedt v. Union of India*⁸

The petitioners were aliens who were seeking government intervention on the issue of their residence in India. The Supreme Court was able to recognise that Article 21 extends to foreigners but relaxed that Article 19(1)(e) extends to citizens. The Court also realised the presence of a significant executive power to drive out foreigners.

The ruling thus creates a two-pronged principle. To start with, overseas natives are granted protection against life and liberty in the constitution. Second, there is no unconditional constitutional right of foreigners to be in India. This is the difference that lies at the core of refugee law.

6.2 *National Human Rights Commission v. State of Arunachal Pradesh*⁹

This is a major Indian judgment regarding the issue of refugees. Its case was of Chakma refugees in Arunachal Pradesh, who were threatened and unfriendliness against certain sections of the local population. The Supreme Court assigned protection to their privileges in Article 21 because it was applied to them by the National Human Rights Commission.

The Supreme Court found that it was the constitutional duty of the State to safeguard the life and liberty of the Chakmas, and to which the State could not allow the expulsion of the Chakmas in the State to be done forcibly by private groups.

The ruling illustrates that protection of refugees is not just an executive blessing. When refugees find themselves on the Indian territory then they need to be given the basic constitutional rights. The other essential principle that the case prompts is that of the State accountability: although hostility towards a refugee group may be the prerogative of non-State actors, a State cannot afford to stand by without taking action.

⁸ (1991) 3 SCC 554.

⁹ (1996) 1 SCC 742.

6.3 *Ktaer Abbas Habib Al Qutaifi v. Union of India*¹⁰

The petitioners were Iraqi refugees who were in danger of being deported to Iraq. The Gujarat High Court took into consideration the principle of non-refoulement and its connection to the Article 21. The Court acknowledged that non-refugee covers a person against being sent back home where he or she risks dying or being imprisoned. It also noted that international conventions could guide constitutional interpretation where it was in line with the domestic law.

Notably, the Court did not overlook the issue of national security. It provided that protection under non-refoulement functions provided that the presence of the refugee does not pose prejudice to national security. This serves as a helpful paradigm to balance humanitarian imperatives and sovereignty.

6.4 *Dough Lian Kham v. Union of India*¹¹

The Delhi High Court not only discussed the applicability of non-refoulement and Article 21, but also the protection that a foreign nation may have against removal.

The case depicts the general disposition of the Indian judiciary to identify international principles on refugees as applicable to constitutional rights and at the same time the power of State to govern foreigners.

7. NATIONAL SECURITY AND REFUGEE PROTECTION: THE CENTRAL TENSION

Another State interest is national security. India should not be expected to relinquish her sovereign duty of safeguarding her citizens just because an individual declares himself this refugee. The challenge here is when national-security interests are so strong they ever give rise to a requirement to limitations in protecting refugees.

7.1 *Genuine Security Threats*

Security screening could be reasonable in case there is credible evidence to indicate participation in inter-border terrorism, spying, organised crimes, trafficking, militant groups, other possible grave offences, identity theft, or other criminal activities that undermine societal peace or national security. The process of determining refugee status should therefore contain security checks.¹²

¹⁰ 1999 Cri LJ 919 (Guj).

¹¹ 2015 SCC OnLine Del 13765.

¹² B.S. Chimni, "The Legal Condition of Refugees in India," 7(4) *Journal of Refugee Studies*

7.2 *The Danger of Collective Suspicion*

Nevertheless, issues of security should not be used as justification to deem an entire nationality or group of refugees as dangerous.

There are a number of constitutional issues with collective attribution of criminality:

- it undermines Article 14;
- and it undermines individualised justice;
- it can promote xenophobia;
- so many things which it jeopardizes; so many things it threatens to refuel: genuine refugees, as well;
- it will result in mistrust between law-enforcement authorities and refugees.

Security must thus be founded upon evidence regarding people as opposed to being generalised with regards to communities.¹³

7.3 *Proportionality*

The proportionality principle provides a suitable constitutional principle.

The four broad responses of any limitation on refugee rights should be to meet:

- **Legitimate purpose** - will there be an actual security or public-order purpose?
- **Rational connection** - the restriction should really benefit that purpose.
- **Necessity**- we need to have other options that are not as restrictive.
- **Balancing**- there must be no disproportionate detriment to individual rights of security.

To give an example, the mere presence of a security matter would likely be much harder to justify than individual security claims along with

378–401 (1994).

¹³ B.S. Chimni, "The Geopolitics of Refugee Studies: A View from the South," 11(4) *Journal of Refugee Studies* 350–374 (1998).

monitored residence were indefinite detention of a whole refugee” population issued.¹⁴

8. THE ROHINGYA QUESTION AS A CASE STUDY

In the case of the Rohingya, it is complex as it depicts the dilemma of “refugees and security that India has been in. The Rohingya people left Myanmar after being persecuted and murdered and were seeking refuge in the neighbouring states, including India. The Indian Government has expressed concerns over illegal immigration, national security and potential connectivity between the unlawful immigration networks and the security threats. The litigation ended up before the Supreme Court in 2021. The petitioners, however, used the Article 21,¹⁵ which was the international human-rights law and non-refoulement.

This response of the Court illustrates three significant principles. To start with, the rights of article 14 and 21 apply to non-citizens. Secondly, India has the right to control the immigration and expulsion of foreigners. Third, a removal due process is required.¹⁶

The case thus places the extremes in opposition to each other: it does not end up by stipulating an unconditional right to marry as a refugee, and does not allow ad hoc deportation.

The Rohingya case is another indication of why India needs a formal process to determine refugee status. When refugee status and security risk are evaluated under a transparent and individualised system, then the State will be able to determine people in need of protection and at the same time determine those who pose serious security challenges.

9. MAJOR CHALLENGES IN INDIA'S REFUGEE PROTECTION FRAMEWORK

9.1 *Absence of a Comprehensive Refugee Law*

The most significant problem is the absence of a specific statute on refugees. UNHCR remains to refer to India as refugeless, in terms of a national protection system towards refugees.

9.2 *Ad Hoc Policy*

India has been associated with various strategies to various categories of refugees. The Government has already applied the Standard Operating

¹⁴ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India, New Delhi, 2019).

¹⁵ The Constitution of India, 1949, Article 21.

¹⁶ The Constitution of India, 1949, Articles 14 and 21.

Procedures in processing the claims by the foreign nationals who seek protection of refugees. In 2014, a Government statement indicated that the cases of prima facie justified refugee cases might be devoted to Long Term Visas following a security check. This type of executive flexibility can come in handy in the time of emergencies, but over discretion can lead to unequal treatment.

9.3 Refugees and Illegal Migrants

The lack of any legal distinction between refugees and any other foreigners can make actual asylum-seekers appear as immigration offenders. The fact that a refugee can get into the country without valid documents is the reason why such individual may flee due to some form of persecution that may cause him/her to be unable to go. Therefore, the illegitimacy of entry should not necessarily terminate the right of an individual to international protection.

9.4 Lack of Uniform Refugee Status Determination

In India, UNHCR conducts refugee-status determination of selected groups of people, especially those who have a state of origin requiring a UNHCR mandate. But a national statutory mechanism would be more consistent and would have legal certainty.

9.5 Detention

The detention of immigrants is an issue of grave concern to Article 21. Although in certain cases, detention can be justified, it should not be made permanent or penal due to mere fact that the individual does not have immigration papers. Alternatives to detention must thus be implemented, particularly to children, families as well as vulnerable individuals.

10. RECONCILING HUMANITARIAN OBLIGATIONS WITH STATE SOVEREIGNTY

The main thesis of this paper is that there is no necessary contradiction between the rights of refugees and sovereignty.

10.1 Sovereignty as Responsible Governance

Current sovereignty does not merely imply the absolute State power. The exercise of constitutional sovereignty is by way of law. The sovereignty of India is in fact enhanced as opposed to the state being weakened when there has been a predictable legal process involved in making immigration and refugee decisions.

10.2 Individualised Security Screening

India ought to have a formal system of determining refugee status that has identity verification, biometric registration, background checks, interviews, persecution claims verification, use of security assessment and appeals. This would enable the State to differentiate the refugees as opposed to those in need of abusing the asylum routes.

10.3 Temporary Protection

Temporary protection that applies when there is a mass influx of immigrants may be introduced in India. In the meantime, measures would ensure that refugees obtain basic protection until they can get permanent residence. This may also come in handy especially in a humanitarian emergency in other neighbouring countries.

10.4 Procedural Safeguards before Deportation

A claimant of refugee status is to normatively be granted:

- notice;
- There should be an opportunity to present the protection claim;
- risk upon return;
- access to legal help in the right cases;
- screening by a third party; and
- judicial review: in situations where there are major dangers to life or liberty.

10.5 Security Exceptions to Refugee Protection

An exclusion clause should be well formulated in a future refugee law to exclude individuals who have committed such crimes of international character or those who have actually demonstrated a beneficial threat to the national security. Nonetheless, the security exception is supposed to be grounded in evidence, be individual, reviewable and be aligned with the ban on torture and other human-rights anti-derivable factors.

10.6 Role of UNHCR

As India builds domestic institutions to take care of refugees, it should maintain collaboration with the UNHCR. The UNHCR skills might be used in training, determine status, resettlement and international burden-sharing. The involvement of India in protecting refugees over the years shows that national sovereignty and humanitarian duty may co-exist.

11. RECOMMENDATIONS

11.1 Enact a Comprehensive Refugee Protection Law

India needs to have legislation that is specifically on refugees and asylum seekers. This should become law that defines refugee, asylum-seeker, temporary protection, non-refoulement, cessation of refugee status and durable solutions.

11.2 Establish an Independent Refugee Status Authority

The claims of the refugees should be determined by a specialised statutory authority in transparent procedures.

11.3 Integrate Security Screening

The security screening process must become part of the determination of refugee status and not an exercise of justification to resort to indiscriminate deportation.

11.4 Codify Non-Refoulement

Indian laws should explicitly acknowledge the principle of non-refoulement, with statutory exceptions that are well-limited and in accordance with the constitutional and global human-rights policies.

11.5 Protect Vulnerable Refugees

More protection should be provided to children, women, persons with disabilities and torture victims.

11.6 Reduce Reliance on Detention

The use of detention must be reasonable and appropriate. Some reporting requirements, specified accommodation and other options must be kept in mind.

11.7 Strengthen Judicial Review

In cases where fundamental rights, non-refoulement or procedural fairness are at stake courts must be allowed to hear removal determinations.

12. CONCLUSION

Protection of refugees is one of the most challenging fields of modern constitutional and international law as it is at the merit of human rights and State sovereignty. India has exhibited a significant humanitarian sensibility traditionally by accepting refugee settlement of the

neighboring Asian regions. However, this custom has mostly been in practice without the all-inclusive legal structure.

To some degree, Indian constitutional jurisprudence has sealed this gap. In *Louis De Raedt v. Union of India*¹⁷, the Supreme Court recognised that foreigners are protected by Article 21 even though they do not possess the citizen-specific right to reside and settle in India. The national human rights commission v the state of Arunachal Pradesh¹⁸, ruled that the State has the responsibility of safeguarding the life and liberty of Chakma refugees. The ruling by the Gujarat High Court in *Ktaer Abbas Habib Al Qutaifi v. Union of India* provided significant constitutional consideration to non-refoulement with recognition of national-security restrictions.

The passing of the Immigration and Foreigners Act, 2025 is a significant issue in the Indian immigration legislation. On 1 September 2025 the Act came into effect, and legal regulation of immigration and foreigners was unified and the Foreigners Act, 1946 and other previous acts were repealed. It must not however be considered as an alternative to full-fledged refugee legislations. The underlying issue is the fact that the protection of refugees is not sufficiently separated in terms of general immigration control.

India thus requires a special refugee-protection system that must appreciate both humanitarian duties and authentic national-security concerns. This kind of legislation must enforce non-refoulement, an independent mechanism to determine refugee-status, procedural protections, and allow effective security screening, and mechanisms of judicial review.

Neither can unrestricted admission nor unrestricted exclusion be the proper model. It is regulated humanitarian protection. Real refugees must not be persecuted and refouled, and people who pose security risks that can be demonstrated must have their lawful considerations measured by reasonable and proportionate means, and upon an individual basis.

Finally, safeguarding of refugees does not necessitate the loss of sovereignty. Instead, the sovereignty of the State is exemplified by a sovereign constitutional State, which participates in it by law, proportionately" accountably and respecting human dignity. The future policy of India towards refugees ought thus to aim at finding a principled compromise where the national security ensures that the State is not destroyed under the name of humanitarian protection, and refugee

¹⁷ (1991) 3 SCC 554.

¹⁸ (1996) 1 SCC 742.

rights will also ensure the protection of human dignity that is not at the expense of legitimate State interests.