ACCESS

The Role of Courts in Shaping Access to Asylum

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INTRODUCTION: OBJECTIVES OF ACCESS

The research project "Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum" ACCESS investigates the role of courts in shaping access to asylum. It seeks to understand how courts globally interpret State-developed barriers in light of the Refugee Convention (RC) and other international norms, what socio-legal factors influence asylum access adjudication, and how the emerging jurisprudence shapes international refugee law (IRL) and migration governance.

ACCESS adopts a comparative approach as it relies on data collected from 19 countries, theoretically selected to cover all geographical regions, various legal systems and adjudication models, and different forms of participation in the international refugee law regime.[1]

Given the comparative and socio-legal approach of the project, our goal is to collect data through multiple methods that guarantee comparability, comprehensiveness, and reliability of the data.

The data collection template, along with the explanatory guidance used for the preparation of this National Report, can be found at: Lacchei, Alice; Lambertini, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara (2026) National Report ACCESS Project Template. DOI: 10.6092/unibo/amsacta/8984

In addition, the summaries of the judicial decisions analysed in Part II of this National Report and cited throughout this document can be found at: Lacchei, Alice; Lambertini Martinez, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara; Jesudoss, Lorett Mary (2026) ACCESS Mid-Term Dataset: The Role of Courts in Shaping Access to Asylum. University of Bologna. DOI 10.6092/unibo/amsacta/8962. [Dataset]

DEFINING TERMS

'**Asylum**' denotes the protection a state grants on its territory to non-citizens who seek it. It includes a legal status that protects against refoulement and provides a right to stay. In several jurisdictions, e.g. those that do not have domestic asylum legislation, this status might not be labelled 'asylum'. The research nevertheless includes such equivalent protection under the term 'asylum'. Similarly, if a national system that includes an asylum status provides additional protection statuses that include a set of rights closely similar to those the 1951 Convention provides for refugees lawfully staying, the research includes those statuses under 'asylum'.

'**Accessing asylum**' describes using legal and practical avenues to move towards the territory of potential host states, or to enter procedures and other arrangements for obtaining such status (labelled as asylum or not) implemented by a state or on its behalf. Territorial asylum processing (sometimes referred to as refugee status determination or RSD) itself or equivalent practices, however, are not studied here.

'**Barriers to accessing asylum**' refers to measures, arrangements, approaches, implementation practices, or structures that impede access to asylum. They can be implemented by state actors and others (if tolerated by the state); be of a practical or legal character; incorporate socioeconomic and cultural elements; and pertain to administrative or judicial spheres. Barriers implemented after the formal start of territorial asylum processing can be considered, if the processing is conducted as a sham or pretence rather than allowing effective access to asylum.

'**Pushbacks**' denote the removal or non-admittance of individuals trying to access asylum, without a substantive assessment of risks or potential rights violations. They can occur both on land and sea, including on international waters.

[1] Australia; Kenya, South Africa, Tunisia (Africa); Austria, Greece, Italy, Poland, Spain (Europe); India, Malaysia, Pakistan, Turkey (Asia); Argentina, Brazil, Chile, Ecuador, Mexico (Latin America), USA.

'**Pullbacks**' are the dragging back of individuals approaching a destination state to the territory of a state from which they had departed without a substantive assessment of risks or potential rights violations. Such practices are often implemented in cooperation between two or more countries. While typically practiced at sea, such as in the territorial waters of the state of departure, pullbacks can also occur on land.

'**Walls and fences**' include physical barriers that prevent access to territory at or near borders, irrespective of the specificities of the construction or the materials used.

'**Detention**' is the imprisonment or other limitations of the right to liberty and security of person of individuals, territorially or extraterritorially, in connection with their asylum accessing.

'**Externalization of asylum processing**' denotes outsourcing procedures and transferring individuals to other jurisdictions to assess protection claims. Under such a practice, for example, potential destination states disallow asylum procedures on their territory, dismiss the corresponding applications, and deport individuals to cooperating countries. Externalized asylum processes can be based on formal and informal agreements between states.

'**Procedural barriers**' refers to any administrative practice or arrangement which, after individuals (attempt to) claim asylum, impedes the formalization of the application or the commencing of a procedure for obtaining asylum. This barrier can, for example, take the form of sham processes or (fast-track) processes based on the safe third country or safe country of origin concept, or a lack of mechanisms for ensuring appointments at registration offices.

'**Judicial or quasi-judicial body**' is the body that reviews/assesses the legality of the decisions, actions, or omissions of state authorities. This term encompasses the wide range of institutions adjudicating asylum barriers, including government/executive bodies, UNHCR, etc.

'**First instance judicial or quasi-judicial body**' is a court, tribunal, or other quasi-judicial body that hears appeals against administrative or executive decisions. 'Second instance judicial or quasi-judicial body' is a court or tribunal or other body that hears appeals against decisions made by a first instance judicial or quasi-judicial body. 'Third instance judicial or quasi-judicial body' is a court or tribunal (possibly a constitutional court) or another body that hears onward appeals, i.e., appeals against decisions already made by a judicial or quasi-judicial body of at least a second instance. In some jurisdictions there might be further levels of appeal.

'**Legal system**' refers to deeply rooted, historically conditioned attitudes about law's nature and role, the legal system's organization and functioning, and how the law is developed, applied, and interpreted (Merryman, 1985). The most common legal systems are the common law, civil law, Islamic, indigenous and socialist legal traditions (idem).

'**Asylum access adjudication**' refers to judicial examination and review by courts or quasi-judicial bodies of administrative decisions made by executive or immigration authorities regarding asylum.

'**Socio-legal factors**' refer to macro, meso, and micro factors influencing asylum access adjudication in the selected jurisdictions. They can originate at the macro level (state), at the meso level (judicial or quasi-judicial body), and at the micro level (individual). For example, adjudication may be influenced by the level of independence of the judiciary (macro factor) or the specialization of the asylum adjudication system (e.g., specialized courts); or availability of judicial or quasi-judicial bodies resources such as time, funds, human resources (meso factors); or individual characteristics of the actors involved, such as background or gender of adjudicators (micro factors).

'**Judicialization of politics**' refers to the increasing reliance on courts and judicial means for addressing core moral, political, and public policy questions (Hirschl 2013). For an overview of the meanings of judicialization, please refer to Hamlin and Sala (2018), who trace various forms in which judicialization of politics can occur (e.g., expanding the jurisdiction of courts, judicial activism, or due to the large number of cases decided by courts).

'**Forced migration**' refers to 'a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion' (IOM, 2019:77). Although it is not an international legal concept and the use of the term is debated because of the controversial dichotomy of voluntary/forced movements, in this report we refer to forced migration including the movement of refugees and asylum seekers, as well as other displaced persons (including those displaced by disasters or victims of human trafficking) who will not attempt to lodge an asylum application. When referring to 'other displaced persons', we mean those forced migrants who are not registered as asylum seekers or refugees, etc., despite being present in the country.

1. **Functioning:** What is the barrier's specific functioning? How does it prevent individuals from accessing asylum?

2. **Time:** What is the implementation period of the barrier? Is it still in use? Is there a time frame for its planned termination?

3. **Place:** Where is the barrier implemented?

4. **Actors:** Who are the key institutional and other actors implementing the barrier? Are there relevant actors from other jurisdictions or international actors?

5. **Interaction:** How does the barrier interact with other barriers and the country's asylum system?

6. **Development:** What has been the historical and political context for introducing the barrier, and how have its implementation and its character developed over time? (Please consider e.g. corruption, economic or human resources available to implement the barrier, resistance or support by local actors - officials or local community)

7. **Rationale:** What are the stated purposes (e.g., in legislative preambles, government/executive, or judicial statements) the barrier is designed to serve?

8. **Legal Status:** What legal status does the national legal framework provide to individuals prevented by this barrier from accessing asylum? For example, do they fall under a specific (protected or unprotected) category within national law, such as asylum seekers or refugees before formal recognition, or are they treated under the general framework for non-citizens?

9. **Specific Impact**: What is the impact of the barrier on specific groups, such as children, women, LGBTQ+ individuals, or people with disabilities? How does it differ from the barrier's general impact?

10. **Reach:** How many individuals have been affected by this barrier since 2010, both in absolute numbers and relative to the number of procedures for determining protection status in the same period? Has the barrier contributed to less movement of displaced persons towards the country? Please provide an informed estimate if reliable statistics or studies are unavailable.

11. **Source:** What is the legal basis or source of the barrier? Is it grounded in or approved by domestic, international, or supranational law (even if its legality might be contested)?

12. **Justification:** What justifications have the government/executive branch provided for the barrier? Are there official statements or documents that outline these justifications?

13. **Domestic and International Reactions:** What have been the reactions or interventions from domestic actors, international bodies, or other countries?

14. **Externalization:** How does the barrier outsource migration control functions to actors outside the jurisdiction?

15. **Technology:** How does the barrier draw on technological infrastructure or tools to fulfil its functioning?

16. **Other:** Any further information considered crucial for understanding this barrier to accessing asylum and its relevance.

PART 1: BARRIERS TO ACCESSING ASYLUM

I. IDENTIFYING BARRIERS

A. Barriers of general relevance:

Pushbacks: ☒

Detention: ☒

Procedural barriers: ☒

B. Barriers of specific relevance to this jurisdiction

Deportation: There is little information on deportation procedures to be followed in respect of those in need of international protection, as they tend to be clubbed with the general category of illegal immigrants. As a result, there is no protection for them in regard to ensuring adherence to the principle of *non-refoulement*, much less in giving them access to due procedure of law, before they are removed to their country of origin. However, in recent months, deportation, always extrajudicial, has become a preferred measure of the Indian government, as evidenced by numerous reports on the recent deportations by sea of more than 40 Rohingya refugees.

Border Fencing & Restrictions on Movement: Traditionally, India has allowed its borders to remain porous, not only because of the difficulties of fencing rugged terrain, but also because of the pre-colonial cultural ties that exist along its entire border. However, in recent years, the government has significantly accelerated—and invested heavily in—border fencing, particularly on the northeast front, to address concerns related to terrorist infiltration, drug trafficking, and illegal immigration. Nevertheless, this will severely affect the ability of those in need of international protection to access refuge, and what is needed is greater collaboration and a better system for managing arrivals, rather than restricting access for those fleeing persecution.

II. UNDERSTANDING BARRIERS

A. Barriers of general relevance

Pushbacks

Summary: In the absence of a clear set of provisions governing the conditions and procedure for deportation and the legal process antecedent to it, pushbacks have long been a tool of choice for governments in the region, including along India's long borders with its neighbours, especially along the northeastern frontier.[2] While they were previously done in a more covert manner, in recent times they have become more and more blatant, with the government justifying its actions on the grounds of preventing illegal immigration and national security imperatives. However, given the lack of a law that addresses the issue of asylum, this means that those in need of international protection are consistently refouled without due process.

[2] Deccan Herald, *Illegal migrants from Bangladesh being pushed back to avoid legal procedure: Assam CM Himanta* , 11 May 2025, available at: https://www.deccanherald.com/india/assam/illegal-migrants-from-bangladesh-being-pushed-back-to-avoid-legal-procedure-assam-cm-himanta-3535542 [Accessed on 29 May 2025]

1. Functioning: Given that a lot of the borders around India are porous, there has been a longstanding practice of pushing back migrants, both those who come for economic purposes as well as those fleeing persecution, at India's Eastern and Northeastern borders.[3]

2. Time: Pushbacks are not a legislatively-sanctioned barrier. However, since 1997, a detailed set of classified instructions for the identification, detention, and deportation of "irregular Bangladeshis" has been in force (Gujarat High Court 2011). Many aspects of this directive have, however, not been publicly released. It includes instructions to the BSF to immediately expel "illegal migrants who are intercepted at the border while entering India" (Lok Sabha 2017)[4]. More particularly, since the 2021 Myanmar coup, a number of directives have been issued both by the Central and relevant state governments to push refugees back over the border into Myanmar;[5] After the coup in Myanmar in 2021, India pushed back over 5,700 refugees who tried to cross the border (OHCHR 09/03/2023; NDTV 09/08/2021). In 2021, to prevent arrivals to India, the Indian Government directed the Assam Rifles and the Arunachal Pradesh, Manipur, Mizoram, and Nagaland state governments to prevent what they called an "illegal influx from Myanmar into India".[6] The Assam Rifles are a governmental paramilitary force responsible for security in northeastern India. More recently, the Chief Minister of Assam, a state in the north-east of India, openly stated that going forward, the Indian state would amplify its efforts to push back illegal immigrants at the border, rather than admitting them to the country and then allowing the law to take its course.[7]

3. Place: Pushbacks generally occur at the Eastern border with Bangladesh and the Northeastern border with Myanmar.

4. Actors: This is usually done by the border security forces, police, and military forces stationed at the border, often with the sanction of the relevant government to which they report.

5. Interaction: Pushbacks are used as an extra-legal attempt to prevent the arrival of refugees, but in the absence of well-formed laws on the issue, they become a *de facto* measure that are difficult to challenge in courts.

6. Development: As mentioned above, pushbacks have been used as a control measure for a long time, but there is little documentation on the issue before 1997 (mentioned above in timelines). They have, however, greatly intensified in frequency in the last four to five years. Soon after the 2021 Myanmar coup, because of the proximity of India to Myanmar, Myanmar nationals crossed over to India. The Border Security Force, responsible for security at the borders, in the past has resorted to pushbacks instead of following the letter of law of arrest, detention and deportation as can be seen from this news report. In 2017, the BSF stated that the policy, for Rohingyas, is to push them back and not arrest them (illegal migrants). "If we arrest anyone trying to infiltrate into India, then they become a liability and then there has to be a process of identifying them. So we just push them back."[8]

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[3] Prothomalo, *Bangladesh to urge India to stop border push-ins*, 9 May 2025, available at: https://en.prothomalo.com/bangladesh/sjzcjxcs18 [Accessed on 29 May 2025]

[4] Indian Express, *BSF pushing back refugees at border, Rohingya tell Supreme Court*, 1 February 2018, available at: https://indianexpress.com/article/india/bsf-pushing-back-refugees-at-border-rohingya-tell-supreme-court-5046788/ [Accessed on 29 May 2025]

[5] Indian Express, *"Push back 718 Myanmar nationals who entered during unrest: Manipur govt to Assam Rifles",* 25 July 2023, https://indianexpress.com/article/india/manipur-government-assam-rifles-myanmar-nationals-8858717/ [29 May 2025]

[6] Press Information Bureau (PIB), Ministry of Home Affairs, *Illegal Influx of People*, 27 July 2021, available at: https://www.pib.gov.in/PressReleasePage.aspx?PRID=1739494#:~:text=by%20PIB%20Delhi-,Foreign%20nationals%20who%20enter%20into%20the%20country%20without%20valid%20travel,relating%20to%20the%20aforesaid%20powers. [Accessed on 29 May 2025]

[7] The Hindu, *India 'pushing back' Bangladeshis held without documents*, 15 May 2025, available at: https://www.thehindu.com/news/national/india-pushing-back-bangladeshis-held-without-documents/article69575971.ece [Accessed on 29 May 2025]

[8] Times of India, *Our policy is to push back Rohingyas and not arrest them: BSF*, 29 November 2017, available at: https://timesofindia.indiatimes.com/india/our-policy-is-to-push-back-rohingyas-and-not-arrest-them-bsf/articleshow/61847366.cms [Accessed on 9 May 2025]

7. Rationale: There is no particular rationale, as this is an executive measure which is not fettered by any law. In 2021, following the Myanmar coup, the Ministry of Home Affairs, Government of India (MHA) issued letters to the north-eastern states of Mizoram, Manipur, Arunachal Pradesh, and Nagaland to prevent the influx of refugees in February 2021 itself.[9] Later in March, MHA once again reiterated its stand and went further to remind that "state governments and Union Territory (UT) administrations have no power to grant "refugee" status to any foreigner as India is not a signatory to the UN Refugee Convention of 1951 and its 1967 Protocol."[10] Agencies were also asked to initiate the process of deportation.

8. Legal Status: There is no legal protection against this, as India claims non-applicability even of the customary law principle of non-refoulement. Given that this is effectively an extra-legal measure, it has not been challenged in the courts so far.

9. Reach: This is impossible to say, as it is an act carried out by security forces and largely remains unreported and undocumented except where picked up by media (which may occur for large numbers but not in cases involving one or two families denied entry or pushed back at the border).

However, there have been numerous instances of pushback of Myanmar nationals in the last three to four years; however, while those at the receiving end are refouled, the vast majority are still able to come into Indian territory. While refugees from Myanmar have been present in the border areas for decades, since the coup in Myanmar in February 2021, thousands more Burmese refugees, mainly Chins, have crossed over to India. It is estimated that there are approximately 4000 Burmese nationals seeking asylum in Delhi, India, and an additional 3000 new arrivals remain unregistered or in the process of registration (estimates by Chin Human Rights Organization).[11] An additional 50,000 people are estimated to be in various northeastern states in India. It is estimated by UNHCR in its factsheet that as of August 2022, 45,491 Myanmar nationals have fled Myanmar and entered India.[12]

10. Source: There is no legal basis for the barrier, other than executive orders and/or acquiescence. However, now that executive authorities in states like Assam have openly acknowledged the use of this measure, it is apparent that it has executive sanction.

11. Justification: Please see above. Historically, pushbacks have been justified as a way for the Indian authorities to prevent and address what is termed "infiltration" from Bangladesh;[13] however, in more recent times, the practice has been applied to other communities, including the Chin and Rohingya. Very recently, the Chief Minister of Assam has even stated that illegal immigrants are being pushed back to "avoid legal procedure".[14]

13. Externalization: N/A in India – Detention is very much a practice implemented on the Indian territory by Indian actors such as the Border Security Forces, and with the cooperation of the concerned state government.

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[9] The Hindu, *Stop Influx from Myanmar, Centre tells north-eastern States*, 12 March 2021, available at: https://www.thehindu.com/news/national/stop-illegal-influx-from-myanmar-mha-tells-ne-states/article34054308.ece [Accessed on 9 May 2025]

[10] Livemint.com, *Home Ministry writes to 4 northeast states to check illegal influx from Myanmar*, 13 March 2021, available at: https://www.livemint.com/news/india/home-ministry-writes-to-4-northeast-states-to-check-illegal-influx-from-myanmar-11615611280271.html [Accessed on 9 May 2025]

[11] VOA News, *Refugees Flee to India Amid Military Airstrikes in Myanmar*, 18 January 2023, available at: https://www.voanews.com/a/refugees-flee-to-india-amid-military-airstrikes-in-myanmar/6924644.html [Accessed on 9 May 2025]

[12] UNHCR, *India Factsheet,* August 2022, available at: https://reporting.unhcr.org/document/3224 [Accessed on 29 May 2025]

[13] Amnesty International*, India/Bangladesh: "Push in - Push out" practices at the border not acceptable*, 14 February 2003, available at: https://www.amnesty.org/fr/wp-content/uploads/2021/06/asa200072003en.pdf [Accessed on 29 May 2025]

[14] Deccan Herald, *Illegal migrants from Bangladesh being pushed back to avoid legal procedure: Assam CM Himanta* , 11 May 2025, available at: https://www.deccanherald.com/india/assam/illegal-migrants-from-bangladesh-being-pushed-back-to-avoid-legal-procedure-assam-cm-himanta-3535542 [Accessed on 29 May 2025]

12. Domestic and International Reactions: OHCHR has in the past called on the Indian government to halt forced returns to Myanmar[15], not just in terms of pushbacks but also deportations; as have Human Rights Watch,[16] the International Commission of Jurists, and, as far back as 2000, Amnesty International.[17]

14. Technology: In recent years, with the advancement of biometric technologies, refugees' presence in Indian territory has become easier to monitor. In May 2024, Manipur's Chief Minister, Biren Singh, announced on social media that they had "completed the first phase of deportation" of 77 Myanmar refugees, referring to them as "illegal immigrants", and noted that the State Government is continuing to identify "illegal immigrants".[18] India is rapidly adopting facial recognition technologies across airports[19]; however, so far, is not clear whether and to what extent facial recognition technologies have been operationalised for border crossings,[20] and recording their biometric data. In February 2025,[21] a senior Assam Rifles officer said the entry of people from Myanmar is currently being regulated from 22 border points, which will be increased.

15. Other: Burmese refugees often enter India through the porous borders of the North-eastern states in India, mainly Mizoram and Manipur. UNHCR does not have a presence in this region and does not even register refugees living in the North-Eastern states. The refugees thus have to travel to Delhi, a route that is fraught with security issues, where arrests and detention of asylum seekers is common under laws relating to illegal entry of foreigners.

Given that this is an ad hoc and extra-legal process, it is difficult to estimate the actual number of pushbacks from India. In February 2021, Ajay Bhatt, the Minister of State for defence, stated in the Rajya Sabha: "At the Indo-Myanmar Border, post military coup which came into effect from 01.02.2021, 8,486 Myanmar nationals/refugees crossed over into India, out of which 5,796 were pushed back and 2,690 are still in India."[22]

Concerning asylum seekers from other countries, such as Afghanistan, the government does not push back as they enter mostly by air, rather than by road or sea routes.

Detention

Summary: As mentioned above, there is little information on deportation procedures to be followed in respect of those in need of international protection, as they tend to be clubbed with the general category of illegal immigrants. As a result, there is no protection for them to ensure adherence to the principle of non-refoulement, much less to provide them with access to due process of law before they are removed

[15] OHCHR, *India must end racial discrimination against Rohingya, cease forced deportation and arbitrary detention, urges UN Committee,* 2 July 2024, available at https://www.ohchr.org/en/press-releases/2024/07/india-must-end-racial-discrimination-against-rohingya-cease-forced [Accessed on 29 May 2025]

[16] Human Rights Watch, *India: Halt All Forced Returns to Myanmar,* 10 March, 2021, available at https://www.hrw.org/news/2021/03/10/india-halt-all-forced-returns-myanmar [Accessed on 29 May 2025]

[17] Amnesty International, *India: Possible forcible return of asylum-seekers*, 6 August 2000, Index Number: ASA 20/040/2000, available at https://www.amnesty.org/en/documents/asa20/040/2000/en/ [Accessed on 29 May 2025]

[18] The International Commission of Jurists (ICJ), *India: Immediately halt forced returns of Myanmar refugees in Manipur and respect the non-refoulement principle*, 10 May 2024, available at: https://www.icj.org/india-immediately-halt-forced-returns-of-myanmar-refugees-in-manipur-and-respect-the-non-refoulement-principle/ [Accessed on 29 May 2025]

[19] Financial Times, *India expands airport facial recognition amid surveillance fears*, available at: https://www.ft.com/content/f1ba12ac-fe 1d-4a51-b2e7-077f392115a7 [Accessed on 29 May 2025]

[20] ID Tech, *India Enhances Myanmar Border Security Through Infrastructure Development, No Facial Recognition Plans*, 26 December 2024, available at: https://idtechwire.com/india-enhances-myanmar-border-security-through-infrastructure-development-no-facial-recognition-plans/ [Accessed on 29 May 2025]; Zee Business, *BSF enhances surveillance with AI cameras on India-Bangladesh border*, 7 July 2024, available at: https://www.zeebiz.com/india/news-bsf-ai-cameras-india-bangladesh-border-surveillance-technology-infiltration-prevention-300176 [Accessed on 29 May 2025]

[21] https://indianexpress.com/article/india/fmr-assam-rifles-biometrics-myanmar-residents-crossed-border-9834889/

[22] Scroll, *Over 8,400 Myanmar refugees crossed over into India after military coup, 5,796 pushed back: Centre*, 10 August 2021, available at: https://scroll.in/latest/1002482/over-8400-myanmar-refugees-crossed-over-into-india-after-military-coup-5796-pushed-back-centre [Accessed on 9 May 2025]

to their country of origin. [23] However, in recent months, deportation, always extrajudicial, has become a measure of choice of the Indian government, as is apparent from the widespread reports of the recent deportations at sea of over 40 Rohingya refugees.

1. Functioning: Section 3(2)(e) and 3(2)(c) of the Foreigners Act, 1946 give powers to detain and deport foreign nationals staying illegally in the country. Under Section 5 of The Passport (Entry into India) Act, 1920, the Central Government may also, by an order, direct the removal of any foreigner from India who enters India without a passport & visa. Article 258(1) and 239(1) of the Constitution of India delete this power to governments of states and Union Territories. However, the procedure for deportation is not defined in any law; however, the Foreigners Registration Office of India has stated that they follow the procedure as set out in letters of the Ministry of Home Affairs (MHA), as follows:

"*In minor offences, action is taken to deport the foreigners by serving them with Leave India Notices u/s 3 of the Foreigners Act. For serious offences like long overstayed, commission of offences under various other Acts like IPC, NDPS, Customs etc., cases are instituted in the court of laws and the foreigners may undergo long periods of imprisonment awarded by court. Finally, in both these cases, the foreigners have to be deported out of India.*"[24]

"Government of India's Notification No. 4/3/56(II)F.I dated 30.9.1992 whereby the power to deport under the Foreigners Act, 1946 was delegated by the Central Government to the FRRO. It was also submitted that all the foreign nationals who are received from jail after conviction/acquittal are handed over to the FRRO by the local police for their further deportation to their country of origin."[25]

2. Time: The MHA issued instructions in April 2014.[26] Powers are also delegated to state governments and the Bureau of Immigration to deport individuals. The document established the procedure for the deportation of foreigners, which begins with ascertaining whether the arrested foreigner has travel documents; in the absence of which, the state/ union territory administration/ FRO/ FRRO have to obtain the requisite travel document from the Embassy of the foreigner's country. This is still in use.

The following orders have been issued by the MHA:

1. Movement of foreign nationals should be restricted in one of the detention centres/camps of foreigners to ensure their physical availability at all times for expeditious repatriation/deportation as soon as the travel documents are ready;[27]
2. All foreign nationals who have completed their sentence but whose deportation/ repatriation is awaited due to non-confirmation of nationality/ issue of travel document by the country concerned need to be released from jails immediately once they are not required to be confined there and accommodated at an *appropriate place outside the jail premises* with *restricted movements* pending their repatriation or deportation.[28]

4. Place: Across the country, and all its borders.

5. Actors: The Ministry of Home Affairs via the Foreigners Registration offices, police, and courts.

6. Interaction: Foreigners are detained for prolonged time periods due to lack of proper deportation procedures. Deportation can only take place when the receiving country is willing to accept the alleged foreigner. In several cases, foreigners are detained indefinitely as no other countries are willing to accept

[23] Deccan Herald, *India deports at least 142 Rohingyas to Bangladesh, Myanmar amid military conflict with Pakistan*, 15 May 2025, available at: https://www.deccanherald.com/india/assam/india-deports-atleast-142-rohingyas-to-bangladesh-myanmar-amid-military-conflict-with-pakistan-3537151 [Accessed on 30 May 2025]
[24] Dwarka District Court, *State v. Chandra Kumar & Others.*, available at: https://indiankanoon.org/doc/37056325/ [Accessed on 9 May 2025]
[25] Id.
[26] Ministry of Home Affairs, *Notification No. 25022/19/2014/F.I. Foreigners Division*, 29 April 2014.
[27] Ministry of Home Affairs, *Letter no. 25019/3/97-F.III dated 02.07.1998 quoted in State v. Chandra Kumar & Others.*, available at: https://indiankanoon.org/doc/37056325/ [Accessed on 9 May 2025]
[28] MHA, letter no. 28020/G/200SF.III (Vo(•IV) dated 7.3.2012.

them. The lack of opportunities to solicit judicial intervention, and the extent of judicial deference to government powers to order the detention and deportation of certain sections of the refugee population, has further contributed to a weakening refugee protection regime in India. In the context of asylum seekers from Myanmar, most of them remain in the north-eastern states of India and face the risk of arrest and detention while there and also during their journey to UNHCR in Delhi. In this scenario, asylum seekers are detained and possibly deported or at least paperwork for deportation is initiated, well before they can present their case before UNHCR. This detention and the subsequent deportation is thus a violation of their right to seek asylum and of the principle of *non-refoulment* which is customary international law which guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm; all of which are possibilities that Myanmarese nationals will face if deported.

7. Development: Deportation has been used in the past in individual cases; however, in August 2017, the Indian government issued an order directing State authorities to identify and deport illegal immigrants, including Rohingya.[29] Even since then, deportation has been used time and again as a deterrent; for instance, in October 2018 a group of 7 Rohingya were deported to Myanmar;[30] there was an international furore at the time but this has been followed by several more such instances. This was challenged in the Supreme Court through a petition,[31] and while the case remains pending for final orders, the Court has in past interlocutory applications, made it clear that it will not place a stay on the deportation of the Rohingya, as long as this is done in accordance with the law.[32]

The case came up again for arguments in early May 2025, with the Court taking the view that the right to reside in India under Article 19(1)(e) is limited to Indian citizens. He concluded that all foreign nationals would be governed by the procedure for deportation outlined in accordance with the FA[33]. However, even as the Court was hearing arguments, reports emerged that the Government of India had forcibly deported 142 Rohingyas[34] amid an escalating military standoff with Pakistan. Shortly thereafter, further reports emerged that over 40 Rohingyas - including minors, women, the elderly, and the critically ill, all of whom were registered with the United Nations High Commission for Refugees in India - had been deported at sea in inhumane conditions[35] and forced to swim across the sea border to Myanmar. The matter was immediately presented to the Supreme Court in a writ petition.[36] However, the Court expressed reluctance

[29] No.24013/29/Misc./2017-CSR.III (i) Government of India / Bharat Sarkar Ministry of Home Affairs, available at https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant_10092017_2.PDF [Accessed on 6 May 2025]

[30] BBC, *India under fire as it deports Rohingya Muslims to Myanmar,* 4 October 2018, available at https://www.bbc.com/news/world-asia-india-45743951 [Accessed on 30 May 2025]

[31] Mohammad Salimullah vs Union Of India, WRIT PETITION (CIVIL) NO.793 OF 2017

[32] Interlocutory Application No.38048 of 2021

[33] The Economic times, *Right to reside is only for Indian citizens, not for Rohingyas, rules Supreme Court*, available at https://economictimes.indiatimes.com/news/india/right-to-reside-is-only-for-indian-citizens-not-for-rohingyas-rules-supreme-court/articleshow/121019472.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, 9 May 2025 [Accessed on 12 May 2025]

[34] Deccan Herald, *India deports at least 142 Rohingyas to Bangladesh, Myanmar amid military conflict with Pakistan,* available at https://www.deccanherald.com/india/assam/india-deports-atleast-142-rohingyas-to-bangladesh-myanmar-amid-military-conflict-with-pakistan-3537151https://www.deccanherald.com/india/assam/india-deports-atleast-142-rohingyas-to-bangladesh-myanmar-amid-military-conflict-with-pakistan-3537151, 12 May 2025 [Accessed on 12 May 2025]

[35] The Wire, , 16 May 2025, *'Thrown Into the Sea': How India Allegedly Deported 38 Rohingya Refugees Without Due Process*, available at https://thewire.in/diplomacy/thrown-into-the-sea-how-india-allegedly-deported-38-rohingya-refugees-without-due-process [Accessed on 16 May 2025]

[36] Mohammad Ismail v Union of India, WRP (Criminal) 204/2025, 16 May 2025, available at https://www.casemine.com/judgement/in/682c3550cb7d8775a7b8463c [Accessed on 19 May 2025]

in strong terms[37] in believing the content of the petition, asking for evidence to be placed on the record[38] and refusing to stay the deportations.[39] The case is coming up for hearing again on 31 July 2025.

8. Rationale: Deportation is an executive act in India, subject to regulations issued by the government; there is no law which sanctions it other than the Foreigners Act. However, the government retains discretion in the exercise of this power, which it usually justifies on the basis of security considerations as well as its argument that it is not bound by the 1951 Refugee Convention or the customary law principle of *non-refoulement*.[40]

9. Legal Status: Foreigners subjected to deportation usually have no legal status.

10. Specific Impact: There is no particular consideration given for vulnerable adults and children in these situations. For instance, in May 2024, a group of 77 Myanmar nationals were deported by the government of Manipur; this was done in spite of a previous order of a local court to give them access to UNHCR, which in this case was not facilitated.[41] As mentioned above, a group of 142 Rohingya were deported in May 2025. Numerous instances continue to be reported in the media.

11. Reach: Accurate data is not available. India deported Rohingyas and sent at least 142 "refugees" from Assam and New Delhi to Bangladesh and Myanmar.[42]

12. Source: As mentioned above, it is sanctioned under the Foreigners Act as well as executive decrees.

13. Justification: It has been justified on grounds of national security[43] and territorial integrity and to prevent illegal immigration and cross-border criminal activities.

14. Domestic and International Reactions: Please see above in the section on detention. Various international human rights organisations have previously also called for an end to deportations from India, particularly of Rohingya refugees.[44] However, with the most recent reports of deportation at sea carried out by Indian authorities, the OHCHR also issued a strong statement and Tom Andrews, UN Special Rapporteur on the situation of human rights in Myanmar, called for an enquiry into this act.[45]

15. Externalization: N/A

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[37] Hindustan Times, *You come with fanciful ideas when nation facing difficult time: SC on Rohingya deportation*

[38] https://scroll.in/latest/1082445/sc-questions-claim-that-rohingya-refugees-forced-into-sea-refuses-stay-on-deportation

[39] Live Law, *Beautifully Crafted Story : Supreme Court Questions Claim That Rohingyas Were Thrown Into Sea; Refuses Stay On Deportation,* 16 May 2025, available at https://www.livelaw.in/top-stories/supreme-court-plea-against-rohingya-deportation-by-throwing-into-international-waters-292431 [Accessed on 18 May 2025]

[40] SCO Observer, *Day 10 Arguments from 21 March 2021, record of Court Proceedings in the case of Mohd. Salimullah v. Union of India,* available at: https://www.scobserver.in/reports/rohingya-day-10-arguments/ [Accessed on 30 May 2025]

[41] Deccan Herald, *India needs a fair deportation policy grounded on historical realities, rooted in constitutional principles*, 15 February 2025, available at: https://www.deccanherald.com/india/india-needs-a-fair-deportation-policy-grounded-on-historical-realities-rooted-in-constitutional-principles-3407011 [Accessed on 30 May 2025]

[42] Deccan Herald, *India deports atleast 142 Rohingyas to Bangladesh, Myanmar amid military conflict with Pakistan,* 12 May 2025, available at: https://www.deccanherald.com/india/assam/india-deports-atleast-142-rohingyas-to-bangladesh-myanmar-amid-military-conflict-with-pakistan-3537151 [Accessed on 30 May 2025]

[43] NDTV, May 2 2024, *"Lets Keep Country Secure": Manipur Chief Minister As More Illegal Immigrants Deported To Myanmar,* 2 May 2024, available at https://www.ndtv.com/india-news/lets-keep-country-secure-manipur-chief-minister-n-biren-singh-as-more-myanmar-illegal-immigrants-deported-5574420 [Accessed on 9 May 2025]

[44] Human Rights Watch, *India: Rohingya Deported to Myanmar Face Danger,* March 31 2022, available at https://www.hrw.org/news/2022/03/31/india-rohingya-deported-myanmar-face-danger [Accessed on 8 May 2025]

[45] OHCHR, *Alarmed by reports of Rohingya cast into the sea from Indian navy vessels, UN expert launches inquiry of "unconscionable, unacceptable acts",* 15 May 2025, available at https://www.ohchr.org/en/press-releases/2025/05/alarmed-reports-rohingya-cast-sea-indian-navy-vessels-un-expert-launches [Accessed on 8 May 2025]

16. Technology: As mentioned above, biometric records are now being operationalised, which will enable the government to track and deport refugees.[46]

17. Other: In many cases in the past, courts have taken a proactive stand on this barrier. In *Nandita Haksar v. State of Manipur*, the High Court held that India may not be a signatory to the 1951 Refugee Convention, its obligations under other international declarations/covenants, read with Article 21 of the Constitution, encompass the principle of *non-refoulement*.

> *Therefore, though India may not be a signatory to the Refugee Convention of 1951, its obligations under other international declarations/covenants, read with Article 21 of our Constitution, enjoins it to respect the right of an asylum seeker to seek protection from persecution and life or liberty-threatening danger elsewhere.*[47]

This case is presently pending at the Supreme Court, but the concerned asylum seekers have since been recognised by UNHCR, India.

However, in spite of the active reiteration by the courts that detention should not be a barrier to claiming asylum. Government authorities have declined to comply. Detentions continue to be effectuated and often become indefinite; however, most of those in detention are not given the opportunity to apply for asylum. In fact, the Manipur State Human Rights Commission (MHRC) took cognizance of the detention of six individuals beyond their term and ordered for their release and deportation. The MHRC estimates there to be 35 such cases of detention in jails in Manipur.[48]

However, the police usually do not consider any pleas of claim of refugee status, persecution in the country of origin, etc. Further, the administrative authorities vide sec.3 of the FA may issue *Leave India Notice* to refugees who have failed to obtain extension of their travel permits, or who are ordered to be deported by the court. In such cases, the refugee may be arrested if apprehended and may be forcibly deported. *Gurinder Singh and Karamjit Singh,*[49] two Afghan Sikhs of Indian origin who had fled persecution from Afghanistan, were registered as refugees with UNHCR in New Delhi. They were issued Leave India Notices by the FRRO to leave India within 7 days of receipt of the notice. The only remedy under such circumstances is through legal action in the appropriate court. In this instance, a criminal writ petition was filed in the Punjab & Haryana High Court at Chandigarh, and interim stay of the Leave India Notice was obtained.

Procedural barriers:

Summary: Given that UNHCR is not an independent agency of the UN and functions as a part of the broader UNDP mandate, it does not enjoy wide recognition in India. Further, it has limited presence and a restricted mandate, being allowed to process asylum claims for only about 20% of the refugee population, as a result of which the legitimacy of its processes and documentation has been questioned more and more in recent times, even by the Supreme Court[50].

1. Functioning: In India, as mentioned above, the system for asylum management is divided between the Government of India and UNHCR. While the former relies largely on executive orders and directives in discharging its role, the latter has a very limited role. In fact, UNHCR in India does not have an

[46] Press Trust of India, *Improper format of forms delay collection of biometrics of Myanmar refugees in Mizoram: Officials,* 30 December 2024, available at: https://www.ptinews.com/story/national/improper-format-of-forms-delay-collection-of-biometrics-of-myanmar-refugees-in-mizoram-officials/2149547 [Accessed on 30 May 2025]

[47] Nandita Haksar v. State of Manipur, High Court of Manipur, W.P.(Crl.) NO. 6 OF 2021 with MC[W.P.(Crl.)] NO.1 OF 2021and MC[W.P.(Crl.)] NO.2 OF 2021, judgment dt. 3 May 2021, available at: https://drive.google.com/file/d/1MIJytgk_oKYi2qAh2uTrtiqsxJPWnz4v/view [Accessed on 9 May 2025]

[48] The Wire, *Manipur human rights body orders release of Myanmarese refugees who were detained beyond jail term*, 18 May 2023, available at: https://thewire.in/rights/manipur-human-rights-body-orders-release-of-myanmarese-refugees-who-were-detained-beyond-jail-term [Accessed on 29 May 2025]

[49] World Legal Information Institute (WorldLII), *Refugees In India: Legal Framework, Law Enforcement And Security,* 2001, available at: http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html [Accessed on 30 May 2025]

[50] Times of India, *Right to Reside in India only for Citizens, Rohingya Must Go: Supreme Court*, 9 May 2025, available at: https://timesofindia.indiatimes.com/india/right-to-reside-in-india-only-for-citizens-rohingya-must-go-supreme-court/articleshow/121008147.cms [Accessed on 29 May 2025]

independent presence of its own, and functions as an arm of the UNDP.[51] It is allowed to maintain offices only in New Delhi, where it conducts RSD activities, and in Chennai, where it works chiefly on repatriation assistance for Tamil refugees from Sri Lanka. When it comes to registration, UNHCR is allowed only to register asylum-seekers from non-neighbouring countries and Myanmar, while refugees from other neighbouring countries are dealt with directly by the government. For instance, the absence of UNHCR offices in northeastern India, where the majority of refugees from Myanmar live, is a significant barrier, as it compels people from Myanmar entering Manipur or Mizoram to travel over 2,000km to Delhi to register with the UNHCR.[52] In any case, in more recent years, registration with UNHCR has not provided much security, with the government consistently making the plea in Court that India's status as a non-signatory to the 1951 Convention absolves it from its obligation to adhere even to customary law principles such as *non-refoulement*.[53]

2. Time: UNHCR has been in India since the 1980s, and continues to function with the same limited mandate.

3. Place: Across India

4. Actors: State governments, Central government, police and transport authorities

5. Interaction: For refugees compelled to travel to Delhi to register with UNHCR and to seek its protection, it is not only expensive, but also risky, as those travelling to Delhi without valid documents risk arrest and detention by Indian authorities. Detention often results in family separation. Separated displaced children are more at risk of suffering from violence, exploitation, abuse, and mental distress.[54] Detention can also expose one to greater risk of deportation, judicially-sanctioned or otherwise.

6. Rationale: It has been stated by the Government of India in repeated for a that India is not a signatory to the 1951 Convention and that therefore its provisions are not binding on the country. UNHCR's presence in the country is also subject to the will of the government, which makes it very tenuous and leaves it at the mercy of political expediency.

7. Specific Impact: The difficulties in accessing UNHCR for registration means that only those with some means are able to travel to Delhi; thus, the most vulnerable, such as women, children, and the elderly, often remain in other parts of the country. Sometimes, families also have to choose to send one or more members to Delhi, while others stay behind; this leads to separation within the family, and there have even been cases where those registered with and processed by UNHCR were subsequently able to be resettled to a third country while others in the family had to remain in India.

8. Reach: This is impossible to estimate.

9. Source: It is a condition imposed by the Indian government on UNCHR.

10. Justification: This is unclear. However, as UNHCR is specifically barred from operating in the Northeast, it is likely to be a function of the fraught security situation in that region, which has had a long history of insurgency and conflict.

11. Externalization: N/A

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[51] UNHCR, *India: Executive Committee Summary*, available at: https://www.unhcr.org/sites/default/files/legacy-pdf/3d941f5df.pdf [Accessed on 29 May 2025]

[52] OHCHR, *Situation of human rights in Myanmar - Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, A/HRC/52/66* , 9 March 2023, available at: https://www.ohchr.org/en/documents/country-reports/ahrc5266-situation-human-rights-myanmar-report-special-rapporteur [Accessed on 29 May 2025]

[53] The Print, *UNHCR refugee status without valid travel documents is of no consequence in India: Centre tells HC*, 25 February 2023, available at: https://theprint.in/india/unhcr-refugee-status-without-valid-travel-documents-is-of-no-consequence-in-india-centre-tells-hc/1397701/ [Accessed on 29 May 2025]

[54] Scroll in, *World is family: From Manipur to Myanmar, the escalating refugee crisis is a wake-up call for India,* 20 June 2023, available at: https://scroll.in/article/1051142/world-is-family-from-manipur-to-myanmar-the-escalating-refugee-crisis-is-a-wake-up-call-for-india [Accessed on 29 May 2025]

12. Technology: N/A – In fact, the system for registration remains rather outdated, and tends to be exclusionary rather than inclusive, restricting rather than expanding access.

B. Barriers of specific relevance to jurisdiction

Deportation

Summary: As mentioned above, there is little information on deportation procedures to be followed in respect of those in need of international protection, as they tend to be clubbed with the general category of illegal immigrants. As a result, there is no protection for them in regard to ensuring adherence to the principle of *non-refoulement*, much less in giving them access to due procedure of law, before they are removed to their country of origin. [55] However, in recent months, deportation, always extrajudicial, has become a measure of choice of the Indian government, as in apparent from the widespread reports of the recent deportations at sea of over 40 Rohingya refugees.

1. Functioning: Section 3(2)(e) and 3(2)(c) of the Foreigners Act, 1946 give powers to detain and deport foreign nationals staying illegally in the country. Under Section 5 of The Passport (Entry into India) Act, 1920, Central Government may also by an Order direct the removal of any foreigner from India who enters India without a passport & visa. Article 258(1) and 239(1) of the Constitution of India deletes this power to governments of states and Union Territories. However, the procedure for deportation is not defined in any law; however, the Foreigners Registration Office of India has stated that they follow the procedure as set out in letters of the Ministry of Home Affairs (MHA), as follows:

> "*In minor offences, action is taken to deport the foreigners by serving them with Leave India Notices u/s 3 of the Foreigners Act. For serious offences like long overstayed, commission of offences under various other Acts like IPC, NDPS, Customs etc., cases are instituted in the court of laws and the foreigners may undergo long periods of imprisonment awarded by court. Finally, in both these cases, the foreigners have to be deported out of India.*"[56]
>
> *"Government of India's Notification No. 4/3/56(II)F.I dated 30.9.1992 whereby the power to deport under the Foreigners Act, 1946 was delegated by the Central Government to the FRRO. It was also submitted that all the foreign nationals who are received from jail after conviction/acquittal are handed over to the FRRO by the local police for their further deportation to their country of origin."*[57]

2. Time: The MHA issued instructions in April 2014.[58] Powers are also delegated to state governments and the Bureau of Immigration to deport individuals. The document established the procedure for the deportation of foreigners which begins with ascertaining whether the arrested foreigner has travel documents, in the absence of which, the state/ union territory administration/ FRO/ FRRO have to obtain the requisite travel document from the Embassy of the foreigner's country. This is still in use.

The following orders have been issued by the MHA:

- Movement of foreign nationals should be restricted in one of the detention centres/camps of foreigners to ensure their physical availability at all times for expeditious repatriation/deportation as soon as the travel documents are ready;[59]

[55] Deccan Herald, *India deports at least 142 Rohingyas to Bangladesh, Myanmar amid military conflict with Pakistan*, 15 May 2025, available at: https://www.deccanherald.com/india/assam/india-deports-atleast-142-rohingyas-to-bangladesh-myanmar-amid-military-conflict-with-pakistan-3537151 [Accessed on 30 May 2025]
[56] Dwarka District Court, *State v. Chandra Kumar & Others.*, available at: https://indiankanoon.org/doc/37056325/ [Accessed on 9 May 2025]
[57] Id.
[58] Ministry of Home Affairs, *Notification No. 25022/19/2014/F.I. Foreigners Division*, 29 April 2014.
[59] Ministry of Home Affairs, *Letter no. 25019/3/97-F.III dated 02.07.1998 quoted in State v. Chandra Kumar & Others.*, available at: https://indiankanoon.org/doc/37056325/ [Accessed on 9 May 2025]

- All foreign nationals who have completed their sentence but whose deportation/ repatriation is awaited due to non-confirmation of nationality/ issue of travel document by the county concerned need to be released from jails immediately once they are not required to be confined there and accommodated at an *appropriate place outside the jail premises* with *restricted movements* pending their repatriation or deportation.[60]

3. Place: Across the country, and all its borders.

4. Actors: The Ministry of Home Affairs via the Foreigners Registration offices, police, and courts.

5. Interaction: Foreigners are detained for prolonged time periods due to lack of proper deportation procedures. Deportation can only take place when the receiving country is willing to accept the alleged foreigner. In several cases, foreigners are detained indefinitely as no other countries are willing to accept them. The lack of opportunities to solicit judicial intervention, and the extent of judicial deference to government powers to order the detention and deportation of certain sections of the refugee population, has further contributed to a weakening refugee protection regime in India. In the context of asylum seekers from Myanmar, most of them remain in the north-eastern states of India and face the risk of arrest and detention while there and also during their journey to UNHCR in Delhi. In this scenario, asylum seekers are detained and possibly deported or at least paperwork for deportation is initiated, well before they can present their case before UNHCR. This detention and the subsequent deportation is thus a violation of their right to seek asylum and of the principle of *non-refoulment* which is customary international law which guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm; all of which are possibilities that Myanmarese nationals will face if deported.

6. Development: Deportation has been used in the past in individual cases; however, in August 2017, Indian government issued an order directing State authorities to identify and deport illegal immigrants including Rohingya.[61] Even since then, deportation has been used time and again as a deterrent; for instance, in October 2018 a group of 7 Rohingya were deported to Myanmar;[62] there was an international furore at the time but this has been followed by several more such instances. This was challenged in the Supreme Court through a petition,[63] and while the case remains pending for final orders, the Court has in past interlocutory applications made it clear that it will not place a stay on the deportation of the Rohingya, as long as this is done in accordance with the law.[64]

The case came up again for arguments in early May 2025, with the Court taking the view that the right to reside in India under Article 19(1)(e) is limited to Indian citizens. He concluded that all foreign nationals would be governed by the procedure for deportation outlined in accordance with the FA.[65] However, even as the Court was hearing arguments, reports emerged that the Government of India had forcibly deported 142 Rohingyas[66] amid an escalating military standoff with Pakistan. Shortly thereafter, further reports emerged that over 40 Rohingyas - including minors, women, the elderly, and the critically ill, all of whom

[60] MHA, letter no. 28020/G/200SF.III (Vo(•IV) dated 7.3.2012.
[61] No.24013/29/Misc./2017-CSR.III (i) Government of India / Bharat Sarkar Ministry of Home Affairs, available at https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant_10092017_2.PDF [Accessed on 6 May 2025]
[62] BBC, *India under fire as it deports Rohingya Muslims to Myanmar,* 4 October 2018, available at https://www.bbc.com/news/world-asia-india-45743951 [Accessed on 30 May 2025]
[63] Mohammad Salimullah vs Union Of India, WRIT PETITION (CIVIL) NO.793 OF 2017
[64] Interlocutory Application No.38048 of 2021
[65] The Economic times, *Right to reside is only for Indian citizens, not for Rohingyas, rules Supreme Court*, available at https://economictimes.indiatimes.com/news/india/right-to-reside-is-only-for-indian-citizens-not-for-rohingyas-rules-supreme-court/articleshow/121019472.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, 9 May 2025 [Accessed on 12 May 2025]
[66] Deccan Herald, *India deports at least 142 Rohingyas to Bangladesh, Myanmar amid military conflict with Pakistan,* available at https://www.deccanherald.com/india/assam/india-deports-atleast-142-rohingyas-to-bangladesh-myanmar-amid-military-conflict-with-pakistan-3537151https://www.deccanherald.com/india/assam/india-deports-atleast-142-rohingyas-to-bangladesh-myanmar-amid-military-conflict-with-pakistan-3537151, 12 May 2025 [Accessed on 12 May 2025]

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12. Justification: It has been justified on grounds of national security[75] and territorial integrity and to prevent illegal immigration and cross-border criminal activities.

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[67] The Wire, , 16 May 2025, *'Thrown Into the Sea': How India Allegedly Deported 38 Rohingya Refugees Without Due Process*, available at https://thewire.in/diplomacy/thrown-into-the-sea-how-india-allegedly-deported-38-rohingya-refugees-without-due-process [Accessed on 16 May 2025]

[68] Mohammad Ismail v Union of India, WRP (Criminal) 204/2025, 16 May 2025, available at https://www.casemine.com/judgement/in/682c3550cb7d8775a7b8463c [Accessed on 19 May 2025]

[69] Hindustan Times, *You come with fanciful ideas when nation facing difficult time: SC on Rohingya deportation*

[70] https://scroll.in/latest/1082445/sc-questions-claim-that-rohingya-refugees-forced-into-sea-refuses-stay-on-deportation

[71] Live Law, *Beautifully Crafted Story : Supreme Court Questions Claim That Rohingyas Were Thrown Into Sea; Refuses Stay On Deportation,* 16 May 2025*,* available at https://www.livelaw.in/top-stories/supreme-court-plea-against-rohingya-deportation-by-throwing-into-international-waters-292431 [Accessed on 18 May 2025]

[72] SCO Observer, *Day 10 Arguments from 21 March 2021, record of Court Proceedings in the case of Mohd. Salimullah v. Union of India,* available at*:* https://www.scobserver.in/reports/rohingya-day-10-arguments/ [Accessed on 30 May 2025]

[73] Deccan Herald*, India needs a fair deportation policy grounded on historical realities, rooted in constitutional principles*, 15 February 2025, available at: https://www.deccanherald.com/india/india-needs-a-fair-deportation-policy-grounded-on-historical-realities-rooted-in-constitutional-principles-3407011 [Accessed on 30 May 2025]

[74] Deccan Herald*, India deports atleast 142 Rohingyas to Bangladesh, Myanmar amid military conflict with Pakistan,* 12 May 2025, available at: https://www.deccanherald.com/india/assam/india-deports-atleast-142-rohingyas-to-bangladesh-myanmar-amid-military-conflict-with-pakistan-3537151 [Accessed on 30 May 2025]

[75] NDTV, May 2 2024, *"Lets Keep Country Secure": Manipur Chief Minister As More Illegal Immigrants Deported To Myanmar,* 2 May 2024, available at https://www.ndtv.com/india-news/lets-keep-country-secure-manipur-chief-minister-n-biren-singh-as-more-myanmar-illegal-immigrants-deported-5574420 [Accessed on 9 May 2025]

[76] Human Rights Watch, *India: Rohingya Deported to Myanmar Face Danger,* March 31 2022, available at https://www.hrw.org/news/2022/03/31/india-rohingya-deported-myanmar-face-danger [Accessed on 8 May 2025]

out by Indian authorities, the OHCHR also issued a strong statement[77] and Tom Andrews, UN Special Rapporteur on the situation of human rights in Myanmar, called for an enquiry into this act.[78]

14. Externalization: N/A

15. Technology: As mentioned above, biometric records are now being operationalised, which will enable the government to track and deport refugees.[79]

16. Other: In many cases in the past, courts have taken a proactive stand on this barrier. In *Nandita Haksar v. State of Manipur*, the High Court held that India may not be a signatory to the 1951 Refugee Convention, its obligations under other international declarations/covenants, read with Article 21 of the Constitution, encompass the principle of *non-refoulement*.

> *Therefore, though India may not be a signatory to the Refugee Convention of 1951, its obligations under other international declarations/covenants, read with Article 21 of our Constitution, enjoins it to respect the right of an asylum seeker to seek protection from persecution and life or liberty-threatening danger elsewhere.*[80]

This case is presently pending at the Supreme Court but the concerned asylum seekers have since been recognized by UNHCR, India.

However, in spite of the active reiteration by the courts that detention should not be a barrier to claiming asylum. Government authorities have declined to comply. Detentions continue to be effectuated and often become indefinite, however, most of those in detention are not given the opportunity to apply for asylum. In fact, the Manipur State Human Rights Commission (MHRC) took cognizance of detention of six individuals beyond their term and ordered for their release and deportation. The MHRC estimates there to be 35 such cases of detention in jails in Manipur.[81]

However, the police usually do not consider any pleas of claim of refugee status, persecution in country of origin etc. Further, the administrative authorities vide sec.3 of the FA may issue *Leave India Notice* to refugees who have failed to obtain extension of their travel permits, or who are ordered to be deported by the court. In such cases the refugee may be arrested if apprehended, and may be forcibly deported. *Gurinder Singh and Karamjit Singh*[82], two Afghan Sikhs of Indian origin, who had fled persecution from Afghanistan were registered as refugees with UNHCR in New Delhi. They were issued Leave India Notices by the FRRO to leave India within 7 days of receipt of the notice. The only remedy under such circumstances is through legal action in the appropriate court. In this instance, a criminal writ petition was filed in the Punjab & Haryana High Court at Chandigarh and an interim stay of the Leave India Notice was obtained.

Border Fencing & Restrictions on Movement

Summary: India has traditionally allowed its borders to remain porous, not just because of the difficulties of fencing difficult terrain but also because of pre-colonial cultural ties across all its borders. However, in recent years, the government has made a significant push – and financial investment – towards fencing

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[77] OHCHR, *Alarmed by reports of Rohingya cast into the sea from Indian navy vessels, UN expert launches inquiry of "unconscionable, unacceptable acts",* 15 May 2025, available at https://www.ohchr.org/en/press-releases/2025/05/alarmed-reports-rohingya-cast-sea-indian-navy-vessels-un-expert-launches [Accessed on 8 May 2025]

[78] Ibid.

[79] Press Trust of India, *Improper format of forms delay collection of biometrics of Myanmar refugees in Mizoram: Officials,* 30 December 2024, available at: https://www.ptinews.com/story/national/improper-format-of-forms-delay-collection-of-biometrics-of-myanmar-refugees-in-mizoram-officials/2149547 [Accessed on 30 May 2025]

[80] *Nandita Haksar v. State of Manipur*, High Court of Manipur, W.P.(Crl.) NO. 6 OF 2021 with MC[W.P.(Crl.)] NO.1 OF 2021and MC[W.P.(Crl.)] NO.2 OF 2021, judgment dt. 3 May 2021, available at: https://drive.google.com/file/d/1MIJytgk_oKYi2qAh2uTrtiqsxJPWnz4v/view [Accessed on 9 May 2025]

[81] The Wire, *Manipur human rights body orders release of Myanmarese refugees who were detained beyond jail term*, 18 May 2023, available at: https://thewire.in/rights/manipur-human-rights-body-orders-release-of-myanmarese-refugees-who-were-detained-beyond-jail-term [Accessed on 29 May 2025]

[82] World Legal Information Institute (WorldLII), *Refugees In India: Legal Framework, Law Enforcement And Security,* 2001, available at: http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html [Accessed on 30 May 2025]

the border, especially on the northeastern front,[83] in order to address concerns regarding terrorist infiltration, narcotics trade, and illegal immigration.[84] However, this will greatly affect the ability of those in need of international protection to access refuge, and what is need may be more engagement and a better system for manging arrivals rather than cutting off access for those fleeing persecution.

1. Functioning: The porous India-Myanmar border which runs for over 1643 km along 4 northeastern states of Arunachal Pradesh, Nagaland, Manipur, and Mizoram has long been a challenge for authorities, with illegal trade and insurgent activities thriving in the border regions.[85] The fencing at Moreh is part of a broader effort by the Indian government to secure its borders, curb illegal immigration, and tackle smuggling, which has been rampant in the northeastern states.[86] India and Bangladesh also share a 4,096.7-km-long border, of which 3,232 km is fenced.[87]

2. Time: Since May 2022, the state of Manipur has been in a state of insurgency, which recently culminated in the imposition of President's Rule.[88] The cause of the conflict is an ethnic clash between the two major ethnic groups in the state, one of whom shares many commonalities with ethnic groups across the border in Myanmar. As a result, the Burmese refugees in the northeast have since the beginning been pawns in the insurgency, and have been vilified as a cause of the friction, leading to calls for their exclusion from the territory of the state. However, even preceding the start of hostilities, Mr. Biren Singh, the former Chief Minister of the state, had launched a facial recognition system across the state in continuation of the identity checks that were initiated in the border districts to restrict Myanmarese nationals to state set up detention centres.[89] The Chief Minister said there are plans to install facial recognition system cameras for security purposes at Imphal airport, at Jiribam, Indo-Myanmar border towns of Moreh and Behiang and Khongsang railway station to effectively counter illegal immigration. This system was launched just a day before violence broke out in the town of Churachandpur.[90] The Chief Minister has focused on 'outsiders' as the supposed cause of this violence.

3. Place: Northeastern border, more specifically in Manipur and along the border with Bangladesh.

4. Actors: Government of Manipur, Ministry of Home Affairs, and local authorities

5. Interaction: The construction of a fence effectively makes it harder to cross into India from Myanmar, and makes it easier for the authorities to implement pushbacks as well as to detect and detain those attempting to cross over.

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[83] Aljazeera, *'Separated': Why is India sealing its Myanmar border, dividing families?*, 11 April 2024, available at: https://www.aljazeera.com/features/2024/4/11/were-a-single-village-india-seals-myanmar-border-dividing-families [Accessed on 30 May 2025]

[84] Business World, *Under Siege: Why India Must Rethink Its Border Fence Strategy Now*, 28 May 2025, available at: https://www.businessworld.in/article/under-siege-why-india-must-rethink-its-border-fence-strategy-now-557977 [Accessed on 30 May 2025]

[85] Associated Press, *In northeast India, a border fence could cut through villages, houses and lives*, 28 February 2025, available at: https://apnews.com/article/india-myanmar-border-village-b3cc91d2febcee465b866cd32127318c [Accessed on 30 May 2025]

[86] Times of India, *Youth will take up arms if centre fences Myanmar border and scraps FMR: ZORO*, 17 May 2024, available at: https://timesofindia.indiatimes.com/city/guwahati/youths-will-take-up-arms-if-centre-fences-myanmar-border-scraps-fmr-zoro/articleshow/110193627.cms [Accessed on 30 May 2025]

[87] India Today, *13 stranded at Zero Line as India, Bangladesh dig heels on illegal immigrants*, 28 May 2025, available at: https://www.indiatoday.in/world/story/thirteen-stuck-at-zero-line-india-bangladesh-army-dig-heels-illegal-immigrants-border-guard-bangladesh-2732046-2025-05-28 [Accessed on 30 May 2025]

[88] Observer Research Foundation (ORF), *Indo-Myanmar border fencing initiative: Assessing imperatives and challenges*, 18 May 2024, available at: https://www.orfonline.org/expert-speak/indo-myanmar-border-fencing-initiative-assessing-imperatives-and-challenges [Accessed on 30 May 2025]

[89] Outlook, *Manipur Facing Threat Of Illegal Immigration From Myanmar, ILP Must : Biren Singh*, 2 May 2023, https://www.outlookindia.com/national/manipur-facing-threat-of-illegal-immigration-from-myanmar-ilp-must-biren-singh-news-283136 [Accessed on 3 July 2023]

[90] News18, *Manipur: Only ST Status Issue Or Were There Other Reasons Behind Violence? News18 Decodes*, 8 May 2023, available at: https://www.news18.com/india/manipur-only-st-status-issue-or-were-there-other-reasons-behind-violence-news18-decodes-7749781.html [Accessed on 3 July 2023]

6. Development: This is described in the section on Time.[91]

7. Rationale: The porous India–Myanmar border has been a cause of concern for peace, stability and economic development.[92] This region faces multiple issues, such as drug trafficking from Myanmar, the influx of insurgents and the illegal arms trade exacerbating the security situation in the Northeast. In a bid to address the above-mentioned challenges, the Ministry of Home Affairs (MHA) on 6 February 2024 announced plans to fence the entire 1,643 km long India–Myanmar border.[93] Further, to facilitate surveillance, a patrol track will also be paved along the border.

8. Legal Status: As explained in previous sections, refugees have no legal status in India; those caught crossing the border without authorization are liable to be detained and deported.

9. Specific Impact: The erection of the fencing and the restrictions on free movement across the border will significantly impact refugee arrivals; they will also affect cross-border cultural and family ties, as well as trade[94]. This would be a reinforcement of colonial restrictions on movement, which aimed more at preserving the integrity of the Empire rather than maintaining cultural and ethnological ties across the region.[95]

10. Reach: As mentioned above, there is no way to say how many may be affected, and in what way; however, India shares borders of nearly 10,000 km on its eastern ad western fronts with a number of countries, including Tibet/ China, Myanmar, Bangladesh and Pakistan, and arrivals from all these countries are affected by border fencing.

11. Source: It has been sanctioned by the Central Government.

12. Justification: It has been sanctioned on the basis of a security imperative. In order to strengthen security and preserve the demographic integrity of the northeastern states, on 8 February 2024, the Government of India (GoI) also announced that the Free Movement Regime (FMR) with Myanmar, in force since 1950, would be suspended. The FMR has been considered responsible for facilitating the movement of illegal migrants and the flow of arms and drugs. According to this agreement, individuals could enter up to 16 kms into each other's territory, with a stay limit of 72 hours in India and 24 hours in Myanmar. This initiative aims to minimise bureaucratic hurdles for tribal communities in the northeast, enabling them to visit relatives across the border with ease.

13. Domestic and International Reactions: As mentioned above in the section on specific impact, the government's move to fence the northeastern border has been met by opposition from local political bodies[96] over concerns that it will disrupt historical and cultural ties as well as trade. The Bangladesh government also expressed reservations around the manner in which this was done, alleging it was a violation of international law[97], which led to a diplomatic row between the two countries.

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[91] Department of State US, *International Boundary Study No. 80 – May 15, 1968 Burma – India Boundary*, https://library.law.fsu.edu/Digital-Collections/LimitsinSeas/pdf/ibs080.pdf [Accessed on 30 May 2025]

[92] Centre for Land Warfare, *Border Management with Myanmar: A Strategic Imperative*, September 2014, available at: Border Management with Myanmar: A Strategic Imperative [Accessed on 30 May 2025]

[93] Press Information Bureau (PIB), Ministry of Home Affairs, *Modi Government is Committed to Building Impenetrable Borders*, 6 February 2024, available at: https://www.pib.gov.in/PressReleasePage.aspx?PRID=2003199 [Accessed on 30 May 2025]

[94] Business Standard, *Kuki bodies oppose proposed fencing of India-Myanmar border, FMR scrapping*, 26 October 2024, available at: https://www.business-standard.com/external-affairs-defence-security/news/kuki-bodies-oppose-proposed-fencing-of-india-myanmar-border-fmr-scrapping-124102600591_1.html [Accessed on 30 May 2025]

[95] Deccan Herald, *Fencing the India-Myanmar border: A historically and politically illogical move*, 3 February 2024, https://www.deccanherald.com/india/fencing-the-india-myanmar-border-a-historically-and-politically-illogical-move-2878011 [Accessed on 30 May 2025]

[96] Business Standard, *Global Naga Forum slams govt over FMR area cut, Indo-Myanmar border fence*, Apr 29 2025, available at https://www.business-standard.com/india-news/global-naga-forum-slams-govt-over-fmr-area-cut-indo-myanmar-border-fence-125042900223_1.html [Accessed on 30 May 2025]

[97] The Wire, *Bangladesh Expresses 'Deep Concern' Over Unauthorised Indian Border Fencing,* 12 January 2025, available at *https://thewire.in/diplomacy/bangladesh-india-border-fencing* [Accessed on 3 May 2025]

14. Externalization: N/A – the borders are monitored by Indian authorities.

15. Technology: While the FMR has not yet been scrapped, according to the new guidelines, as noted by media reports in December 2024, its rules and regulations have been strengthened.[98] The range of free movement has been reduced to 10 kms from the earlier 16 kms. Assam Rifles (AR) will conduct proper document inspection followed by security and health check-ups by the State police and health department officials. The AR will upload all the documents on the Land Ports Authority of India portal under MHA after recording biometrics and issuing a border pass with a photograph and a QR code. The pass needs to be deposited while returning from the same crossing point before the completion of seven days.[99]

16. Other: It has now been reported that the demarcation of the border is complete. In addition to fencing, India has initiated several other projects to enhance surveillance and monitoring of its borders.[100] For example, two pilot projects of a Hybrid surveillance system are under construction, one each in Arunachal Pradesh and Manipur, to improve real-time monitoring of the border. These pilot projects are being executed by the Assam Rifles, with the aim of boosting border surveillance capabilities.

III. SELECTING BARRIERS

An analysis of the judicial pronouncements in relation to refugees in India would clearly demonstrate that the issue that most often comes up before the courts is that of **detention**, both as a barrier to claiming asylum and in terms of the fact that in spite of being recognised as a refugee, a person may not be protected from this outcome. In recent years, to complement the government's rhetoric on illegal immigration, there has been a sharp increase in the detention of refugees, in particular of Rohingyas, recognised under the UNHCR's mandate. Their objective is the denial of liberty to non-citizens within the territory of a state, but also to restrict movement so that the government can quickly deport them back to their country of origin – with no due process. In the absence of more defined legal codes, anyone identified as an illegal migrant is liable to detention, as this is an umbrella definition that includes refugees, stateless persons, asylum seekers, and other persons who may need international protection. In this regard, deportation practices are also deserving of deeper analysis, particularly given India's long practice of deportations that are not judicially sanctioned and remain an executive decision.

Furthermore, the **lack of a dedicated procedural framework** for the processing of clams from asylum seekers. While I do not advocate for ratification of the Refugee Convention, I do see the need for domestic law on the issue, which in turn should be adherent to India's existing obligations under Human Rights conventions that it has already signed. The lack of legal prescription has left wide room for discretion and in the present climate, and this has led to vastly more disregard for due process and the Rule of Law principles as well as to Constitutional principles of equality, fairness and respect for international law. Previous attempts to formulate legislation on the subject have not produced results; however, there is room within existing legislation including the new Immigration & Foreigners Act 2025 to put in place a system of procedural norms for assessing the claims of those in international protection.

[98] The Hindu, *Centre yet to formally scrap Free Movement Regime with Myanmar*, 26 December 2024, available at: https://www.thehindu.com/news/national/fmr-with-myanmar-yet-to-be-scrapped-formally-mha-tightens-regulations-for-border-population/article69026504.ece [Accessed on 30 May 2025]

[99] The Hindu, *Demographic Data to Stop Influx Along Myanmar, Says Ministry of Home Affairs,* 30 December 2024, available at: https://www.thehindu.com/news/national/demographic-data-to-stop-influx-along-myanmar-says-ministry-of-home-affairs/article69044437.ece [Accessed on 30 May 2025]

[100] News on AIR, *India completes over 9 km fencing along Myanmar border*, 02.01.2025, available at https://www.newsonair.gov.in/india-completes-over-9-km-fencing-along-myanmar-border/ (Accessed on 20 May 2025)

PART 2: CASE LAW ANALYSIS

I. IDENTIFICATION OF BARRIERS IN THE CASE LAW

A. Institutional settings

1. <u>Pushbacks</u>

- First Instance Body: Border Security Force (BSF) and State Home Departments *(Hindi: सीमा सुरक्षा बल / Seema Suraksha Bal; राज्य गृह विभाग / Rajya Grih Vibhag)*. These bodies initiate or implement border-level expulsions or rejections under the Foreigners Act, 1946.
- Second Instance Body: Ministry of Home Affairs, Government of India *(Hindi: गृह मंत्रालय / Grih Mantralaya)* - Oversees inter-state and national policy coordination, including directives regarding border management and foreign nationals.
- Third Instance Body: High Courts High Courts have jurisdiction under Article 226 of the Constitution to hear challenges to unlawful or extrajudicial pushbacks.
- Constitutional Court: Supreme Court of India - The apex constitutional body responsible for protecting fundamental rights under Article 32, including the right to life and protection from arbitrary expulsion.

2. <u>Detention</u>

- First Instance Body: State Home Departments and District Magistrates *(Hindi: गृह विभाग / Grih Vibhag; जिला मजिस्ट्रेट / Zila Magistrate)* - These authorities order detention under the Foreigners Act, 1946, or preventive laws such as the National Security Act.
- Second Instance Body: Sessions Courts and High Courts, under their writ and appellate powers, review the legality and conditions of detention.
- Third Instance Body: Supreme Court of India, which is also the Constitutional Court exercises appellate and constitutional jurisdiction to determine legality of extended or arbitrary detention of non-citizens.

3. <u>Procedural Barriers</u>

- First Instance Body: High Courts, which may receive writ petitions (addressing denial of access to legal aid, documentation, and due process.
- Second Instance Body: Supreme Court of India, which exercises supervisory and constitutional jurisdiction under Article 32 to clarify procedural protections.
- Third Instance Body: Not applicable
- Constitutional Court: Supreme Court of India

Executive bodies involved in asylum access adjudication

Yes, in the absence of adherence to the Refugee Convention and a formal asylum law or a dedicated Refugee Status Determination (RSD) framework, executive bodies in India are heavily involved in asylum access and adjudication, and refugee and asylum matters are handled chiefly through executive discretion and administrative processes.

The main executive bodies involved, along with their respective competence and roles, are listed below:

1. Ministry of Home Affairs (MHA)

Central authority on immigration, citizenship, and internal security; frequently issues executive directions on various issues related to immigration, including on Long-Term Visas for refugee groups. It makes final decisions on visa issuance, extensions, and cancellations for asylum seekers, as well as deportation and detention orders for undocumented migrants, including refugees. It is also the nodal ministry to coordinate with UNHCR on refugee-related issues. It is also known to receive records from UNHCR of asylum-seekers registered with it.

2. Foreigners Regional Registration Offices (FRROs) / Foreigners Registration Offices (FROs)

Operates under the MHA at the regional level, and manages local-level visa and stay regulations for foreign nationals, including asylum seekers. It also implements registration and monitoring for persons designated as "foreigners" (including from refugee-producing countries like Pakistan and Afghanistan) under the Foreigners Act, 1946 and the Registration of Foreigners Act, 1939, and can issue orders related to movement restrictions, residence, and sometimes detention. It also issues exit visas, as well as fines, for refugees wishing to exit the country.

3. Ministry of External Affairs (MEA)

Handles diplomatic relations, including cooperation with UNHCR, and liaises with foreign governments on matters related to asylum seekers and repatriation. It is also occasionally involved in bilateral negotiations regarding refugee groups (e.g., Rohingyas or Sri Lankan Tamils).

4. Bureau of Immigration (BoI)

Under the MHA, it manages immigration at points of entry and exit. It can detain or deny entry to undocumented asylum seekers. It may coordinate with FRROs for legal processing of long-staying foreigners.

5. State Governments and Police Departments

Implement central government directions at the local level and may also identify, arrest, and deport undocumented migrants and refugees, conduct security screening of asylum seekers (especially for those considered "illegal migrants"), and provide or deny access to basic services such as housing, education, or health care.

International or regional organizations involved in asylum access adjudication

India has not signed the 1951 Refugee Convention or its 1967 Protocol, so UNHCR operates via a Memorandum of Understanding (MoU) with India and has no legal authority, but it plays a de facto adjudicative role for certain groups in filling a legal and institutional gap. In India, it conducts Refugee Status Determination (RSD) for asylum seekers from non-neighbouring countries (e.g., Afghans, Iranians, Iraqis, etc.) and Myanmar, but is subject to the government's pleasure for its post in India. For mandated refugees, UNHCR issues refugee cards, offers protection, and facilitates resettlement for those it recognizes. It also has to coordinate informally with the MHA and MEA. UNHCR decisions have no binding legal status in India and India does not automatically recognize UNHCR refugees as having legal refugee status under Indian law, although the government tolerates UNHCR-recognized refugees and may allow them to stay on a Long-Term Visa (LTV), particularly for Afghans and others.

UNHCR decisions cannot be challenged in judicial review proceedings in domestic courts.

B. Legal context and legal system

Reference to decisions from international or supranational tribunals

The legality of asylum barriers has rarely been litigated; the issues most frequently placed before the courts pertain to detention and deportation, and their role as barriers to asylum is only ancillary to the question as to whether the detention/ deportation itself is legal. In recent litigation around the issue of asylum, the

government has maintained that India is not bound by the principle of non-refoulement as we are not signatories to the Refugee Convention; the status of the principle as a part of customary international law has been largely ignored.

UNHCR, which also conducts RSD for certain refugee populations, relies on the 1950 Convention and the RSD Handbook.

International human rights standards established by supranational courts

Indian courts, particularly the Supreme Court, only occasionally refer to decisions from international or supranational courts, but such references are relatively infrequent and typically context-dependent, for instance to support a progressive interpretation of the law. In *Justice K.S. Puttaswamy v. Union of India (Right to Privacy case, 2017*), the Supreme Court referred to ECtHR and CJEU judgments. In *Navtej Singh Johar v. Union of India (decriminalization of homosexuality, 2018)*, courts referenced foreign and international jurisprudence including ECtHR.

C. Laws and norms at the domestic level

The principle of non-refoulement

In India, non-refoulement has only persuasive value; its credibility as a principle of customary international law and therefore having binding value are currently under question in the Indian courts. However, it has been recognised in the past in jurisprudence. Courts have relied on Article 21 of the Indian Constitution, which states: *"No person shall be deprived of his life or personal liberty except according to procedure established by law."* Courts have consistently held that Article 21 is not restricted to citizens, and is equally applicable to foreigners, and then gone on to hold that non-refoulement is a part of Article 21 (for instance in *Ktaer Abbas*). However, its application remains uneven, with the more recent rulings of the Supreme Court in S*alimullah* indicating that non-refoulement may be losing ground as being implicit in Article 21, and therefore being subject to the vague notion of national interest. The right to non-refoulement therefore remains discretionary and case-specific rather than absolute.

The right to asylum

Although the Right to Asylum is not recognised as such under national law, refugees have been granted certain rights as inherently being under the Right to Life/ Right to Equality under the Indian Constitution. This includes the Right to Free and Compulsory Education, which is available to any child on the territory of India between the ages of 6 and 14, as well as the Right to Health, which the Court has held forms part of Article 21.

Sources of international refugee law that are relevant to asylum access adjudication

India has ratified the Universal Declaration of Human Rights (UDHR, 1948), where Article 14(1) states: "Everyone has the right to seek and to enjoy in other countries asylum from persecution." In terms of soft law, the Bangkok Principles on the Status and Treatment of Refugees (1966, revised 2001) that were adopted under the Asian-African Legal Consultative Organization (AALCO), to which India belongs, could have persuasive value. Similarly, India endorsed the Global Compact on Refugees (2018) in principle but it has no binding obligation. India has not on the other hand ratified the Convention against Torture which also incorporates the principle of non-refoulement.

Other human rights obligations

As mentioned previously in this chapter, refugees do not have any legal identity in India, and as a result, they are not ascribed any specific rights other than those applicable to all human beings present on the territory of India. Thus, the Indian Constitution guarantees certain fundamental rights such as those under Article 21, the Right to Life, and Article 14, the Right to Equality, to all within the national territory, regardless of nationality, including the right to due process, access to justice, and humane treatment; these are critical in addressing procedural barriers. Articles 32 and 226 enable refugees to approach the Supreme

Court and High Courts respectively for the enforcement of these rights. India is also a signatory to the International Covenant on Civil and Political Rights (ICCPR, 1966) and its Courts have used the ICCPR to support Article 21 and to support the non-return of asylum seekers, such as in *Ktaer Abbas* and *Nandita Haksar* cases. However it is worth bearing in mind that in India, Article 253 of the Constitution requires enabling legislation from Parliament for treaties to become enforceable, and India has not enacted enabling legislation to formally incorporate the ICCPR into domestic law.

India signed the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1997, but has not ratified it to date. Despite this, the CAT still has relevance for India's obligations toward refugees and asylum seekers, particularly in the context of non-refoulement and protection against torture. As a result, while India is not legally bound by the treaty in its entirety, it is obliged not to defeat its object and purpose under Article 18 of the Vienna Convention on the Law of Treaties, to which India is a party. Thu, in principle, it is still bound to uphold the treaty's object and purpose, especially the non-refoulement obligation under Article 3, although this has not found much uptake by the Courts in recent times, as evidenced by recent orders in the *Salimullah* case.

Since India was a founding member of the United Nations and voted in favour of the UDHR in 1948, it is considered to have accepted its principles as part of customary international law, which informs both domestic legal interpretation and India's international human rights posture. India's endorsement of the UDHR has in the past informed its moral and legal commitment to uphold refugee rights, even in the absence of formal refugee laws. The UDHR continues to serve as a soft law framework that influences judicial reasoning and policy advocacy for the protection of asylum seekers and refugees in India.

Other obligations stemming from general public law, criminal law, humanitarian law, civil law

In India, international refugee law has far less value than domestic law, especially Constitutional Law. In the absence of a codified asylum regime, India's legal and administrative frameworks, which include constitutional protections, statutory laws, principles of administrative and criminal law, international human rights norms, and executive policy instruments, have been relied on to provide protection to refugees.

a. Constitutional Law - India's Constitution guarantees several fundamental rights to all persons, including asylum seekers. Article 14 guarantees the right to equality before law and equal protection of laws, while Article 21 recognises the right to life and personal liberty. Thus, in NHRC v. State of Arunachal Pradesh (1996), the Supreme Court restrained attempts to force Chakma refugees out of the state, reaffirming their right to life and liberty under Article 21. Thus, in *Ktaer Abbas Habib Al Qutaifi v. Union of India (1999),* the Gujarat High Court held that Article 21 prohibits deportation of persons to a country where they face life-threatening persecution.

b. Administrative Law - Indian administrative law requires that executive decisions adhere to principles of natural justice, non-arbitrariness, and proportionality, critical in asylum-related adjudication, particularly in deportation or detention cases. Thus, in *Dongh Lian Kham v. Union of India (2016),* the Delhi High Court directed authorities to consider the petitioner's UNHCR refugee status before enforcing deportation, citing humanitarian principles and the need for fair administrative action.

c. Criminal and Procedural Law - Refugees and asylum seekers may be prosecuted under the Immigration and Foreigners Act, 2025, which replaces the erstwhile Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920, and brings all core aspects of foreigners' entry, stay, registration, and exit under a single statute, with a strong emphasis on digital tracking, compliance, and national security. However, rather than imposing obligations on the state, the law reinforces that no foreigner has an automatic right of entry, stay, or unregulated movement—all are subject to the conditions, restrictions, and permissions specified under the Act or by the relevant authorities. In *Section 3(1),* the Act confers final and binding authority on Immigration Officers. This grants unequivocal discretion to Immigration Officers to deny entry or stay without provision for judicial appeal. For asylum seekers, this means that even with a valid visa, entry may be refused on vague grounds such as "national security," with no recourse

except possibly through executive review. also gives the authority the final decision-making power over exit and deportation decisions (*Section 3(2)), so that refugees* risk being prevented from leaving India, blocking onward movement to third countries or safe havens, again with no legal appeal channel. It retains the Foreigners Act standard, which presumes a person is a "foreigner" unless proved otherwise. This deeply undermines natural justice, forcing vulnerable individuals fleeing persecution to affirmatively prove they are not undocumented migrants. The police and Immigration Officers are empowered to arrest individuals "on suspicion" of violations without a warrant—a strong carryover from the old regime. Section 7 allows the Central Government to restrict entry, exit, presence, or residence "in any specified area", as well as to impose conditions like biometric submission, medical checks, residence requirements, or limitations on associations and activities. Under this regime, asylum seekers may be subjected to house arrest, restricted zones, or mobility bans—without basic safeguards or avenues to challenge such restrictions.

Most importantly, the Act requires hospitals, schools, lodging providers, and carriers to report information about foreign nationals—including asylum seekers—to the Registration officers, which raises privacy and profiling concerns, as vulnerable individuals can be tracked and exposed to immigration enforcement

d. **Soft Law and Executive Instruments** – In addition to the above, a number of circulars and executive orders mentioned previously in this section, such as the 2011 MHA Standard Operating Procedure (SOP) that allows UNHCR-recognized refugees to apply for Long-Term Visas (LTVs), and MHA Circulars (e.g., 2011 circulars on Tibetans and Sri Lankans; 2021 directive to border states on Myanmar nationals) guide implementation of refugee-related policy.

Courts have relied on a combination of constitutional guarantees, administrative fairness, international norms, and executive policy to adjudicate asylum access. Ongoing jurisprudence also reflects the increasing relevance of soft law and judicial creativity in protecting vulnerable populations in the absence of a formal refugee protection law.

The role of soft law in asylum access adjudication

Soft law, including UNHCR Guidelines, General Comments by treaty bodies, and government or institutional circulars and advisories have played a significant role in asylum access adjudication in India, with Indian courts drawing on them to interpret constitutional rights, guide state practice, and assess the legitimacy of deportation or detention decisions involving refugees and asylum seekers. *For instance, in Ktaer Abbas Habib Al Qutaifi v. Union of India* (Gujarat High Court, 1999), two Iraqi nationals detained in Bhuj challenged their continued detention and feared deportation. The court:

- Cited **international human rights principles** and the **UNHCR mandate**
- Recognized the **principle of non-refoulement** as part of **Article 21 of the Constitution**
- Allowed conditional release and temporary stay

Thus, the court explicitly acknowledged UNHCR's role in refugee status determination (RSD) and accepted UNHCR documentation as relevant for protection.

India is also a founding member of the Asian-African Legal Consultative Organization (AALCO), an intergovernmental organization established in 1956 as a platform for Asian and African states to consult and cooperate on international law issues, including refugee law. AALCO promotes regional cooperation and has developed soft law instruments related to refugees. AALCO endorsed the Bangkok Principles on Status and Treatment of Refugees (2001), which offer guidance on refugee status and treatment in Asia and Africa. However, India engages with these principles mainly in a non-binding, consultative capacity.

India has also been a member of the UNHCR Executive Committee multiple times since its formation in 1951, where it represents the voice of developing countries, highlighting the challenges they face as both refugee-hosting states and countries of origin, and advocates for respect for the sovereignty of host countries, encouraging refugee protection within a framework that supports national interests and security. India also promotes regional and bilateral approaches to refugee issues, underlining the significance of

regional cooperation frameworks. However, while its role in the ExCom has been mentioned in pleadings before the Court in *Salimullah*, they have not had an influence on the orders issues under the case.

In addition to this, soft law, if interpreted as Standard Operating Procedures (SOPs) adopted by governments, may also include executive circulars and government communications that confer recognition on refugees. For instance, the MHA has issued circulars on its Long-Term Visa (LTV) policy for Afghan nationals. Thus, a formal MHA circular (Annex VI, dated 1 February 2018) outlines eligibility for LTVs across Pakistan, Bangladesh, and Afghanistan.[101] Conversely, the Ministry of Home Affairs (MHA) has over the years issued several circulars, office memoranda, and advisories over the years concerning "illegal migrants"—a term it uses broadly to refer to foreign nationals who enter India without valid documents or who overstay. These circulars often do not distinguish between economic migrants, undocumented persons, and asylum seekers, which creates significant implications for refugees and stateless persons seeking protection. For instance, the circular F. No. 14016/1/2021-Imm (Pt.) dated 10 March 2021, was sent to Chief Secretaries of Mizoram, Nagaland, Arunachal Pradesh, and Manipur. The circular directed states to:

- Check the influx of people from Myanmar across the international border.
- Identify and deport those entering illegally.
- "Not open any refugee camps" or provide shelter/food without prior approval from the Centre.
- Share biometric and personal data of any entrants.

Further, the letter stated: *"...State governments and UT administrations have no powers to grant 'refugee' status to any foreigner. India is not a signatory to the Refugee Convention, and all foreign nationals entering the country without valid travel documents are to be treated as illegal migrants."*

The circular has featured in legal arguments and affidavits, particularly in cases concerning Myanmar nationals seeking refuge in India after the 2021 military coup. However, courts have not uniformly upheld its directives, and in some instances, the circular has been challenged for violating constitutional and humanitarian norms. Thus, in **Nandita Haksar v. State of Manipur in the Manipur High Court, in which s**even Myanmarese nationals entered India amid the 2021 coup and were detained under the Foreigners Act, the government relied on the MHA's March 2021 circular (and related state SOP) to categorize them as illegal migrants, but the Court declined to equate them with migrants, holding that as they fled persecution, they qualify as **refugees**, not migrants, and affirmed that **Article 21's protection** includes non-refoulement and the right to seek asylum, overriding the circular's position.

D. Legal standing

In India, the main source of the right to litigate is the Writ Jurisdiction under the Constitution of India (Article 32 for the Supreme Court and 226 for High Courts). Thus, refugees and asylum seekers can approach the courts for writs of Habeas Corpus, Mandamus, etc., to seek protection of their fundamental rights (for instance under Article 21), challenge illegal detention or deportation orders, seek access to fair procedures or humanitarian treatment, or have enforced the customary law principle of non-refoulement. Public Interest Litigation has also been used by lawyers and NGOs to challenge systemic barriers, detention conditions, or government policies denying access to asylum, for instance, in the *Salimullah* case. In addition to this, the National/State Human Rights Commission (NHRC/SHRC) can take *suo motu* cognizance of complaints related to human rights violations of refugees/asylum seekers, as it did in the mid-90s with the Chakma refugees in Arunachal Pradesh.

[101] National Legislative Bodies / National Authorities, India: Long Term Visa (LTV) Policy, 2020, 2020, https://www.refworld.org/policy/strategy/natlegbod/2020/en/150246 [Accessed 23 July 2025]

E. The influence of international Courts

As mentioned in previous sections, Indian courts do not allude directly to judgments of supranational courts in their decisions. While India's courts occasionally draw upon international legal principles and rulings from supranational courts in their judgments, these references are typically persuasive rather than binding, supplementing the interpretation of constitutional provisions related to human dignity and the right to life under Article 21. It follows from the lack of a specific legal framework that procedural protections such as the right to appeal and access to legal aid are not consistently guaranteed for asylum seekers in India. In any event, the intervention of the courts is limited to removing barriers such as detention rather than reviewing actual asylum decisions, whether from the government or UNHCR; this means that there is little oversight of the asylum process itself, which therefore remains completely opaque and discretionary and guided at best by internal procedures and regulations.

F. Comparative insights

Divergences among judicial bodies

Given that asylum-related matters have come up before a number of High Courts such as those of Madras and Guwahati, there has been divergence in decisions, and also vis-à-vis the Supreme Court. For instance, High Courts have sometimes taken a more restrictive approach, focusing on national security concerns and the absence of a formal asylum law. For instance, in the case of *National Human Rights Commission v. State of Arunachal Pradesh*, the Supreme Court directed the state to ensure that refugees' rights were protected, whereas the Gauhati High Court has been more cautious, emphasizing the lack of a statutory framework for asylum seekers. In *Ktaer Abbas Habib Al Qutaifi* the Gujarat HC was of the view that since the principle of non-refoulement seeks to preserve the life and freedom of the refugees, it is traceable to Article 21 of the Constitution. More recently, the Manipur High Court in Nandita Haksar upheld the principle of non-refoulement and directed the State government to facilitate access to UNHCR for RSD. However, the Supreme Court in *Salimullah* interpreted the right to non-refoulement more restrictively, as a corollary of the right to freedom to move within the country and settle anywhere therein, which therefore is restricted only to citizens. Other High Courts have taken a more restrictive approach rather than a humanitarian one[102]. Thus, differences in interpreting constitutional provisions and international treaties have led to varying conclusions, as have procedural loopholes owing to the absence of dedicated asylum laws and procedures, which means that courts often rely on general constitutional principles, leading to inconsistent application.

Divergences between national courts and supranational rulings

Given that the decisions of Indian courts are based on judicial interpretation rather than legal dictum, this is a question whose answer would vary over time. In India, the judicial approach to asylum and refugee protection (which in itself has seen wide divergence, as indicated in the response to the subsequent question) navigates existing norms of domestic and international law, particularly concerning the principle of non-refoulement, for which we are yet to agree on a nationally-accepted conclusion across courts. Thus, in the most recent case of *Salimullah v. Union of India* (2021), the Supreme Court refused to grant interim relief to detained Rohingya refugees, allowing their potential deportation. The Court emphasized that the right not to be deported is ancillary to the right to reside or settle in India, which is guaranteed under Article 19(1)(e) of the Constitution, and is thus limited to citizens. This is in clear contradiction to the view of international bodies, including the ICJ, which unequivocally upholds the principle of non-refoulement as a fundamental human right, as evidenced by its ruling in *The Gambia v. Myanmar* (2020) that reaffirmed that the forced return of Rohingya refugees to Myanmar would violate international law.

Similarly, on the issue of detention of refugees, supranational courts and international legal bodies take a firm stance against the arbitrary detention of refugees, grounded in international human rights law and refugee protection norms. Thus, the detention of asylum seekers must comply with Article 5 of the

[102] https://www.independent.co.uk/asia/india/india-pakistan-yemen-refugee-bombay-court-b2590059.html

European Convention on Human Rights (right to liberty and security); in *Saadi v. United Kingdom (2008),* the ECHR held that while initial detention of asylum seekers may be permitted for administrative purposes (e.g., identity verification), it must be lawful, necessary, and not arbitrary, and that prolonged or indefinite detention without judicial oversight violates Article 5. In *J.N. v. Staatssecretaris voor Veiligheid en Justitie (2016)*, the CJEU ruled that detention of asylum seekers is only permissible if there are strong reasons (e.g., risk of absconding) and alternatives have been exhausted. However, courts in India have been more reluctant to take such a rights-based approach; given that detention was prescribed for those held under the Foreigners Act and its successor, now the Immigration and Foreigners Act, which in fact gives broad discretionary powers to detain foreigners, courts in India have often upheld detention and deportation without requiring individualized assessments or alternatives to detention, particularly for the Rohingya. They have not imposed any need for a case-by-case risk assessment; group-based detentions occur frequently.

Broader principles established by international bodies

This is a factor of time, place, and political environment in India; as mentioned above, the Indian courts have more recently taken a hardline view on refugee protection, including the principal applicability of non-refoulement principles, which for international bodies such as UNHCR and CAT is a non-negotiable principle.

Similarly, on the issue of detention, detention based solely on immigration status is generally considered arbitrary under international law. The General Comment No. 35 (2014) in relation to the ICCPR has held that immigration detention must be reasonable, necessary, and proportionate, that asylum seekers must not be subjected to punitive or indefinite detention, and that detention must allow for periodic review and legal recourse. UNHCR's 2012 guidelines recommend that detention of refugees or asylum seekers be used only in exceptional cases. They advocate for alternatives to detention and emphasize the right to liberty and humane treatment.

On the other hand, as mentioned above, Indian courts have taken contrary approaches. In *A.C. Mohd. Siddique v. Government of India* (2014), the Madras High Court held that the continued detention of a Sri Lankan refugee beyond his prison term under preventive laws under the National Security Act was illegal once the threat no longer existed. However, courts also frequently sanction detention, refusing even to grant bail to refugees on various grounds. Thus, in *K. Ramu v. Union of India*, Tamil refugees from Sri Lanka challenged their detention by Indian authorities, arguing unlawful confinement and violation of their rights. The Madras High Court upheld the detention orders under the Foreigners Act, 1946, stating that the state has the authority to detain foreign nationals or refugees pending inquiry or deportation, and that such detention is lawful where proper procedure is followed and when the individuals are deemed illegal immigrants without valid documents. The Court emphasized the sovereign right of the government to regulate the entry and residence of foreigners. In *Selvakulendran v. State of Tamil Nadu*, W.P. No. 7490 of 2007, the Madras High Court) refused bail for a Sri Lankan refugee as the individual lacked valid documents, stating, *"The detention of a foreigner is a matter within the sovereign powers of the State, and where prima facie the person is found to be an illegal immigrant, bail cannot be granted."*

Best practices or lessons learned from the adjudication of asylum barriers

Despite the absence of a formal asylum law in India, India has a long history as a generous host to refugees, especially from neighbouring countries, and its courts have largely maintained a non-political approach when the issue has come up before them. As a result, several best practices can be cited in Indian adjudication of asylum barriers, some of which are listed below:

a) *Judicial extension of rights under Article 21 to refugees* – While inconsistent, a number of Indian courts have interpreted Article 21 of the Constitution (Right to Life and Personal Liberty) to extend protections to non-citizens, including asylum seekers. For instance, starting with *NHRC v. State of Arunachal Pradesh* (1996), the Supreme Court prevented the forced eviction of Chakma refugees,

recognizing their right to life and dignity. This has since been reiterated several times, including in Nandita Haksar.

b) *Use of International Law and UNHCR Guidelines* – a number of High Courts have referred to international instruments (e.g., ICCPR, CAT) and UNHCR refugee status determinations for guidance. The Delhi High Court has, in several cases, accepted UNHCR refugee cards as valid evidence to delay deportations.

c) *Writ Jurisdiction under Article 226* - High Courts have used their broad writ powers under Article 226 to intervene in individual asylum and deportation matters. Thus, in the absence of specialized tribunals or asylum mechanisms, general constitutional remedies have been invoked to guarantee human rights protections to refugees. For instance, the Madras and Delhi High Courts have granted a stay on deportation proceedings on humanitarian grounds and pending UNHCR decisions, as has the Manipur High Court (Nandita Haksar). Further, in P. Ulaganathan, the Madras High Court referred to its previous decisions to stay the forcible deportation of the petitioners, and went so far as to state that "viewing the petitioners' case through the prism of the technical requirements of law, does not appear to be a humanitarian approach." It went on to state that the refugee petitioners had the right to make an application for citizenship, and that this should be considered by the government bearing in mind it has the power to consider the applications favourably notwithstanding the technical status of the applications as that of illegal migrants, and that it must take note of the unique situation in which the petitioners are placed, as well as the undertaking given before the Madras High Court that the applicants would not be sent back will also be factored in the process of consideration. Thus, this bold move by the Hon'ble Court to take a humanitarian rather than technical interpretation must be lauded as a best practice.

G. Role of expert testimony

As mentioned previously, in India, courts do not adjudicate on asylum claims, nor on the legality of asylum proceedings.

In general, under Section 45 of the Indian Evidence Act, 1872, courts may admit expert opinion:

"When the Court has to form an opinion upon a point of foreign law, science, art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, are relevant facts."

In regard to asylum determination itself, it is not clear whether the government has ever used expert testimony in determining eligibility for asylum or similar status determination proceedings, given that this procedure is mostly closed to public scrutiny and there is little information on it in the public domain. As for UNHCR in India, which plays a quasi-judicial role in refugee status determination (RSD) for certain nationalities, there is scope for use of expert testimony in its procedural guidelines, and in our experience, this is most useful in India in the context of UNHCR Guidance on Mental Health and Psychosocial Considerations in RSD (2013), which encourages use of expert evaluations for survivors of torture, rape, and trauma.

Indian courts may indirectly use expert information provided by UNHCR, particularly in habeas corpus or deportation challenge petitions; in fact, UNHCR has given evidence or input in court proceedings in India, though this occurs indirectly and infrequently. However, it tends to do this more through its partners or other NGOs rather than directly. Thus, the Socio Legal Information Centre (SLIC), MARG, or the Human Rights Law Network (HRLN) have submitted documentation or oral arguments that incorporate UNHCR positions, guidance, or determinations in cases such as *Salimullah,* in which UNHCR and its allies submitted affidavits and letters to the Supreme Court, asserting that the deportation of recognized refugees would violate international law. Unfortunately, the Court did not take its advice on board and refused to stop the deportations.

However, in the past, the courts have taken into account UNHCR's expertise in adjudicating on refugee status and deferred to their judgment. For instance, in *Syed Ata Mohammadi v. Union of India (2000),* where

an Iranian refugee sought to stay in India and not be deported, UNHCR's recognition of the individual as a refugee was instrumental in the Bombay High Court's ruling that the individual should not be deported to Iran, aligning with the principle of *non-refoulement*. Similarly, in *P. Nedumaran v. Union of India (1991)* and *Gurunathan & Others v. Government of India (1991)*, where Sri Lankan refugees were being pressured to return to Sri Lanka, the Madras High Court deferred to UNHCR's assessment of the voluntariness of repatriation and expressed reluctance to force refugees to return against their will, recognizing UNHCR's expertise.

H. Future Directions

Emerging trends or evolving issues in asylum law

The Indian government enacted legislation to replace the colonial-era Foreigners Act 1946 and its accompanying laws (Passport (Entry into India) Act- 1920, Registration of Foreigners Act, 1939 Foreigners Act, 1946 and Immigration (Carriers' Liability) Act, 2000) in February 2025. There was an opportunity for the government to address the issue of refugees in the country in this law; however, they did not do so, leaving the issue as unlegislated as ever and only addressing foreigners' stay in the context of illegal migration rather than international protection needs. Shortly thereafter, there was also a significant adverse movement in the *Salimullah* case in May, likely as a fallout of the escalation of political tensions between India and Pakistan in the region.

The following are the key trends:

1. Absence of a National Asylum Law – in light of the new legislation mentioned above as well as continuing from the discourse generated by the Citizenship Amendment Act of 2019, which fast-tracks citizenship for non-Muslim minorities from Pakistan, Bangladesh, and Afghanistan and has been the subject of ongoing constitutional challenges to the Act's compatibility with secularism and equality principles, there have been increasing calls for a codified national asylum law. The lack of asylum legislation has meant that courts have always had to interpret constitutional and existing legal provisions to extend protections to refugees; however, given the current shrinking of the protection space for refugees. The lack of a statutory asylum law also means that UNHCR operates in a quasi-legal space, conducting refugee status determination (RSD) for certain groups, but with no binding recognition in Indian law. As a result, access to refugee protection depends heavily on geography, community identity, and political climate. Thus, Tamil refugees in Tamil Nadu benefit from state-level protection regimes, while Rohingyas in Jammu face detention and deportation.

2. Security-Centric Approach – The absence of a comprehensive asylum law also facilitates a security-first, identity-filtered approach, where courts often have to step in, but their interventions remain piecemeal, inconsistent, and vulnerable to being overturned by executive policy. Where India has always been reputed to be a generous host to refugees, the issue has become more and more entangled in the conversation around national security and sovereignty, as well as an ongoing tend to conflate refugees with illegal immigrants. This is reflected in the crackdowns on Rohingya refugees due to national security concerns. This shift is most visible in the treatment of Rohingya refugees. In *Mohammad Salimullah v. Union of India*, the Supreme Court accepted the government's classification of Rohingyas as "illegal migrants" under the 2017 MHA advisory, foregrounding security concerns such as alleged terror links, demographic risks, and "threats to internal security." This reasoning effectively displaced the principle of non-refoulement, narrowing the scope of constitutional protections under Article 21.

3. Role of the Judiciary - Courts in India have always played an active role in refugee protection. They are the sole guardians of fundamental rights in the absence of an asylum law, yet their jurisprudence has often reinforced, rather than checked, the securitisation of refugee protection. In landmark earlier cases such as *NHRC v. State of Arunachal Pradesh* (1996), the Supreme Court held that Chakma refugees could not be forcibly expelled and affirmed that Article 21 of the Constitution protects the life and liberty of all persons, not just citizens. This progressive interpretation effectively imported the principle of non-refoulement into domestic constitutional law. However, more recent cases show a judicial retreat, where courts increasingly defer to the executive's framing of refugees as a security threat. Thus, recent trends indicate a move away

from a humanitarian approach to one mirroring that of the state itself, as evident from the observations and commentary of the Supreme Court in *Mohammad Salimullah v. Union Courts*, in turn, are constrained to adjudicate within this securitised policy environment, which colours how they interpret constitutional protections and international norms.

4. UNHCR's Role and Limitations - While UNHCR has continued to process refugee status determination (RSD) for non-neighbouring country asylum seekers including Afghanistan, Sudan, etc., we see a sharp decline in its numbers, and with the recent cuts to its funding, its capacity has continued to decline resulting in a large backlog of unprocessed claims as well as a credible fear that it may see a curtailing of its mandate itself. However, its role has always been fragile and dependent on executive tolerance. Indian authorities have never formally recognised UNHCR's mandate decisions as conferring legal status, treating them instead as advisory. The Ministry of Home Affairs retains the discretion to issue or deny visas and deportation orders, and the courts have repeatedly affirmed this executive control, as seen in *Salimullah* and *Dongh Lian Kham*. With increasing securitisation of refugee policy, UNHCR's space has narrowed. Security agencies frequently portray refugee inflows as threats to internal security or demographic stability, especially in border states like Jammu & Kashmir and Assam. This has reduced the practical utility of UNHCR-issued refugee cards, as local police and FRROs often disregard them. The Manipur High Court in *Haksar*, by directing safe passage to Delhi for UNHCR processing, implicitly recognised both the organisation's limited reach and the risks of leaving RSD solely to executive discretion at the borders. However, now, with funding cuts and capacity reductions, UNHCR's ability to play even this limited role is under strain. Registration backlogs have increased, RSD interviews are delayed, and avenues for durable solutions like resettlement are shrinking. This erodes asylum seekers' already fragile protection and further entrenches dependence on executive discretion. The cuts also reduce UNHCR's ability to coordinate with civil society organisations that provide legal aid and humanitarian support, weakening the overall refugee protection ecosystem in India.

6. Digitalization and Surveillance - One of the most prominent tools is the Foreigners Regional Registration Office (FRRO) online platform, through which foreign nationals, including refugees, must apply for visa renewals, residential permits, and exit permissions. While digitisation is intended to streamline processes, in practice it has created new procedural barriers: asylum seekers often lack digital literacy, access to internet facilities, or the documentation required to complete online applications. Moreover, errors in the system or arbitrary rejections are difficult to challenge, as there is no statutory appeals mechanism. Alongside administrative digitalisation, India has expanded its biometric surveillance regime. There has been an uptake in the use of Aadhaar, biometric data, and surveillance for refugee management, particularly around the northeastern borders; this has been complemented by the government's push to fence previously open borders. This has raised fresh concerns about potential infringement on privacy and freedom of movement, especially in camps or detention centres. Refugees from Myanmar, Afghanistan, and elsewhere have also reported difficulties in accessing basic services without Aadhaar, effectively forcing them into a system that enhances state surveillance but provides no legal recognition of their status. The National Population Register (NPR) and the proposed National Register of Citizens (NRC) further exemplify how digitalisation intersects with securitisation. These measures are designed to identify "illegal migrants," and in states like Assam, they have led to large-scale exclusion of individuals, including long-settled communities with contested documentation. Refugees, particularly Rohingya and Bengali-speaking Muslims, face heightened risks of being targeted by such digital exclusion exercises, as they lack official papers to prove lineage or legal entry.

Thus, the intersection of refugee protection with national security, religious identity, and climate displacement (which, while not addressed above, is a major concern in South Asia) will likely shape the next phase of India's asylum policy.

II. IDENTIFICATION OF LEADING DECISIONS

1. **Pushbacks**: *Mohammad Salimullah v. Union of India (SC, 8 Apr 2021 and subsequent orders):* Acknowledged Articles 14/21 extend to non-citizens, but held no constitutional "right not to be deported" since Article 19(1)(e) applies only to citizens. The Court held that India is not bound by *non-refoulement* under the refugee treaty, but the customary international law principle might inform domestic law. It permitted deportations and pushbacks if due process is followed.
   Bhushan/Petition vs. BSF Pushbacks (SC, ~2018–2021): In 2018, human rights advocate Prashant Bhushan filed a petition in the Supreme Court of India on behalf of Rohingya refugees. The petition challenges the Border Security Force (BSF) policy of preventing Rohingya from entering India.[103] While the petition has remained under judicial consideration, but the government has contended that such matters fall under its executive and diplomatic authority, not judicial oversight. The PIL petition evolved into the broader case *Mohammad Salimullah v. Union of India*, still pending as of mid-2025, dealing mainly with non-refoulement, Article 14 & 21 rights, and procedure for deportation.

2. **Detention**: In *Dongh Lian Kham & Anr. v. Union of India*[104]- The petitioners were UNHCR-recognised Chin refugees (Myanmar nationals) residing in India under long-term visas issued via UNHCR. After a drug-related conviction, they completed their jail term and were moved to a detention centre (Sewa Sadan, Narela, Delhi), awaiting deportation. The petition dealt with the question of whether mandated refugees can be detained and deported like other foreigners, and whether prolonged detention beyond the six-month deportation timeframe (as per internal guidelines) violates fundamental rights. The Delhi High Court ordered the release of both petitioners, holding that under internal guidelines, deportation must be completed within six months. Continued detention after that period without deportation arrangements was unjustified. Refugees with valid visas who pose no flight risk can be conditionally released, subject to reporting to immigration authorities
   In *Sabera Khatoon v. Union of India & Ors. (Delhi-HC round) + order of the Supreme Court reviving the petition,*[105] the case was initially in the Delhi HC, but the Supreme Court revived the petition in August 2023 and directed status reports; the final adjudication is pending as of mid-2025. Sabera Khatoon, a Rohingya refugee woman, was detained in a "Sewa Kendra" (a shelter-style detention facility) in Delhi. Her sister, also a Rohingya refugee, who had been left with the care of Sabera's infant, filed the *habeas corpus* petition, arguing that the detention had no clear legal basis under the Foreigners Act or any codified procedure; deportation had not been initiated or finalized; the conditions in detention were inadequate and violated basic constitutional rights. She was reportedly classified as a "foreigner" under the Foreigners Act, 1946, but no order of deportation or judicial custody was produced. The lack of clarity in the legal process and extended confinement without a deportation roadmap formed the core grievance. The Delhi HC noted the *lack of transparency* around the conditions in which the detainee was being held. The Court ordered a joint inspection by the Delhi Urban Shelter Improvement Board (DUSIB) and FRRO, and instructed the Union to file a status report. However, the HC dismissed the petition primarily on procedural grounds without ruling on the substantive legality of the detention. The High Court held that since the detainee was classified as a "foreigner" under the Foreigners Act, 1946, and no deportation order had yet been issued, the detention could not be considered illegal *per se* at that stage. It viewed the matter as a routine immigration enforcement action within the executive's domain. Subsequently, the Supreme Court revived the case, holding that the High Court was incorrect in disposing of the matter without ruling on the legality of detention. It held that serious constitutional issues remained unaddressed, especially regarding procedural fairness, conditions of detention, and the rights of refugee mothers and children. The Court accepted the sister's locus standi and directed that detailed affidavits be submitted by the Government.

[103] https://indianexpress.com/article/india/bsf-pushing-back-refugees-at-border-rohingya-tell-supreme-court-5046788
[104] W.P. (Crl.) 1884/2015, *Delhi High Court*, 21 Dec 2015

3. **Procedural barriers**: In *Mohammad Salimullah & Anr. v. Union of India*, W.P. (C) 793/2017, order dated 8 April 2021, Supreme Court; *Nandita Haksar v. State of Manipur & Ors.,* W.P. (Crl.) 6/2021, order dated 3 May 2021, High Court of Manipur; and *Dongh Lian Kham & Zel Khan Mang v. Union of India,* W.P. (Crl.) 1884/2015, judgment dated 21 December 2015, Delhi High Court. These three cases have been selected because they collectively illustrate how procedural barriers—such as lack of access to legal remedies, denial of refugee status determination, and absence of individualized assessment—compound the risk of deportation for asylum seekers in India. They expose the absence of a statutory asylum framework, reliance on executive discretion, and courts' inconsistent willingness to treat procedural safeguards as integral to the right to life.

A. Description of the barriers in the selected decisions

Formality or informality of the barrier

Pushbacks: In both cases, the barrier of pushbacks against refugees is not formally established in India in the sense of being codified in law or explicitly authorised by statute. India does not have a domestic refugee law, nor has it adopted any legislation or policy framework that openly permits or regulates pushbacks at the border.

However, in practice, pushbacks are informally established through the actions of the Border Security Force (BSF) and other security agencies, which prevent refugees—most prominently Rohingya—from entering India. These actions are generally justified by the government on grounds of sovereignty, security, and the classification of refugees as "illegal migrants" under the Foreigners Act, 1946, and subsequent Ministry of Home Affairs advisories.

The judiciary has indirectly validated such practices. In *Mohammad Salimullah v. Union of India* (2021), the Supreme Court held that non-citizens do not have a constitutional "right not to be deported" and declined to bar the removal of Rohingya despite arguments based on non-refoulement. While the Court did not explicitly endorse pushbacks, its reasoning effectively permits them so long as minimal procedural safeguards are observed. This represents a judicial tolerance of pushbacks as executive action, even if they are not formally legislated.

Detention: The barrier of detention against refugees is formally established in India, though its framework is somewhat fragmented. The Foreigners Act, 1946, provides the legal basis for treating all undocumented persons as "foreigners," authorizing their detention pending deportation. In addition, internal Ministry of Home Affairs (MHA) guidelines provide that foreign nationals can be kept in detention centres while removal is arranged, though these guidelines set a six-month timeframe. Courts have both reinforced and qualified this practice. In *Dongh Lian Kham v. Union of India* (Delhi HC, 2015), the Court recognized detention as lawful but held that confinement beyond six months without progress toward deportation was unconstitutional. Similarly, in *Sabera Khatoon v. Union of India* (Delhi HC/Supreme Court, 2023–25), the judiciary questioned indefinite civil detention in "shelter homes" without a clear legal basis or procedural safeguards. Thus, detention is formally embedded in law and administrative practice, but its scope and duration are increasingly contested.

Procedural barriers: Procedural barriers to accessing asylum in India are both formally and informally established. The absence of a statutory asylum law means that there is no uniform procedure for registration, adjudication, or protection. Instead, the state relies on executive circulars such as the 2017 Ministry of Home Affairs advisory, which directed authorities to treat all Rohingya as "illegal migrants," and the 2021 circular instructing border forces to deny entry. These formal instruments create systemic obstacles by classifying asylum seekers as undocumented foreigners subject to detention or deportation without individualized status assessment. Alongside these formal barriers, informal administrative practices—such as delays in visa renewal, lack of access to UNHCR, or failure to produce detainees before

[105] W.P. (Crl.) 116/2023 (Delhi HC, 9 Feb 2023 interim order) & S.L.P. (Crl.) No. …/2023 (Supreme Court, 22 Aug 2023 order)

a magistrate—compound the difficulty of asserting asylum claims. For example, in *Mohammad Salimullah v. Union of India* (2021), the Supreme Court accepted the government's classification of Rohingya as illegal migrants and refused to consider UNHCR cards as determinative, thereby effectively constitutionalising procedural barriers to asylum. Conversely, in *Nandita Haksar v. State of Manipur* (2021), the High Court recognised the procedural gap and ordered "safe passage" to UNHCR in Delhi, indicating that executive circulars cannot override Article 21. Similarly, in *Dongh Lian Kham v. Union of India* (Delhi HC, 2015), the Court highlighted how bureaucratic inertia in visa extension and deportation timelines unlawfully prolonged detention. Thus, procedural barriers are deeply entrenched in both formal state directives and informal bureaucratic inertia, reinforcing the lack of statutory asylum procedures. Courts have occasionally mitigated these obstacles, but at the national level, the dominant trend is to uphold executive discretion, leaving asylum seekers in a precarious legal space where access to procedures depends on judicial geography and case-specific factors.

Administrative obstacles faced by the applicant(s)

Pushbacks: In the pushback cases (*Mohammad Salimullah v. Union of India* and related petitions), the central administrative delay has been the lack of transparent, codified procedures for recording or processing individuals intercepted at the border. Refugees subject to pushbacks by the Border Security Force were often not even registered, meaning there was no administrative file to contest or review. Where petitions were filed, such as in *Salimullah*, proceedings dragged on for years, with interim orders allowing deportations in the meantime. This reflects a delay rooted in the absence of procedural safeguards and the state's refusal to formalise documentation of arrivals.

Detention: Administrative delays are perhaps most visible in detention cases. In *Dongh Lian Kham*, the petitioners remained in custody beyond their sentences because the government failed to arrange deportation within its own six-month guideline. Files on visa renewals and deportation logistics were left "pending," prolonging detention unlawfully. In *Sabera Khatoon*'s case, detention extended indefinitely without any deportation roadmap, and authorities failed to produce basic reports on conditions. These delays stemmed from inertia in processing deportations and inattention to guidelines, leaving detainees confined with no end in sight. Courts eventually intervened to order release or inspections, but only after prolonged administrative inaction.

Procedural barriers: Across procedural barriers, administrative delay is the defining feature. Refugees face prolonged waits for visa renewals, during which their legal status remains unresolved; slow or incomplete responses to court-ordered inspections (as in Sabera Khatoon); and indefinite pendency of petitions, such as in *Salimullah*, which has remained in the Supreme Court for years without final resolution. Moreover, the lack of a statutory asylum framework forces reliance on ad hoc circulars, so every step — from detention to deportation to UNHCR referral — becomes subject to bureaucratic drift. These delays not only extend uncertainty but also function as barriers in themselves, deterring asylum seekers from asserting claims.

Challenges related to their legal standing or capacity

Pushbacks: In *Mohammad Salimullah v. Union of India*, the applicants were Rohingya detainees themselves, who filed through counsel. The Supreme Court did not raise objections to their standing, implicitly recognising that even non-citizens classified as "illegal migrants" could approach the Court under Article 32 when alleging violation of the right to life under Article 21. This was significant because the state argued that only citizens could claim protection under Article 19(1)(e) (the right to reside and settle). By grounding the matter in Article 21, the Court avoided excluding petitioners on locus grounds. However, the Court's acceptance of standing did not translate into relief; standing was recognised but narrowed, with the substantive claim reframed in terms of national security. Thus, while capacity was not denied, the way standing was framed limited the scope of judicial protection.

Detention: *Dongh Lian Kham* and *Sabera Khatoon* demonstrate varied approaches to standing. In the former, detainees themselves filed habeas corpus petitions, which courts readily admitted, recognising the standing

of non-citizens to contest unlawful deprivation of liberty. In the latter, especially when the detainee was isolated, the petition was filed by a human rights lawyer acting for the primary petitioner, who was the detainee's sister (next-friend). Both HC and SC accepted the locus despite her own refugee status. Indeed, they acknowledged the importance of third-party standing when detainees could not effectively access justice. These cases show that locus was generously construed, but in practice, delays, lack of legal aid, and absence of state-facilitated access meant that recognition of standing often came late, prolonging detention.

Procedural barriers: Challenges arise where procedural barriers leave refugees without documentation; courts often require identity proof, which creates a paradoxical barrier to standing. For instance, those without valid visas or recognised refugee cards face hurdles in substantiating their legal presence, and respondents sometimes argued that undocumented persons had no right to maintain petitions. Courts did not usually dismiss petitions on this ground, but sometimes limited relief to procedural directions (e.g., requiring the state to clarify the legal basis of detention). Standing was routinely accorded, even to next-friends (in *Nandita Haksar* the petition was brought to court by a human rights advocate). Thus, standing was formally granted but practically constrained by the very procedural deficiencies being challenged.

Hearing

Pushbacks: The Supreme Court in *Mohammad Salimullah v. Union of India* (2021 and subsequent orders) heard the matter through counsel, with no direct production of the Rohingya applicants before the Court. Owing to the pandemic, the hearings were conducted in a hybrid format, combining physical appearances and video conferencing. Similarly, in the PIL filed by advocate Prashant Bhushan challenging pushbacks by the Border Security Force, the refugees were not personally produced, and the Court engaged primarily with arguments advanced by counsel. These hearings were largely in person, though later stages also involved virtual components.

Detention: In this, different procedural practices have emerged. In *Dongh Lian Kham & Anr. v. Union of India (Delhi High Court, 2015)*, the petitioners were represented by counsel but were not physically produced in court; hearings were conducted in person, and arguments were fully developed. Similarly, in *Sabera Khatoon v. Union of India & Ors* (Delhi High Court, later revived in the Supreme Court), the detainee herself was not produced. The Delhi High Court heard the matter in person, while the subsequent revival in the Supreme Court took place in a hybrid format, with both physical and virtual appearances by counsel. The Supreme Court even raised the possibility of interacting directly with the detainee through in-camera proceedings, though this was not ultimately carried out.

Procedural barriers: In *Mohammad Salimullah & Anr. v. Union of India (2021),* the Supreme Court conducted hybrid hearings, with lawyers making submissions in person and through video link. The applicants themselves were not present. In *Nandita Haksar v. State of Manipur & Ors.* (2021), the Manipur High Court heard arguments both in person and virtually; here too, the petition was advanced through counsel acting as next friend, and the refugees were not produced before the court. Earlier, in *Dongh Lian Kham & Zel Khan Mang v. Union of India* (Delhi High Court, 2015), the case proceeded through a full in-person merits hearing, with representation by counsel but no direct presence of the petitioners.

Legal aid

Pushbacks: In *Mohammad Salimullah v. Union of India* (Supreme Court, 2021) and the PILs challenging BSF pushbacks, there was no state-sponsored legal aid provided to the Rohingya petitioners. Instead, they were represented by senior human rights advocates such as Prashant Bhushan and Colin Gonsalves on a pro bono basis. The absence of formal legal aid meant that access to the highest court depended entirely on civil society lawyers willing to take up the matter. While this ensured robust representation, it also highlighted systemic inequities: only high-profile refugee groups with NGO backing were able to access the courts, while many others without such support remained excluded.

Detention: In the selected cases, legal aid was not systematically provided by the state. In *Dongh Lian Kham & Anr. v. Union of India* (Delhi HC, 2015) and *Sabera Khatoon v. Union of India* (Delhi HC and later Supreme Court), representation came through pro bono refugee lawyers and public-interest counsel. The lack of state legal aid meant that challenges to detention were sporadic, dependent on whether lawyers or NGOs took up individual cases. This significantly affected outcomes: while courts sometimes ordered conditional release, there was no consistent oversight or systemic remedy for the arbitrary detention of refugees.

Procedural barriers: The same pattern is evident. In *Salimullah* (2021, Supreme Court), *Haksar* (2021, Manipur High Court), and *Dongh Lian Kham* (2015, Delhi HC), refugees relied on pro bono lawyers, including well-known advocates. There was no institutional or state-backed legal aid provided to asylum seekers. The effect was that these cases reached the higher judiciary only because of exceptional advocacy, leaving the vast majority of refugees unable to challenge procedural hurdles such as denial of registration, visa restrictions, or access to RSD.

Applicant's vulnerability

Pushbacks: In *Mohammad Salimullah v. Union of India* (2021, SC) and the pushback PILs, the applicants were Rohingya refugees, many of whom were women and children. The Court acknowledged their precarious humanitarian situation but did not formally designate them as a vulnerable group in its reasoning. Instead, the Court emphasised national security and citizenship distinctions, holding that Article 19 rights (freedom of movement/residence) were only for citizens. Thus, while vulnerability was visible in pleadings and submissions, it did not materially shift the adjudication, which prioritised executive discretion and security concerns.

Detention: In *Dongh Lian Kham* (2015, Delhi HC) and *Sabera Khatoon* (Delhi HC and SC), courts were presented with facts showing detainees were impoverished refugees and, in some cases, women. High Courts sometimes recognised the humanitarian dimension, ordering conditional release or questioning the legal basis for continued detention. However, the Supreme Court was less willing to foreground vulnerability, often deferring to the executive's powers under the Foreigners Act. Where recognised, vulnerability influenced outcomes by softening detention conditions or allowing release after extended confinement, but it did not generate a consistent doctrine limiting refugee detention.

Procedural barriers: In *Salimullah* (2021, SC), *Haksar* (2021, Manipur HC), and *Dongh Lian Kham* (2015, Delhi HC), vulnerability was argued by counsel but not always taken on board by the courts. The Supreme Court downplayed vulnerability in *Salimullah*, equating refugees with "illegal migrants." By contrast, the Manipur High Court in *Haksar* treated asylum seekers as a distinct vulnerable category deserving special procedural accommodation (safe passage, access to UNHCR). Thus, vulnerability influenced outcomes unevenly: more persuasive in High Courts, less so at the apex level.

B. Impact of the judicial body's decision

Pushbacks: With respect to pushbacks, the Supreme Court's handling of *Mohammad Salimullah v. Union of India* reflects a significant jurisprudential shift. Initially, the Court stressed that such measures could not bypass due process requirements, implicitly recognising the constitutional relevance of non-refoulement principles under Article 21. Yet, in later orders, the Court appeared more willing to accept state actions even where procedural safeguards were weak or absent, thereby diluting earlier protections. The companion petition filed by advocates such as Prashant Bhushan prompted the Court to examine the practice of border pushbacks more squarely, spotlighting the legal and moral implications of denying refugees access to protection. This litigation briefly created space for closer scrutiny of India's obligations under international law, though recent developments suggest a retreat from that trajectory. Although the cases are still pending final adjudication, the Court's interim rulings already carry binding weight and have effectively reshaped the legal framework, marking a provisional but consequential precedent that tilts toward state discretion in managing refugee inflows. The *Bhushan* petition prompted the Supreme Court to examine the practice of border pushbacks more closely, drawing attention to both the legal and ethical dimensions of India's treatment of refugees. It briefly opened space for robust judicial scrutiny of India's

international obligations, although this momentum has since been rolled back in subsequent developments. As the matter remains pending, the Court's interim orders already carry binding force and have effectively shifted the legal landscape, establishing a provisional but significant precedent in favour of state discretion over refugee protection at the border.

Detention: The jurisprudence around detention illustrates the courts' gradual recognition of limits on state power while still leaving wide executive discretion intact. In *Dongh Lian Kham v. Union of India*, the Delhi High Court underlined that individuals who had approached UNHCR should not be held indefinitely without a clear statutory basis, thereby nudging the state to account for international protection claims. Thus, the judgment acknowledges that UNHCR status matters even under the Foreigners Act, asserts that detention beyond six months is illegal, unless deportation is in progress, and emphasises Article 21 protections for refugees and respect for administrative guidelines. It was frequently cited by Delhi HC (2017 onwards) when granting *conditional bail* to long-term detainees; it became the authority for the "six-month rule" and for reading *non-refoulement* into Art. 21 while balancing security[106]. It is also quoted in policy submissions by UNHCR and civil society groups in later Rohingya matters. In *Sabera Khatoon v. Union of India*, the Delhi High Court questioned prolonged incarceration in detention centres, especially where individuals had already served criminal sentences or were pending deportation without clarity on timelines. The subsequent revival of this matter by the Supreme Court shows how unresolved questions around the length and legality of detention remain central to refugee protection. Collectively, these cases have prevented indefinite confinement in some instances, but the absence of a comprehensive legal framework means that outcomes are highly contingent on judicial discretion, leaving asylum seekers vulnerable to inconsistent rulings.

Procedural barriers: Litigation on procedural barriers highlights how the absence of a domestic asylum framework shifts protection into the courts' hands. In *Mohammad Salimullah v. Union of India*, the petitioners sought recognition of their right to be protected from deportation pending determination of refugee status, but the Supreme Court declined to create procedural entitlements beyond what the executive allowed, underscoring the limits of judicial willingness to innovate. By contrast, *Nandita Haksar v. State of Manipur* affirmed asylum seekers' right to approach UNHCR for refugee status determination, holding that state authorities could not block access to this channel. The Delhi High Court in *Dongh Lian Kham v. Union of India* similarly acknowledged the procedural vacuum faced by asylum seekers and pressed the executive to justify restrictions on liberty in the absence of a statutory scheme. The impact of these cases has been uneven: while the Supreme Court has hesitated to fill legislative gaps, High Courts have more boldly recognised access to UNHCR and due process as procedural rights, shaping a fragmented but important jurisprudential landscape.

C. Consistency with previous jurisprudence

Pushbacks: In *Mohammad Salimullah v. Union of India*, the Supreme Court's orders diverged from earlier jurisprudence that had implicitly recognised non-refoulement as part of Article 21 protections. In earlier cases such as *NHRC v. State of Arunachal Pradesh* (1996), the Court was clear that expulsions without due process were unconstitutional. By contrast, in *Salimullah*, the Court shifted toward validating the Ministry of Home Affairs' classification of Rohingya as "illegal migrants," even when procedures for individualised assessment were not guaranteed. This represented a notable departure from the stronger due process orientation of prior rulings. The Bhushan-led pushback petitions briefly realigned with earlier rights-protective reasoning, but subsequent interim orders diluted that position. In May 2025, a related plea by Bhushan and Advocate Colin Gonsalves was rejected, with the Court ruling that non-citizens have no legal right to reside in India, effectively allowing deportations.[107] This marks a significant divergence from prior *Chakma*, *Malvika Karlekar,* and *Nandita Haksar HC* rulings that invoked customary *non-refoulement* under

[106] *Mohammad Anwar v. Union of India & Ors., Delhi High Court W.P. (Crl.) 2457/2019, 3 December 2019*

[107] https://timesofindia.indiatimes.com/india/supreme-court-irked-by-repeated-pils-to-stop-rohingya-deportation/articleshow/121220210.cms

Article 21 even without treaty obligations. Thus, it clearly indicates a shift from the earlier protectionist and humanitarian approach to a more restrictive one, prioritizing executive discretion and sovereignty, while requiring procedural compliance.

Detention: In *Dongh Lian Kham v. Union of India* and *Sabera Khatoon v. Union of India*, the courts' insistence on procedural safeguards and conditional release echoed prior jurisprudence that detention of non-citizens cannot be indefinite or arbitrary. In the former, the Court relied on a lapsed six-month guideline; the national-security angle was seen as minimal, as the drug offence had been served. This line is consistent with earlier rulings, such as *Shahidul Islam*, where the Supreme Court set outer limits on the period of confinement of declared foreigners. The courts have generally maintained continuity in requiring that detention be subject to constitutional scrutiny under Article 21, even as they stop short of recognising a general right to liberty for asylum seekers. Together, the two decisions trace a continuum: from *time-bound release once deportation stalls* (Dongh) to scrutiny of the very necessity and humanity of civil detention (Sabera), indicating that Indian courts—while not striking at the core power to detain—are incrementally raising procedural and humanitarian bars for refugee confinement.

Procedural barriers: In *Salimullah*, *Haksar*, and *Dongh Lian Kham*, courts demonstrated a mixed approach. On one hand, they echoed earlier constitutional jurisprudence by grounding access claims in Article 21 and recognising the locus standi of petitioners. On the other hand, particularly in *Salimullah*, the Court's acceptance of executive determinations without robust scrutiny signalled some departure from the more protective orientation evident in earlier refugee-related decisions like *Ktaer Abbas*. Thus, jurisprudence here has been uneven, reflecting both continuity and divergence.

Reasons and extent of these differences

Pushbacks: The divergence arises primarily between earlier jurisprudence, such as *NHRC v. State of Arunachal Pradesh* (1996), which underscored the constitutional bar against forcible expulsions without due process, and more recent cases like *Mohammad Salimullah v. Union of India* (2021), where the Supreme Court accepted the Ministry of Home Affairs' 2017 advisory classifying Rohingya as "illegal migrants." The shift stems from heightened national security discourse and political sensitivities around migration. While earlier courts interpreted Article 21 broadly to include *non-refoulement*, the recent rulings evaluate the same right in a narrower sense, subordinating it to executive determinations. The divergence lies in how expansively Article 21 is read, and whether international norms like non-refoulement are treated as binding principles or discretionary considerations.

Detention: Divergences within detention jurisprudence arise in how strictly courts apply Article 21 safeguards. In *Dongh Lian Kham and Sabera Khatoon*, High Courts insisted on procedural fairness and conditional release, aligning with earlier protective reasoning. *Sabera Khatoon* procedurally diverges from *Mohd. Salimullah* (2021), which upheld detention & deportation: SC here emphasised due-process & child-welfare over blanket sovereignty. It thus aligns more with the humane-treatment strand in *National Human Rights Commission v. State of Arunachal Pradesh* (1996). However, in other cases, courts have shown deference to executive narratives of national security, limiting scrutiny of detention conditions. The extent of divergence is therefore one of judicial posture: protective in principle, but uneven in practice, particularly when "declared foreigners" are involved. The key interpretive difference is whether detention is treated as a necessary extension of immigration control or as an exception subject to strict proportionality and necessity review.

Procedural Barriers: Cases such as *Salimullah* (SC, 2021), *Haksar (*Manipur HC, 2021), and *Dongh Lian Kham* (Delhi HC, 2015) can at best be described as a spectrum. Divergences turn on whether procedural access is framed as a constitutional entitlement or as an administrative concession. The Supreme Court in *Salimullah* allowed executive discretion to prevail, while High Courts in *Haksar* and *Dongh Lian Kham* interpreted Article 21 and habeas corpus jurisdiction more expansively to secure due process rights. The differences stem from judicial level (apex vs. high court), political context, and willingness to integrate international norms into domestic reasoning.

Divergence establishing binding precedent

Pushbacks: In *Mohammad Salimullah v. Union of India* (Supreme Court, 2021), the interim orders came from the apex court, which ordinarily binds all lower courts under Article 141 of the Constitution. However, because the case remains pending and the rulings were in the form of interim directions rather than a final judgment, their precedential weight is somewhat limited but still binding in practice. High Courts and first-instance bodies must follow the Supreme Court's approach unless a larger Bench overrules it. Thus, the divergence toward a more security-oriented interpretation of Article 21 has, for the time being, crystallised into a binding framework.

Detention: Here, divergences occur between High Courts (e.g., *Dongh Lian Kham*, *Sabera Khatoon*) and the Supreme Court. High Court rulings bind only within their territorial jurisdiction and can be contradicted by other High Courts. When the Supreme Court issues directions on detention (such as limiting the duration of confinement under the Foreigners Act), these are binding nationally. Thus, while High Courts may develop progressive interpretations of detention safeguards, any subsequent Supreme Court order narrowing protections overrides them and establishes the controlling precedent.

Procedural Barriers: The conflicting approaches between High Courts (*Haksar*, *Dongh Lian Kham*) and the Supreme Court (*Salimullah*) mean that the latter's narrower approach technically binds all lower courts under Article 141. However, High Court decisions in their own jurisdictions continue to provide openings for procedural rights-based claims. In practice, this creates a fragmented precedent landscape: binding national guidance from the Supreme Court, but with pockets of progressive rulings at the High Court level.

The decision aligns with or differs from resolutions on similar barriers

Pushbacks: The *Salimullah* case (Supreme Court, 2021) aligns with a security-first approach adopted in earlier refugee jurisprudence, where the Court prioritised sovereignty over international refugee protection. However, it diverges from High Court approaches, such as in *Nandita Haksar*, which recognised *non-refoulement* under Article 21 and allowed safe passage to UNHCR. The divergence lies in the framing: the Supreme Court equated deportation and pushbacks with the treatment of "illegal migrants" under domestic law, while the High Court emphasised humanitarian protection and constitutional rights.

Detention: There is an inconsistency across judicial levels. The Gauhati and Delhi High Courts (*Dongh Lian Kham*, *Sabera Khatoon*) emphasised safeguards, proportionality, and non-arbitrariness in detention, diverging from the Supreme Court's narrower interim orders in *Salimullah* that permitted continued detention subject only to minimal procedural oversight. The divergence lies in the weight attached to Article 21: High Courts foreground liberty and procedural fairness, while the Supreme Court accords greater deference to executive discretion under the Foreigners Act.

Procedural barriers: Here, divergences are pronounced. The Delhi High Court in *Dongh Lian Kham* and the Manipur High Court in *Haksar* recognised procedural access rights such as safe passage and access to UNHCR. In contrast, the Supreme Court in *Salimullah* declined to expand procedural protections, framing deportation as primarily a sovereign prerogative. The specific difference is that High Courts interpret Article 21 as encompassing procedural guarantees for asylum seekers, while the Supreme Court has stopped short of embedding such protections in its reasoning.

Evolutive or restrictive approach

Pushbacks: The Supreme Court's handling of *Mohammad Salimullah v. Union of India* (2021) fits into a restrictive trajectory of Indian jurisprudence on asylum. By framing Rohingya as "illegal migrants" and upholding executive discretion to deport or exclude them, the Court reinforced a securitized and sovereignty-first approach. This reflects continuity with earlier restrictive jurisprudence, such as *Louis De Raedt v. Union of India* (1991), where the Court held that foreigners have no fundamental right to reside in India, and state discretion is paramount. Legal scholars (Bhattacharjee 2013; Chimni 2019) have noted that

Indian refugee jurisprudence has historically been reluctant to embed non-refoulement into enforceable domestic law, and *Salimullah* confirms this trend.

Detention: The detention jurisprudence reveals a growing divergence between the Supreme Court and several High Courts. Decisions such as *Dongh Lian Kham* and *Sabera Khatoon* reflect a more evolutive approach, emphasizing Article 21 protections, humane treatment, procedural fairness, and judicial oversight of detention practices affecting asylum seekers and refugees. In *Sabera Khatoon*, the courts recognized that challenges to detention conditions and access to medical care raise distinct constitutional concerns that warrant independent judicial scrutiny, separate from deportation proceedings. By contrast, the Supreme Court's interim order in *Mohammad Salimullah* reflects a more restrictive approach, permitting detention and deportation subject primarily to compliance with statutory procedures under the Foreigners Act and according substantial deference to executive discretion. The divergence lies in the weight accorded to liberty and dignity interests: the High Courts scrutinize detention as a potentially arbitrary interference with Article 21 rights, while the Supreme Court has generally prioritized immigration control and national security considerations. Consequently, detention jurisprudence remains fragmented, reflecting an unresolved tension between constitutional protection of vulnerable non-citizens and the state's sovereign authority to regulate its borders.

Procedural Barriers: Judicial engagement with procedural barriers has been fragmented. The Supreme Court in *Salimullah* declined to expand procedural rights (such as meaningful RSD access or legal aid), aligning with the restrictive approach. In contrast, the Delhi HC (*Dongh Lian Kham*) and Manipur HC (*Haksar*) adopted more evolutive reasoning by safeguarding access to UNHCR and procedural due process. The divergence illustrates a split: the apex Court consolidates restrictive trends, while some High Courts cautiously evolve protections in individual cases. Thus, India's refugee jurisprudence is now effectively bifurcated: there is a more restrictive apex court narrative that UNHCR status is (if that) merely advisory, and national security trumps. On the other hand, there is a more liberal stand amongst High Courts, that procedural fairness and time-bound detention are constitutionally mandated; here, UNHCR RSD is an essential due-process proxy in the absence of a domestic statute. This ambivalence leaves asylum seekers in a precarious space: partial relief depends on geography and the level of court accessed, rather than a coherent national standard. The three decisions examined illustrate a tension between constitutional safeguards and executive imperatives. However, it is important to note that in any case, it is the Supreme Court decision that would prevail.

PART 3: SOCIO-LEGAL FACTORS

I. PROCEDURES IN ASYLUM ACCESS ADJUDICATION

A. Access to judicial or quasi-judicial bodies

Time as a challenge

Pushbacks: Pushbacks happen within minutes or hours of interception, often before individuals can express an intent to seek asylum. Judicial review is rendered impossible because there is no window of time for filing petitions.

Pullbacks: Any coordinated "returns" with neighbouring authorities are immediate and undocumented. The absence of any formal process means there is no time-trigger to approach courts, making review practically impossible.

Walls and fences: These are structural, continuous barriers. The challenge here is not delay in adjudication but the fact that people are permanently prevented from reaching a point where they could engage judicial bodies. Time plays a role in the sense that the longer the barriers remain in place, the more enduring the denial of access becomes.

Detention: Prolonged detention occurs without automatic judicial review. Habeas corpus petitions or bail applications can take months to be heard, rendering the detention effectively indefinite. The lack of defined timelines for deportation can further have a similar impact so that even if the detention is ultimately found unlawful, the passage of time itself causes irreparable harm.

Externalization of asylum processing: Where India shifts responsibility onto UNHCR, individuals experience long delays before registration or Refugee Status Determination. Lack of clear timelines results in people remaining in limbo, unable to approach courts to demand action.

Procedural barriers: Lack of asylum legislation means there are no statutory deadlines for registration, processing, or appeals. Digital barriers (online applications, hearings) create additional delays. By the time a case is listed or heard, removal – or even spontaneous return by the refugee themselves - may already have occurred, nullifying the remedy.

Deportation: Here, orders are often executed quickly. Interim relief from courts requires time (drafting petitions, serving notice, scheduling hearings).

Costs for legal representation

Pushbacks: Pushbacks occur before asylum-seekers can access lawyers at all. The issue is not just cost but the complete absence of opportunity.

Pullbacks: Again, because pullbacks, if any, are informal and undocumented, lawyers cannot intervene.

Walls and fences: Physical barriers mean asylum-seekers never reach Indian territory to hire or be referred to lawyers.

Detention: Here, cost plays a direct and significant role. Filing habeas corpus petitions or bail applications requires legal representation, which is expensive. Most refugees lack funds for sustained litigation. Under the Legal Services Authorities Act, 1987, legal aid is available to persons in custody, women, and persons with low income. In theory, this includes asylum-seekers and refugees in detention. However, detained asylum-seekers are rarely informed that they are eligible for state-funded legal aid. Even where they receive an assigned legal aid lawyer, in practice, legal aid lawyers appointed through District Legal Services Authorities (DLSAs) are overburdened and often lack training in refugee law or human rights standards.

Further, legal aid lawyers typically do not have access to interpreters; asylum-seekers cannot communicate their claims effectively. As a result, legal aid is often perfunctory — lawyers may be assigned but rarely appear proactively to challenge detention conditions or prolonged custody. Without affordable counsel, prolonged detention goes unchallenged; access to courts becomes theoretical.

Externalization of asylum processing: Where India conducts RSD, asylum seekers may have access to legal representation, but there is only one organisation (MAP) in India that UNHCR has authorised to provide this representation, which is far below the need.

Procedural barriers: To challenge the system, refugees must navigate asylum-related petitions (stay against deportation, challenges to Foreigners Tribunals' findings, appeals in High Courts). These processes require sustained, skilled representation that is expensive. While asylum-seekers without Indian citizenship are not explicitly excluded from the Legal Services Authorities Act, as in principle, low-income status and vulnerability should qualify them, the inherent flaws in the system make this notional rather than actual access. Thus, most legal services authorities require proof of identity or income to process a legal aid application — documents that asylum-seekers typically cannot provide. Refugees outside Delhi (where UNHCR is located) find it especially difficult to access specialized pro bono or legal aid support. Adjournments multiply costs even when lawyers are pro bono, since refugees must cover travel, translation, and subsistence expenses. Legal aid panels rarely include lawyers trained in asylum or refugee protection, resulting in weak or misdirected representation.

Other barriers: Deportation orders are usually challenged through writ petitions before the High Courts or the Supreme Court. These require urgent filing, drafting in English, and skilled constitutional law advocacy — all of which are expensive. Emergency petitions often involve additional costs such as interim relief applications, urgent listing fees, and travel to higher courts. Refugees rarely have the financial resources to meet these costs. Under the Legal Services Authorities Act, 1987, any person at risk of losing their liberty or livelihood — especially those below income thresholds, in custody, or women/children — is entitled to free legal aid. In principle, this should extend to asylum-seekers facing deportation. However, since deportation cases are not framed as "criminal" or "custodial" proceedings but as executive measures under the Foreigners Act, 1946, legal aid authorities often fail to recognize the entitlement. Further, legal aid is delivered at the district or state level. Deportation cases often need urgent intervention at the High Court or Supreme Court, where quality legal aid coverage is especially thin.

Spatial and geographical issues

Pushbacks: Pushbacks happen *at the border* or sometimes in no man's land. Once expelled outside India, asylum-seekers are physically outside the jurisdiction of Indian courts and cannot approach them.

Pullbacks: These involve handovers or returns coordinated at or beyond the border, often without documentation. Once outside Indian territory, asylum-seekers cannot file petitions in Indian courts.

Walls and fences: Physical barriers prevent entry into India altogether. Since Indian constitutional protections generally apply within the territory, persons stopped at or outside the fence cannot meaningfully approach courts.

Detention: Detention centres are often in border outposts in remote districts, far from High Courts (e.g., Northeastern borders, Rajasthan). Lawyers, interpreters, and NGOs face logistical and financial obstacles in reaching detainees. Distance delays or prevents filing petitions, and detainees may remain unrepresented for long periods.

Externalization of asylum processing: By shifting asylum processing to UNHCR in Delhi or to third states, access depends on the ability to travel. Refugees outside Delhi (e.g., in border states or detention centres) cannot easily register or seek judicial protection.

Procedural barriers: Again, the lack of a defined asylum framework means that refugees who may not have been reunited with their communities here may have no information about asylum or visa procedures. Refugees in rural areas, camps, or detention centres often lack connectivity. Court appearances may require travel to state capitals, which is expensive and logistically impossible without documents.

Other barriers: Once deported, asylum-seekers are outside India and cannot challenge the deportation in Indian courts, even if the removal violated non-refoulement. Even if a petition is filed on their behalf, the fact of removal makes reinstatement or return almost impossible. Where the refugee is in detention prior to deportation, it is often in a remote outpost, where physical distance delays or complicates access to counsel and representation.

Practices to overcome these challenges

Pushbacks: People are returned across borders almost immediately, outside Indian jurisdiction. Here as refugees are prevented from entering India at all, there is little scope for NGOs or others to take pre-emptive action.

Pullbacks: As above.

Walls and fences: Documentation of violations by NGOs and journalists (photos, testimonies) is used to submit complaints to NHRC or international bodies, since direct judicial access is impossible. Some lawyers file "public interest litigations" (PILs) arguing that denial of entry itself violates the constitutional guarantee of life and liberty if refoulement risk is real. Thus, NGOs such as the Asian Centre for Human Rights (ACHR) and smaller rights groups in the Northeast have documented how border fencing affects both local communities and asylum seekers (esp. Chin and Rohingya). This documentation serves as shadow evidence in litigation and in advocacy with quasi-judicial bodies (e.g., National Human Rights Commission, State Human Rights Commissions). However, courts in India have generally received NGO evidence on walls and fences politely but without granting it decisive weight — especially where it intersects with border security. For instance, in *Assam Sanmilita Mahasangha* (cited above) & related fencing cases, NGOs and lawyers presented reports, affidavits, and testimonies about the human impact of fencing (e.g., displacement of border residents, difficulties for people stranded beyond fences, risk of excluding refugees). The Supreme Court acknowledged these submissions but framed the problem primarily as one of "illegal immigration and national security." It directed the Government of India to expedite fencing and border sealing.[108]

Detention: As mentioned above, detention centres are remote, legal aid is weak, and interpreters are lacking. NGOs (e.g., MAP, Human Rights Law Network) have built pro bono panels to represent detainees and use video-conferencing for court access when travel is impossible. Legal practitioners train local lawyers near detention centres to file habeas petitions and bail applications. However, the NGOs have limited capacity, and far more cases fall through the cracks than can be served by these measures.

Procedural barriers: Complex procedures, adjournments, and digital filing obstacles frequently pose challenges. NGOs and lawyers have attempted to use strategic litigation to push courts to hear matters urgently (seeking interim stays, urgent listings, "out-of-turn" hearings such as in *Salimullah*). However, these cases tend to run for years, with inconsistent rulings from frequently changing judicial panels.

Other barriers: NGOs and lawyers sometimes file pre-emptive writ petitions (anticipatory *habeas corpus* / Article 32 or 226 petitions) once they hear of impending removals, to secure interim stays before deportation can happen. In *Mohammad Salimullah v. Union of India* (2017–2021), NGOs filed in the Supreme Court seeking interim protection for Rohingya refugees in Jammu before deportation, to prevent fait accompli. However, courts are reluctant unless identity and individual risk are clearly documented, which NGOs often struggle to provide at short notice.

[108] Paragraphs 23-26 of the Order

Previously, in October 2018 (following detention since 2012), India deported seven Rohingya men from Assam's Silchar Central Jail to Myanmar. The deportation was carried out after Myanmar "verified" them as citizens, though UN experts and NGOs raised concerns that they would face persecution. NGOs and lawyers tried to intervene through an urgent Article 32 petition on the morning of deportation. This was a practice designed to overcome time and cost barriers by mobilizing quickly at the apex court.

However, the Supreme Court dismissed the plea, holding that since Myanmar had accepted them as citizens, deportation did not violate their rights. The men were handed over at the Moreh border crossing in Manipur, a remote location far from the Supreme Court in Delhi.

B. Legal aid

The availability, quality, and accessibility of legal aid significantly influence asylum seekers' ability to navigate India's legal landscape. While the Legal Services Authorities Act, 1987, mandates free legal aid for those unable to afford counsel, including foreign nationals, the practical application of this provision is fraught with challenges.[109] The lack of effective legal aid in asylum adjudication in India has significant implications for the quality, fairness, and outcomes of decisions. Without competent legal counsel, petitions often fail to comply with procedural requirements (affidavits, identification, framing of claims under Article 21/14). Courts may dismiss cases on technical grounds, such as improper documentation or jurisdictional issues, rather than assessing the merits of the asylum claim. Judges and tribunals often rely heavily on the executive record in the absence of counsel's arguments or submissions, which can lead to detention being upheld without scrutiny of conditions or alternatives, deportation orders being executed without assessing non-refoulement risks, and courts issuing adverse findings due to a lack of contextual evidence on persecution or statelessness. The lack of legal aid also creates a systemic inequity: those who cannot access legal aid or its substitutes, i.e., help from an NGO or other civil society actors —often the poorest, stateless, or geographically remote—bear the brunt of adverse decisions. This contributes to underreporting of claims and absence of precedent-setting cases on asylum in India and reinforces a procedural regime where judicial protection is contingent on NGO mediation rather than universal, rights-based access to counsel.

The absence of skilled legal argumentation also means courts may not fully interpret international standards (e.g., refugee protection, non-refoulement), leading to decisions that prioritize administrative convenience over human rights. Thus, the lack of legal aid undermines both access and quality of justice in asylum adjudication. Decisions are more likely to be procedurally constrained, technically flawed, or biased toward state interests, leaving many asylum seekers effectively unrepresented and unprotected.

Pushbacks: Free legal aid under the Legal Services Authorities Act, 1987, is tied to being in custody or a "person entitled under Section 12" (including foreign nationals who cannot afford representation). However, pushbacks happen at the border before custody/detention is recorded, so no trigger for legal aid arises. Asylum-seekers are returned summarily, meaning legal aid is inapplicable.

Pullbacks: Same as above: legal aid becomes available only upon formal detention. Since pullbacks are often executive actions without detention orders, asylum-seekers never come into the legal aid net.

Walls and fences: There is no direct provision linking fencing with legal aid. In theory, once inside India and in custody or proceedings, asylum-seekers can access legal aid. Those stranded outside or prevented from entry have no locus for Indian legal aid.

Detention: Article 22(1) guarantees the right to consult a lawyer of choice, and the Legal Services Authorities Act, 1987, requires free legal aid for detainees who cannot afford counsel. Legal aid is most clearly available here — District Legal Services Authorities (DLSAs) are mandated to assign lawyers. However, quality is poor: appointed counsel often lack refugee law knowledge and rarely mount

[109] PILnet

substantive asylum-based defences. NGOs (e.g., HRLN) fill the gap, but this is not systemic and is rarely enough.

Externalization of asylum processing: Since there is no statutory asylum system or externalization framework in India, legal aid provisions do not apply outside territorial custody.

Procedural barriers: Asylum-seekers in India could, in principle, seek free legal aid to file writs under Articles 32/226. However, structural barriers (documentation, affidavits, language, digital filing) mean that legal aid in practice is unavailable unless NGOs step in, as legal services authorities do not take up writs proactively.

Other barriers: On paper, once in detention pending deportation, asylum-seekers are entitled to legal aid. However, deportations are carried out swiftly and secretly, often without informing detainees or their counsel (e.g., 2018 deportation of 7 Rohingya from Assam). Thus, even where legal aid exists on paper, in practice, it cannot be mobilized in time.

C. Lodging the appeal

India does not have a formal domestic asylum law or statutory procedure for processing asylum claims. Governmental procedures concerning asylum or refugee recognition are largely opaque, discretionary, and undocumented. There is no official registration or appeal mechanism for decisions regarding entry, detention, or deportation. As a result, asylum seekers facing adverse state action—such as denial of entry, detention, or deportation—cannot formally challenge these decisions through a designated administrative process. This absence of structured procedures constitutes the primary disqualifier for asylum access adjudication in the Indian context.

For asylum seekers under UNHCR's mandate, India provides a parallel, non-governmental procedure. UNHCR registers asylum claims and determines refugee status in accordance with international standards. However, UNHCR decisions cannot be challenged in Indian courts, and the organization lacks enforcement power over the Indian state. While UNHCR may provide documentation and advocacy support, its procedural outcomes are extrinsic to Indian legal remedies, meaning asylum seekers are left without formal recourse if state action conflicts with UNHCR recognition.

Where legal challenges are attempted, asylum seekers rely on constitutional writs (Articles 32 and 226) or habeas corpus petitions in High Courts and the Supreme Court. Filing these appeals involves strict procedural requirements—affidavits, petitions in prescribed formats, and submission to the correct court registry—yet there are no asylum-specific filing protocols, deadlines, or templates. The Limitation Act, 1963, does not apply to writ petitions under Article 226 (High Courts) or Article 32 (Supreme Court) of the Constitution. Instead, the guiding principle is "reasonable promptness", assessed *judicially*, not mechanically. Courts have repeatedly held that no fixed deadline can restrict the filing of writs, especially where fundamental rights are implicated.[110]

However, accessibility is further constrained by the requirement of legal representation, language barriers, lack of documentation, and physical distance from courts, particularly for detainees in remote centres. In detention or deportation cases, the time-sensitive nature of state action often prevents meaningful filing of appeals, with petitions sometimes admitted only after the adverse action has been executed. Although writs under Articles 32 or 226 are technically available, procedural requirements—affidavits, court costs, and formal petitions—are difficult to fulfil without legal assistance or NGO mediation. The cost of accessing writ remedies in India (especially in asylum or migration-related cases) is not high in *absolute* legal terms, but it is functionally prohibitive for refugees, undocumented persons, or those without NGO

[110] *Tilokchand Motichand v. H.B. Munshi*, (1969) 1 SCC 110 — SC held that while delay may be a factor in rejecting a writ, no statutory period of limitation applies. In *Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur*, (1992) 2 SCC 598, the Court reaffirmed that limitation provisions don't apply to writs; the court exercises equitable discretion.

support because of the combined burden of formalities, procedural costs, and representation. Digital filing options are largely inaccessible due to language, literacy, and technological barriers. This option may exist in many High Courts, but they are largely inaccessible to asylum seekers due to limited internet access, digital literacy, and language limitations. Paper filings remain the default, but delays and bureaucratic hurdles—for example, obtaining court dates or securing service of process—compound the difficulties.

In practice, NGOs and legal aid providers play a critical role in assisting asylum seekers to navigate these procedural obstacles. They help prepare petitions, file them in court, and sometimes provide interim representation in detention or deportation cases. Nevertheless, the ad hoc nature of these interventions, coupled with the discretionary and opaque character of governmental procedures, means that asylum seekers' ability to lodge appeals is highly contingent on external support rather than guaranteed by law. In India, the procedural aspects for lodging appeals in asylum access adjudication have profound implications for which cases reach judicial or quasi-judicial bodies and how they are adjudicated. The starting point is the absence of a formal domestic asylum law or statutory appeal mechanism. Governmental procedures concerning entry, detention, or deportation are largely opaque and discretionary, providing no clearly codified route for asylum seekers to file appeals. Parallel procedures under UNHCR exist for status recognition, but UNHCR decisions are non-justiciable in Indian courts, meaning that asylum seekers cannot formally challenge state decisions within the domestic judicial system. Procedural complexity, coupled with rapid executive actions such as deportation, often renders appeals ineffective, even when technically admissible. Where appeals are possible, asylum seekers rely primarily on constitutional remedies, such as writ petitions under Articles 32 and 226 or habeas corpus petitions. While these mechanisms provide a legal avenue in theory, their accessibility is heavily shaped by procedural requirements: petitions must include affidavits, identification documents, and formal pleadings, and must be filed in the correct registry of the relevant High Court or Supreme Court. Delays or errors in fulfilling these requirements can lead to dismissal or non-admission of cases, meaning that procedural factors effectively filter which cases are considered by courts. As a result, only individuals who can navigate these complex procedural hurdles—often with NGO or legal aid support—can secure judicial attention. Thus, procedural requirements and logistical hurdles determine which cases are actually considered by judicial or quasi-judicial bodies, creating a de facto triage based on access and resources rather than the merits of asylum claims.

Divergences are also apparent across forums. High Courts and the Supreme Court may entertain writ petitions with NGO intervention and are comparatively more open to reviewing the substantive legality of state action. However, this dependence on NGOs and specialized lawyers means that judicial review is often available only to those with external support, leaving many asylum seekers without recourse. In contrast, Foreigners Tribunals—mandated to determine nationality—focus narrowly on procedural and evidentiary issues, often excluding refugee protection arguments. Similarly, quasi-judicial bodies such as the National Human Rights Commission (NHRC) can consider complaints and NGO evidence but issue non-binding recommendations, meaning procedural access does not always translate into enforceable relief.

Pushbacks: By their nature, pushbacks and pullbacks occur outside Indian territorial jurisdiction or formal detention. Legally, there is no mechanism for filing appeals against such executive actions. In practice, asylum seekers intercepted at borders are returned before any procedural filing can occur, meaning that appeals cannot be lodged and access to judicial review is effectively foreclosed. NGOs may document incidents or file PILs on behalf of groups, but individual asylum seekers rarely benefit from these interventions.

Pullbacks: As above

Walls and fences: Physical barriers impede access to courts. Even if an asylum seeker crosses into India, those stranded near or outside border infrastructure face practical challenges in reaching High Courts to file petitions.

Detention: In practice, however, filing an appeal from detention is highly constrained. Many detainees are unaware of their rights or the procedural requirements, including the need for affidavits, identification, and formal petition formats. Assigned legal aid counsel often lack specialized knowledge in refugee law, limiting their ability to frame effective arguments. Physical remoteness of detention centres—such as in Assam, Jammu, or Tripura—adds logistical barriers for both asylum seekers and lawyers, delaying filing or court appearances. In principle, the right to seek a writ of *habeas corpus* under Article 32 (Supreme Court) or Article 226 (High Courts) can be exercised at any time while the unlawful detention continues. Since illegal detention is a continuing wrong, courts generally entertain such petitions even after a delay, so long as the person remains in custody or detention.

NGOs and specialized legal aid organizations, such as HRLN or MAP, frequently intervene to prepare petitions, gather documentation, and coordinate court submissions, effectively bridging the gap between statutory entitlement and practical access. Nonetheless, the combination of secrecy around detention, limited procedural guidance, and resource constraints means that many asylum seekers are unable to lodge timely and effective appeals, resulting in judicial review being accessible only to a subset of detainees with NGO support.

Externalization of asylum processing: When the state prevents entry or pressures neighbouring states to take back asylum seekers, these individuals remain outside Indian jurisdiction. Legally, there is no mechanism to appeal such externalization, and UNHCR procedures, while available, are non-justiciable. Consequently, asylum seekers have no procedural avenue to lodge an appeal, and the timing and secrecy of such actions preclude remedial interventions.

Procedural barriers: Even within Indian territory, structural procedural requirements complicate the filing of appeals. Legal documentation, identification papers, and affidavits are prerequisites for petitions, yet many asylum seekers cannot access these due to displacement or statelessness. In practice, NGOs assist with drafting and filing petitions, but asylum seekers remain dependent on external intermediaries, highlighting the discrepancy between procedural law and practical accessibility. Language barriers and unfamiliarity with court procedures further impede the filing process.

Other barriers: Deportation orders are executed swiftly, often without notice to the asylum seeker. Although legal aid is available for those in custody, the speed and secrecy of deportations frequently render filing of appeals ineffective. Courts may issue interim relief in some cases, but once deportation is complete, petitions become infructuous, demonstrating the limits of procedural access in practice.

D. Hearing

In India, the procedural aspects for lodging appeals in asylum access adjudication have profound implications for which cases reach judicial or quasi-judicial bodies and how they are adjudicated. The starting point is the absence of a formal domestic asylum law or statutory appeal mechanism. Governmental procedures concerning entry, detention, or deportation are largely opaque and discretionary, providing no clearly codified route for asylum seekers to file appeals. Parallel procedures under UNHCR exist for status recognition, but UNHCR decisions are non-justiciable in Indian courts, meaning that asylum seekers cannot formally challenge state decisions within the domestic judicial system. Procedural complexity, coupled with rapid executive actions such as deportation, often renders appeals ineffective, even when technically admissible.

Where appeals are possible, asylum seekers rely primarily on constitutional remedies, such as writ petitions under Articles 32 and 226 or habeas corpus petitions. While these mechanisms provide a legal avenue in theory, their accessibility is heavily shaped by procedural requirements: petitions must include affidavits,

identification documents, and formal pleadings, and must be filed in the correct registry of the relevant High Court or Supreme Court. Delays or errors in fulfilling these requirements can lead to dismissal or non-admission of cases, meaning that procedural factors effectively filter which cases are considered by courts. As a result, only individuals who can navigate these complex procedural hurdles—often with NGO or legal aid support—can secure judicial attention. Thus, procedural requirements and logistical hurdles determine which cases are actually considered by judicial or quasi-judicial bodies, creating a de facto triage based on access and resources rather than the merits of asylum claims.

Detention cases illustrate this dynamic clearly. Legally, detainees are entitled to challenge their detention through habeas corpus petitions and to access free legal aid under the Legal Services Authorities Act, 1987. In practice, however, constraints such as limited awareness of rights, physical remoteness of detention centres, secrecy in detention and deportation, and inadequate counsel specialization frequently prevent timely or effective filing of appeals. Consequently, only a fraction of detention cases reaches High Courts, creating a systemic bias in case consideration.

Divergences are also apparent across forums. High Courts and the Supreme Court may entertain writ petitions with NGO intervention and are comparatively more open to reviewing the substantive legality of state action. However, this dependence on NGOs and specialized lawyers means that judicial review is often available only to those with external support, leaving many asylum seekers without recourse. In contrast, Foreigners Tribunals—mandated to determine nationality—focus narrowly on procedural and evidentiary issues, often excluding refugee protection arguments. Similarly, quasi-judicial bodies such as the National Human Rights Commission (NHRC) can consider complaints and NGO evidence but issue non-binding recommendations, meaning procedural access does not always translate into enforceable relief.

Other barriers, such as pushbacks, pullbacks, walls/fences, and externalization of asylum processing, underscore the procedural limitations. Asylum seekers affected by these barriers are often unable to physically access courts or fulfil procedural requirements in time. Even where NGO assistance is available, the speed and secrecy of executive actions frequently preclude meaningful filing of appeals.

Pushbacks and Pullbacks - There is no formal procedure or legal requirement for a hearing in cases of pushbacks or pullbacks, as these actions often occur extraterritorially or at the border. Indian law does not mandate judicial oversight before such removals. In practice, asylum seekers rarely, if ever, participate in hearings prior to return. NGOs may document incidents or file PILs, but these are ex post facto interventions and do not constitute formal hearings.

Walls and Fences - Entry barriers are executive actions; there is no statutory requirement for hearings regarding access at physical border infrastructures. No oral or written hearing is provided for asylum seekers physically blocked at walls or fences. Judicial review, if initiated via PIL, involves lawyers or NGOs representing affected populations, but asylum seekers themselves rarely participate directly.

Detention - Asylum seekers detained under the Foreigners Act, 1946 can challenge detention through habeas corpus petitions. Courts are required to review the legality of detention, which typically involves a hearing. However, hearings tend to focus narrowly on the lawfulness of detention rather than the merits of the asylum claim. Single judge benches usually review the petition; hearings are generally in-person and oral, though some digital hearings have been conducted recently. Appellants may participate directly or through counsel, presenting evidence or arguments. Hearings are generally open to the public, but sensitive cases (e.g., involving national security) may be heard in camera. However, remote detention centres and limited access to legal counsel often delay or restrict the asylum seeker's participation and NGO or legal aid representatives frequently appear in place of the detainee.

Externalization of Asylum Processing - No domestic law governs procedural hearings for cases where asylum seekers are denied entry or returned through third-country arrangements. Asylum seekers are

typically unaware of executive decisions. UNHCR procedures, while providing interviews for status determination, cannot be challenged in Indian courts, and participation in any Indian judicial process is therefore unavailable.

Procedural Barriers - General constitutional remedies (writ petitions) provide for a hearing before a court decides on admissibility and relief. High Court or Supreme Court hearings are typically oral and in-person, conducted by single judges or benches depending on case complexity. Appellants participate through legal counsel; direct participation is possible but uncommon. Courts have discretion to allow NGOs or amici curiae to present submissions. However, in practice, language barriers, limited awareness, and procedural complexity reduce meaningful participation. Courts may schedule intermittent hearings over weeks or months, delaying effective adjudication.

Other barriers – Deportation - Asylum seekers facing deportation can, in principle, file writs or *habeas corpus* petitions. Courts may schedule hearings to decide on interim relief. High Courts typically hear petitions orally and in-person, sometimes on an urgent basis. Remote locations of detention and lack of rapid access to courts mean appellants often cannot attend the hearing personally. Single judges review the petition; appellants participate through counsel. In exceptional cases, hearings may be conducted *ex parte* if time-sensitive. However, practically speaking, deportation is often executed swiftly, limiting the possibility of scheduling a hearing before removal. Interim orders are sometimes granted after intervention by NGOs or UNHCR documentation, but these are rare.

Thus, hearing modalities vary by barrier: detention and deportation provide formal avenues for hearings; pushbacks, pullbacks, walls, and externalization do not. While law often allows oral participation and counsel representation, geography, secrecy, rapid executive action, and procedural complexity frequently limit actual participation. NGO intervention becomes critical to bridge this gap**.**

E. Deliberation

In India, deliberation in asylum access adjudication occurs primarily within judicial forums, as there is no formal domestic asylum law or structured administrative procedure for asylum claims. Governmental procedures regarding entry, detention, or deportation are largely opaque and discretionary, and there is no statutory appeal process. UNHCR conducts parallel refugee status determination, but its decisions are non-justiciable in Indian courts, leaving asylum seekers without formal recourse in state adjudication.

In terms of single-judge vs. panel deliberation, High Courts and the Supreme Court handle writ petitions and habeas corpus applications related to asylum matters. In the former, most such cases are adjudicated by single-judge benches, in keeping with the convention that routine matters, less complex constitutional issues, or individual petitions are assigned to single judges to ensure timely disposal, which typically focus on procedural legality rather than the substantive merits of refugee protection. For example, in *Sabera Khatun v. Union of India*, a habeas corpus petition challenged the detention of Rohingya in Delhi. The single-judge bench concentrated on the legality of detention and the maintainability of the petition, illustrating how procedural deliberation can circumscribe the scope of judicial review. In the Supreme Court however, single-judge benches are rarely used, and if so, generally only for ministerial or administrative matters, not substantive constitutional or asylum issues. Most petitions challenging state action or involving constitutional questions are heard by two- or three-judge benches.

Larger benches may be convened for substantial questions of law under Articles 141 or 142, or where there is a need to harmonize conflicting precedents. Thus, multi-judge benches, as seen in *Mohammad Salimullah v. Union of India,* allow for broader deliberation. Cases involving novel questions of law, constitutional interpretation, or where precedent may be required are referred to a division bench (two judges). In *Salimullah's* case, a three-judge bench of the Supreme Court reviewed the potential deportation of Rohingya refugees, considering constitutional rights and international norms, including non-refoulement. The panel deliberation permitted more comprehensive reasoning, highlighting the potential

for multi-judge forums to expand the scope of protection, although such benches are rarely convened for first-instance asylum petitions.

Foreigners Tribunals, which assess nationality, deliberate as single-member panels and focus on documentary evidence. Similarly, bodies like the NHRC may undertake deliberation through internal committees or consultations with experts, but their conclusions are advisory, not binding, and thus procedural access does not always result in enforceable relief.

Practical Implications of Deliberation Procedures

1. **Scope of Analysis:** Single-judge deliberation, common at the High Court level, often limits consideration to procedural legality—detention, deportation, or maintainability of the petition—rather than the substantive merits of the asylum claim, as illustrated in *Sabera Khatun*. Multi-judge panels, such as in *Salimullah*, allow more extensive assessment of human rights norms and constitutional protections.
2. **Consistency and Predictability:** Reliance on single-judge benches introduces variability in decisions. Appellants with similar circumstances may receive different outcomes depending on the bench's interpretation of procedural fairness, while panel deliberations enhance consistency but remain exceptional.
3. **Influence on Remedies:** Because deliberation is predominantly procedural, relief is typically interim, such as stays on deportation or temporary release from detention. In *Dong Lian Kham,* the Delhi High Court's focus on nationality documentation constrained relief to the procedural question of lawful status rather than substantive refugee protection.
4. **Barrier-Specific Considerations:** Procedural deliberation interacts with barriers differently. Detention and deportation trigger formal hearings and deliberation, allowing some opportunity for judicial review. Pushbacks, pullbacks, walls, and externalization of processing often preclude deliberation entirely, as asylum seekers are outside Indian jurisdiction or removed before petitions can be filed.

Thus, the procedural architecture of deliberation in Indian asylum adjudication shapes both access to justice and the substance of decisions. Single-judge hearings predominate at the High Court level, narrowing focus to procedural legality, while panel deliberation, though rare, enables broader human rights reasoning. Quasi-judicial forums, including tribunals and commissions, offer limited deliberation that is largely documentary or advisory, without binding effect. Cases such as *Sabera Khatun, Mohammad Salimullah,* and *Dong Lian Kham* exemplify how procedural aspects—bench composition, forum, and mandate—directly influence the scope, depth, and enforceability of decisions, underscoring systemic discrepancies between procedural law and its practice in Indian asylum adjudication.

F. Review of decisions

While judicial and quasi-judicial review is formally available in detention and deportation scenarios, in practice it is undermined by remoteness, lack of legal aid, absence of formal orders, and sudden execution of state action. For pushbacks, pullbacks, and walls, review is procedurally impossible because asylum seekers never formally "enter" the system. Externalization (via UNHCR) creates an additional gap, since Indian courts do not recognize UNHCR's procedures.

Pushbacks - No explicit provision exists in Indian law for judicial review of pushbacks, as there is no statutory asylum framework. In theory, asylum seekers could file writ petitions (Articles 32 or 226) alleging violation of fundamental rights. Pushbacks happen at or near the border, and asylum seekers are returned before accessing courts. Since no official record of entry is created, filing judicial review is almost impossible. NGOs may file public interest litigations, but such cases rarely succeed as courts defer to sovereign border control powers.

Pullbacks - As with pushbacks, there is no specific legal mechanism to review pullbacks (interceptions inside Indian territory followed by removal). Technically, detainees could challenge deportation via habeas corpus. Pullbacks usually occur without a formal order; hence, there is no decision to appeal. Detainees are often sent back swiftly. Habeas corpus petitions are only possible if family or NGOs intervene quickly.

Walls and Fences - India's fencing of the Bangladesh and Myanmar borders is a matter of state policy. Challenges could, in theory, be mounted under constitutional writs on grounds of violation of the right to life (Article 21). In practice, asylum seekers are stopped at borders; since they never formally "enter," courts have held they cannot claim protection. Judicial review is thus procedurally blocked at the threshold.

Detention - Detainees can seek judicial review of detention under Articles 32 and 226 through habeas corpus petitions. The Code of Criminal Procedure (CrPC) and the Legal Services Authorities Act, 1987 provide for legal representation and free legal aid. No fixed deadline applies to habeas corpus—it can be filed anytime detention is alleged to be illegal, as long as the detention is ongoing. In reality, detainees often lack information, documents, or access to lawyers. Detention centres in Assam, Tripura, or Jammu are remote, making access to courts difficult. Legal aid lawyers are assigned but rarely trained in refugee law. Habeas corpus petitions, as in *Sabera Khatun v. Union of India*, focus narrowly on the procedural legality of detention rather than asylum claims.

Externalization of Asylum Processing - India does not engage in formal externalized processing agreements (e.g., offshore detention). Thus, there is no judicial review procedure. In practice, India informally "outsources" refugee status determination to UNHCR. Judicial review of UNHCR decisions is unavailable, as Indian courts have held (e.g., *Dong Lian Kham v. Union of India* and more recently in *Salimullah*) that UNHCR recognition has no binding effect domestically. Thus, refugees recognized by UNHCR cannot enforce their status in Indian courts, illustrating a sharp divergence between international procedure and domestic review.

Procedural Barriers - Writ jurisdiction provides a path to challenge the denial of rights. However, filing requires petitions, affidavits, and procedural compliance, but no dedicated asylum procedure exists. Asylum seekers also face barriers such as language, lack of digital literacy, and absence of lawyers. Digital portals for appeals in regular criminal/administrative law are inaccessible to most asylum seekers. Deadlines (such as in Foreigners Tribunal reviews) are frequently missed due to illiteracy or lack of notice. Thus, while the law presumes procedural capacity to file, practice shows systemic exclusion.

Other Barriers – Deportation - Deportation orders can be challenged via writ petitions under Articles 32 and 226. There are no statutory timelines for filing. Representation can be secured through legal aid in theory. Again, though, deportations often occur suddenly and without notice, precluding appeals. In *Mohammad Salimullah v. Union of India*, petitioners challenged proposed deportations of Rohingya, and the Supreme Court deliberated on constitutional protections. However, in other cases like the 2017 deportation of seven Rohingya men, judicial review was absent or came too late[111].

Formally, India's judicial hierarchy means Supreme Court precedents bind all lower courts; High Court decisions bind subordinate courts in the State. In theory this produces legal coherence: a leading Supreme Court ruling elaborating principles (e.g., on Article 21 or *non-refoulement*) should channel how lower courts handle detention, deportation and related procedural questions. However, quasi-judicial bodies (Foreigners Tribunals, NHRC) are not part of that hierarchical precedent system: their findings are persuasive or administrative, not binding law. Nevertheless, a clear, well-reasoned higher-court judgment

[111] Human Rights Watch, October 4, 2018: *"India: 7 Rohingya Deported to Myanmar",* available at https://www.hrw.org/news/2018/10/05/india-7-rohingya-deported-myanmar. Also see Business Standard, October 4, 2018 *"SC refuses to interfere with deportation of seven Rohingyas to Myanmar"*, available at https://www.business-standard.com/article/pti-stories/sc-refuses-to-interfere-with-deportation-of-seven-rohingyas-to-myanmar-118100400338_1.html

that engages refugee protection and procedure should generate uniformity and raise the baseline of protection across lower fora.

In practice, several interacting dynamics weaken, distort or localize the top-down effect. Higher-court refugee jurisprudence is sparse and often framed narrowly. Thus, while higher courts have sometimes engaged with asylum-adjacent claims, it is usually within constitutional or administrative law frames (focus on detention law, procedural fairness, locus/maintainability), not as a systematic asylum law. For example, *Mohammad Salimullah* reached higher courts and generated interlocutory protection in places, but it did not produce a detailed, general rulebook on RSD/non-refoulement to be applied uniformly by lower courts, leading to very limited normative influence.

Further, only a small, non-representative subset of asylum matters reach appellate fora — typically those with NGO backing, media attention, or particular factual salience. Because of this selection effect, the higher-court caseload does not reflect ordinary, everyday tribunal-level cases, so the resulting lines of authority are partial and do not cover the full terrain of asylum problems (pushbacks, remote deportations, or undocumented claimants). Further, because victims are outside jurisdiction or removed before a petition can be filed (e.g., the seven Rohingya deported 2017), there is a lack of documented events for higher courts to rule upon and thus nothing to filter down as precedent.

In many lower courts and tribunals (and especially in Foreigners Tribunals), adjudicators treat immigration as an executive domain: questions get decided on documentary thresholds or deference to administrative determinations rather than on broader human-rights reasoning. *Dong Lian Kham* (Delhi HC) illustrates the point: the court acknowledged UNHCR documentation but emphasized domestic legal categories and limits, signalling to lower tribunals that UNHCR recognition does not automatically override immigration rules. As a result, higher-court influence is intermittent and issue-specific — where higher courts have given sustained, principled rulings they do shape lower-level practice; where higher courts have not, lower fora develop divergent practices heavily shaped by administrative norms and local conditions. Further, given that higher courts have not systemically articulated asylum-specific procedures (RSD standards, mandatory screening, periodic review of detention, or a binding *non-refoulement* test), lower courts and tribunals apply a patchwork: some detainees get relief (when NGOs mobilize and a High Court intervenes), many do not. The result is geographic and institutional variation in outcomes.

Against this background, many judicial interventions concentrate on procedural questions (was detention lawful, was due process followed?) rather than on the substantive protection need. This reflects both judicial comfort with constitutional procedure and the limits of the case record. Cases such as *Sabera Khatun* show single-judge focus on maintenance/technicalities rather than building refugee doctrine. While some higher courts have recognized constitutional protections for non-citizens (creating openings for non-refoulement arguments), there is no consistently applied, binding body of law equating UN treaties or UNHCR determinations with domestic relief. As a result, even appellate judgments that urge protection do not create durable, operational procedures for lower courts to apply. Courts—including higher courts—often yield to executive claims of security or public order. Where such claims are invoked (a common pattern in deportation cases), lower courts mirror that deference in the absence of a strong higher-court precedent insists otherwise.

As higher-court pronouncements are interlocutory, narrowly tailored, or confined to exceptional facts (e.g., an emergency interim stay on deportation), they function as case-specific relief rather than doctrinal guidance. Coupled with the fact many cases never get litigated up the chain, systemic change is limited. On the other hand, a binding Supreme Court pronouncement that is clear on procedure (for example, on timelines, need for disclosure, or mandatory judicial review) would compel subordinate courts and administrative bodies to conform, because of uniformly applicable hierarchical obligation and because litigants and NGOs can point to a concrete standard.

G. Procedures in decentralized states

In India, refugees and asylum seekers are treated under the Foreigners Act, 1946 and now the Immigration & Foreigners Act 2025, and allied executive orders, which vest wide discretionary power in the Union government. Immigration and foreign affairs fall under the Union List, so Parliament and the central executive have primary competence. However, procedural aspects of adjudication, detention, and policing are strongly shaped by State governments (police, prisons, law and order are State subjects). High Courts exercise territorial jurisdiction and thus shape access and interpretation regionally. Delhi hosts UNHCR's RSD operations, as a result of which many of its mandate refugees tend to live in the city. Refugees here can lodge claims, access legal aid through NGOs, and file petitions in the Delhi High Court. Courts sometimes recognize UNHCR-issued Refugee Certificates (as in *Dong Lian Khan*), though not as binding. Access to legal representation is comparatively stronger due to more NGO presence. However, in law, UNHCR status has no standing; in practice, Delhi judges occasionally accept it as mitigating against deportation. Outside Delhi however, there are wide variations in the treatment of refugees. In the Northeastern border states that are the entry points for Chin, Kachin, and Rohingya refugees, UNHCR has *no operational access*. High Courts (e.g., Gauhati HC, Manipur HC) have occasionally dismissed petitions summarily, emphasizing executive discretion. Detention and deportation are more aggressively pursued in Manipur, but not in Mizoram. In Jammu & Kashmir, which is politically sensitive territory with enhanced executive control, there is significant Rohingya presence; detention cases are common. The Jammu HC has largely deferred to the Union's position that Rohingyas are "illegal migrants," limiting space for protective procedural innovation. Here, "national security" arguments carry heightened judicial weight compared to Delhi, where courts balance Article 21 more assertively. Tamil refugees in Tamil Nadu are not subject to UNHCR Refugee Status Determination (RSD) or Foreigners Tribunals. Instead, they are governed by a State-administered "camp system" dating back to the 1980s–90s, when successive governments created a parallel welfare-custodial regime for Sri Lankan Tamils. Tamil Nadu's procedures (camp rules, restricted movement) are framed as *administrative policy*, with little judicial scrutiny compared to other states. Tamil refugees rarely access legal representation in relation to their status, because they are not channelled into asylum adjudication in the first place. Legal aid is theoretically available through the Legal Services Authorities Act, but in practice it is accessed only when criminal charges are brought (e.g. for leaving a camp without permission).

Pushbacks – In Delhi this is not relevant (no land border). Refugees who reach Delhi can register with UNHCR; no pushback procedures arise. In the Northeast or Jammu and Kashmir, it is common at the Myanmar and Bangladesh borders. No record of entry created means no possibility of judicial review. High Courts rarely entertain petitions since claimants are physically absent. In Tamil Nadu it has become less relevant in recent years;[112] arrivals by sea are often detained and placed in camps instead of immediate pushback.

Pullbacks – This is rare in Delhi, as refugees are usually documented (by UNHCR) if apprehended. It is more frequent in Assam and the Northeast, where returnees intercepted inside territory are often produced before Foreigners Tribunals; *habeas corpus* petitions are possible but limited. In Jammu & Kashmir, pulled back Rohingya are placed in detention pending deportation. In Tamil Nadu, Sri Lankan arrivals are usually "pulled" into camps, treated administratively under State supervision. Judicial review only arises if detention is challenged.

Walls and Fences – Again in Delhi it is not applicable, while in the Northeast, fencing of the Bangladesh border prevents entry but procedural review is absent since no formal "denial" occurs. In J&K there is already a heavily fenced borders, and courts defer to national security; no asylum-related adjudication is

[112] National Herald India, "*15 more Sri Lankan Tamil refugees reach Rameswaram",* 25 April 2022, available at https://www.nationalheraldindia.com/international/15-more-sri-lankan-tamil-refugees-reach-rameswaram

possible. In Tamil Nadu, the sea route makes fences irrelevant. Arrivals are detected by coastal police and placed in camps.

Detention – In Delhi, detained asylum seekers can petition Delhi High Court; NGOs may be able to facilitate access. Courts sometimes consider UNHCR documentation (e.g., *Dong Lian Khan*), though this is becoming more and more tenuous. In Assam / Northeast, detention centres are usually attached to jails. Procedural review is possible but constrained for all the reasons detailed previously; legal aid is weak. In J&K, Rohingya detainees held in Sub-jails; courts have upheld detention on security grounds, with minimal procedural scrutiny. In Tamil Nadu, Sri Lankan refugees are held in "special camps." Detention is preventive and administrative, not criminal. Judicial review is therefore rare; but petitions have sometimes challenged prolonged or indefinite confinement.

Externalization of Asylum Processing – Delhi is the only place where UNHCR conducts RSD. Indian courts have occasionally taken UNHCR recognition into account but treat it as non-binding. In all the other regions, there is no UNHCR access; RSD is unavailable and courts largely ignore UNHCR entirely, though there are exceptions like in *Nandita Haksar v. State of Manipur* (2021), where the Manipur High Court directed safe passage for a group of Myanmar nationals (journalists fleeing after the coup) to travel to Delhi and seek protection with UNHCR. The Court explicitly acknowledged UNHCR's role, even though Indian law does not formally recognize it. This was framed through Article 21 (right to life) and India's international obligations (*non-refoulement*), showing a procedural opening where UNHCR recognition could become relevant.

Procedural Barriers – In Delhi, there is some access to legal aid and NGOs; writ petitions are possible in English-language courts. Still, costs and digital barriers remain. In *Assam / Northeast*, the language and literacy barriers become more severe, and legal aid perfunctory. In *J&K*, strong executive control means "national security" arguments override procedural fairness. Refugees are often not given prior notice before deportation. In Tamil Nadu, camp confinement bypasses adjudication. Refugees cannot lodge asylum claims, so procedural barriers are structural rather than logistical.

Other Barriers – Deportation – Again in Delhi, deportation has been challenged in courts; e.g. *Salimullah* (Rohingya deportations). UNHCR recognition has been occasionally used as evidence, although with varying degrees of success. In *Assam / Northeast*, deportations are more frequent and review is limited to writs; courts usually side with executive. Similar is the case in *J&K*: Courts have upheld deportations, invoking sovereignty and security. There has been very little procedural space for asylum arguments. In Tamil Nadu, on the other hand, deportation of Sri Lankans is rare; instead, indefinite camp confinement is used. Courts defer to administrative policy.

Because India lacks a national asylum statute, procedural access is heavily mediated by territory. Where UNHCR, specialist NGOs, and sympathetic courts are physically present (notably Delhi), asylum seekers have a materially greater chance of registering, securing counsel, and getting interim judicial relief (see *Dong Lian Khan* and aspects of the *Salimullah* litigation). By contrast, in border states (Assam, Manipur, Mizoram, J&K) and places where the state runs ad-hoc administrative regimes (Tamil Nadu camps for Sri Lankan Tamils), procedural realities — detention practices, tribunal structures, policing priorities, lack of UNHCR access — sharply reduce practical access to judicial or quasi-judicial remedies. The territorial distribution therefore produces inequality of protections: the same factual claim can have very different prospects depending on where the person is intercepted or detained.

Procedural differences create a strong filtering effect: only certain types of claims reach courts. Cases that reach higher fora tend to be (i) those with NGO backing or media attention, (ii) where petitioners can physically travel to courts (e.g., from Delhi), or (iii) where there is adequate documentary evidence. This produces a non-representative docket and skews jurisprudence toward the issues that are litigable (detention legality, narrow procedural fairness) rather than the full spectrum of asylum problems (pushbacks, fence denials, secret deportations). The 2017 deportation of seven Rohingya illustrates this —

many removal practices never generate reported litigation because they are executed outside venues where judicial remedies are accessible. Different adjudicative bodies apply different procedural and evidential logics. Foreigners Tribunals in Assam operate on strict documentary and pedigree standards focused on nationality, whereas High Courts and the Supreme Court deal with constitutional writs and may be willing to look at humanitarian indicators or UNHCR material (though they stop short of treating UNHCR recognition as determinative — as in *Dong Lian Khan*). The result is inconsistent outcomes: a UNHCR certificate may be given weight in Delhi or by an activist bench (cf. *Nandita Haksar* in Manipur) but ignored or sidelined in tribunal processes in Assam or in security-sensitive benches in *J&K*. This variability undermines predictability and produces forum-dependent justice. However, as the higher courts have issued only a few substantive, general rulings on asylum (most decisions are interlocutory or confined to specific facts), their ability to generate uniform downstream guidance is weak. Territorial divergence exacerbates this: even where a High Court in one State accepts an argument (e.g., facilitating UNHCR access in *Nandita Haksar*), tribunals or courts elsewhere may not follow. The net effect is fragmented jurisprudence rather than a coherent body of asylum procedure law — lower courts and tribunals continue to rely on local administrative practice and security rationales.

Procedures for assigning counsel and the presence of specialized pro-bono networks vary by territory. Delhi has a denser NGO/legal-aid ecosystem able to prepare urgent writs; the Northeast and *J&K* have far fewer specialist actors and overstretched DLSA panels. Tamil Nadu's administratively managed Sri Lankan camps seldom route residents into asylum litigation at all. This produces geographic inequality in who gets competent legal representation; where representation is absent, cases fail on procedural grounds (missing affidavits, lack of identity evidence), not on merits. Territorial fragmentation allows the executive to exploit procedural gaps: pushbacks and "informal" pullbacks at porous frontiers, deportations executed from remote points (e.g., Moreh), or the use of administrative camps instead of formal asylum procedures (Tamil Nadu). Where courts cannot reliably review such actions, there is reduced administrative accountability and potential for repeat practices that evade judicial scrutiny. The 2017 Rohingya deportations and repeated claims of secret removals exemplify this risk.

Procedural divergence produces uneven protection of the most vulnerable (the remote, the poor, the undocumented). It undermines the rule of law by making remedies contingent on geography and NGOs' capacity, and by allowing different parts of the federation to operationalize migration and protection policy with little national coherence. This fragmentation also complicates monitoring, data collection, and policy development because there is no consistent procedural record across territories.

There are, however, limited upsides: territorial variation can produce jurisprudential experimentation — some benches (e.g., the Manipur High Court in *Nandita Haksar*, and certain Delhi decisions) have been more protective and have paved tactical openings (e.g., facilitating UNHCR access, giving weight to non-refoulement). Such pockets of progressive practice can be used strategically by litigants and NGOs to create persuasive precedents and to nudge administrative reform.

Thus, territorial divergence in procedural aspects is not a technicality — it is a decisive structural factor that defines who can access adjudication, what remedies are realistically available, and whether India's system produces predictable rights protection or a patchwork of local practices. The cases flagged here (e.g., *Mohammad Salimullah*, the 2017 Rohingya deportations, *Dong Lian Khan*, *Sabera Khatun*, *Nandita Haksar*) illustrate both the harms of fragmentation and the limited potential for judicially driven remedial pockets.

H. Influence of procedures in practice and the role of courts

Indian asylum adjudication operates in a non-incorporated, persuasive model. Supranational case law and UN treaty body interpretations have been cited in arguments and occasionally noted in judgments, but they do not bind Indian courts. Their impact has been in shaping judicial rhetoric around procedural safeguards (access to courts, non-refoulement, legal aid) rather than creating enforceable rights. Indian courts occasionally invoke supranational norms but have not expressly imported this jurisprudence into

asylum adjudication. However, in detention-related cases (e.g., Delhi High Court litigation involving Burmese/Myanmar refugees such as *Dong Lian Khan*), petitioners cited ICCPR standards to argue for access to legal counsel. Courts relied instead on constitutional Article 21 and domestic legal aid provisions but the international references shaped the narrative that asylum seekers must not be left unrepresented. While no binding procedural right to state-funded legal aid in asylum cases has emerged, supranational decisions have reinforced NGO and bar association strategies to frame access to counsel as a constitutional minimum standard, in line with global norms.

Courts have occasionally ordered humane treatment or release from arbitrary detention, showing indirect alignment with supranational norms, even without formal incorporation. Courts like the Delhi High Court in *Dong Lian Khan* and the Supreme Court in Rohingya cases have noted UNHCR's role in conducting RSD as relevant for fairness but did not translate supranational standards into enforceable domestic procedures. Thus, the influence of supranational courts remains more discursive than doctrinal: they frame constitutional rights arguments, support interim relief, and justify judicial concern with humane treatment, but they have not established binding procedural requirements like a suspensive right of appeal, compulsory legal aid, or statutory recognition of non-refoulement.

Non-refoulement and UNHCR guidance have been referenced in judicial reasoning, but always as persuasive rather than binding sources. Judges reference UNHCR reports and international non-refoulement norms in reasoning (e.g., to assess risk or the humanitarian context), and NGOs rely on these materials in submissions. The Manipur court's facilitation for UNHCR access is an example of practical uptake. However, in the Rohingya deportation cases, international standards were cited by petitioners and noted by the Court, but the Supreme Court ultimately upheld executive discretion, underscoring the limits of supranational influence in the absence of domestic incorporation. Thus, because India has not codified refugee protections domestically and is not party to the 1951 Convention, supranational decisions do not bind the executive or courts; they function as interpretive aids that may nudge procedural outcomes (e.g., granting interim relief) but cannot substitute for statutory safeguards.

As there is no national asylum statute or codified appeals procedure, there are few formal procedures for Courts to rely on; instead, they rely on constitutional writ jurisdiction, the Foreigners Act, and ad hoc administrative measures. No statute prescribes deadlines, filings, or grounds of appeal in asylum matters. In principle, writ petitions can be lodged at any time against unlawful state action. However, deportations often occur without notice, foreclosing timely petitions. Courts have sometimes entertained urgent late filings (*Mohammad Salimullah*), but in practice, removals at remote borders (pushbacks/pullbacks) happen too quickly for judicial scrutiny. In the vacuum, UNHCR operates a parallel system in Delhi, but its decisions have no legal enforceability in Indian courts (*Dong Lian Kham*). Thus, what counts as "procedure" is largely constructed through litigation and executive practice rather than legislation. In asylum-related cases, hearings are often summary, focused narrowly on nationality verification or executive discretion. In principle, judicial review through High Courts/Supreme Court should be oral, adversarial, and public, with petitioners present through counsel. However, in practice, claimants themselves rarely appear; matters are argued by lawyers, sometimes without the asylum seeker ever being heard. In quasi-judicial fora like Foreigners Tribunals in Assam, hearings tend to be document-heavy, with little scope for oral testimony.

In terms of legal representation, while everyone has a constitutional right to legal aid (Art. 39A, Legal Services Authorities Act), asylum seekers rarely secure competent counsel unless NGOs intervene. In detention or border areas, representation is virtually absent. Where it exists (Delhi), it often comes from NGOs or pro bono lawyers rather than state-provided legal aid. This unevenness directly affects who can challenge deportation or detention in time. As a result of this structural ambiguity, only claimants who can access NGOs and sympathetic courts (usually in Delhi) can realistically litigate. Even here, the same asylum claim may succeed or fail depending on geography, representation, and the bench's openness to UNHCR evidence. With most hearings summary and fact-specific, higher courts have not articulated robust procedural standards, leaving gaps that perpetuate divergence.

The absence of a dedicated asylum law in India has meant that procedural protections for asylum seekers have been shaped almost entirely through the jurisprudence of judicial and quasi-judicial bodies. Courts, particularly the High Courts and the Supreme Court, have incrementally clarified the extent to which non-citizens may access judicial review, while quasi-judicial bodies such as the Foreigners Tribunals and the National Human Rights Commission (NHRC) have provided limited, context-specific procedural interventions. A first strand of jurisprudence has reinforced the availability of judicial review and habeas corpus. In *Mohammad Salimullah v. Union of India* (2017–21), the Supreme Court entertained petitions from Rohingya refugees challenging detention and deportation orders. Although the Court did not recognize refugee status as such, it accepted that Article 21 protections applied to non-citizens and that deportation measures were subject to judicial scrutiny. This line of reasoning has secured a procedural safeguard: asylum seekers may invoke writ jurisdiction to challenge detention or removal, even if substantive refugee status is not recognized.

Second, jurisprudence has produced procedural remedies in the form of interim relief rather than durable status outcomes. In several Rohingya cases, courts issued interim stays on deportation or directed humane treatment in detention, but did not establish binding standards for refugee status determination (RSD) or non-refoulement. As such, judicial interventions often delay removal or improve treatment but stop short of conferring lasting protection.

Third, courts have grappled with the status of UNHCR documentation. In *Dong Lian Kham v. Union of India* (Delhi High Court, 2015), the court acknowledged the petitioner's UNHCR recognition but held that it had no binding effect absent domestic legislation. By contrast, in *Nandita Haksar v. State of Manipur* (2021), the Manipur High Court facilitated safe passage for Myanmar journalists to approach UNHCR in Delhi, explicitly engaging with UNHCR's role. These divergent approaches illustrate procedural uncertainty: UNHCR certificates may be treated as persuasive evidence in some jurisdictions, but they do not carry uniform procedural weight.

Quasi-judicial bodies have contributed differently. Foreigners Tribunals, especially in Assam, interpret their mandate narrowly to assess nationality under the Foreigners Act, largely excluding asylum or UNHCR considerations. Their hearings are document-driven and summary in nature, providing little scope for oral testimony or representation. By contrast, the NHRC and state human rights commissions have, on occasion, issued directions to ensure detainees' access to legal aid and humane treatment, though their recommendations are not binding.

The net effect is a patchwork of procedural protections: courts have affirmed access to judicial review, interim relief, and, in some cases, facilitated UNHCR engagement, but there is no coherent, binding procedural regime for asylum adjudication. The outcome of an asylum case often depends less on substantive claims than on geography, representation, and the interpretive posture of the adjudicating body. Despite more liberal interpretations of procedure in some rulings, in practice, procedural protections often collapse at the enforcement stage. Courts frequently defer to executive determinations on nationality and security, with limited insistence on independent assessment or legal aid. For example, while the Delhi High Court in *Dongh Lian Kham* extended protection, lower courts in border states like Assam tend to prioritize expeditious deportations over procedural safeguards.

I. Other procedures

1. **Absence of a Formal Statutory Framework**
    - India has no dedicated refugee law, and asylum adjudication is not codified within the Foreigners Act, 1946 or the Citizenship Act, 1955. Instead, asylum seekers' rights are indirectly mediated through constitutional guarantees (Articles 14, 19, and 21) and executive discretion.

- This creates procedural uncertainty — asylum seekers cannot anticipate clear steps, deadlines, or rights to appeal. Courts may invoke constitutional protections, but outcomes remain ad hoc and inconsistent. The jurisprudence in *Salimullah*, *Nandita Haksar*, and *Dongh Lian Kham* reflects this improvisational quality.

2. **Dual and Parallel Systems of Adjudication**
    - UNHCR runs its own refugee status determination (RSD) process in India, but its decisions cannot be appealed in Indian courts. Conversely, Indian courts may adjudicate deportation or detention challenges without reference to UNHCR findings.
    - This dual system fragments procedural protection. For example, a Rohingya with UNHCR refugee status may still face deportation proceedings in Assam or Jammu, with no guarantee that the court will recognize their UNHCR card. This undermines consistency and predictability.
3. **Identity Documentation and Registration**
    - Registration with UNHCR or local authorities is often the gateway to procedural protection. Lack of documentation leads to classification as "illegal migrants" under the Foreigners Act, which triggers detention and deportation without asylum screening.
    - Procedural access is contingent on identity proof. Refugees unable to register — especially after pushbacks at borders or in detention — are effectively excluded from asylum adjudication processes altogether.
4. **Language and Interpretation**
    - Courts and quasi-judicial bodies rarely provide interpretation for asylum seekers. In *Dongh Lian Kham*, the petitioners' ability to argue their case hinged on NGO and lawyer support, not on institutional provision of interpreters.
    - This creates de facto barriers to participation in hearings, undermining fairness and due process.
5. **Bail and Release Procedures in Detention Contexts**
    - For asylum seekers detained under the Foreigners Act, release depends on courts granting bail. However, bail hearings vary significantly between territories (e.g., more restrictive in Assam, somewhat more lenient in Delhi or Tamil Nadu).
    - Bail conditions also vary across jurisdictions. While courts do sometimes grant bail, the **conditions attached are often onerous and practically impossible for refugees to fulfil**; this could include the amount of surety, reporting requirements, restrictions on movement as well as the condition for having a local as a guarantor.
    - Since bail decisions are discretionary and lack clear asylum-sensitive procedures, detention often extends indefinitely, which weakens the protective role of judicial review.
6. **Time and Delay**
    - No statutory deadlines exist for asylum-related adjudication in India. Appeals, bail applications, and constitutional writs can take months or years.
    - **Implication**: For refugees at risk of deportation, delay effectively denies protection, since deportation may occur before adjudication is complete. This procedural gap is especially visible in *Salimullah*, where the Supreme Court declined to halt deportations while arguments on fundamental rights were pending.

Conclusion: These additional procedural aspects demonstrate that the absence of codified asylum law, combined with fragmented and inconsistent practices, significantly undermines asylum seekers' access to justice. They highlight a systemic reliance on ad hoc judicial intervention and NGO support, which means protections depend heavily on where a case is filed, which lawyer is involved, and which judge presides.

The implication for adjudication in the field is a lack of consistency, predictability, and fairness. Instead of a rights-based system, asylum adjudication in India operates through piecemeal, case-by-case constitutional litigation, producing an uneven patchwork of protections.

II. JUDICIAL BODIES IN ACCESS TO ASYLUM

A. Institutional configuration

The institutional framework for asylum access adjudication in India has evolved over time, but continues to be built around the state's prerogative to regulate the presence of "foreigners." Historically, the *Foreigners Act*, 1946, was the cornerstone of this regime, empowering the government to make orders regarding foreigners' entry, presence, and exit. To operationalize determinations of nationality and status, the *Foreigners (Tribunals) Order,* 1964, created quasi-judicial bodies — popularly known as Foreigners Tribunals[113], a colonial legacy mechanism extended into independent India to police migration (especially in Assam). They are quasi-judicial bodies empowered to determine whether a person is or is not a "foreigner" under the Act.[114] These tribunals became especially significant in Assam following the Assam Accord and the preparation of the National Register of Citizens (NRC). They were tasked with determining whether individuals were "foreigners" under the 1946 Act, often without clear procedural guarantees. Their governance structure placed them under the executive, usually the Ministry of Home Affairs and relevant state home departments. Critics, including the Supreme Court in *Sarbananda Sonowal (2005; 2007)*, noted both their necessity in controlling irregular migration and their procedural shortcomings, including a lack of independence and uneven quality of adjudication.

First instance judicial or quasi-judicial body/bodies: With the enactment of the Immigration and Foreigners Act, 2025, the earlier statutes—including the Foreigners Act, 1946—have been repealed and replaced by a unified immigration framework. The new law consolidates immigration regulation and significantly expands the powers of Foreigners' Tribunals, granting them functions akin to magisterial powers (such as issuing arrest warrants and ordering detention of suspected non-citizens).[115] Further, under the Immigration and Foreigners Order, 2025 (which is framed under section 7 read with sections 3 & 11 of the Act), the Foreigners' Tribunals (formerly under the 1964 Order) are given additional powers such as issuing arrest warrants and sending persons unable to prove Indian nationality to detention or holding centres. In practice, for asylum seekers in India, the UNHCR and the Immigration Bureau/immigration officers at ports of entry serve as the primary "first-instance" actors. However, other than UNHCR, these bodies remain quasi-judicial in character and closely tied to the executive rather than the judiciary. The fundamental structure of adjudication, therefore, remains unchanged: asylum seekers and refugees are primarily filtered through institutions designed to regulate "foreigners" rather than institutions recognizing a right to seek asylum. The system comes under the purview of the Ministry of Home Affairs.

Second instance judicial or quasi-judicial body/bodies: Appeals do not lie to a dedicated appellate tribunal. Instead, asylum-related disputes reach the High Courts through their constitutional writ jurisdiction under Articles 226 and 227 of the Constitution. This makes High Courts the de facto appellate forum for challenging tribunal determinations, deportation orders, or denial of entry. Practice, however, varies widely across jurisdictions: the Gauhati High Court has been deeply involved in NRC-related adjudication; the Madras

[113] Section 3 of the Foreigners Act, 1946, and Foreigners (Tribunals) Order, 1964 (as amended in 2019).
[114] Rahman, T.A., *"An assessment of foreigners tribunals in the Indian state of Assam"* (Statelessness & Citizenship Review, 2020), available at https://statelessnessandcitizenshipreview.com/index.php/journal/article/download/141/67
[115] Section 26 & 27 of the Act

High Court has often dealt with the status of Sri Lankan refugees; and the Delhi High Court has addressed petitions involving UNHCR-recognized refugees. This federal variation highlights the absence of uniform asylum jurisprudence.

Third instance judicial or quasi-judicial body/bodies: The Supreme Court of India acts as the final forum through its appellate jurisdiction under Article 136 and original jurisdiction under Article 32. Its jurisprudence has had profound implications for procedural protections. In *Salimullah (2018)*, the Court declined to restrain the deportation of Rohingya refugees, prioritizing national security over non-refoulement. In contrast, in *Dong Lian Kham (2015)* and *Sabera Khatoon (2020)*, it intervened to stop deportations, thereby acknowledging procedural safeguards and the need for individualized assessment. These cases illustrate the Supreme Court's ambivalence: while reinforcing state sovereignty, it has occasionally opened space for procedural protection in asylum matters.

India's institutional configuration — the mix of courts, quasi-judicial tribunals, commissions, executive bodies, and the UNHCR (parallel actor) — shapes who can test the *legality of barriers to asylum access* (pushbacks, fences, detention, deportation, externalization, procedural obstacles). Thus, the type, governance, and independence of each body affect its ability to scrutinise state conduct in the treatment of asylum seekers and refugees.

Given that the first-instance forum is a quasi-judicial tribunal created and governed by the executive, many barrier-related actions (e.g., determinations of "foreigner" status, summary administrative removals, detention orders) are handled initially in a forum structurally close to the state apparatus. That positioning weakens independent scrutiny at the crucial fact-finding stage: tribunals' mandate is identification (foreigner/not), not protection; they typically apply documentary/evidentiary rules rather than a humanitarian standard. The practical result: *many barriers are validated administratively before a fully independent judicial review is triggered*[116]. For instance, the Foreigners Tribunal model (now preserved and re-configured under the 2025 Act/Order) sits at the frontline in Assam/Northeast; their single-member, document-heavy processes mean nationality issues are decided quickly and with limited procedural safeguards — which directly affects people who may actually be refugees rather than ordinary "foreigners."

Tribunals that are constituted by executive order and administratively linked to the MHA/State Home Departments naturally have weaker institutional independence than regular courts. Thus, there tends to be a deference to executive claims of security/sovereignty (tractable when the executive frames fences, pushbacks or externalization as security measures), and lower institutional capacity to push back against opaque executive practices (e.g., secret deportations, pushbacks at fences) because tribunal members rely on executive records and lack broader investigatory resources. By contrast, when High Courts or the Supreme Court are seized, they can and do take a wider constitutional view (due process, Article 21) and order remedies (stays, directions for humane treatment). But courts are accessed only after the tribunal/administration stage — so independence matters most at the *frontline* where barriers are created.

Because tribunals, police, and prison administrations are local/state-operational actors, the *same* procedural configuration produces *different* results across states. Assam's tribunal-heavy model produces fast nationality adjudication; Tamil Nadu's administrative camp regime for Sri Lankan Tamils yields a different mix of administrative control and almost no RSD. Courts in different High Courts have also developed divergent practices (e.g., Manipur HC's *Nandita Haksar* facilitation vs. more restrictive readings elsewhere). This fragmentation means the legality of a barrier is litigated in different ways depending on where the person is located.

Further, tribunals and administrative actors can act quickly (detentions, removals, pushbacks, fences enforcement). Courts operate more slowly (time to file writs, listing, hearings). That time-lag favours the

[116] See Calcutta Research Group, *Access to Justice for Women under Foreigners Tribunal Act, 1946 in Assam,* available at http://www.mcrg.ac.in/PP148.pdf

executive: removals or pushbacks are often executed before judicial remedy can be secured. Even when courts intervene, remedies tend to be interim (stays) rather than durable status recognition.

With reference to UNHCR as a quasi-judicial body, UNHCR conducts RSD and issues refugee recognition; in practice, this is critical evidence of protection need. However, UNHCR decisions are not legally enforceable in India. Indian courts have treated UNHCR material as persuasive but not binding: *Dong Lian Kham* recognized UNHCR recognition as relevant but not determinative, while other benches have used UNHCR outputs to justify interim measures or safe passage (*Nandita Haksar*). The upshot: where UNHCR is present (primarily Delhi), claimants have better access to persuasive documentary leverage; elsewhere, UNHCR's absence means no parallel procedural safety net.

Power/competences of the judicial bodies responsible for asylum access adjudication

First instance bodies: UNHCR and the Immigration Bureau/immigration officers at ports of entry serve as the primary "first-instance" actors. The Foreigners Tribunals (1964 Order) and now the Immigration & Foreigners Tribunals (2025 Act/Order) apply in the context of NRC, and usually only in limited geographical jurisdictions like the state of Assam. UNHCR India conducts Refugee Status Determination (RSD) interviews and issues recognition or rejection letters. For the populations it is mandated to serve, it decides on the merits of asylum claims according to refugee protection criteria. It can recommend protective measures, such as preventing refoulement, and issue facilitation letters. However, it cannot enforce its decisions in Indian courts; its recognition is persuasive evidence rather than binding.

The Immigration Bureau / Officers at entry points register arrivals, may detain or deny entry, and refer cases for RSD or deportation. Its decisions are binding operationally (e.g., detention or refusal to allow entry), but reviewable via High Court writs.

Second Instance: this basically refers to High Courts, which are Constitutional courts (Articles 226/227) reviewing executive or UNHCR-linked actions (though not the RSD decision itself). The High Court can review the legality, procedural correctness, and limited merits of first-instance decisions. It can stay deportations, order release from detention, or mandate reconsideration. Its decisions are binding on immigration officers and administrative bodies at the state or central level. Thus, it serves as the first real independent check on executive or quasi-judicial first-instance decisions.

Third Instance: The Supreme Court is the highest appellate and constitutional review authority. It can examine both on merits and law, including protection of fundamental rights, and can remand cases to High Courts or administrative bodies, issue declaratory relief, or prescribe procedural safeguards. Its decision is binding on all lower bodies (immigration, UNHCR-recognized claimants, and High Courts). It also shapes overall procedural standards for asylum adjudication, e.g., recognition of UNHCR documents as persuasive, and procedural safeguards for detainees.

In practice, First-instance actors (UNHCR / immigration) dominate practical access to asylum: delays, denial, or discretionary barriers can prevent claims from reaching courts.

Implications of the available types of remedies on asylum access adjudication

First instance: UNHCR and Immigration Officers

UNHCR conducts RSD interviews to assess asylum claims. While UNHCR's decisions are not legally binding within India, they carry significant weight in influencing subsequent legal proceedings. The remedies available to asylum seekers at this stage are limited. While UNHCR provides an initial assessment, the absence of a dedicated legal framework in India means that there is no guaranteed judicial scrutiny of UNHCR's decisions. At this stage, its decisions are largely administrative and persuasive. UNHCR's recognition does not bind Indian authorities but carries weight in courts, as seen in Nandita Haksar. UNHCR can also recommend protective measures, such as preventing refoulement, and issue facilitation letters to support asylum seekers in accessing legal processes. UNHCR's decisions can shape the trajectory

of an asylum seeker's case, especially when Indian authorities defer to UNHCR's expertise. However, the lack of binding authority means that Indian courts and immigration officers are not compelled to follow UNHCR's determinations.

Immigration officers have the authority to detain individuals and even to refer them for RSD to UNHCR. They can also decide on the admissibility of asylum seekers, who may enter without appropriate travel documentation, at ports of entry. They therefore hold significant discretion in the initial stages of status processing. Their decisions can determine whether an individual is allowed to remain in the country pending RSD or is detained. However, the remedies available at this stage are administrative. Judicial oversight is limited, and individuals may face challenges in contesting decisions promptly.

Second instance: High Courts

Under Articles 226 and 227 of the Indian Constitution, individuals can approach High Courts through writ petitions challenging unlawful detention or denial of entry. The availability of writ petitions provides a mechanism for judicial scrutiny, ensuring that decisions affecting asylum seekers are made within the bounds of the law and respect for human rights. By granting stays or directing re-examination of cases, High Courts limit executive discretion and enhance procedural safeguards. The Courts can grant interim relief, such as stays on deportation, to ensure that individuals are not returned to countries where they face persecution. In doing so, they can serve as a critical check on the actions of immigration officers and to an extent, on UNHCR determinations. Their ability to grant interim relief and issue directions ensures that executive actions are subject to judicial review. However, disparities exist across jurisdictions: courts in Assam have been more hesitant to rely on UNHCR documents, while Delhi and Tamil Nadu courts often consider them persuasive.

Third instance: Supreme Court

The Supreme Court holds the ultimate authority in interpreting constitutional and international human rights obligations. As a last resort, individuals can file curative petitions in the Supreme Court to address gross miscarriages of justice. NGOs and other entities can also file PILs to address systemic issues affecting asylum seekers, leading to broader legal reforms. The remedies available at this stage ensure the highest level of scrutiny. The Court's ability to issue binding directions and its role in shaping public policy underscore its pivotal role in asylum access adjudication.

B. Independence

The Indian Constitution provides for the independence of the judiciary, but the absence of a dedicated refugee law means that the independence of bodies involved in asylum adjudication is not explicitly guaranteed by law. Their authority and functioning are subject to the discretion of the executive, potentially undermining the consistency and fairness of asylum procedures.

Therefore, the independence of bodies responsible for asylum access adjudication is not fully guaranteed by formal legal provisions, highlighting the need for comprehensive legislative reform to ensure the protection of asylum seekers' rights.

a. UNHCR: While India is not a signatory to the 1951 Refugee Convention, the UNHCR continues its work in India to support refugees, particularly from Myanmar and Afghanistan, in coordination with the Indian government and partner organizations. UNHCR's role is quasi-judicial in nature, as it conducts Refugee Status Determination (RSD) interviews and makes recommendations. However, its decisions are not legally binding within India, and their implementation depends on the cooperation of Indian authorities.

b. Supreme Court and High Courts:

- **Article 124**: Establishes the Supreme Court of India, outlining its composition and powers. It ensures that judges of the Supreme Court are appointed by the President, following a collegium system, which aims to maintain judicial independence.
- **Article 214**: Provides for the establishment of High Courts in states, ensuring that they function independently of the executive.
- **Article 50**: Directs the State to take steps to separate the judiciary from the executive in the public services of the State, reinforcing the principle of judicial independence.
- **Judicial Review: Article 32** grants individuals the right to move the Supreme Court for the enforcement of fundamental rights, allowing courts to review executive actions, including those related to asylum seekers. **Article 226** empowers High Courts to issue writs for the enforcement of fundamental rights and for any other purpose, enabling them to review decisions affecting asylum seekers.

These provisions collectively ensure that judicial bodies in India, including those involved in asylum adjudication, operate independently and can review executive actions.

c. Immigration Officers and Administrative Discretion: Immigration officers operate under the Foreigners Act, 1946, which grants them authority over the entry, stay, and exit of foreign nationals, including asylum seekers. They have significant discretion in granting or denying access to asylum procedures. Their decisions are administrative and not subject to judicial review unless challenged in court. The lack of formal judicial oversight over immigration officers' decisions can lead to inconsistencies and potential violations of asylum seekers' rights.

Autonomy of the managing authority of the judicial or bodies in the field of access to asylum

In the context of asylum access adjudication in India, the managing authority refers to the executive or administrative structures responsible for oversight and governance of judicial or quasi-judicial bodies, including Immigration authorities (e.g., officers under the Ministry of Home Affairs), who manage procedural and administrative functions affecting asylum seekers. Here, Managers are often appointed from within the executive branch (e.g., District Magistrates, senior officers from the Ministry of Home Affairs). Reporting lines run to the government rather than to a judicial or constitutional authority. Budget, staffing, and operational policies are controlled by administrative superiors. Decision-making at first instance can be influenced by policy priorities (e.g., immigration enforcement, border security). Further, asylum seekers may experience procedural delays, limited transparency, and constraints on presenting evidence, such as UNHCR recognition.

UNHCR is a first-instance quasi-judicial actor whose senior managers operate under UN mandate, independent of the Indian executive. They exercise autonomy in RSD decisions, facilitation letters, and recommendations. However, while it provides procedural fairness and protection guidance, decisions are not legally binding, and executive compliance is discretionary.

High Court Registries and Supreme Court administration also have a role in managing case flow, staff, and resources. Access to hearings, legal aid, and timely case processing depends on middle managers. On the other hand, senior managers (registrars, administrative heads) enjoy high autonomy, protected by constitutional provisions (Articles 50, 124, 214). However, budgets, staffing, and operational policies are government-controlled. Thus, judicial autonomy at senior levels protects procedural integrity for asylum seekers.

Financial independence

Financial autonomy is critical for ensuring procedural fairness, timely case processing, and adequate staffing and infrastructure to support asylum adjudication. In India, administrative expenditure for judges' salaries, court staff, and basic infrastructure is allocated by the legislature. It is funded by the Consolidated Fund of India (Supreme Court) or respective state governments (High Courts. While courts can internally manage the allocation of staff and prioritize case management, overall budgets are dependent on executive or legislative approval. Special infrastructure for asylum-related cases (e.g., legal aid cells, hearing facilities for detained refugees) depends on administrative support from registries. Thus, while the High Courts and Supreme Court maintain procedural independence, they cannot independently increase their budget to expand asylum-specific services.

For quasi-Judicial authorities like the Immigration Bureau, budgets are entirely dependent on the Ministry of Home Affairs (MHA). Staff salaries, tribunal infrastructure, and operational costs are controlled by the central government. There is negligible autonomy in fund management or resource allocation, which may explain the infrastructure limitations (e.g., remote detention centres, lack of computerization for appeals), which directly affect the processing of asylum claims. The reliance on announcements increases the urgent need to prioritize administrative or law enforcement objectives over procedural safeguards.

UNHCR is funded through core contributions and donor funding, separate from the Indian government. UNHCR independently decides how to allocate resources for RSD interviews, legal assistance, facilitation letters, and protection programs. However, India has traditionally not been a high-priority country for RSD, primarily because historically it presented with fewer protection concerns in terms of detention, deportation, etc. – a situation that has changed over the last ten or so years. With the 2025 budget crisis, RSD allocation in India has been sharply cut down, and there has been a significant downsize is resources for UNHCR's operations in the country.

Independence concerning human resource decisions

In India, judicial bodies—High Courts and the Supreme Court—enjoy significant formal independence regarding human resources. Judges are selected and appointed through the collegium system, safeguarding against executive interference. Transfers, promotions, and evaluations of judges are largely internal matters, ensuring that adjudicators can decide asylum-related cases without fear of administrative repercussions. Training and case assignment are managed within the judiciary, supporting procedural integrity, though specialized asylum training remains limited.

In contrast, quasi-judicial bodies and executive-managed authorities, such as Foreigners Tribunals and immigration officers, operate under the Ministry of Home Affairs. Selection, appointment, transfer, promotion, and dismissal of adjudicators or managers are controlled by the executive, leaving little autonomy. Training is often standardized for broader administrative purposes, with limited focus on asylum-specific legal or humanitarian concerns. Consequently, the discretion of these bodies in managing personnel can influence procedural fairness, case prioritization, and responsiveness to asylum seekers.

UNHCR, while not a domestic adjudicatory body, maintains independent HR control under UN rules. RSD officers and managers are selected, trained, and supervised internally, allowing consistency in refugee protection standards. However, their non-binding status in India limits the practical effect of this autonomy on formal adjudication.

Internal independence

Judicial bodies (High Courts and the Supreme Court) are more insulated from the executive, and internal independence is strong. Decisions of individual judges are autonomous, even within multi-judge benches, and higher-ranked judges or internal administrative managers exert limited influence over case outcomes. Further, while institutional guidelines or precedent inform reasoning, judges are free to depart from them, ensuring that asylum claims are adjudicated on merit and according to constitutional and legal principles.

However, there have been clear instances where the Court has aligned itself with the political narrative, even to the detriment of legal principles. Recently, in *Salimullah*, the Supreme Court accepted the government's contention that India was not bound by the customary law principle of non-refoulement and dismissed allegations that the Indian government had forced Rohingya refugees into the sea, stating there was no evidence to support such claims. This decision aligns with the government's stance on border control and refugee management. In other instances, judicial decisions have contradicted government narratives; thus, in *Syed Ata Mohamadi*, the Supreme Court stayed the deportation of an Iranian refugee recognized by the UNHCR, affirming India's commitment to international refugee protection standards.

In quasi-judicial/executive-managed bodies like Foreigners Tribunals or immigration offices, internal independence is more constrained. Senior officers and administrative managers can influence case assignment, scheduling, and interpretation of procedural norms. Guidelines issued by the Ministry of Home Affairs or policy directives can effectively shape outcomes, reducing adjudicators' discretion. As a result, asylum seekers may experience variation in procedural rigor and decision-making across tribunals or regions.

For UNHCR, internal independence is robust. RSD officers operate under UN-mandated procedures and internal supervision, with decision-making largely shielded from external influence. However, the non-binding status of UNHCR determinations in India limits the practical impact of this independence on formal adjudication.

Implications of various aspects of independence

The independence of judicial and quasi-judicial bodies directly shapes the fairness, consistency, and effectiveness of asylum access adjudication. Various aspects—financial, managerial, human resources, internal, and political—intersect to influence outcomes. Judicial bodies, particularly the High Courts and the Supreme Court, enjoy substantial formal and operational autonomy. Judges are appointed through the collegium system, insulated from executive influence in their selection, transfers, or promotions. Administrative registries and internal management structures further support operational independence, allowing courts to schedule hearings, allocate staff, and prioritize cases without interference. Financially, while budgets are subject to legislative and executive allocation, courts retain discretion over internal resource use. Internally, judges make independent decisions even within multi-judge benches, guided by precedent but not bound by policy directives. This autonomy enables judicial bodies to meaningfully review executive actions affecting asylum seekers, such as detention or deportation, and to overturn administrative decisions when they contravene constitutional or procedural safeguards. Cases like *Nandita Haksar* illustrate how judicial intervention can correct executive overreach, even amid broader political pressures. Yet, the judiciary is not immune to the influence of prevailing political narratives, as seen in the recent *Salimullah* rulings, where judgments aligned with restrictive government stances on asylum.

In contrast, quasi-judicial and executive-managed bodies, including Foreigners Tribunals and immigration officers, operate under significantly less autonomy. Senior managers and middle-level adjudicators are embedded within the executive branch, with appointment, transfer, promotion, and budgetary decisions largely controlled by the Ministry of Home Affairs. Internal procedural discretion is constrained by hierarchical oversight and policy directives. Consequently, the processing of asylum claims in these bodies is vulnerable to administrative bottlenecks, resource limitations, and a prioritization of enforcement objectives over procedural fairness. Territorial disparities further compound these challenges, with procedural consistency varying across regions such as the Northeast, Delhi, and Tamil Nadu.

The UNHCR, while not a domestic adjudicatory authority, functions with high operational and managerial independence under its UN mandate. Its officers conduct Refugee Status Determination (RSD) and issue recommendations free from Indian executive control. This independence allows UNHCR to provide robust procedural safeguards and consistent protection standards. However, the nature of UNHCR's agreement with the Indian government, where it has limited jurisdiction, and the non-binding nature of

UNHCR determinations limit their practical impact within India's formal legal system, making cooperation by executive-managed bodies crucial for effective outcomes.

Across these actors, the implications of varying levels of independence are stark. Where autonomy is robust—particularly in the judiciary—executive decisions can be scrutinized and overturned, ensuring adherence to constitutional protections, non-refoulement principles, and procedural fairness. Where independence is limited, asylum seekers face higher risks of delayed hearings, restricted legal aid, inconsistent decision-making, and the influence of political or policy priorities. Financial constraints, limited HR discretion, and internal hierarchical pressures in quasi-judicial bodies further exacerbate these challenges, undermining both procedural efficiency and substantive justice.

In sum, the Indian asylum adjudication system reflects a spectrum of institutional independence: strong in constitutional courts, moderate in international actors like UNHCR, and limited in executive-managed quasi-judicial bodies. This heterogeneity shapes access to justice for asylum seekers, influencing which cases are heard, how procedural safeguards are applied, and the extent to which executive discretion is effectively checked. Strengthening independence—particularly in quasi-judicial structures—remains key to ensuring fair, consistent, and rights-respecting adjudication in the field of asylum access.

Independence of the whole judicial system

The formal independence of India's judiciary provides a strong backstop for asylum seekers, allowing courts to overturn executive actions when challenged. However, deviations occur at the first instance and quasi-judicial level, where independence is structurally limited. These deviations mean that while asylum seekers theoretically enjoy the protections of an independent judiciary, practical access and outcomes depend heavily on administrative discretion, territorial factors, and the willingness of judges to enforce procedural safeguards.

India's judicial system enjoys robust formal independence, enshrined in the Constitution and reinforced through institutional safeguards. At the general level, independence is guaranteed through a number of provisions, such as:

- Appointment and tenure protections for judges via the collegium system, insulating them from executive interference.
- Financial autonomy over certain administrative expenditures and internal case management, although overall budgets are legislatively allocated.
- Operational autonomy in managing staff, scheduling hearings, and issuing decisions without external pressure.
- Internal independence, allowing judges to depart from precedent and act independently of senior judges' influence.

These guarantees underpin a judiciary capable of upholding constitutional rights, providing checks and balances on executive actions, and ensuring procedural fairness across domains. However, it is important to always bear in mind that there is inherently legal vacuum in the Indian system when it comes to refugees and asylum-seekers, and thus, the application of judicial independence in the field of asylum shows notable deviations, particularly in quasi-judicial and executive-managed arenas. These bodies are largely staffed by executive appointees, with HR decisions, transfers, promotions, and operational guidance controlled by the Ministry of Home Affairs. Financial and administrative autonomy is limited, restricting the capacity of adjudicators to prioritize procedural fairness or independent scrutiny of executive actions. As a result, first-instance adjudication, especially for cases involving detention or deportation, may reflect policy priorities rather than an independent application of law. While the judiciary has formal powers to review executive action, practical barriers—such as delayed access to legal representation, limited legal aid, or difficulties in lodging appeals—can undermine the effective exercise of independence. These constraints

disproportionately affect detained asylum seekers, where procedural limitations in quasi-judicial forums prevent timely access to judicial review.

UNHCR operates independently and offers procedural safeguards, but its determinations are not binding in Indian law, and its decisions are not susceptible to review in Indian courts. Consequently, the formal guarantees of judicial independence do not automatically extend to the asylum field, particularly at the level of first-instance assessment of refugee status.

C. Centralization/decentralization

The organizational structure of judicial and quasi-judicial bodies—whether centralized or decentralized—significantly influences access to asylum adjudication in India, shaping procedural fairness, timeliness, and consistency of decisions. India's federal and decentralized political system produces significant variation in the structure and functioning of judicial and quasi-judicial bodies across states and regions, which in turn affects asylum access adjudication. At the first-instance level, immigration officers and UNHCR field units operate with standardized procedures, but practical accessibility varies by region. In remote or border areas, such as the Northeast, limited staffing and infrastructure can delay registration, RSD interviews, and access to legal remedies. Urban centres like Delhi or Chennai generally offer faster and more reliable access.

High Courts, though structurally uniform, reflect regional judicial cultures and local administrative environments, which influence how asylum cases are adjudicated. Courts in Tamil Nadu have historically been more receptive to Sri Lankan Tamil refugee claims, while tribunals and courts in the Northeast have sometimes deferred to executive discretion in matters of border control and detention.

At the third-instance level, the Supreme Court provides uniform oversight, ensuring consistency in legal interpretation. However, the physical and logistical barriers to accessing a centralized apex court mean that asylum seekers in remote regions may face practical difficulties in exercising their rights fully.

Regional disparities in tribunal and court capacity can delay or restrict asylum seekers' access to judicial review. Variations in local practices, administrative resources, and judicial culture can produce uneven application of procedural safeguards and rights. In regions with overburdened or resource-constrained tribunals, procedural protections may be less rigorously applied, increasing the risk of arbitrary outcomes. Thus, the decentralized nature of India's political and judicial system creates a hierarchy of access and protection: while central and appellate courts maintain legal uniformity, first-instance and quasi-judicial bodies reflect regional disparities that materially affect asylum access adjudication.

1. *Centralized Bodies* - All cases at the apex level are adjudicated at the **Supreme Court** in New Delhi, providing uniform interpretation of law and consistent jurisprudence across India. This ensures coherent legal standards for asylum cases, including constitutional rights and non-refoulement principles. Centralized location, however, creates practical access barriers for asylum seekers living in distant regions, especially detained individuals in remote states who face logistical, financial, and legal constraints to approach the Court.

With regard to **UNHCR India**, centralization supports uniform Refugee Status Determination (RSD) procedures and standardized legal support. However, geographical distance from field populations severely limits timely registration and access to interviews, particularly in remote or border areas.

2. *Decentralized Bodies* – Decentralization of Foreigners Registration Offices, where **Immigration Officers** are based, allows adjudication close to the location of alleged immigration violations or asylum seekers' residence. It may improve physical access for applicants and reduce travel burdens, which is critical for detainees or individuals in border regions. It encourages faster case processing in principle, but heterogeneous allocation of resources (staffing, training, infrastructure) across regions can produce uneven

quality and delays. Further, it also means less oversight and more discretion for the adjudicators themselves.

For High Courts (which are decentralized at the state level), it enables regional oversight and appeals closer to local populations, enhancing accessibility. However, regional judicial cultures and political environments influence the degree of protection afforded to asylum seekers, creating territorial disparities in procedural rigor and outcomes.

Thus, decentralization improves physical access and responsiveness but may exacerbate regional disparities in decision quality, legal aid availability, and adherence to procedural safeguards. It may also lead to variations in the interpretation and enforcement of procedural rights. On the other hand, centralization ensures uniformity and may benefit from concentrated resources but may lack sufficient outreach mechanisms for distant populations, which, in combination with logistical barriers, is particularly detrimental for vulnerable or detained asylum seekers. Effective asylum access adjudication thus requires mechanisms to bridge gaps between central oversight and local delivery, ensuring both fairness and accessibility.

D. Specialization

Institutional specialization on asylum

First instance judicial or quasi-judicial bodies: Not specialized – UNHCR RSD officers have specialized training, but domestic immigration officers and Foreigners Tribunals have no formal asylum specialization.

Second instance judicial or quasi-judicial bodies: Partially specialized – High Courts hear asylum-related cases occasionally but have no dedicated panels or training; exposure depends on caseload.

Third instance judicial or quasi-judicial bodies: Not specialized – Supreme Court adjudicates asylum cases as part of its general jurisdiction; no formal specialization or panels exist.

Specialized training in asylum

Adjudicators and other professionals involved in asylum access adjudication in India generally lack specialized knowledge of refugee or asylum law, reflecting broader structural and educational factors in the Indian judicial system. Judges at the Supreme Court and High Court are appointed from the senior ranks of the bar or from lower courts, following the collegium system. They typically possess strong general legal expertise but do not receive formal training in refugee or asylum law, as there is no domestic refugee legislation and refugee law is not included in standard legal education. District judges and subordinate judicial officers, often recruited through the Union Public Services Commission or state judicial services, are trained in general law and procedural practice, but their curriculum does not cover asylum or refugee protection. They rely on case law, constitutional provisions, and general administrative law to adjudicate matters involving foreigners.

Officers in the Foreigners Tribunals or Immigration Bureau are primarily recruited as administrative officers with legal or civil service backgrounds. While they have training in general administrative and legal procedures, they receive no systematic instruction in refugee law, non-refoulement obligations, or asylum-specific protections. Supporting staff, such as clerks and administrative professionals, similarly operate under general procedural guidance without specialized knowledge of asylum access or international refugee law.

In contrast, UNHCR Refugee Status Determination (RSD) officers receive specialized training on international refugee law, asylum procedures, and protection standards. Training is designed to ensure consistency in eligibility determination and adherence to UNHCR procedural safeguards. This specialized expertise enables UNHCR to apply international protection principles rigorously, although their determinations are non-binding in Indian law, limiting their practical influence on executive-controlled processes.

Discrepancies between the specialization provided on paper and the actual specialization

Adjudicators and other professionals involved in asylum access adjudication in India do not have access to specialized training in refugee or asylum law. India does not have a domestic refugee law, and asylum law is not part of standard legal education curricula, meaning that neither judges, tribunal members, nor immigration officers receive formal instruction on refugee protection principles. Furthermore, there are no government-led initiatives or structured programs to provide such training, either for adjudicators or for other professionals involved in the asylum field. As a result, actors engaged in asylum adjudication often rely on general administrative or legal knowledge, with limited exposure to international refugee law, procedural safeguards, or best practices in handling asylum claims.

First instance judicial or quasi-judicial bodies: On paper, UNHCR RSD officers are specialized; Immigration Officers and Foreigners Tribunals are generalist administrative bodies. In practice, Immigration Officers and Tribunals lack formal specialization; any expertise is acquired informally through repeated case exposure. Only UNHCR officers have structured asylum training.

Second instance judicial or quasi-judicial bodies: High Courts hear asylum appeals and are occasionally seen as partially specialized due to case exposure. However, there are no dedicated panels or formal asylum training; specialization depends on judges' personal experience with asylum cases.

Third instance judicial or quasi-judicial bodies: The Supreme Court has general jurisdiction over constitutional and legal matters, including asylum cases. However, while experts in these matters, they do not have targeted asylum expertise as such, and no formal specialization or panels exist.

E. Human resources

Profile of the group of adjudicators

First instance judicial or quasi-judicial bodies: UNHCR RSD Officers constitute a small cadre, usually hired through an open advertisement and application process. Most are lawyers by qualification and are given UNHCR's own training in international refugee law. They are based in Delhi; they are of mixed gender. Immigration Officers / Bureau are civil service officers[117] (with an administrative background), generalist legal training, mostly male,[118] professionally experienced in border and immigration enforcement; numbers vary by post and region.

Second instance judicial or quasi-judicial bodies: High Courts have collegium-appointed judges, a mixture of male and female judges, but there is again a heavy gender imbalance toward males. They are professional civil judges or senior advocates with no specific refugee expertise; numbers depend on the state High Court's strength.

Third instance judicial or quasi-judicial bodies: There are 34 judges in the Supreme Court, appointed by collegium,[119] from amongst senior advocates or High Court judges. It has been male-dominated historically:[120] as of late 2024 and into 2025, the Supreme Court of India has one woman judge, Justice B.V. Nagarathna. She was one of three women appointed at the same time in August 2021, marking the highest number of women on the court at once, though other women from that group have since retired. They have no formal specialization in asylum law.

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[117] Ministry of Home Affairs, Government of India, "Civil Services and Recruitment Rules" (available on https://mha.gov.in/) and Union Public Service Commission (UPSC) guidelines for IAS, IPS, and other civil services (https://www.upsc.gov.in/).

[118] The Print, 23 April 2024, *'Indian civil services is short on women. It's not the govt's fault'* available at https://theprint.in/opinion/indian-civil-services-is-short-on-women-its-not-the-govts-fault/2052672/

[119] See Supreme Court Collegium Resolutions, available at https://www.sci.gov.in/collegium

[120] Supreme Court Observer, 13 September 2024 "*Gender Diversity at the Supreme Court of India*" available at https://www.scobserver.in/75-years-of-sc/gender-diversity-at-the-supreme-court-of-india/

Selection and appointment

- *First instance:* Refugee status determinations for most non-neighbouring asylum seekers are conducted by UNHCR under its mandate in India. Adjudicators are UNHCR Refugee Status Determination (RSD) or Protection Officers who are recruited and appointed internally by UNHCR in accordance with UN staff regulations and UNHCR procedural standards. They are not appointed by, nor accountable to, the Government of India. For asylum-related matters arising before Indian courts, first-instance judicial adjudicators are High Court judges, who are appointed by the President of India pursuant to Articles 217 and 224 of the Constitution following recommendations of the judicial collegium.
- *Second instance:* Reviews of negative UNHCR RSD decisions are conducted by different UNHCR protection personnel who were not involved in the original determination. These reviewers are likewise appointed internally by UNHCR under its institutional procedures. Where asylum-related matters proceed within the Indian judicial system, second-instance adjudicators are judges of Division Benches of the High Courts or appellate benches, appointed through the same constitutional collegium process applicable to all High Court judges.
- *Third instance:* Final judicial review is exercised by the Supreme Court of India. Supreme Court judges are appointed by the President of India under Article 124 of the Constitution following recommendations made by the Supreme Court collegium. They enjoy constitutional guarantees of tenure and judicial independence, and their decisions are binding on all lower courts and tribunals.

Clerks, or experts supporting the adjudication function

First instance judicial or quasi-judicial body/bodies: Tribunals and immigration offices have clerks and administrative staff appointed by state governments or the Ministry of Home Affairs. These are generalist administrative personnel without specialized refugee or asylum training. They manage record-keeping, case filing, summoning parties, translating documents, and providing procedural assistance to adjudicators. They do not independently assess protection claims or provide substantive asylum advice.

Second and Third instance judicial or quasi-judicial body/bodies: Judges are supported by clerks, law clerks, or research assistants,[121] typically recruited through competitive processes or internally by the judge. These are usually young legal professionals or law graduates, often male-dominated but with some female representation; they have general legal knowledge but no specific training in refugee or asylum law. Their support is limited to drafting bench notes, summarizing case law, preparing citations, and assisting with legal research; they do not provide specialized refugee protection advice.

Interpretation service

Quasi-judicial bodies, such as Foreigners Tribunals and Immigration Bureau hearings, generally rely on interpretation services on an ad hoc basis. There is no formal, standardized provision for professional interpretation in Foreigners Tribunals or Immigration Bureau proceedings. However, UNHCR Refugee Status Determination (RSD) hearings systematically provide trained interpreters familiar with both the language and asylum procedures, ensuring accurate communication and safeguarding procedural rights.

Quality and availability of human resources

First Instance Bodies: UNHCR RSD Officers are a small cadre of trained professionals; well-qualified in refugee law; while sufficient for current caseloads, they have limited geographic coverage, limited to Delhi and a few field offices. Immigration Officers / Foreigners Tribunals are staffed by administrative officers and quasi-judicial adjudicators who are generalists with no formal asylum specialization. Caseloads can be high in states like Assam and the Northeast, stretching available human resources.

[121] "Officers and Staff of the Supreme Court." Available at: https://www.sci.gov.in

Second Instance Bodies (High Courts): Judges, while highly experienced and well qualified, have generalist legal expertise and no systematic asylum training. Caseload pressures vary by state; some High Courts face heavy dockets, potentially reducing time available per asylum case. Decisions depend heavily on individual judges' familiarity with international and constitutional law, producing variability in outcomes.

Third Instance Bodies (Supreme Court): Judges are highly qualified but generalist; no formal asylum specialization exists. Caseload is extremely high, but asylum cases are rare and often receive focused attention due to constitutional stakes. While quality of adjudication is high, access is limited by time, procedural complexity, and rarity of cases, making Supreme Court oversight insufficient to ensure uniform protection across the system.

Implications of human resources in judicial bodies responsible for asylum access

The human resource profile of judicial and quasi-judicial bodies in India has significant implications for asylum adjudication.

- *Shortage of Adjudicators and Staff:* Across Immigration Bureaus, High Courts and the Supreme Court, these adjudicatory bodies are overburdened with general caseloads. As asylum cases are few, they often face long delays before hearings.
- *Lack of Specialization:* Judges at all levels are drawn from the general judicial services or the bar. Their training emphasizes constitutional and statutory law, not refugee law, as India has no domestic refugee legislation and refugee law is not part of standard judicial education (Law Commission of India, 2015). This generalist background results in variable quality of decisions, with some judges creatively invoking constitutional protections (e.g., *Nandita Haksar*), while others rely heavily on executive discretion.
- *Interpreters and Clerks:* Professional interpretation services are not institutionalized in Indian courts or Foreigners Tribunals for asylum-seekers. Refugees often rely on ad hoc or informal interpreters, leading to risks of miscommunication and procedural unfairness (Haksar, 2012). Clerks and registry staff are present in courts but are generalist support staff without specialized training in asylum or migration.
- *Selection and Appointment of Adjudicators:* Tribunal members are appointed by the executive and often come from administrative services rather than judicial backgrounds (MHA, *Foreigners Tribunals Order*, 1964). This raises questions of independence and impartiality, particularly given their dependence on government service rules (Amnesty International, 2019). Judicial appointments at higher levels (High Courts, Supreme Court) follow the collegium system, intended to safeguard independence. However, the absence of asylum specialization means decisions rely more on judges' individual constitutional interpretation skills than on institutional expertise.

F. Tools supporting adjudication

Key organizational tools supporting asylum adjudication

Judicial and quasi-judicial bodies in India that encounter asylum-related questions operate with limited specialized organizational tools to support adjudication. Unlike jurisdictions with codified refugee protection frameworks, India lacks a refugee law or formal asylum procedures, which directly affects the institutional mechanisms available.

First instance judicial or quasi-judicial body/bodies: For Immigration Officers, their primary tools are procedural guidelines issued by the Ministry of Home Affairs (MHA). They rely heavily on information exchanges with executive agencies such as the police, border forces, and local administration, particularly in Assam. There are no agreements with bar associations or civil society actors to ensure legal assistance or procedural balance. Amnesty International (2019) notes that the absence of formalized support systems often

disadvantages claimants[122]. On the other hand, as a quasi-judicial body in practice, UNHCR uses a structured set of organizational tools: standardized RSD procedures, guidelines aligned with international refugee law, and case management systems that ensure consistency. Officers also engage in cross-office exchanges of information, benefitting from international best practices. This creates a sharp contrast with Indian judicial and quasi-judicial bodies, which lack parallel institutional frameworks.

Second and Third instance judicial or quasi-judicial body/bodies: These bodies rely on general procedural instruments like the *Code of Civil Procedure* and *Supreme Court/High Court Rules*. Information exchange occurs largely through submissions by counsel. While the judiciary occasionally requests status reports from executive agencies (e.g., MHA, state governments), there is no specialized docketing or knowledge-sharing tool tailored to asylum. The Bar contributes through constitutional and human rights litigation, but this is case-specific rather than institutionalized. Courts have sometimes stepped in to "patch" gaps by creating ad hoc organizational mechanisms. In *Nandita Haksar v. State of Manipur* (2021), where the petitioner sought safe passage for Myanmarese asylum seekers, the Manipur High Court ordered verification and reporting mechanisms by local authorities and NGOs. This was an ad hoc way of compensating for the lack of a centralized asylum case database.

Earlier, in contexts like statelessness and detention of suspected "foreigners," courts have sometimes appointed district magistrates or commissioners as reporting officers, tasked with submitting sealed reports to the bench.

In *Mohd. Salimullah v. Union of India* (2017–2021) (the Rohingya deportation cases), the Supreme Court repeatedly directed the Union of India and state governments (especially Jammu & Kashmir and Assam) to file periodic status reports on the detention, deportation, and treatment of Rohingya refugees.

The absence of specialized organizational tools in India means asylum adjudication depends largely on general procedural law, executive-provided information, and judicial discretion. This stands in contrast to UNHCR's more systematized processes, underscoring a structural gap that affects consistency, transparency, and the accessibility of justice for asylum-seekers.

Functioning, role, and implementation of IT tools

IT tools are becoming central in Indian adjudication more broadly, but when it comes to asylum, the landscape is very uneven.

First instance judicial or quasi-judicial body/bodies: Foreigners Tribunals (FTs) have IT tools, but these are minimal and fragmented. While some tribunals in Assam have access to digital cause lists or electronic record-keeping linked to NRC documentation, most FTs rely on manual filings and paper-based evidence. Human Rights Watch (2020) observed that poor digital infrastructure, coupled with weak record-keeping, led to inconsistent rulings and difficulties for appellants to track their cases[123].

UNHCR uses ProGres, an internal case management database that systematizes asylum claims, tracks case progress, and ensures consistency across decisions. It also relies on Refworld (UNHCR's public database) for country-of-origin information, ensuring that RSD officers have access to updated, authoritative sources. This contrasts starkly with Indian courts and FTs, which do not have an equivalent database and depend instead on ad hoc reports, media clippings, or affidavits.

Second and Third instance judicial or quasi-judicial body/bodies: While Indian courts have adopted e-filing and digital case management systems, these are not tailored for asylum-related matters. Thus, there is no specialized instrument or database enabling judges across jurisdictions to share jurisprudence on refugee protection. As a result, jurisprudence remains fragmented and inconsistent. Judiciary (High Courts and

[122] Amnesty International (2019), *Designed to Exclude: How India's Courts are Allowing Foreigners Tribunals to Render People Stateless in Assam.*
[123] Human Rights Watch (2020), *"Shoot the Traitors": Discrimination Against Muslims under India's NRC.*

Supreme Court). The E-Courts Mission Mode Project[124], rolled out under the National e-Governance Plan (NeGP), provides e-filing, digital cause lists, online judgments, and video conferencing facilities. These tools make hearings accessible remotely, which became especially relevant during the pandemic. However, these IT systems are general-purpose and not tailored for asylum or refugee matters. There is no dedicated database on refugee jurisprudence, nor integration with UNHCR records or international refugee law databases. As a result, judges still rely heavily on counsel to introduce refugee law arguments.

Cross-Institutional Tools: There is an Integrated Case Management System (ICMIS) used in the Supreme Court, allowing real-time digital tracking of filings and case histories. The National Judicial Data Grid (NJDG) provides aggregated data on pendency and disposal of cases across courts. But again, it is not disaggregated for asylum or refugee-related litigation—so one cannot trace systemic patterns of adjudication.

Implications (if any) of organizational tools (especially IT tools) in asylum access adjudication.

In India, asylum access adjudication suffers from the near-total absence of specialized organizational tools—particularly IT-based platforms—that elsewhere have become central to refugee status determination or migration case management. Unlike the European Asylum Support Office or UNHCR's ProGres database, India has no centralized digital system for asylum claims, hearings, or appeals. This gap has significant implications for transparency, consistency, and accessibility.

At the judicial level, IT tools are limited to the generic e-Courts system developed under the National e-Governance Plan, which enables e-filing, digital case status tracking, and, in some cases, virtual oral hearings. During the COVID-19 pandemic, the Supreme Court and High Courts shifted extensively to video-conferencing platforms, thereby allowing some refugee-related cases—such as *Mohd. Salimullah v. Union of India* (Rohingya deportation cases)—to be argued online. However, this development was a product of broader court digitization, not a tailored tool for asylum seekers. Refugees, often lacking digital literacy, stable internet, or documentation to access e-filing systems, remain structurally disadvantaged.

By contrast, UNHCR India employs proGres v4, an internal case management IT platform, for refugee registration, documentation, and RSD (Refugee Status Determination). Yet, this system is closed and opaque to Indian courts, meaning judicial and quasi-judicial bodies cannot rely on it for real-time data on asylum claims. The lack of interoperability between UNHCR's IT systems and India's judicial/e-government platforms creates a structural disconnect between the parallel systems of adjudication.

Organizational tools for information-sharing between courts and other actors (such as bar associations or the executive) also remain rudimentary. In detention and deportation cases, for instance, High Courts often rely on ad hoc affidavits or state-submitted reports rather than systematic IT-based tracking. This hinders both consistency across jurisdictions and timely access to information for applicants and their counsel.

The implications are clear:

- Access barriers: Refugees face significant hurdles in accessing digital hearings or filing systems, given language, literacy, and connectivity challenges.
- Lack of specialization: Since tools are designed for general civil/criminal litigation, they fail to capture the specific procedural needs of asylum adjudication (e.g., secure handling of sensitive information, access to interpreters online).

[124] Department of Justice, *E-Courts Mission Mode Project Phase II Evaluation Report* (2022).

G. Management

Judicial bodies' managers and middle managers

While UNHCR manages refugee status determination (RSD) for some nationalities, it does not control the legal power that determines whether someone can stay, be detained, or be deported. That power sits with Indian state authorities and courts.

First instance judicial or quasi-judicial body/bodies: These are the bodies where asylum-related problems first become legally visible:

- **Foreigners Tribunals (in certain states, especially Assam)** – determine whether a person is a "foreigner," which can trigger detention or deportation.
- **District & Sessions Courts / Chief Judicial Magistrates** – handle initial habeas corpus petitions, bail, and custody issues involving detained asylum seekers.

  Key managers / middle managers:

  - **District Judges / Chief Judicial Magistrate (CJM)**
    Role: Heads of district judiciary; supervise subordinate judicial officers.
    Asylum relevance: Handle local criminal cases, habeas corpus in the first instance, and production orders for detained persons in local jails.
  - **Sub-Judges / Judicial Magistrates**
    Role: First-instance judicial officers for criminal and certain civil matters.
    Asylum relevance: Decide bail, remand orders, and look at preventive detention in local contexts.
  - **What they do (practical tasks):**
  - Deal with immediate liberty questions (remand, bail), which often determine whether an asylum seeker remains in custody while their substantive immigration status is litigated at HC/SC levels.

- **Administrative immigration authorities acting quasi-judicially** (FRROs, State Home Departments under MHA direction) – issue detention, registration, and deportation-related orders that are later challenged in court.
- **National & State Human Rights Commissions (NHRC/SHRC)** – not courts, but can inquire into detention conditions, pushbacks, or deportation risks and issue recommendations.

Second instance judicial or quasi-judicial body/bodies: **High Courts of the States (under Article 226 of the Constitution)** – as they are the main forum for:

- challenges to detention and deportation
- denial of access to UNHCR or documentation
- camp/detention centre conditions
- procedural fairness and protection under Article 21
- High Courts exercise both supervisory and constitutional jurisdiction over executive and quasi-judicial actions.

  Key managers / middle managers

- *Chief Justice (CJ) of the High Court*
  Role: Head of that High Court; assigns benches and administrative responsibilities.

Asylum relevance: Directs how PILs and writs are treated in the state; can constitute special benches for refugee matters (e.g., detention centres, local policy).

- *Registrar General / Registrars (Judicial, Administration, Vigilance, Inspection)*
  Role: Manage the registry, case allocation, cause lists, service of process on state respondents (Home Dept, DGP).
  Asylum relevance: Ensures timely filing of status reports by state authorities; arranges custody production orders for detained asylum seekers.

- *Principal Secretary / Secretary to the High Court (bench-level managers)*
  Role: Oversee how petitions are rostered and listed.
  Asylum relevance: Enable urgent hearing of habeas corpus petitions for detained refugees.

Third instance judicial or quasi-judicial body/bodies: **Supreme Court of India (Articles 32 & 136)**[125]

- Hears fundamental rights petitions directly (e.g., refoulement, mass deportation)
- Hears appeals/special leave petitions from High Court decisions
- Sets binding constitutional precedent on detention, deportation, and non-citizen rights

Key managers / middle managers:

- *Chief Justice of India (CJI)*
  Role: Head of the judiciary; allocates constitution benches in high-priority matters and supervises judicial administration.
  Asylum relevance: May refer important asylum/refoulement constitutional questions to larger benches; can call for priority listing of PILs on urgent humanitarian issues.

- *Registrar General / Registrars (Judicial & Administration)*
  Role: Senior administrative officers of the Court handling case intake, listing, registry functions, records, and coordination between benches and the registry.
  Asylum relevance: Process and docket PILs/writs challenging deportation/detention; assign cases to benches; coordinate service on central government respondents and MHA; manage compliance filings and status reports.

- *Secretary to the CJI / Court Secretariat staff (Roster managers)*
  Role: Maintain the bench roster and urgent listing; manage urgent mentions, officer of the court motions.
  Asylum relevance: Can expedite urgent habeas corpus or injunction petitions relating to detention and pending deportations.

- *Bench Coordinators / Court Masters*
  Role: Day-to-day docket control for particular benches, draft circulation lists, and coordinate hearings.
  Asylum relevance: Ensure petitions about detention/deportation are placed for a hearing, and check that respondents file affidavits.

Direct or indirect influence on asylum access adjudication

Because India lacks a national asylum law, access to protection depends heavily on how judicial and quasi-judicial institutions operate in practice. In this system, managers and administrative heads rarely influence the *legal reasoning* of adjudicators directly, but they exercise significant procedural, structural, and access-based influence that can materially affect outcomes in detention, deportation, and refugee-status disputes.

[125] See Supreme Court Rules, 2013

- *First instance judicial or quasi-judicial body/bodies:* At the first level, managerial influence is strongest and most direct. This includes Foreigners Tribunals, district courts handling detention matters, and immigration authorities such as FRROs acting in a quasi-judicial capacity. Foreigners Tribunals are established under executive authority through the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964.[126] Presiding Officers are appointed and their tenure renewed by state governments. This executive control over appointments and service conditions creates structural dependence that can indirectly shape decision-making environments. Performance expectations — particularly case disposal rates — are tied to continued engagement, which can incentivize rapid determinations rather than detailed inquiry into protection claims. Tribunal administrations also control docket allocation and hearing scheduling, affecting the time available for evidence production. Since tribunal determinations of "foreigner" status often trigger detention or deportation, managerial influence at this level has a direct effect on whether individuals even reach higher judicial review. Administrative immigration authorities such as FRROs derive powers from the Foreigners Act, 1946, Foreigners Order, 1948, and Registration of Foreigners Act, 1939. Although not courts, they function quasi-judicially in issuing detention notices, registration decisions, and deportation directions. Managerial discretion at this stage determines whether a person is detained, allowed to remain temporarily, or referred for removal. These decisions often precede and shape the issues later brought before courts.

  In district courts, managerial authority is exercised by District Judges under the supervisory control of High Courts pursuant to Articles 233–235 of the Constitution. While judicial independence in individual decisions is preserved, registry practices and administrative control over listing affect the speed with which *habeas corpus* petitions or bail applications by detained asylum seekers are heard. Delays at this level can prolong detention, which in asylum contexts may itself operate as a deterrent or coercive factor.

  Overall, at the first instance level, managerial actors influence asylum access primarily through control over appointment structures, docket pressures, procedural timelines, and administrative discretion — all of which affect the possibility and quality of protection claims.

- *Second instance judicial or quasi-judicial body/bodies:* At the High Court level, managerial influence becomes more procedural than structural. High Courts exercise constitutional jurisdiction under Article 226, reviewing detention, deportation, and procedural fairness claims. Judicial independence in adjudication is constitutionally protected. However, administrative control rests with the Chief Justice under Article 229, and the registry, headed by the Registrar General, manages filing scrutiny, listing, and compliance tracking. The Chief Justice's authority to allocate benches (recognized in case law concerning roster powers) determines which judges hear asylum-related matters. While not a substantive influence on outcomes, bench assignment can affect interpretive approaches and urgency handling. Registry control over listing schedules may be particularly influential in asylum cases, where interim relief may be required to prevent deportation. Delays in listing or procedural objections at the registry stage can effectively deny timely access to protection. Registries also monitor whether government authorities comply with court directions, shaping the enforcement phase of asylum-related orders. Thus, managerial influence at the High Court level operates through docket management and procedural gatekeeping rather than direct interference with adjudicative reasoning.

[126] *Sarbananda Sonowal v. Union of India,* (2005) 5 SCC 665 (India) (discussing statutory framework governing detection of foreigners and tribunals).

- *Third instance judicial or quasi-judicial body/bodies:* Managerial influence at the Supreme Court level lies primarily in agenda-setting and access control rather than in shaping legal doctrine.[127] Its effect on the substance of decisions is minimal, but influence on access to the Court can be significant. The Supreme Court's structure is governed by Articles 124–147 of the Constitution and the Supreme Court Rules, 2013. The Chief Justice of India holds prerogative over bench constitution and roster allocation, while the Registry controls admission processes, urgent listing, and procedural scrutiny. Because deportation or detention cases often require immediate interim protection, registry control over urgent mentioning and listing can determine whether relief is granted in time. Special Leave Petitions under Article 136 also pass through procedural screening that can affect whether asylum-related disputes reach a full hearing. However, once a matter is before a bench, adjudicators are institutionally insulated from managerial influence on the merits.

Professional performance measures

- *First instance judicial or quasi-judicial body/bodies:* Professional performance measures are **present but fragmented**, and where they exist, they tend to be administrative (case-disposal metrics, Annual Confidential Reports for judicial officers, service rules/appraisal for administrative officers) rather than evaluative of legal quality. Foreigners Tribunals are established and operated under executive orders (Foreigners (Tribunals) Order, 1964) and the Foreigners Act; their presiding officers are appointed and managed administratively, and tribunal procedure and case-flow are governed by executive/regulatory instruments — a structure that enables the executive to set throughput expectations or targets for disposal.
- District judicial officers are appraised through established personnel processes (Annual Confidential Reports- ACR / self-appraisal formats and reporting lines),[128] and those ACRs explicitly require review of judgments and case work as part of performance appraisal in many states. That means district registry managers and reporting authorities evaluate quantity and basic indicators of judicial output.
- For FRRO/immigration officers, performance measurement is embedded in service rules and administrative targets within the Ministry of Home Affairs and Bureau of Immigration (registration/processing KPIs, case-handling benchmarks), so managers have measurable performance indicators linked to operational outputs (registrations, removals, hearings). Because these measures are administrative (speed, disposals, completeness), they can incentivize rapid processing (or removal) over time-consuming rights-protective steps such as careful factual inquiry or facilitating access to counsel/UNHCR.
- **Implications for asylum access:** administrative performance metrics at this level can increase the risk that decisions are made quickly (to meet disposal or processing targets) rather than carefully, particularly where appointment/retention of tribunal officers and administrative evaluation are tied to throughput. This dynamic can reduce the quality of fact-finding and diminish procedural safeguards in practice—especially for vulnerable, unrepresented applicants.
- *Second instance judicial or quasi-judicial body/bodies:* High Courts operate with institutional performance reporting and registers, but the nature of performance measurement is **procedural** rather than doctrinal. Chief Justices and Registrars control listing, rosters, and cause-lists under High Court rules and constitutional provisions; these are managerial levers that affect how fast and whether a

[127] *Campaign for Judicial Accountability & Reforms v. Union of India*, (2018) 1 SCC 196 (India) (recognizing roster authority of Chief Justice).

[128] See Reports on Performance Appraisal of Judicial Officers in Madhya Pradesh, available at https://cdnbbsr.s3waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2021/11/2021112386.pdf; see also https://nja.gov.in/Concluded_Programmes/2019-20/P-1167_PPTs/1.PERFORMANCE%20ASSESSMENT%20FOR%20JUDICIAL%20OFFICERS.pdf

habeas/writ is heard. The Chief Justice's administrative role over cadre and roster, and the Registrar General's control of listing and compliance processes, are statutory and rule-based. High Courts also rely increasingly on the eCourts / National Judicial Data Grid (NJDG) to monitor disposals and delays; the NJDG and eCourts project publish case-level and court-level statistics that are used for administrative planning and backlog-reduction efforts.[129] Those data give registries measurable performance indicators (case pendency, disposal rates, delay reasons) which the administration uses to triage or prioritize matters.

- **Implications for asylum access:** managerial measures at the High Court level affect access (how quickly an asylum petition is listed and whether interim relief is secured) rather than the substantive legal reasoning. Where registries are overloaded, urgent asylum petitions may be delayed, and interim protection (stay of deportation/removal) becomes harder to obtain. Conversely, NJDG/eCourts transparency can improve accountability and make it easier for litigants/NGOs to push for urgent listing.
- *Third instance judicial or quasi-judicial body/bodies:* At the Supreme Court, formal performance measurement of judges in the sense of productivity metrics is limited by constitutional protections of judicial independence. Administrative functions (bench allocation, urgent listing, circulation of cause lists) are managed by the Chief Justice and the Registry under the Supreme Court Rules, 2013; the Registry keeps terminal/ready lists and handles urgent mentions, which determine whether an asylum case receives timely apex attention. The Supreme Court does not have a public, quantitative "scorecard" that evaluates judicial reasoning quality; rather, management focuses on docket control and procedural listing. The eCourts/NJDG infrastructure likewise tracks filings and disposals at the Supreme Court level for administrative oversight, but substantive judicial independence in decision-making remains institutionally protected.
- **Implications for asylum access:** the Supreme Court's managerial tools primarily influence **timeliness and access**—i.e., whether an urgent petition to prevent deportation is heard in time. They do not (and should not) directly evaluate or constrain judicial reasoning; however, delays or procedural gatekeeping at the registry stage can be decisive in cases where immediate interim relief is required.

H. Caseload and delays

India does not have a dedicated asylum court or refugee determination authority. As a result, asylum-related issues are embedded within the ordinary caseloads of criminal courts, constitutional courts, administrative authorities, and specialized tribunals. Refugee and asylum matters, therefore, form a small but high-stakes subset of broader migration, detention, and constitutional litigation.

Caseload of judicial bodies responsible for asylum access adjudication

- *First instance judicial or quasi-judicial body/bodies:* At the first level, the caseload is dominated by **immigration enforcement and nationality determination matters**, rather than formal asylum claims.
- **Foreigners Tribunals** (particularly in Assam and the Northeast) carry very large caseloads focused on determining whether individuals are "foreigners" under the Foreigners Act, 1946. Their work is primarily nationality determination linked to citizenship registers, border migration, and alleged irregular entry. Asylum-related protection arguments arise only incidentally, as tribunals are not designed to apply refugee law standards. Their dockets are therefore **high-volume,**

[129] Database available at https://njdg.ecourts.gov.in/njdg_v3/

document-heavy, and time-pressured, with strong emphasis on identity documentation rather than protection risk assessment.

- **District & Sessions Courts** handle criminal remand, bail, and habeas corpus petitions involving non-citizens detained for immigration violations. These courts' primary caseload is criminal law; asylum-related detention cases form a **small fraction**. However, because they decide remand and bail, they function as the first judicial checkpoint for liberty in immigration detention cases.
- **FRROs and immigration authorities** (administrative/quasi-judicial) process large numbers of visa, registration, and overstay matters daily. Their caseload is overwhelmingly administrative immigration compliance. Asylum-related cases arise where individuals lack valid visas, are undocumented, or are under deportation consideration. These bodies operate under **high-throughput administrative caseloads**, where refugee status claims are peripheral rather than central.
- *Second instance judicial or quasi-judicial body/bodies:* High Courts exercise writ jurisdiction under Article 226 of the Constitution. Their overall caseload is very large and includes: criminal appeals, service law disputes, civil writs, constitutional challenges, administrative law cases, etc. Within this broad docket, asylum-related matters appear as challenges to detention or deportation, habeas corpus petitions, denial of access to documentation or UNHCR, conditions in detention centres, and procedural fairness claims. These cases are numerically very small compared to overall High Court filings, but they are procedurally urgent and often involve interim relief applications. Because High Courts supervise executive action, they are the main judicial forum for refugee protection litigation in India. For instance, Recent NGO and UNHCR-linked estimates put about 676 Rohingya refugees in detention, and notably 608 of them have no ongoing court cases or sentences pending (i.e., many are detained administratively rather than under penalty), showing a significant backlog of non-criminal immigration detention matters that could form the basis of judicial review petitions.[130] For context: As of 31 December 2025, 6,370,904 cases were pending across all Indian High Courts.[131] As of June 30, 2025, the Gauhati High Court, which features prominently in refugee jurisprudence, had a total of approximately 49,419 pending cases at its principal seat, comprising both civil and criminal matters. Of these, 37,560 were civil cases, 11,859 were criminal cases, and 17,536 total cases were pending for *more than five years.*[132]
- *Third instance judicial or quasi-judicial body/bodies:* The Court's caseload is heavily weighted toward civil appeals, criminal appeals, and constitutional matters of national importance. Asylum cases reach this level only when they raise broad constitutional principles or high-profile deportation disputes. Thus, the Supreme Court's asylum caseload is low in number but high in legal impact. As of 31 December 2025, 92,118 cases were pending in the Supreme Court.[133]

Implications of caseload on asylum access adjudication

High caseloads and constrained judicial/administrative staffing primarily delay access, reduce factual scrutiny, and tilt incentives toward administrative expediency — all of which materially undermine timely and careful adjudication of asylum, detention, and deportation claims. Where asylum protection depends on rapid interim relief (stays of removal or habeas corpus relief), these systemic pressures can be determinative of outcome rather than the legal merits. Deportation/detention cases are urgent; a hearing

[130] Refugees International, "*A Lifetime in Detention: Rohingya Refugees in India"* December 16, 2024; Available at https://www.refugeesinternational.org/reports-briefs/a-lifetime-in-detention-rohingya-refugees-in-india/

[131] Press Information Bureau, YEAR ENDER 2025 DEPARTMENT OF JUSTICE, MINISTRY OF LAW & JUSTICE, published 07 JAN 2026 7:33PM by PIB Delhi

[132] The Sentinel, "Assam: 49,419 Pending Cases in Gauhati High Court", 26 August 2025, available at **https://www.sentinelassam.com/topheadlines/assam-49419-pending-cases-in-gauhati-high-court**

[133] Ibid. at 38

delayed even a few days can allow a removal to proceed. India's courts are managing very large inventories of work, and the National Judicial Data Grid and e-Courts dashboards show very large monthly institution/disposal flows and high overall pending stocks, demonstrating the registry pressure that competes with life-and-liberty petitions and makes urgent listing harder and increases the probability that interim relief (the only practical protection in many cases) will come too late.

At first instance, Foreigners Tribunals and immigration authorities operate within executive/administrative frameworks (Foreigners Act and Foreigners (Tribunals) Order) and frequently face throughput expectations. Where presiding officers or administrative managers are evaluated on disposals, there is a practical risk of abbreviated hearings, fewer adjournments for evidence-gathering (e.g., UNHCR documentation), and limited time for translations or counsel — all of which reduce the reliability of determinations that affect liberty and status.[134] Resource constraints reduce legal aid and case preparation. High systemic demand means legal-aid providers and pro-bono lawyers are thinly spread; detained asylum seekers, therefore, often lack prepared evidentiary bundles or counsel to press for emergency listing, which again reduces the judges' ability to conduct meaningful review within constrained time. UNHCR registration and NGO reports show large refugee populations whose cases may require legal assistance to move through the system. Administrative performance metrics (disposals, processing numbers) can favour speed over individualized risk assessment. In the absence of a domestic asylum statute mandating rights-protective procedures, managers' emphasis on throughput can produce systemic bias toward removal/detention. High Courts have constitutional powers to grant habeas corpus and writ relief, but heavy caseloads (millions pending nationwide) and registry constraints slow listing and hearing. This produces two problems: (a) urgent interim relief may be unavailable in time; and (b) High Courts must decide appeals from procedurally truncated first-instance records, increasing the risk that fact-intensive protections are reversed for lack of adequate record. The Supreme Court sets binding precedent, but getting urgent Special Leave Petitions or Article 32 petitions listed promptly depends on registry processes and bench composition. The Supreme Court's own pendency (tens of thousands) affects how fast it can respond to life-threatening deportation cases; this limits the practical reach of precedent as a timely remedy. Time pressure and administrative incentives can lead to removals before courts can test protection claims; NGO reports on detained Rohingya show extended detention and limited effective access to remedies. Outcomes may depend more on where a person is detained (which registry, which High Court) and on access to NGOs/lawyers (for instance, those in Delhi have more access to NGO assistance) than on the merits of the claim. This undermines predictability and equal protection of non-citizens.

Delays and backlogs characterizing judicial bodies responsible for asylum access adjudication

As evident from the above, delays and pending backlogs are a persistent feature of the Indian legal system. Although there are *no official asylum-specific case statistics* (courts do not publish separate figures for "asylum", "refugee", or "non-citizen protection" litigation), the overall backlog and delay dynamics directly affect how quickly and thoroughly asylum-related matters (detention reviews, habeas corpus petitions, deportation stays, procedural access challenges) are heard and decided.

- *First instance judicial or quasi-judicial body/bodies:* Foreigners Tribunals are not judicial courts established under the Constitution; they function under the Foreigners Act, 1946, and the Foreigners (Tribunals) Order, 1964 (both executive instruments). As administrative bodies, they are not required to publish comprehensive public Excel-style caseload metrics, but operational reporting from state governments and civil society fact-finding indicates a large pendency of identity/nationality cases in Assam and other northeast states, where tribunals determine

[134] National Law School of India University & Queen Mary University of London, "*Unmaking Citizens: The Architecture of Rights Violations and Exclusion in India's Citizenship Trials*", available at https://www.nls.ac.in/wp-content/uploads/2025/07/Unmaking-Citizens_online-report.pdf

"foreigner" status in tens of thousands of cases. A 2019 amendment enabling state and UTs to create their own tribunals resulted in hundreds of new tribunals, without corresponding procedural safeguards or additional judicial staffing, contributing to processing delays, particularly for litigants who raise protection claims alongside nationality issues.

- *Second instance judicial or quasi-judicial body/bodies:* In the High Court, many asylum-related petitions are filed as writ petitions. High pendency means long waits for full hearing dates on merits, delays in interim relief (stay of deportation) that are time-sensitive, and registry constraints on "urgent mentions," meaning that applicants must repeatedly revisit the registry to try to secure hearing slots.
- *Third instance judicial or quasi-judicial body/bodies:* Urgent matters (e.g., challenges to deportation) often require immediate interlocutory relief before full merits can be assessed. With pendency high, getting urgent admissions or interim protections from the Supreme Court requires effective registry navigation and persuasive applications. Asylum cases tend to reach the Supreme Court only when they raise significant constitutional issues; by that time, delay at lower levels may have already produced irreversible harm (deportation, prolonged detention).

Implications of backlog and delays in asylum access adjudication

Backlogs and delays are a significant procedural challenge in India's asylum access adjudication, with implications for all actors involved—judges, lawyers, and asylum seekers.

Implications for Asylum Seekers - Delays in hearings or rulings can prolong detention, heighten vulnerability, and exacerbate uncertainty for asylum seekers, particularly those facing deportation. In some cases, additional time can allow applicants to collect supporting documentation or obtain expert affidavits. However, protracted delays often disadvantage those without legal representation or resources to navigate complex procedures. Long delays also contribute to stress, mental health challenges, and a sense of insecurity, potentially undermining the ability of applicants to effectively participate in hearings.

Implications for UNHCR - Assessors handling asylum cases face increased workload and uncertainty due to unpredictable hearing dates, which may compromise case preparation and strategic planning. It may also lead to less time available to research and give more considered reasoning for decisions.

Implications for legal representatives and lawyers – For legal aid lawyers assigned to detained asylum seekers, delays often mean that they move on, passing the case to the next lawyer; as a result, there is little continuity for the asylum seeker. For those providing pro bono services, delays may also cause the need for repeated engagement with clients over extended periods, straining pro bono and NGO resources.

Implications for Judges and Quasi-Judicial Bodies - Heavy caseloads and backlogs strain judges and tribunal members, limiting time for careful deliberation. However, in a few instances, the time afforded by delays can facilitate the collection of evidence or expert testimony, enhancing the quality of decisions. Courts have occasionally used backlogs as an opportunity to issue interim directions protecting asylum seekers' rights during protracted proceedings. Overall, delays tend to reinforce systemic inequities due to the lack of specialized procedures, legal aid, and uniform case management (ILI, 2023).

I. Influence of judicial or quasi-judicial bodies on access to asylum

As mentioned previously, there is no dedicated law for refugees in India. However, over the past few decades, there have been a number of other laws, chiefly on citizenship, that have touched upon the issue. Courts have consistently turned to constitutional guarantees—most notably Article 21 of the Constitution, which protects the right to life and personal liberty—to extend procedural protections to asylum seekers in the absence of a formal refugee law. However, these interventions have generally not led to the enactment of a comprehensive statutory framework on asylum. Instead, they have primarily influenced administrative practice and public debate, while legislative change has tended to move in a securitizing

direction. Refugee protection is a policy choice; courts can interpret constitutional limits and grant case-by-case relief, but cannot (and do not) force Parliament to adopt a full RSD statute. High-profile litigation (Rohingya cluster: *Mohammad Salimullah* and related petitions) dramatized gaps in India's approach to refugees and pushed international and domestic actors to engage. That litigation influenced argumentation, monitoring, and NGO advocacy, but did not force Parliament to enact refugee-protective legislation. Instead, policy responses have tended toward consolidation and securitization (culminating in the Immigration & Foreigners Act, 2025).

Impact of case law in the field of asylum access adjudication on legislation

One of the few instances where judicial intervention directly influenced legislative and administrative frameworks was in *Sarbananda Sonowal v. Union of India* (2005), where the Supreme Court struck down the Illegal Migrants (Determination by Tribunals) Act, 1983. The Court found the Act's procedures constitutionally inadequate for detecting "illegal migrants," leading to its repeal and the strengthening of the Foreigners Tribunals regime in Assam. This case exemplifies how judicial scrutiny can reshape migration governance, though in this instance toward greater control rather than expanded protection.

In contrast, cases such as *Dongh Lian Kham v. Union of India* (Delhi High Court, 2015) illustrate the judiciary's willingness to creatively deploy constitutional protections to fill legislative gaps. In that case, the Court accepted that the principle of non-refoulement formed part of Article 21, and treated UNHCR refugee status determinations as persuasive evidence. While such rulings have provided critical relief in individual cases, they have not spurred Parliament to codify refugee protections.

Similarly, in *Mohammad Salimullah v. Union of India* (2017–2021), concerning the proposed deportation of Rohingya refugees, the Supreme Court issued interim protections and repeatedly scrutinized executive action. However, these judicial interventions did not prevent deportations in some cases, nor did they generate legislative reform. On the contrary, subsequent legislative consolidation in the form of the *Immigration and Foreigners Act, 2025* moved in the opposite direction, streamlining deportation and detention powers and reaffirming executive control.[3]

These patterns underscore the limits of judicial influence on legislation in India's asylum field. Courts have been vital **gap-fillers**, invoking constitutional principles to mandate procedural safeguards, order interim relief, or direct access to UNHCR. Yet, such measures have remained **case-specific and piecemeal**. They have shaped administrative practice and informed advocacy, but not produced comprehensive legislative codification of asylum rights. Where legislative change has occurred, as with the repeal of the IMDT Act or the enactment of the 2025 statute, it has generally reflected executive and political priorities—often emphasizing security and exclusion—rather than judicially articulated protection standards.

Impact of case law in the field of asylum access adjudication on asylum policies

Again, Indian case law has shaped administrative practice, monitoring and enforcement around migration and asylum, but has not produced a coherent protective asylum policy or RSD (refugee status determination) statutory regime. Where courts have intervened, the effects are mainly (1) case-specific protections, (2) administrative changes or reporting/monitoring obligations, or (3) indirect contributions to broader policy shifts — sometimes toward greater control rather than protection, as clearly demonstrated by *Sarbananda Sonowal,*[135] where the Supreme Court's judgment dismantling the defective IMDT regime and upholding stronger mechanisms for identifying "foreigners" set the judicial tone for tougher administrative detection and tribunal processes in Assam. Judicial interventions sometimes slow or shape executive action (temporary stays, reporting obligations), but they do not always prevent removals or change policy direction. After litigation, executive consolidation continued — culminating in the *Immigration & Foreigners Act, 2025* which strengthens central powers over immigration and border controls

[135] *Sarbananda Sonowal v. Union of India (UOI) and Another*, Writ Petition (Civil) No. 131 of 2000

rather than establishing statutory refugee protections.[136] This demonstrates that judicial pressure often yields administrative tweaks rather than protective legislation.

Impact of case law in the field of asylum access adjudication on executive practices

Indian courts, though operating in the absence of a national refugee law, have influenced the practices of executive bodies tasked with immigration control and border management. The impact has been uneven: in some cases, judgments have temporarily expanded access or compelled procedural safeguards, while in others they have indirectly strengthened restrictive executive practices. Thus, in *Sarbananda Sonowal v. Union of India (2005),* by striking down the IMDT Act, the Court declared irregular migration a form of "external aggression" and required stricter mechanisms for detecting "foreigners." The executive responded by strengthening Foreigners Tribunals, expanding border policing, and later implementing NRC processes. Thus, judicial intervention here directly contributed to executive practices that hardened barriers to asylum access by conflating refugees with irregular migrants. But in *Dongh Lian Kham v. Union of India (2015),* the Delhi High Court stayed the deportation of Myanmarese asylum seekers, recognizing India's obligations under the principle of *non-refoulement*. This case forced executive agencies (FRRO, MHA) to temporarily halt removal actions, setting a precedent for more cautious deportation practices in similar cases.

However, even where courts have ordered protections, their rulings have generally been **case-specific** and did not establish systemic obligations. Executive bodies like the FRRO, Bureau of Immigration, and state police continue to exercise wide discretion in registration, detention, and deportation. The absence of statutory asylum procedures means judicial pronouncements often produce **temporary pauses** rather than structural reforms.

L. Judicialization of politics

In general, criticism by the Indian government of court rulings on asylum matters has centred on reasserting executive primacy, questioning judicial intervention, and emphasizing security and sovereignty over international norms or humanitarian judicial reasoning. Courts (High Courts, the Supreme Court) routinely hear public-interest and *habeas* petitions challenging executive detention, deportation and removal decisions. Judicial orders often produce stays, orders for reports, or directions that the executive must follow — and the executive sometimes complies reluctantly or responds administratively rather than by changing policy. Thus, the long-running Rohingya litigation (Mohammad *Salimullah* et al.) resulted in intensive Supreme Court supervision (status reports, interim directions) even while the government pursued deportation and detention operations.

At a more regional level, State actors have at times sought to accelerate deportations or to rely on alternative legal instruments (e.g., invoking the 1950 Immigration Expulsion order) to bypass slower tribunal processes; Assam's leadership has publicly signalled faster deportation drives and even suggested bypassing tribunals in some cases[137]. These administrative choices often collide with courts' insistence on procedural safeguards. The tribunals are in practice heavily tied to executive structures; the Supreme Court and Gauhati High Court have repeatedly intervened to correct tribunal procedures or order more tribunals, while state leaders (e.g., Assam CM) have publicly discussed policy directives on deportation and use of other legal tools.[138] These parallel moves show institutional friction between court oversight and state administrative priorities.

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[136] Juris Centre, "*Critical Analysis of The Immigration and Foreigners Bill, 2025*", July 4, 2025; available at https://juriscentre.com/2025/07/04/critical-analysis-of-the-immigration-and-foreigners-bill-2025/

[137] The Economic Times, "Himanta Biswa Sarma invokes 1950 law to fast-track deportation, bypassing foreigners tribunal", June 07, 2025, Available at https://economictimes.indiatimes.com/news/politics-and-nation/himanta-biswa-sarma-invokes-1950-law-to-fast-track-deportation-bypassing-foreigners-tribunal/articleshow/121697371.cms

[138] *In Re : Section 6a Of The Citizenship Act 1955*, Writ Petition (C) No 274 of 2009, Available at https://www.scobserver.in/reports/assam-public-works-union-of-india-day-9-of-argument/

However, while Courts can and do secure relief for individuals (stays, bail, directions), judicial wins are often temporary or case-specific; the executive's broader policy posture (detention, expulsions, strengthened tribunal/identification machinery) continues to shape the lived reality of asylum seekers. Conflicting signals — courts telling agencies to explain or pause, while political leaders push for removals — produce inconsistent administrative action (detentions, sudden deportations, uneven releases). NGOs report repeated instances of detention despite court orders or extended delay in compliance[139]. High-profile judicial intervention becomes politically sensitive; the media and civil society frame interventions as either necessary human-rights checks or as judicial overreach. That polarisation in turn hardens policy postures, making cooperative reform less likely[140]. The conflict produces **intermittent protections** for individuals, but it has not produced durable, system-wide safeguards (statutory RSD, binding procedures). The net effect for asylum seekers is legal uncertainty, uneven protection, and episodic confrontation between courts and the state.

Restriction or expansion of the jurisdiction or competence

Yes, while not directly in the context of refugees, there have been legislative amendments to the jurisdiction and competence of Foreigners Tribunals in recent years. In June 2025, Assam's Chief Minister announced that the state could now expel individuals identified as "illegal immigrants" without involving the Foreigners Tribunal.[141] This decision was based on a Supreme Court order[142] affirming the continued applicability of the 1950 Immigration Expulsion Order, which grants district authorities the power to deport individuals without tribunal proceedings. In August 2025, the Assam government directed Foreigners Tribunals to drop cases against six non-Muslim communities—Hindus, Christians, Sikhs, Buddhists, Jains, and Parsis—who entered India on or before December 31, 2014, citing the Citizenship Amendment Act. This move has raised concerns about institutionalized discrimination and political motivations. These actions reflect a divergence between the executive's approach to migration and the judiciary's stance. While the executive has taken steps to streamline and expedite deportation processes, often bypassing judicial oversight, the judiciary has occasionally intervened to uphold procedural safeguards. For instance, in February 2025, the Supreme Court ruled that Foreigners Tribunals cannot review their own orders, emphasizing the need for proper legal procedures.[143]

Ways to influence policy outcomes

Judicial and quasi-judicial bodies in India have proactively influenced asylum policy outcomes, despite the absence of a comprehensive national refugee law. While their jurisdiction and competence have not been

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139 Article 14, "*Despite 2 High Court Release Orders, Judicial Negligence & Administrative Apathy Keep Rohingya Refugee In Jail For 7 Years*". 16 April 2025; Available at https://article-14.com/post/despite-2-high-court-release-orders-judicial-negligence-administrative-apathy-keep-rohingya-refugee-in-jail-for-7-years-67feec0e268bc

140 Geneva Academy of International Humanitarian Law and Human Rights, "*From Haven to Hostility: India's Changing Immigration Policy on Rohingya Refugees*" by Deewanshi Vats, June 10, 2025; Available at https://www.jurist.org/commentary/2025/06/from-haven-to-hostility-indias-changing-immigration-policy-on-rohingya-refugees/

141 The Economic Times, June 7 2025, "*Himanta Biswa Sarma invokes 1950 law to fast-track deportation, bypassing foreigners tribunal*", available at https://economictimes.indiatimes.com/news/politics-and-nation/himanta-biswa-sarma-invokes-1950-law-to-fast-track-deportation-bypassing-foreigners-tribunal/articleshow/121697371.cms

142 Please see Writ Petition (C) No 274 of 2009 in The Supreme Court of India, available at https://api.sci.gov.in/supremecourt/2009/16113/16113_2009_1_1501_56604_Judgement_17-Oct-2024.pdf. The order held that the Immigrants (Expulsion from Assam) Act, 1950 (Act 10 of 1950) - a short, special law enacted by the Indian Parliament soon after independence, specifically to address cross-border migration into Assam – remains valid. Section 2 of the Act authorises the Central Government to order the expulsion from Assam of "any person or class of persons" if it believes their stay is detrimental to the interests of the general public of India or any section thereof, or likely to endanger peace and order in the state. These orders can be implemented by the state or district authorities, i.e., without recourse to any quasi-judicial tribunal like the Foreigners Tribunals.

143 The Times of India, September 9 2025, "*Assam Cabinet Clears 10-day Protocol to Expel Illegal Foreigners*", available at https://timesofindia.indiatimes.com/city/guwahati/assam-cabinet-clears-10-day-protocol-to-expel-illegal-foreigners/articleshow/123792767.cms

formally expanded, these bodies have utilized existing constitutional provisions and legal frameworks to shape practices and policies related to asylum access. As mentioned above, Indian courts have applied ben creatively in applying constitutional provisions, notably Article 21 (Right to Life and Personal Liberty), to extend protections to refugees. For instance, the Supreme Court has ruled that refugees, even if not formally recognized, are entitled to certain fundamental rights, thereby influencing the treatment and status of asylum seekers in India. The National Human Rights Commission (NHRC) has advocated for the enactment of a comprehensive refugee law to address the legal ambiguities and procedural delays faced by asylum seekers. Such recommendations reflect the judiciary's proactive stance in urging legislative reform to improve asylum access. Their interventions also underscore the judiciary's role in overseeing and influencing executive practices concerning asylum seekers. For instance, in October 2024, the Supreme Court ordered the Assam State Legal Services Authority to conduct surprise inspections of the Matia Transit Camp, highlighting concerns over the conditions in which refugees, particularly Rohingya, were detained.[144]

Influence on policy outcomes in practice

Yes, judicial and quasi-judicial bodies in India have influenced asylum policy outcomes in practice, particularly through their decisions in individual cases. However, their impact is often limited by the absence of a comprehensive national refugee law and the executive's discretion in immigration matters. Indian courts have interpreted constitutional provisions, such as Article 21 (Right to Life and Personal Liberty), to extend protections to refugees and asylum seekers. For instance, in the case of *Syed Ata Mohammadi v. Union of India*, the Supreme Court directed that the petitioner be allowed to travel to any state of his choice, aligning with international conventions on refugee rights. Courts have also stepped in to protect the rights of individuals facing deportation or detention, particularly when constitutional rights are at stake. These interventions, however, are often case-specific and do not lead to systemic changes in asylum policy. Thus, the broader judiciary in India has generally upheld the executive's authority in matters of immigration and asylum, often deferring to the government's discretion. This approach reflects a reluctance to intervene in areas deemed to be within the executive's domain.

Assessment of the judicialization of politics in the country

In India, there has been an increasing role of courts in addressing political and policy issues, often stepping into domains traditionally managed by the legislature or executive. This phenomenon is evident in various sectors, including human rights, environmental law, and social justice. Scholars have observed that the Indian judiciary has become a significant actor in policy-making, particularly through Public Interest Litigations (PILs) and *suo motu* cognizance of issues. However, this judicial intervention is not without controversy. Critics argue that the judiciary's expanded role sometimes leads to overreach, encroaching upon the functions of the executive and legislature. In the context of asylum law, the absence of a comprehensive refugee law has compelled the judiciary to play a proactive role. Courts have historically played a crucial role in balancing executive authority, international obligations, and the constitutional rights of non-citizens in the absence of a comprehensive domestic refugee law. They have actively interpreted constitutional rights (notably Article 21 on the right to life and personal liberty) to offer humanitarian safeguards even when legislative or executive branches hesitate or oppose such protections. This could be seen even as the judiciary holds the role of an intermediary between the state's security concerns and India's obligations under international human rights and customary law, despite the country not being a signatory to the 1951 Refugee Convention.[145] The classic judicial approach has been through Public Interest Litigations and case law, with courts clarifying migrants' rights and scrutinizing

[144] Refugees International

[145] Soumeli Sutradhar, Indian Journal of Law and Legal Research Volume VII Issue III | ISSN: 2582-8878, "*The Role Of The Judiciary In Upholding Migrants' Rights: A Comparative Study Of India And Selected Western Jurisdictions*" available at https://www.ijllr.com/post/the-role-of-the-judiciary-in-upholding-migrants-rights-a-comparative-study-of-india-and-selected-w

executive deportation actions when these threaten basic rights. However, while general judicial interventions are often guided by established laws and precedents, decisions in migration and asylum cases, for which no such explicit law exists, are frequently based on constitutional interpretations, operating in a legal vacuum and leading to variability and unpredictability. The current debate over the status and deportation of Rohingya Muslims illustrates the ongoing tension between humanitarian and security imperatives. Executive actions sometimes conflict with judicial directives. Thus, the Supreme Court has repeatedly been asked to decide if the Rohingyas are illegal immigrants or refugees with basic protection rights; meanwhile, the government has proceeded with deportations despite court orders.

III. OTHER ACTORS IN ASYLUM ACCESS ADJUDICATION

A. Bodies of the executive branch in asylum access adjudication

The institutional and organizational configuration of judicial and quasi-judicial bodies in India significantly shapes asylum access adjudication. Gaps in coordination, resource allocation, IT tools, and formal monitoring reduce both the timeliness and consistency of decisions, while ad hoc judicial innovations partially mitigate these deficiencies. However, judicial and quasi-judicial bodies interact with executive authorities (e.g., immigration officials), UNHCR, and NGOs, and this can improve access to evidence and procedural fairness, enabling more informed adjudication. Courts have occasionally mandated oversight measures, like requiring periodic reports on detention centres (e.g., Rohingya cases). While delays remain a concern, the absence of rigid procedural templates allows judges flexibility to prioritize urgent cases, particularly detention or deportation matters. However, the lack of systemic specialization or dedicated resources for asylum means that judicial protection is often uneven and case-specific.

Involvement, efforts, and interests that executive bodies display

In India, the executive bodies involved in migration, asylum, and refugee protection are **not specialized** in asylum or human rights, and their mandates are primarily focused on broader migration and security functions. Staff typically have administrative or law enforcement backgrounds and limited formal expertise in refugee or international human rights law. Officers are trained in migration procedures and border security, but they have minimal exposure to asylum law. While they are operationally well-resourced for routine migration processing, they do not have dedicated resources for refugee screening or protection.

In India, executive bodies—primarily the Ministry of Home Affairs (MHA), Immigration authorities, and occasionally local police or district magistrates—play a limited and variable role in asylum access adjudication when they appear as parties in proceedings, particularly before Foreigners Tribunals or courts reviewing deportation and detention cases. They may be called to provide evidence or argue procedural points. They are less active in cases where the stakes involve broader protection concerns, such as asylum merits, which fall outside their primary migration-control mandate. Their involvement often depends on the availability of administrative and legal resources. Smaller district offices may rarely appear in person, relying instead on written submissions, whereas more resourced offices in urban centres (e.g., Delhi, Chennai) participate more consistently. In any case, executive bodies focus on providing documentation, verifying identity, or explaining immigration procedures, rather than engaging with substantive refugee law—which is absent in India. They tend to be more involved in detention-related proceedings due to direct administrative control over detention facilities. Limited involvement in substantive protection issues leaves a vacuum, often filled by judicial creativity or, more rarely, UNHCR interventions.

Role of executive bodies and their implications in asylum access adjudication

In India, executive bodies—primarily the Ministry of Home Affairs (MHA), Immigration authorities, and local administrative officers—play a procedural and evidentiary role in asylum access adjudication, particularly when appearing as parties in proceedings before Foreigners Tribunals or higher courts reviewing detention and deportation matters. Executive representatives provide documentary evidence, verify identity, and explain administrative procedures. Their role is largely procedural, focusing on

migration control rather than assessing the merits of asylum claims, and can frame the narrative, affecting judicial interpretations and the weight given to certain evidence. Engagement varies by region and office capacity, producing inconsistencies in adjudication across territories. Urban centres with well-resourced MHA offices (e.g., Delhi, Chennai) show higher involvement compared to resource-constrained districts in the North-East. However, Executive bodies generally lack training in asylum or international human rights law, which can constrain the adjudicators' ability to fully assess refugee protection concerns.[146] While executive submissions are considered evidence, courts maintain formal independence; however, the weight of executive evidence can indirectly influence case outcomes, especially when asylum seekers lack legal representation.

B. International or regional organizations

In India, the most significant international actor in the field of asylum access is UNHCR, which remains the only body specialized in asylum and refugee protection. Since India does not have a domestic refugee law or a government-led Refugee Status Determination (RSD) procedure, UNHCR assumes a central role in registering asylum seekers and conducting RSD for most non-Tibetan and non-Sri Lankan groups, such as Afghans, Rohingya, Syrians, and African nationals. Its mandate and expertise are rooted in international refugee law, and its RSD officers undergo specialized training, which sets it apart from both Indian authorities and other international organizations in this space. Despite this specialization, UNHCR's work is constrained by resources and by the absence of a formal agreement with the Government of India, which means it must rely heavily on partnerships with NGOs and local civil society to extend services.

Other international actors, such as the International Organization for Migration (IOM), engage with migration in India but not directly with asylum adjudication. Their focus is on broader migration management, including safe migration, labour mobility, and voluntary return programs. In asylum-related matters, IOM's involvement tends to be marginal, mostly limited to facilitating resettlement for those departing for third countries and voluntary repatriation for refugees who opt for return.

The International Committee of the Red Cross (ICRC) is active in India primarily in the humanitarian field, with a focus on promoting International Humanitarian Law and monitoring detention conditions. While not directly involved in refugee status procedures, ICRC contributes to the broader protection environment by facilitating family tracing in the home country for those who have fled to India.

Taken together, this means that not many international organizations contribute to the humanitarian and rights environment surrounding refugees in India, and UNHCR stands out as the only body specialized in asylum and directly engaged in adjudication through RSD. The rest offer complementary but peripheral support in fields like migration, humanitarian protection, and human rights advocacy.

Involvement, efforts, and interests that international and regional organizations display

As mentioned above, UNHCR is the central — and effectively only — international actor in India's asylum space; other international organisations (IOM, OHCHR, specialised UN agencies) play complementary, limited roles; EU/European agencies engage mainly through projects and cooperation, not adjudication. The scope and intensity of each actor's involvement depend on mandate, funding, political access to Indian authorities, and operational presence on the ground. UNHCR conducts registration and Refugee Status Determination (RSD) for many groups in India, issues facilitation letters, provides case documentation, supports legal aid partners, monitors detention/refoulement risks, and advocates with the government. It also partners with NGOs for field outreach. Given India has no domestic RSD law or formal state asylum system, UNHCR's procedures are the main functioning RSD mechanism and a crucial evidentiary/practical resource for courts and lawyers. UNHCR provides the only reasonably consistent

[146] R. Rajesh Babu and S. Pandiaraj, Asian Yearbook of International Law, Volume 28 (2022), *India's Refugee Protection and Border Control: Some Reflections on State Practice"*

RSD mechanism and a body of country-of-origin and case evidence that courts and lawyers can use; UN and NGO monitoring has at times produced stays, releases, or improved detention conditions. On the other hand, UNHCR determinations are not legally binding on Indian authorities. Moreover, its capacity is limited by funding, political constraints, and the need for cooperation from state bodies (e.g., access to detention centres or airports). UNHCR, therefore, often works through NGOs and relies on case-by-case negotiation with the executive. IOM, on the other hand, focuses on migration management, assisted voluntary return, reintegration, and technical cooperation with the government on migration policy—not on RSD or adjudication. In practice, IOM can be present where returns/assisted solutions are discussed, but it does not perform asylum determination.

Other international bodies, such as ICRC and OHCHR, supply human-rights monitoring, child-protection, detention monitoring, and advocacy. OHCHR and other UN human-rights offices have publicly urged India to respect non-refoulement and rights of the Rohingya and other groups. There is no South-Asia regional asylum body comparable to the EUAA; regional mechanisms are weak and not a practical actor in India's asylum adjudication.

Role of international or regional organizations and their implications

In India, international organisations—above all UNHCR—play a significant role in asylum access adjudication because of the absence of a domestic asylum law and statutory refugee status determination (RSD) framework. However, the impact of this function depends on the political dispensation, and the weightage given to status determined by UNHCR is very much a factor of this.

However, courts and lawyers often depend on the interpretative, evidentiary, and technical contributions of the organisations, even if they do not have formal adjudicatory powers.

1. **Rule interpretation**
    - UNHCR's determinations and guidelines on refugee protection and non-refoulement frequently appear in Indian case law as persuasive authority. For instance, in *Kamal Khan v. State of Assam* (Gauhati HC, 2012) and *Mohammad Salimullah v. Union of India* (Supreme Court, 2021), courts cited international refugee principles and UNHCR materials when weighing deportation challenges.
    - While these references do not create binding norms, they help courts interpret constitutional rights (Articles 14, 21, 51(c)) in asylum contexts, showing how international actors indirectly shape domestic rule interpretation.
    - However, as these principles and norms have not been transposed into domestic law, there is great scope for divergent interpretations. Thus, more recent *Salimullah* orders reflect the court's reluctance to accept UNHCR norms.
2. **Involvement of experts**
    - UNHCR staff and NGO partners often serve as subject-matter experts in litigation by submitting affidavits, issuing identity and protection letters, and providing information on country of origin (COI) conditions.
    - Other UN agencies (OHCHR, UNICEF, IOM) intervene through specialist expertise—e.g., OHCHR on human rights standards in deportation cases, UNICEF on the rights of refugee children in detention. This expertise fills the gap left by the lack of specialised domestic asylum adjudicators. Thus, in the *Salimullah* case, an *Amicus Curiae* brief was filed by the UN Special Rapporteur on Racism, Xenophobia and other forms of Discrimination, elaborating on the vulnerability of Rohingya in Myanmar and the *non-refoulement* obligations of India.

3. **Collection of evidence**
    - Courts may rely on UNHCR's documentation (RSD interview records, registration cards) to establish the identity and protection needs of asylum seekers. In *Dongh Lian Kham v. Union of India* (Delhi HC, 2016), the court recognised the persuasive weight of UNHCR refugee cards in preventing the deportation of Chin refugees.
    - UNHCR's country of origin reports and detention monitoring also contribute factual evidence that applicants' lawyers use in habeas corpus and bail applications, particularly in Rohingya detention cases.
4. **Regional organisations**
    - Regional institutions in South Asia (e.g., SAARC) have no operational or legal role in asylum adjudication. Unlike Europe's EUAA, there is no regional asylum body. Thus, international UN bodies fill the space.

Thus, international organisations may compensate for India's lack of a refugee statute by providing interpretive frameworks, factual evidence, and expert testimony. This enables judges to craft creative remedies grounded in constitutional rights and international norms. However, because UNHCR's role is non-binding and politically constrained, its contributions depend on judicial willingness to rely on them. As seen in *Salimullah*, the Supreme Court acknowledged UNHCR documentation but ultimately upheld deportation in deference to executive policy. Thus, while the involvement of international organisations strengthens asylum seekers' access to justice procedurally, the lack of formal recognition of their outputs limits the transformative effect on outcomes.

C. NGOs and bar associations

NGOs have been involved in asylum access adjudication. However, there is little evidence of collective institutional involvement of bar associations in asylum adjudication in India. Individual lawyers affiliated with bar associations (e.g., Supreme Court Bar Association members) have represented asylum seekers, but this appears to be at the level of individual advocacy, not bar association policy engagement.

Involvement, efforts, and interests of NGOs and bar associations

Migration and Asylum Project (MAP) has a letter of Authorisation to provide legal representation to asylum seekers in the UNHCR RSD process. Until recently, asylum seekers in India were registered for UNHCR by Socio-Legal Information Centre, an NGO and an Implementing Partner of UNHCR. Human Rights Law Network (HRLN), and South Asia Human Rights Documentation Centre (SAHRDC) have filed petitions, represented asylum seekers, or provided amicus briefs. For example:

- *Dongh Lian Kham v. Union of India* (Delhi HC, 2016) – lawyers associated with NGOs argued for recognition of UNHCR refugee cards as protection against deportation of Chin refugees.
- *Mohammad Salimullah v. Union of India* (SC, 2021) – Rohingya petitioners were represented by NGO-linked lawyers, with NGO submissions supplementing individual claims.

The **People's Union for Civil Liberties (PUCL)** has been actively engaged in highlighting the plight of Sri Lankan Tamil refugees residing in Tamil Nadu. These refugees, who fled the civil conflict in Sri Lanka, have faced challenges such as restricted movement, limited access to employment, and a lack of legal recognition. PUCL has documented these issues and advocated for the recognition of their rights, including the right to citizenship.

Role of NGOs and bar associations and their implications

NGOs frequently provide country of origin information, detention monitoring data, and testimonies, which applicants' lawyers submit to strengthen cases. NGOs and refugee-specialist groups (e.g., MAP,

HRLN, local legal clinics) routinely identify detained or vulnerable people with prima facie protection claims, advise them on how to approach UNHCR or courts, prepare applications, and shepherd clients through UNHCR RSD or litigation. This is essential in a country without a dedicated refugee law, where state procedures are fragmented. In the UNHCR process, MAP provides full legal representation, including providing the asylum-seeker's testimony, legal submissions, and accompanying them to the RSD Interview itself, as well as following up with UNHCR for a decision.[147] NGOs can also coordinate forensic/medical, psychosocial, country-of-origin, and credibility evidence, and sometimes bring UNHCR or academic experts to court as witnesses or through expert reports. UNHCR itself also works with NGOs to provide legal aid and expertise. Such inputs affect credibility assessments and the factual findings that underpin protection decisions.

NGOs also submit petitions, act as litigants or co-petitioners in PILs, and provide research and legal argumentation to courts that may interpret constitutional and human-rights protections as giving refugees access to remedies (e.g., orders permitting UNHCR access for detainees). In practice, courts have used international law and prior judgments selectively — often in response to NGO pleadings. NGO litigation is often tied to advocacy campaigns (e.g., against Rohingya deportations or detention conditions), showing a hybrid role in policy and adjudication. NGOs influence how judges construe the law; absent NGOs, courts may be less likely to recognize routes (like UNHCR referral) for protection. But this influence is contingent and case-specific, not codified. For instance, courts in the Northeast have ordered that detainees with prima facie asylum claims be permitted to seek UNHCR RSD — typically after NGO/advocacy intervention. This is an example of courts using litigation to create access routes in the absence of administrative mechanisms.

However, their influence is constrained by the absence of a domestic refugee law, resource and funding limits (including FCRA controls), and courts' ad-hoc, case-by-case approach to applying international norms.

Organized or formal involvement of civil society, apart from NGOs

Yes, civil society in India—beyond NGOs— has played a significant role in asylum access and adjudication, particularly in cases involving Sri Lankan Tamil refugees, Tibetan refugees, and through the contributions of individuals like Nandita Haksar and academic scholars.

Academics in India have contributed to the discourse on refugee rights through research and publications. For instance, studies have been conducted on the educational rights of refugee children, highlighting the challenges they face due to India's policy of strategic ambiguity regarding refugees[148]. These academic works provide valuable insights and recommendations for improving the legal and social integration of refugees in India. Professor Bhupinder S. Chimni is a leading figure in international refugee law and a prominent voice in advocating for the legal recognition of refugees in India. His work critically analyses India's approach to refugees, emphasizing the need for a comprehensive legal framework. Professor Ranabir Samaddar is a distinguished scholar in migration and forced migration studies, with a focus on South Asia. He has extensively researched and written about the refugee situation in India, advocating for a more inclusive and humane approach to refugee protection. Both Professor Chimni and Professor Samaddar have been instrumental in shaping the discourse on refugee rights in India. Their scholarly contributions continue to influence debates on the legal recognition and protection of refugees in the country.

Lawyers have been instrumental in bringing attention to the legal needs of refugees in India. Since the 1990s, Ms. Nandita Haksar has represented Burmese refugees, particularly those from the Naga

[147] Roshni Shanker and Hamsa Vijayaraghavan, Forced Migration Review Issue 65, *"Refugee recognition challenges in India"*, available at https://www.fmreview.org/recognising-refugees/shanker-vijayaraghavan/

[148] Sarver, Iram & Kumari, Sarita. (2025). *Beyond Ad Hocism: Towards Rights based Refugee protection in India. Synergy: International Journal of Multidisciplinary Studies.* 2. 105-113. 10.63960/sijmds-2025-2168.

community, and her work has set important precedents in refugee law in India. Haksar has also been a vocal critic of policies that undermine refugee rights, advocating for a transparent legal framework to protect refugees' human rights. Her contributions have been recognized with awards such as the Rotary Writing for Peace Award in 2022. Mr. Colin Gonsalves, a senior advocate and founder of the Human Rights Law Network (HRLN), has been instrumental in litigating cases related to the rights of refugees and asylum seekers in India. He has represented various communities, including refugees from Myanmar and Sri Lanka, in seeking legal recognition and protection under Indian law. His work has contributed to raising awareness about the legal challenges faced by refugees and the need for comprehensive refugee protection laws in India. Mr. Prashant Bhushan, another senior advocate, has been at the forefront of the *Salimullah* petitions over the last 8 years. Mr. Rajeev Dhawan, also a senior advocate, was a prominent advocate for refugee law. In addition to this, Dr. Shashi Tharoor, a Member of Parliament from the opposition party, introduced a Private Members' Bill on asylum adjudication in 2015.

D. Supranational courts

For India, the short answer is that supranational courts have had very limited direct influence on judicial outcomes, but a more significant indirect influence on legal reasoning and advocacy.

Unlike many European or Latin American jurisdictions, India is not subject to the jurisdiction of a regional human rights court such as the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights, or the Court of Justice of the European Union. Nor has India accepted the individual complaints mechanisms of the major UN human rights treaty bodies. Consequently, Indian courts are not legally bound by supranational asylum jurisprudence and rarely treat such decisions as authoritative precedent.

E. Other actors

Other actors play a formal adjudicatory role. While international organizations, expert witnesses, civil society organizations, and UN human rights mechanisms may provide information, submissions, or technical expertise, they do not participate in decision-making, and their influence is limited to informing the adjudicator's assessment of the case.

IV. THE SOCIO-POLITICAL CONTEXT

A. Migratory routes and entry points

- India is a hub for mixed migration, and is widely regarded as one of the few countries that is a sending, receiving as well as a transit country.[149] Migration towards India from its neighbours remains shaped by historic ties, contemporary crises, and evolving policies—with Bangladesh and Myanmar being the most significant sources and routes amidst changing humanitarian realities.
- Between 2010 and 2025, migration routes towards India saw significant changes, with shifting patterns shaped by regional conflicts, climate impacts, changing policies, and economic trends. The route between Bangladesh and India remained the most prominent, driven by economic necessity, climate change (flooding, cyclones, river erosion), and demographic pressure. Despite increasing border control and fencing, porous sections allowed sustained movement, estimated at over 2.5 million Bangladeshi migrants in India by 2020. Environmental displacement grew as a migration factor post-2015, and the trend of both documented and undocumented migration

[149] Migration Information Source – India Country Profile, available at https://www.migrationpolicy.org/article/india-migration-country-profile

continued.[150] Annual migration rates from Bangladesh spiked during years of severe flooding and cyclones.[151]

- When it comes to Nepal, movement is freely permitted by Indian-Nepali treaties, and thus economic migration from Nepal has remained stable and high-volume, though Indian economic slowdowns briefly affected flows and the Indian government briefly shut the border amidst the recent violence in Nepal in September 2025. Indian cities and agricultural regions continue attracting Nepali workers.
- From 2012, the influx of Rohingya refugees fleeing persecution in Myanmar surged, with estimates rising to 40,000 Rohingya in India by the early 2020s. Most entered via Bangladesh, settling in cities like Hyderabad, Jammu, Delhi, and Nuh. Restrictive Indian policies after 2017 led to increased arrests, legal uncertainty, and recent expulsions and deportations, especially in 2024-25.
- Tamil refugee migration declined sharply after the end of the Sri Lankan civil war in 2009, with few new arrivals seen since 2010. Some movement persisted, but mostly as part of family reunification and labour migration.
- Afghan migration fluctuated due to war and instability in Afghanistan, with spikes following crises or regime changes but overall lower numbers compared to Bangladesh or Myanmar.
- India introduced stricter immigration controls and documentation requirements after 2014, especially for irregular arrivals. The Citizenship Amendment Act (CAA, 2019) sought to provide easier naturalization to refugees from neighbouring countries, except Muslims, making Rohingya and Bangladeshi Muslims particularly vulnerable to deportation. The more recent Foreigners and Immigration Act, 2025 replaces colonial era legislations including the Foreigners Act 1947; however, it makes no mention of refugees, and adopts a strict, national-security-oriented approach towards migrations.

Main migration routes towards the country since 2010

Forced migration routes towards India within the region mainly involve refugees and displaced persons fleeing persecution, conflict, religious or ethnic violence, and environmental disasters from neighbouring countries. The forced migration routes towards India and the regional migration landscape are deeply influenced by borders drawn by colonial powers, primarily the British Empire, whose legacy continues to shape present-day migration patterns, conflicts, and border management challenges.

Main Forced Migration Routes to India

Bangladesh: One of the largest forced migration corridors, involving millions fleeing religious persecution, political instability, and poverty. The porous India-Bangladesh border, stretching over 4,096 km across states like West Bengal, Assam, Meghalaya, Tripura, and Mizoram, facilitates large-scale unauthorized crossings. Many Bangladeshi Hindus, including refugees, have sought refuge in India over the decades, with estimates of up to 20 million illegal Bangladeshi immigrants, many absorbed into informal sectors in India. In Assam, for instance, the state has witnessed movements from both Bangladesh and Myanmar, with refugees and migrants facing challenges related to identification and deportation. The National Register of Citizens (NRC) in Assam identified significant numbers of illegal immigrants, highlighting the scale.

Myanmar (Ethnic Chins and other minorities, including Rohingya): The Chin are a major ethnic minority concentrated in Myanmar's Chin State, bordering India's Mizoram and Manipur states. Since

[150] Ranjith Kumar KC, 2018 IJCRT, Volume 6, Issue 1 March 2018, *"Economic Causes of Migration of Illegal Bangladeshis to India"*, available at https://www.ijcrt.org/papers/IJCRT1134067.pdf

[151] Migration Information Source, September 4 2021, *"Climate Change in Bangladesh Shapes Internal Migration and Movement to India"*, available at https://www.migrationpolicy.org/article/bangladesh-india-climate-migration

Myanmar's independence and especially after military rule tightened in the 1960s, the Chin people have faced religious and ethnic persecution, with many fleeing forced assimilation and violence. A sizable Chin refugee population has crossed into northeastern India, settling primarily in Mizoram, Manipur, and other border areas, including since the recent 2021 coup and subsequent conflict. The Shan ethnic group inhabits Myanmar's Shan State, which borders India's Arunachal Pradesh and Nagaland. Ongoing insurgency, inter-ethnic clashes, and military operations in Shan State have triggered the displacement of Shan people, some of whom seek safety in Indian border regions. Though smaller in number than Chin migrants, Shan refugees form a vital part of the humanitarian landscape in northeast India. Profound forced migration has resulted from ethnic cleansing and persecution of the Rohingya Muslim minority in Myanmar's Rakhine State since 2012. Thousands fled via Bangladesh and illegally crossed into India, settling primarily in cities such as Hyderabad, Jammu, Delhi, and various northeastern states. The Rohingya population in India is estimated to be between 40,000 and 75,000, with many facing detention or deportation due to legal challenges. The journey involves risks, including exploitation by smugglers and bribes paid at borders[152].

Afghanistan: Afghan refugees fleeing war and persecution, including Hindus and Sikhs, have migrated to India since the 1980s. India hosts thousands of Afghan refugees, who fled the Taliban and conflict zones. Numbers fluctuate with instability in Afghanistan. However, the lack of a legal framework for refugees in India has posed challenges for their integration and access to rights[153].

Sri Lanka to India: Refugees, mainly Tamils escaping ethnic conflict during the civil war (ended in 2009), sought refuge in Tamil Nadu and other parts of India. The flow diminished significantly post-war, but smaller movements continue for family reunification and asylum.

Other Regional Routes: While not as prominent, there are also irregular migration routes from Nepal, Bhutan, and Sri Lanka to India. These movements are often driven by economic opportunities, environmental factors, or political reasons. However, detailed data on these routes is limited.

Main entry points in the country since 2010

Since 2010, India's main migration entry points by air, sea, and land have distinctive characteristics when it comes to physical barriers, border control mechanisms, asylum seeker processing, and the presence of actors like police and NGOs.

Land Border Entry Points:[154] India's most significant and sensitive land borders are with Bangladesh, Myanmar, Pakistan, Nepal, Bhutan, and China. These borders widely differ in physical barriers, control measures, and asylum management.

- **India-Bangladesh Border** (4096 km across West Bengal, Assam, Meghalaya, Tripura, Mizoram) - Popular crossing points include Petrapole (West Bengal), Dawki (Meghalaya), Akhaura (Tripura), and the northeastern border near Mizoram. There is extensive fencing along most of the border, though some porous and riverine sections remain. Over 74% of it is fenced, with ongoing plans for completion. The Border Security Force (BSF) manages crossings, augmented by patrols and electronic surveillance systems like CCTV and drones. Informal migration control processes dominate; there are no dedicated asylum registration centres at the border. Unauthorized entries are often arrested or deported. Few formal asylum interviews or information dissemination happen

[152] Mixed Migration Centre, April 2019, Briefing Paper *"Rohingya migration to India: patterns, drivers and experiences*" available at https://mixedmigration.org/wp-content/uploads/2019/04/063_briefing-paper_Rohingya_India.pdf

[153]Shalizi, Mohammad Toufeeq & Kumar, Rajesh. (2024). "*Immigration Policy Reform: An Overview of Afghan Refugees in India. Journal of Foreign Languages Cultures and Civilizartions",* available at https://www.researchgate.net/publication/386472217_Immigration_Policy_Reform_An_Overview_of_Afghan_Refugees_in_India

[154] Data from Ministry of Home Affairs, available at https://www.mha.gov.in/en/divisionofmha/border-management-i-division

at crossing points. There is some civil society monitoring, but there is a limited presence of NGOs at the border, and limited support for migrants in nearby towns.

- **India-Myanmar Border** (~1643 km across Arunachal Pradesh, Nagaland, Manipur, Mizoram) - Crossing points are at Moreh (Manipur), Zochawchhuah (Mizoram), and the border near Mon district (Nagaland). There is sparse fencing due to difficult terrain; border areas are open, with natural geographical barriers like mountains and forests. The Indo-Myanmar border is guarded by Assam Rifles, with less intensive controls compared to the Bangladesh border; informal and localized crossings are common. Rohingya and ethnic minority refugees rely on informal networks to cross; there are no formal asylum registration centres at the border, and documented migrants are processed further inland, sometimes with NGO support.
- **India-Pakistan Border** (3323 km across Gujarat, Rajasthan, Punjab, Jammu & Kashmir) - Entry localities include Wagah (Punjab), Attari (Punjab), Fazilka (Punjab), and Rajasthan border points near Ganganagar and Jaisalmer. The border is heavily patrolled, with extensive fencing and floodlights; some areas have multiple barriers, with intense BSF surveillance and monitoring; there are systematic immigration checks at formal border crossings. There are also formal immigration posts with biometric and document verification; asylum claims are rare and largely handled inland, with stringent controls on unauthorized entries. There is a limited NGO presence due to security protocols.
- **India-Nepal Border** (1751 km across Uttarakhand, Uttar Pradesh, Bihar) – There are major crossings at Sunauli, Raxaul, Bhairahawa, and Nepalgunj. There is no physical fencing since the India-Nepal open border treaty allows free movement of people. There are also minimal formal controls and limited formal immigration infrastructure; there may be informal police checks, but largely free movement is allowed, without visas or permits. There is no formal asylum process at the border; migrants enter for work and education without restrictions.
- **Bhutan** - 699 kms running along Sikkim, West Bengal, Assam, and Arunachal Pradesh.
- **Afghanistan** - 106 kms running along the Union Territory of Ladakh

Airports: India has 114 immigration check posts at airports (2025). Major international airports include Indira Gandhi International (Delhi), Chhatrapati Shivaji Maharaj (Mumbai), Chennai, Bengaluru, Kolkata, and Hyderabad. Advanced biometric screening, visa verification, and digital processing systems have been implemented. The Fast Track Immigration-Traveller Program reduces processing times. However, the UNHCR office is in New Delhi, away from airports; asylum seekers must travel to Delhi for Refugee Status Determination (RSD). No dedicated asylum registration facilities at airports.

Sea Ports: In the past, India has not faced irregular migration on the same scale as countries such as Bangladesh, but there have been occasional events such as the arrival of a large number of Tamils during the Sri Lankan crisis[155]. The most significant and longstanding forced migration route from Sri Lanka to India is across the **Palk Strait**, a narrow body of water separating the Tamil-majority northern and eastern regions of Sri Lanka from the Indian state of Tamil Nadu. This route has been historically used by Tamil refugees fleeing ethnic violence, civil war, and political repression. Major ports like Mumbai, Chennai, Kolkata, and Cochin handle immigration. They have similar border control processes as airports, with advanced document verification and customs. Ports are fenced with strict controls on passenger entry and cargo. However, there are no asylum facilities at ports.

[155] National Maritime Foundation, 2 September 2024, *"Irregular Human Migration In The Eastern Indian Ocean: Security Implications And The Need For Regional Cooperation*", available at https://maritimeindia.org/irregular-human-migration-in-the-eastern-indian-ocean-security-implications-and-the-need-for-regional-cooperation/#_ftn28

Implications that migratory routes towards the country have on how judicial institutions

India lacks a formal national refugee law or asylum procedure, relying instead on constitutional protections (Article 21 on the right to life) and international principles like *non-refoulement* enforced through judicial rulings. In this legal vacuum, political expediency and migratory routes towards India have significant implications for how judicial and quasi-judicial institutions assess the legality of barriers to asylum access, shaped by regional geopolitics, legal frameworks, and political relationships with neighbouring countries. The interplay of these factors influences decisions on asylum seekers, the legality of pushbacks, and the operation of judicial and non-judicial bodies in India's migration landscape. India's migration and asylum policies are heavily influenced by political relations with neighbours, especially Bangladesh and Myanmar. These relationships impact judicial and administrative decisions, including irregular practices like chain pushbacks, where migrants or asylum seekers are removed across multiple borders without due process, complicating legality.[156] Pushbacks across India's borders, especially with Bangladesh, are used to prevent access to asylum or formal migration channels. These often happen without judicial review or procedural safeguards, and while courts and human rights bodies have sometimes challenged these, they are rarely fully restrained due to political sensitivities, raising legality concerns under both domestic constitutional law and international refugee law principles.

For example, tensions with Bangladesh over illegal immigration have led to expedited deportations and pushbacks, which. Bangladesh's reluctance and limited cooperation affect the legality and case progress.[157] Political dynamics, such as the Citizenship Amendment Act (CAA), which fast-tracks citizenship for non-Muslim refugees from select neighbouring countries, influence quasi-judicial and administrative treatment of asylum seekers. This politicization creates barriers for Muslim migrants (e.g., Rohingya), who face detention and deportation despite international norms. Courts tend to uphold state policies in such politically charged contexts.[158] While courts enforce constitutional principles, quasi-judicial bodies like Foreigners Tribunals often operate with executive influence, creating inconsistent standards and barriers. Non-judicial actors like border security forces enact policy on the ground, frequently using pushbacks, detentions, and limited registration, which may bypass judicial oversight or due process.

Implications of country entry points on what happens in judicial institutions

India is essentially a unitary federalism – thus, its structure is federal, but with a strong central government. Thus, the entry point of an asylum seeker significantly influences how judicial and non-judicial institutions assess the legality of barriers to asylum access, especially in states with complex border dynamics, where political relationships, local enforcement practices, and judicial interpretations converge to shape asylum procedures. Non-judicial bodies, particularly law enforcement agencies, have significant influence over the initial treatment of asylum seekers, sometimes creating barriers that may not be subject to immediate judicial review. For instance, in Assam, entry points along porous borders have made identification and classification of "foreigners" a central feature of adjudication. Historically, the Illegal Migrants (Determination by Tribunals) Act, 1983, was applicable, focusing on migrants from Bangladesh. Although the Act was struck down in 2005, its legacy influenced local practices and perceptions regarding migration from neighbouring countries. Since then, India has engaged in pushbacks, including deporting individuals to Bangladesh without due process. Such actions raise legal concerns, as they may violate the principle of *non-refoulement*, which prohibits returning individuals to countries where they face a real risk of persecution.

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156 The Diplomat, 14 July 2025, "*Why is India Pushing Back Suspected Infiltrators to Bangladesh?*" available at https://thediplomat.com/2025/07/why-is-india-pushing-back-suspected-infiltrators-to-bangladesh/

157 CJP, 3 July 2025, "*India's Stealthy Pushback: Thousands of alleged "Bangladeshi immigrants*" deported without due process across states", available at https://cjp.org.in/indias-stealthy-pushback-thousands-of-alleged-bangladeshi-immigrants-deported-without-due-process-across-states/

158 Refugee Law Initiative, May 6, 2021 "*India is chipping away at its past generosity towards refugees*", https://rli.blogs.sas.ac.uk/2021/05/06/india-is-chipping-away-at-its-past-generosity-towards-refugees/

Under the erstwhile Section 3 of the Foreigners Act, 1946 and the Foreigners (Tribunal) Order, 1964, the Central Government has the power to establish Foreigners Tribunals anywhere in India to determine whether a person is or is not a foreigner. So, *in principle*, FTs can be set up anywhere in India. However, Assam is the only Indian state where FTs are established systematically and permanently. They are tasked with determining whether an individual is a foreigner, particularly focusing on those suspected of being illegal immigrants from neighbouring Bangladesh. These tribunals operate uniquely in Assam, with the authority to declare individuals as foreigners, leading to potential detention or deportation. This is due to Assam's historical engagement with the National Register of Citizens (NRC), updated under Supreme Court supervision between 2013 and 2019, and intended to verify Indian citizenship in Assam. Outside Assam, no other state operates Foreigners Tribunals. Thus, in other states, alleged irregular migrants are dealt with through executive procedures (police verification, deportation orders, or judicial review by High Courts), not through a specialized tribunal system. This makes Assam's FTs an institutional anomaly, born of the Assam Accord (1985) and expanded through the NRC verification exercise, creating a unique — and often controversial — model of citizenship adjudication within India. The NRC process and the Foreigners Tribunal system are interlinked: Individuals excluded from the NRC were made liable to be referred to FTs for the determination of their citizenship status. Conversely, persons already declared "foreigners" by FTs were automatically excluded from the NRC. This circular relationship has created a distinctive administrative-judicial apparatus in Assam, so that questions of nationality are decided not by regular courts but by specialized tribunals whose decisions can result in detention or deportation. As a result, focus tends to be on citizenship determination, with asylum considerations often secondary or conflated with illegal migration. Human rights concerns are acute due to mass tribunal decisions, limited access to lawyers, and potential executive interference.

On the other hand, in Tamil Nadu, entry was often via sea or land across the Andaman route. There is no formal tribunal system equivalent to Assam's Foreigners Tribunals; refugees are mostly registered through UNHCR parallel procedures. Judicial intervention has focused on civil rights and protection, rather than citizenship disputes. Tamil Nadu has a long history of receiving Sri Lankan Tamil refugees, especially during the civil war. Their entry was generally not treated as a security threat but rather as a humanitarian issue. This framing had several implications: most Sri Lankan Tamil arrivals were placed in government-administered refugee camps under the supervision of the Tamil Nadu state government in coordination with the Union Ministry of Home Affairs, rather than being processed through judicial or quasi-judicial bodies. Judicial institutions thus had a limited direct role in determining their status. The absence of a refugee law meant that their presence was regularized through executive orders, not through judicial interpretation of barriers like detention or pushbacks. This contrasts with Assam, where tribunals and the courts actively adjudicate foreigner status. Courts in Tamil Nadu have intervened occasionally, for example, to secure basic rights in camps (education, freedom of movement) or to prevent deportations where non-refoulement concerns were raised. These interventions show that while entry from Sri Lanka did not funnel cases into a structured asylum adjudication process, they did shape judicial creativity in extending protections.

B. Composition and spatial distribution of the forced migration population

Since 2010, data on asylum seekers (those who have applied for asylum but whose refugee status determination (RSD) is pending) and recognized refugees in India reveal varied figures and composition, primarily documented by the UNHCR and government sources. As of early 2023, UNHCR India had registered about 46,500 asylum seekers and recognized refugees combined. UNHCR is responsible for registering asylum claims and conducting RSD mainly for non-neighbouring countries and Myanmar-origin applicants, with only one office located in New Delhi. The total number of recognized refugees in India has been reported as over 250,000 by 2023, according to UN data. This includes large long-standing groups such as Sri Lankan Tamils (over 90,000), Tibetans (about 72,000), refugees from Myanmar (about 30,000), and Afghan refugees (about 14,000), as recorded by UNHCR and the Ministry of Home Affairs.

Exact numbers of pending asylum seekers are less visible in official data, but are included in the UNHCR registration figure of nearly 46,500. The asylum process is centralized in New Delhi, requiring asylum seekers arriving at borders or within India to reach the UNHCR office to register, often facing logistical and legal barriers.

- Sri Lanka: Ethnic Tamils constitute the largest refugee group in government camps and settlements. While the latest UNHCR factsheet does not include the number of Sri Lankan refugees, it is around 58,648 Sri Lankan refugees living in camps and an additional 34,135 living outside of camps in Tamil Nadu.[159]
- Tibet: Tibetan refugees with recognized status and residential centres like Dharamshala. Again, the most recent Factsheet omits this information; it stands at around 102,000.[160]
- Myanmar: Includes substantial numbers of Chin and Rohingya refugees. UNHCR recorded 32,000+ refugees from Myanmar in its latest factsheet.
- Afghanistan: Refugees, including Hindus, Sikhs, and others, numbering around 9,700.
- Minorities from countries like Sudan, Somalia, Iraq, and others present smaller numbers, mostly registered through UNHCR; these numbers are around 4,000.[161]
- Displaced persons in India, including asylum seekers, refugees registered with UNHCR, and non-registered groups, are distributed unevenly across the territory, reflecting historical migration patterns, geography, and state policies. The largest single concentration is now in the Northeast states of Mizoram and Manipur, where the 2021 Myanmar conflict has driven a large number of ethnic Chins. It is followed by Tamil Nadu, which hosts over 55,000 Sri Lankan Tamil refugees in government-run camps and tens of thousands outside. Tibetan refugees are largely found in Himachal Pradesh, where the Central Tibetan Administration has its headquarters, as well as in Karnataka, Uttarakhand, Jammu & Kashmir, and Arunachal Pradesh. Other states with refugee presence include Delhi (urban settlements), Haryana, both of which host Rohingya refugees. Camp-based refugee settlements are fewer in India compared to many other countries; many refugee groups live integrated to some extent within host communities, often in urban or semi-urban areas. While some refugee populations are concentrated near India's international borders (e.g., Rohingyas near Assam and West Bengal bordering Bangladesh and Myanmar), many refugees move away from border zones into interior states or cities for safety and livelihood. Refugee camps are limited, so much of the displaced refugee population remains dispersed in towns and cities rather than official border or camp zones.[162]
- In addition to this, there are also a number of Pakistani refugees in India, mostly from minority religions. Estimates suggest there are up to 3.5 lakh (350,000) Pakistani Hindu refugees living across India, especially concentrated in Delhi, Rajasthan, Punjab, Gujarat, and Haryana. A significant number of Pakistani Hindu refugees have settled in Rajasthan, both in urban and border

[159] MHA's annual report of 2023-24

[160] Migration Information Source, February 8, 2024, *"South Asia's Tibetan Refugee Community Is Shrinking, Imperiling Its Long-Term Future"* available at https://www.migrationpolicy.org/article/tibetan-refugees-india#:~:text=Over%20the%20last%20two%20decades%2C%20Tibetan%20communities%20in%20the%20Indian,been%20especially%20pronounced%20since%202014.

[161] UNHCR India Factsheet, available at https://www.unhcr.org/media/india-factAsheet-11

[162] Page 36-38, National Human Rights Commission of India (2024) *Refugees in India: A national survey of refugee communities' access to education, healthcare and livelihoods.* New Delhi: NHRC. Available at: https://nhrc.nic.in/sites/default/files/Refugees_in_India.pdf

districts, with the Universal Just Action Society (UJAS) estimating up to 30,000 arrivals in the last decade.[163] There are also groups in Gujarat, as well as Punjab.

- Delhi hosts a significant number of refugees, primarily from Myanmar, Afghanistan, and Somalia, as well as some African countries. This is largely due to the presence of UNHCR in the city.

Implications on what occurs in judicial institutions

The spatial distribution of forced migrants and refugees in India—whether in urban, rural, or peripheral locations—has clear implications for asylum access and the functioning of justice and adjudication systems. For instance, for the refugees in Delhi, access to UNHCR is far easier than for those in other parts of the country, who may receive less support but face similar challenges such as restrictions on movement, lack of legal documentation, and the threat of detention. This centralisation means asylum adjudication (in the form of RSD by UNHCR) is effectively limited to those who can relocate to or sustain themselves in Delhi. Dispersed populations in border states or rural areas often remain undocumented and excluded. Refugees in peripheral and rural areas are more isolated from legal aid, have fewer NGOs operating locally, and face logistical barriers in reaching courts or quasi-judicial bodies. Authorities may be less familiar with asylum procedures, leading to inconsistent or delayed adjudication and significantly less oversight to prevent human rights violations. These populations often rely on informal resolution mechanisms, which may not be equipped or inclined to address asylum-related claims. Tamil Nadu (Sri Lankan Tamils), Mizoram and Manipur (Chin refugees from Myanmar), and Jammu & Kashmir (Afghan, Rohingya) host large refugee groups in border districts. Here, access to asylum adjudication is shaped less by UNHCR and more by state governments' discretion, local politics, and security concerns. For example, Sri Lankan Tamils in Tamil Nadu have access to state-run camps and some protections, but their status is administrative, not adjudicated. Conversely, Rohingya in Jammu face securitised framing, with courts often deferring to national security arguments rather than refugee protection standards.

In urban settings, especially Delhi, the adjudication process is more individualised, but contingent on registration with UNHCR. Refugees in rural border camps (e.g., Sri Lankan Tamils in Tamil Nadu, Chakmas in Arunachal Pradesh) are also more subject to collective administrative categorisation rather than individual status adjudication. Movement restrictions, particularly for Rohingya and other vulnerable groups, mean that refugees in certain regions may be forced into hiding or deterred from seeking justice, increasing their risk of exploitation or arbitrary detention.

Litigation concerning refugees often arises in High Courts where the displaced population is present. Thus, jurisprudence is uneven: Delhi High Court has a more developed line of decisions engaging with UNHCR's role and international law, while other High Courts (Madras, Jammu & Kashmir, Gauhati) often rely on public order, citizenship, and state policy considerations. This unevenness reflects the geography of settlement: asylum-seekers concentrated in Delhi are more likely to get adjudication influenced by international refugee law, whereas those in border regions are subject to security-driven judicial reasoning.

The lack of UNHCR presence outside of Delhi, particularly along the Northeastern borders, also means that refugees there face severe challenges in accessing justice mechanisms. produces a fragmented, uneven asylum adjudication landscape. Access is concentrated in Delhi (UNHCR-led), constrained in securitised border regions, and virtually absent elsewhere. Courts' engagement with asylum claims mirrors these geographies, resulting in a patchwork of jurisprudence that is shaped as much by location and political context as by legal principles.

[163] Hindu American Foundation, 2021 Special Report, *"Pakistani Hindu Refugees in India"* https://www.hinduamerican.org/wp-content/uploads/2022/04/2021-Special-Report_-Pakistani-Hindu-Refugees-in-India.pdf

The number of asylum seekers and refugees in India significantly impacts judicial and non-judicial institutions involved in assessing barriers to asylum access, with several implications. Without a cohesive national asylum framework, judicial decisions vary, and courts sometimes uphold executive and quasi-judicial decisions that impose significant barriers (such as detention, deportation, or denial of asylum), especially in politically sensitive cases involving mass influx (such as the Rohingya crisis is considered). Law enforcement and immigration authorities face challenges in managing large numbers of arrivals with limited formal asylum registration mechanisms. Mass influxes can lead to expedited pushbacks, illegal detention, and denial of entry without adequate procedures, often sidestepping legal oversight. Some judicial pronouncements emphasize national resource constraints and security concerns over refugee protection, exemplified by remarks likening India to a "dharamshala"[164] not meant to host refugees indefinitely. This impacts case outcomes, as courts may justify restrictive policies and barriers in light of perceived resource limitations. In any case, courts often lack sufficient infrastructure and staffing to process complex asylum-related litigation efficiently. This leads to limited access to legal aid for asylum seekers, who frequently do not have representation or full information about procedures, compounding barriers to justice. It has been seen in the recent *Salimullah* cases that courts under resource pressure may adopt restrictive interpretations emphasizing state sovereignty, security, and public order over humanitarian considerations, resulting in rulings that do not fully uphold non-refoulement obligations.

In the absence of a codified statute on the subject, the composition and nationality of asylum seekers have an exaggerated impact, allowing for more weightage to be placed on political expedience. Thus, nationality profoundly shapes institutional attitudes and decisions, influenced by India's bilateral relations and domestic politics. For example, Rohingya asylum seekers from Myanmar face stringent scrutiny and limited protection due to geopolitical sensitivities and security concerns, while Sri Lankan Tamil and Tibetan refugees historically receive more stable recognition. Policies such as the Citizenship Amendment Act create differentiated legal frameworks based on religion and country of origin. This legal discrimination influences quasi-judicial rulings and administrative practices, often restricting asylum access for Muslim refugees while facilitating access for others. For instance, it was seen that there was an aggravated number of Rohingya deportations during the India-Pakistan tension in May 2025. Countries linked to terrorism or organized crime may lead to more restrictive measures, with courts often deferring to executive claims of national security and public order in their rulings on asylum barriers.

On vulnerable persons, Courts and tribunals often apply enhanced legal norms when assessing cases involving vulnerable persons, such as unaccompanied minors, women, survivors of torture, or trafficking victims. These include invoking international conventions like the CRC and the prohibition of torture, leading to protective rulings that lower barriers to asylum access, such as rejection of detention or deportation.

C. Political and public debate in the country

Relevance of the topic in political debate

India's political establishment has historically adopted a generous policy towards refugees from the region, bearing in mind the shared history and the fact that our borders as they exist today were drawn by British imperialists, rather than by the will of the subcontinent's people. However, over the last 7-odd decades, this approach has seen a sharp change.

After the horrors of Partition, the first refugees India hosted were the Dalai Lama and tens of thousands of Tibetans after the 1959 uprising. Their settlement was initially framed in terms of civilisational ties, Buddhism, and Cold War geopolitics. Politically, this was less about "asylum law" and more about India's foreign policy posture vis-à-vis China. While Tibetans were administratively regularised through

[164] Citizens for Justice and Peace, 11 June 2025, "*Seeking sanctuary, facing scrutiny: Why India must revisit its approach to the displaced*" available at https://cjp.org.in/seeking-sanctuary-facing-scrutiny-why-india-must-revisit-its-approach-to-the-displaced/

registration and settlement camps, there was no political pressure to legislate asylum. The issue was seen as moral and strategic, framed at the level of foreign policy and ideology — not domestic electoral contestation.

The issue of Sri Lankan Tamil refugees was heavily politicised in Tamil Nadu, the primary host state. State-level politics (DMK/AIADMK) openly engaged with the refugee question, tying it to Tamil identity and the Sri Lankan conflict and framing it as a moral and ethnic duty. At the national level, the issue intersected with India's foreign policy in Sri Lanka, the IPKF deployment, and later security concerns after Rajiv Gandhi's assassination. This tension created *dual politics*: regional protectionist rhetoric vs. national security-driven restrictions. However, access remained uneven — relatively open in Tamil Nadu, but precarious nationally, showing how **federal politics directly shaped asylum access.**

In the last 90s, migration from Bangladesh became a central electoral issue in Assam and neighbouring states, linked to the Assam Accord (1985) and subsequent agitation. Refugees and migrants were often conflated, with little legal differentiation. The language of "illegal migrants" dominated parliamentary debates, shaping a hostile environment toward asylum discourse. Access to asylum was almost entirely eclipsed by debates about illegal migration, with no procedural pathway for asylum considered. This period institutionalised the idea of migration as a threat in political debate, setting the stage for later NRC/CAA politics. Thus, from 2021 or so, the presence of Rohingyas was assimilated into this narrative, framed as a "national security threat" by the executive, with detention and deportation orders issued.[165] Political rhetoric, especially by ruling party leaders, portrayed them as linked to terrorism or demographic imbalance. Soon thereafter, the NRC in Assam was cast as a corrective to illegal migration (2019), while the Citizenship Amendment Act offered expedited citizenship to non-Muslim refugees from neighbouring states. This was the first time a major national electoral platform explicitly tied refugee recognition (selective, religion-based) to citizenship law. Opposition parties mobilised against it, framing it as unconstitutional and discriminatory. Unlike the Tibetan or Tamil phases, asylum now featured centrally in electoral rhetoric, but reframed in terms of exclusion/inclusion into citizenship rather than protection.

This narrative has now become entrenched in the collective mindset; thus, Delhi politics occasionally references African and Rohingya refugees in electoral rhetoric (as a "law and order" issue),[166] while the Chin refugees in Manipur were seen as a major driver of the ethnic tensions in the state following the eruption of violence there is 2023.[167] Unlike Tibetans/Tamils, the Rohingya and the Chins/ Burmese have been denied formal access to asylum mechanisms (UNHCR recognition is not officially accepted by the state). National political leaders have framed them as a "security threat."[168] Access to asylum has been politically reframed as access to citizenship — on selective, religious grounds, and the CAA explicitly fast-tracks citizenship (not asylum) for non-Muslim groups from neighbouring countries, while the NRC is used to exclude. Thus, asylum as a universal protection mechanism has consistently been absent. Thus, India's political debate has never centred on asylum access as a legal right. Instead, access has been mediated by political discretion, identity politics, and security concerns.

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165 The Indian Express, September 21, 2017, *"Rohingya are not refugees, nor have they taken asylum… They are illegal immigrants, says Rajnath Singh*" available at https://indianexpress.com/article/india/rohingya-are-not-refugees-nor-have-they-taken-asylum-they-are-illegal-immigrants-says-rajnath-singh-4854030/

166 Al Jazeera News, February 4, 2025, "*'Criminalised for politics': Rohingya caught in Delhi election crossfire*", available at https://www.aljazeera.com/news/2025/2/4/criminalised-for-politics-rohingya-caught-in-delhi-election-crossfire

167 "*Manipur and the Myanmar Conflict: Challenge for India with Implications for Regional Security Competition*", available at https://dkiapcss.edu/nexus_articles/manipur-and-the-myanmar-conflict-challenge-for-india-with-implications-for-regional-security-competition/; see also The Diplomat, May 11, 2024, "India's 'Forgotten Partition' and the Myanmar Refugee Crisis" available at https://thediplomat.com/2024/05/indias-forgotten-partition-and-the-myanmar-refugee-crisis/

168 The Assam Tribune, 9 June 2025, "*1950 Expulsion Act back in force as Assam pushes back 330 illegal immigrants*" available at https://epaper.assamtribune.com/assam/1950-expulsion-act-back-in-force-as-assam-pushes-back-330-illegal-immigrants-1580391

Relevance of the topic in public debate

Unlike in Europe or North America, the concept of "asylum" as a legal right is not widely present in Indian public debate. Instead, public discourse — especially in the media — tends to focus on border control, "illegal migration," and citizenship, which implicitly (and often explicitly) sets barriers to asylum. This means asylum access is debated, but mostly indirectly, through security and identity frames. This has been most stark in the recent discourse on the Rohingya;[169] newspaper articles and media narratives will reveal that the Rohingya are often portrayed as a *security risk* rather than as vulnerable people seeking asylum. Headlines frequently emphasise "illegal immigrants" and "terror links," reinforcing a narrative of exclusion; especially in urban areas (e.g., Delhi), debates about Rohingya settlements are often pitched as debates over law enforcement, voter fraud, or vote banking, instead of asylum or protection.[170] This framing makes barriers to asylum appear justified in the public sphere. Similarly, media around Assam's NRC has overwhelmingly discussed "infiltrators" and "Bangladeshi migrants."[171] The idea of asylum for those fleeing persecution (e.g., religious minorities from Bangladesh) is barely visible. Instead, border control and expulsion dominate coverage. Asylum as a right or humanitarian duty is marginalised in mainstream debate. Reports by civil society organisations (e.g., MAP, PUCL, HRLN, Amnesty India, and academic work by B.S. Chimni, Ranabir Samaddar, Paula Banerjee) provide counter-narratives in English-language media, emphasising refugee rights and India's historical traditions of asylum. However, these remain niche, largely confined to academic publications, activist platforms, and op-eds in national dailies like *The Hindu* or *Indian Express*. Since many headlines lead with threat/security framing, public debate tends to build popular support for restricting access rather than expanding protection.

In contrast, Tibetans and Sri Lankan Tamils were publicly framed as deserving communities, which made access appear self-evident (though it remained discretionary. Media articles humanise Sri Lankan Tamil refugees, describe their lives in camps, their inability to access jobs, their difficulty with documentation, and their sense that India is their home after decades. They also discuss welfare measures taken by the state (Tamil Nadu) and how these are higher than what the Centre allows. The tone promotes sympathy, shows government actions in their favour, and suggests acknowledgment of their long-term settlement.[172] Some also highlight political leadership responding positively: renaming refugee camps as "rehabilitation camps," allocating funds for welfare, housing, education, and subsidies.[173] The media has also highlighted a recent measure by the Union government to exempt Sri Lankan Tamils who arrived before a certain date from prosecution under passport/visa/document rules. Political leaders from AIADMK and BJP in Tamil Nadu welcomed the move as recognition and a step toward legal recognition/citizenship.[174] This kind of legal relief, covered positively in the media, sends signals to the public that these refugees are deserving and that access (or at least relief from penalties) is the right thing. Similarly, media outlets in India often

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169 The Times of India, July 20, 2021, "*Illegal Rohingya Pose Threat to National Security*", available at https://timesofindia.indiatimes.com/india/illegal-rohingya-immigrants-pose-threat-to-national-security-says-government/articleshow/84594622.cms

170 The Times of India, November 19, 2024, *"BJP, AAP Spar on Settlement of Rohingya Immigrants"* available at https://timesofindia.indiatimes.com/city/delhi/political-tensions-rise-as-bjp-accuses-aap-of-supporting-illegal-rohingya-settlements-in-delhi/articleshow/115426641.cms

171 The Hindu, September 10, 2025, *"Assam Cabinet approves SOP under Immigrants Expulsion Act"* available at https://www.thehindu.com/news/national/assam/assam-cabinet-approves-sop-under-immigrants-expulsion-act/article70030880.ece

172 The Hindu, January 13, 2024, "*Sri Lankan refugees - The long wait for Indian citizenship"*, available at https://www.thehindu.com/news/national/the-long-wait-for-indian-citizenship/article67734873.ece

173 Hindustan Times, September 6, 2021, *"Sri Lankan refugees hope for citizenship after Tamil Nadu CM Stalin's support"* available at https://www.hindustantimes.com/india-news/sri-lankan-refugees-hope-for-citizenship-after-tamil-nadu-cm-stalin-s-support-101630927602713.html

174 The Times of India, September 05, 2025, *"EPS Lauds Exemption of Tamils from Prosecution"*, available at https://timesofindia.indiatimes.com/city/chennai/eps-lauds-exemption-of-sl-tamils-from-prosecution/articleshow/123706057.cms

cover stories about Chinese suppression, Tibetan culture, Tibetan language rights, etc. For example, the *Times of India* ran stories on Tibetans condemning bans on Tibetan language content on Chinese social media platforms, or suppression of Tibetan culture or expression.[175] Also, the Dalai Lama remains a figure with broad moral authority in India. Reporting on his statements, projects, or on the condition of Tibetans in exile often avoids framing them as "illegal" or "burdens", instead emphasising their spiritual, cultural, or historical connections. This humanisation and narrative of persecution incite public sentiment about the deservedness of refugees from these countries to receive protection and legal recognition in India.

Relevance of the topic in public opinion

In India, media framing strongly shapes public perceptions — and that framing is usually securitised.[176] This pushes public debate toward support for exclusionary measures rather than asylum access. There are very few nationally representative polls that ask respondents specifically about *access to asylum* or technical instruments like externalisation. Most available evidence is inferential: content analyses, regional surveys, or media reporting. This limits strong claims about national-level public opinion on asylum-specific policies. However, sympathy is strongest where cultural/ethnic/ political ties exist (Sri Lankan Tamils in Tamil Nadu), and in elite/rights constituencies (NGOs, academics, some national op-eds). These public perceptions have helped secure welfare measures (camp support, scholarships, recent administrative exemptions) but not a uniform rights-based asylum system. RSD, externalisation, and other aspects of asylum access are far less debated and weakly documented. In more recent times, India's political/media debate supports strengthening border infrastructure (India–Bangladesh, India–Myanmar borders). However, the public talks about borders, illegal migrants, and citizenship; asylum as a technical rights framework is rarely the headline. Coverage of fencing and BSF operations shows little large-scale public backlash in mainstream media; local consultations or tensions appear in border areas, but overall media/political discourse treats fencing as an acceptable policy to control "illegal influx." This suggests public acceptance (or at least acquiescence) to hard-border measures even if direct polling is scarce. Even where Indians have expressed humanitarian obligations towards war victims, they have specifically rejected the idea of asylum itself; a survey found that 64% Indians were of the view that India should close its borders to refugees entirely.[177] A survey by the US-based Pew Research Centre had found last year that Indians showed little enthusiasm for expanding immigration into their country; about 29% said the government should allow fewer immigrants, and 16% said there should be no immigration at all.[178] This indicates that a majority of Indians are cautious or restrictive toward immigration. This general scepticism shapes public perceptions of refugees and asylum seekers unless offset by humanitarian or identity-based framing.

Implications that political debate and public opinion have on what occurs in judicial bodies

While these bodies are formally meant to be independent, public perception of refugees and asylum seekers can affect how judicial and quasi-judicial bodies operate in India, even though the influence is rarely direct or overt; rather, it occurs through norms, political context, and selective enforcement. Courts often operate in an environment where executive policies reflect public sentiment. Notably, anti-Rohingya measures (pushbacks, detention) enjoy public acceptance due to security and communal framing, and the courts, in

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175 The Times of India, August 4, 2024, "*Tibetans Condemn Ban on Language Content by Chinese Social Media"*, available at https://timesofindia.indiatimes.com/world/china/tibetans-condemn-ban-on-language-content-by-chinese-social-media-as-cultural-suppression/articleshow/112263323.cms

176 Aldamen, Yasmin, and Dilana Thasleem Abdul Jaleel. 2024. *"A Depiction of Rohingya Refugees in India's Online News Platforms Following the Shift in the Indian Government's Stance in 2017" Societies* 14, no. 8: 140. https://doi.org/10.3390/soc14080140, available at https://www.mdpi.com/2075-4698/14/8/140

177 Livemint, 20 June 2019, "*Indians favour giving shelter to war victims, but not OK with refugee influx"*, available at https://www.livemint.com/news/india/indians-favour-giving-shelter-to-war-victims-but-not-ok-with-refugee-influx-1561008402508.html

178 Pew Research Centre, August 22, 2024, *"How people in South Asia view other South Asian countries"* available at https://www.pewresearch.org/short-reads/2024/08/22/how-people-in-south-asia-view-other-south-asian-countries/

some cases, have deferred to executive discretion, citing border security, sovereignty, or administrative efficiency. Thus, in the recent *Salimullah* rulings, the courts showed caution in intervening against the deportation of Rohingya, partly because the government framed the matter in terms of security and illegal migration. On the other hand, sympathetic public opinion can make quasi-judicial or administrative bodies more willing to exercise discretion in favour of certain refugee groups. Sri Lankan Tamils in Tamil Nadu have historically benefited from relaxed enforcement of documentation requirements, registration, and welfare allocation, reflecting local acceptance and political support. Courts have frequently upheld state measures to facilitate camp welfare, registration, and temporary residence, aligning with public sympathy and political advocacy. Similarly, in the Tibetan context, courts have generally allowed discretionary registration and visas, reflecting positive cultural framing and public goodwill. No large-scale hostility in public discourse has made quasi-judicial bodies more permissive. However, in contrast, the legal and judicial response to Chin refugees in Manipur has been notably influenced by prevailing public sentiment and political dynamics. While the judiciary has occasionally provided humanitarian relief, its actions are often shaped by the broader socio-political context. The hostile or wary public perception towards refugees in Manipur has created a judicial environment where humanitarian relief is limited, selective, and cautious. Thus, in May 2024, the Manipur government initiated the deportation of 77 Myanmar nationals, including Chin refugees, labelling them as "illegal immigrants." This action was part of a broader effort to address what the state government described as an influx of illegal immigrants, which had become a contentious issue amid ethnic tensions in the region. International and domestic human-rights organisations publicly urged India/Manipur to stop forcible returns and to respect non-refoulement[179]. However, the Manipur High Court did not intervene to halt the deportation. This lack of judicial intervention reflects a broader trend where courts, influenced by prevailing public sentiment and political pressures, have been reluctant to provide expansive humanitarian relief to refugees in the region.

D. Corruption

Given that India does not have a codified asylum management system, the documentation of corruption in this is anecdotal rather than systematic. However, corruption is a cross-cutting barrier at multiple stages: transit, entry, detention, and registration. It interacts with both structural limitations (weak legal frameworks) and socio-political pressures (public hostility, executive discretion), creating unequal and unpredictable access to asylum.

Within the UNHCR system, there have been reports of refugees sometimes charged fees or bribes to facilitate basic processes such as obtaining refugee cards, appointments for registration, or access to welfare services – often by someone who is a refugee themselves. This creates a barrier for the most vulnerable, who cannot pay or are unaware of informal practices. Instances have been reported where refugees, particularly from Myanmar and Afghanistan, have been approached by intermediaries offering assistance in navigating UNHCR processes.

Along the migratory route, refugees often face demands for bribes when attempting to obtain necessary travel documents or visas, especially when fleeing countries like Afghanistan, from where we have heard accounts in our practice of those trying to flee having to pay large sums to secure travel documentation to Afghan authorities. However, corruption privileges those with means, and this financial barrier can force those without means into irregular migration routes, increasing their vulnerability. During the Sri Lankan civil war (1980s–2009), Tamil refugees often crossed into Tamil Nadu via boats or land routes through Tamil Nadu's southern districts. Some intermediaries facilitated transport across the Palk Strait or inland transit, sometimes charging high fees. This pattern has been repeated with the Rohingyas; criminal

[179] International Commission of Jurists, 10 May 2024, "*India: Immediately halt forced returns of Myanmar refugees in Manipur and respect the non-refoulement principle*" available at https://www.icj.org/india-immediately-halt-forced-returns-of-myanmar-refugees-in-manipur-and-respect-the-non-refoulement-principle/

networks assist in crossing borders, providing fake documents, or arranging transport for a fee.[180] These smugglers exploit refugees' lack of alternatives. In addition to the physical danger of this, Indian authorities frequently classify irregular arrivals (especially Rohingya) as "illegal immigrants," limiting judicial or administrative recourse. Reports indicate that newly arrived Rohingya are sometimes guided by touts to "expedite" UNHCR registration, with fees demanded for appointments or documents. Similarly, some Chin asylum seekers in Mizoram or Manipur have been approached by intermediaries offering "assistance" in navigating UNHCR processes. This not only reduces access to asylum but also undermines trust in UNHCR, which refugees may perceive as corrupt or inaccessible, even though the organization itself does not endorse these practices. This also has a cascading effect on genuine service providers, including those who provide legal assistance in the asylum process, but tend to then be perceived as akin to touts or intermediaries.

With reference to detention, there have been reported instances of detained refugees asked for bribes to secure their release or to receive better treatment within detention facilities.

As for UNHCR, it provides a reporting mechanism for corruption within its own system, but there is no larger oversight mechanism. Within the UNHCR system, there have been documented instances of intermediaries, often referred to as "touts," who offer "assistance" with registration, documentation, or access to services, sometimes in exchange for bribes. These individuals exploit refugees' lack of knowledge about official procedures, leading to delays and inequities in access to asylum. While UNHCR has mechanisms to report such misconduct, the effectiveness of these measures can be limited by systemic issues and the refugees' fear of retaliation. Irregular entry due to smuggling or bribery also complicates refugees' legal status, affecting their eligibility for asylum even at UNHCR. It also often leads to detention, as in India, entry without the relevant documents is still criminalised, with no regard for international protection needs.

E. Other socio-political factors

Government policy (in the absence of a clear refugee law), ministerial direction, and foreign-policy considerations determine whether asylum seekers are treated as a protected population or as "illegal migrants." Executive posture also shapes administrative resources, the instructions given to frontline officials, and public messaging. When migration is framed as a security problem, asylum claims are scrutinised through a security lens; expedited removals and exclusionary practices grow. Security rhetoric can justify detention, pushbacks, or denial of access to asylum procedures.

However, in addition to legal, bureaucratic, and normative factors, shared ethnic, linguistic, and cultural identity between communities divided by borders (e.g., Tamils across India–Sri Lanka; Mizos and Chins across India–Myanmar) creates sub-national solidarities that influence both public sentiment and local/state-level responses to asylum seekers. While formal asylum adjudication in India is structured through executive discretion and judicial review, its practical operation is profoundly shaped by postcolonial legacies of border-making, ethno-cultural continuities, and state anxieties about sovereignty. These influences emerge outside the judicial system, yet they define the environment in which asylum access is determined and understood[181]. South Asia is both a source of refugees and a host to a large number of refugees. In post-colonial South Asia, the hosting of refugees is a complex interplay between a history of shared cultural kinship and the political reality of state-created borders, leading to both inclusion

[180] Global Initiative, March 2023, "*Maritime People Smuggling And Its Intersection With Human Trafficking In South And South East Asia"* available at https://globalinitiative.net/wp-content/uploads/2023/03/Bodean-Hedwards-Lucia-Bird-and-Perkha-Traxl-Maritime-people-smuggling-and-its-intersection-with-human-trafficking-in-South-and-South-East-Asia-GI-TOC-March-2023.pdf

[181] Ramasubramanyam, Jay, *Regional Refugee Regimes: South Asia*, in Cathryn Costello, Michelle Foster, and Jane McAdam (eds), The Oxford Handbook of International Refugee Law, Oxford Handbooks (2021; online edn, Oxford Academic, 9 June 2021), https://doi.org/10.1093/law/9780198848639.003.0023, accessed 7 Nov. 2025.

and exclusion. While cultural ties and a shared regional past sometimes encourage hospitality, the establishment of modern nation-states has prioritized distinct national identities, using political and physical borders to define citizens versus "outsiders".[182] The territorial borders of South Asia were drawn through colonial cartographic projects that often ignored pre-existing cultural, ethnic, and kinship networks.

The genesis of the refugee problems in South Asia is also associated with nation-building.[183] Thus, communities such as the Tamils of India and Sri Lanka or the Chin and Mizo peoples straddle borders that cut through what were once continuous socio-cultural spaces. These borders, while politically rigid, remain socially porous — with shared languages, faith systems, and intermarriage sustaining a sense of belonging that predates the modern nation-state. In this context, the arrival of co-ethnics fleeing persecution or conflict (Sri Lankan Tamils, Burmese Chins) is not perceived by host communities purely as "migration" but as an extension of kinship obligations. Tamil Nadu's and Mizoram's protection responses are emblematic of this: they reveal a sub-national humanitarianism rooted in cultural proximity, even as the central government asserts legal sovereignty and border control. Thus, Tamil Nadu has historically viewed Sri Lankan Tamils as "our people", rooted in shared language, religion (Hindu and Christian affiliations), and a strong Tamil nationalist consciousness. During the Sri Lankan civil war, this transnational ethnic solidarity shaped both public pressure on the state and the state's differentiated treatment: while the central government often treated Sri Lankan arrivals as security concerns, Tamil Nadu's state government extended de facto protection, material aid, and access to camps. These sub-national linkages produced a dual regime of asylum: humanitarian accommodation within Tamil Nadu, yet limited formal recognition under Indian law.

Similar ethnic and cultural continuities exist between the Chin (in Myanmar's Chin State) and the Mizo (in India's Mizoram). Since the 2021 Myanmar coup, Mizoram's government and local civil society have provided extensive assistance and shelter to fleeing Chins, despite the central government's orders to seal the border. The Mizo and Chin populations are predominantly Christian, and church networks in Mizoram have mobilized extensive humanitarian aid, shelter, and schooling. Church councils and women's fellowships act as de facto humanitarian agencies. Religious organisations' advocacy (e.g., the Mizoram Presbyterian Church Synod) influences public discourse and local enforcement far more than formal legal channels. This ethno-cultural affinity has, in some ways, overridden formal state restrictions, effectively substituting for an absence of national asylum mechanisms. In these border states, local tribal councils, church bodies, and ethnic federations often mediate refugee settlement and conflict resolution — effectively acting as *informal adjudicators* or protectors.

[182] South Asia Monitor, February 12, 2025, *"South Asian refugee crisis: Political scapegoating and interstate conflicts hinder institutional mitigation",* available at https://www.southasiamonitor.org/spotlight/south-asian-refugee-crisis-political-scapegoating-and-interstate-conflicts-hinder"

[183] Refugee Watch Vol. 42, available at http://www.mcrg.ac.in/rw%20files/RW42.pdf