

Afghan Refugees and India's Refugee Dilemma

Introduction

“Refugees are not terrorists. They are often the first victims of terrorism.” – António Guterres. (Kamboj, S. 2024, June 19)

India has long provided refuge to people escaping war and persecution. After the Taliban's return to power in August 2021, many Afghans—including former government officials, women, minorities, journalists, and human rights activists—fled abroad and to India (Kaul, 2022). However, India lacks a formal refugee law, forcing most Afghan refugees to rely on the UNHCR for aid and support. Afghan men face unemployment, financial insecurity, and the constant fear of deportation, especially those with military or government backgrounds. For Afghan women, the challenges are even more layered. Along with the trauma of displacement and uncertain legal status, they also face gender-based discrimination. Many have limited access to healthcare, education, and safe work opportunities. (Gender Perspectives on Afghan Refugee Integration, n.d.; Kaul, 2022). Some are survivors of violence, with little institutional support available in India. This paper explores how Afghan women uniquely experience displacement and argues for the formulation of refugee protection law and gender-sensitive policy.

Historical Context of Afghan Displacement to India

The history of Afghan displacement to India is closely tied to Afghanistan's ongoing political conflict. There have been three major waves of migration in 1979, 1996, and 2021, each caused by violence and government collapse. The first wave followed the Soviet invasion in 1979 during the Cold War era and was carried out with the aim of bolstering the pro-communist government in Kabul. It led many from the urban middle classes to seek safety in India due to historical cultural linkages, geographical proximity, and India's longstanding tradition of providing sanctuary on humanitarian grounds. During this period, India refused Afghan refugees (Bose, 2004; Rajan, 2021).

The second wave came in 1996 when the Taliban seized power. It forced women, ethnic minorities—especially Hazaras and Tajiks—and political dissidents to flee. India, which refused to recognize the Taliban government, received Afghan refugees but continued to operate in a legal vacuum, relying on ad hoc administrative procedures and UNHCR

mediation in New Delhi (Singh & Nandini, 2022; Kaul, 2022).

The third and biggest wave began in 2021 after the U.S. withdrawal from Afghanistan and the Taliban's return to power. Many who fled are individuals affiliated with the former Afghan government, civil society actors, and members of vulnerable communities, including women journalists, LGBTQ+ individuals, and human rights defenders (Kaul, 2022; Haksar, 2025). According to UNHCR there are approximately 15,000–18,000 Afghan refugees and asylum seekers registered in India, though unofficial estimates suggest the number may be significantly higher due to undocumented entries and overstayed visas. (Singh & Nandini, 2022). Following the Taliban's return, the Government of India issued several emergency e-visas, but these remain short-term and highly selective, offering no pathway to long-term residency or integration (Kaul, 2022).

India has hosted many displaced groups but still has no refugee law. This absence of legal recognition renders Afghan refugees vulnerable to statelessness, arbitrary detention, and deportation, and inhibits access to employment, education, and legal recourse. The Afghan refugee experience in India thus exposes critical contradictions in India's approach: welcoming in rhetoric, but restrictive in policy. (Singh & Nandini, 2022).

Legal Status and Lived Realities

India's lack of a formal refugee framework has led to inconsistent and often arbitrary treatment of displaced individuals (Singh & Nandini, 2022). As India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, refugees are governed under general immigration laws, primarily the Foreigners Act, 1946 a colonial-era statute that fails to distinguish between refugees, asylum seekers, and undocumented migrants. This legal gap exposes refugees to detention, deportation, and constant surveillance. Under Section 3 of the Act, the central government can issue orders to prohibit, regulate, or restrict any foreigner's presence in the country. However, the Act does not mention the principle of non-refoulement, which is a core part of international refugee law (Kaul, 2022).

In addition to these problems, Afghan refugees in India face structural and everyday challenges that hinder their integration and survival. In settlements such as Lajpat Nagar, Bhogal, and

Tilak Nagar—often referred to as “Little Kabul”—housing remains insecure, overpriced, and largely inaccessible, with many landlords refusing to accept UNHCR-issued refugee cards as valid identification (Krishnan, 2023; Al Jazeera, 2024, Suhasini Krishnan 2023). Access to education is similarly constrained, with refugee children facing language barriers, administrative delays, and social discrimination.

Additionally, very few school-aged Afghan children in Delhi are enrolled in formal education, with girls disproportionately affected due to early marriage, domestic responsibilities, and lack of safe transport (Gender Perspectives on Afghan Refugee Integration, n.d.; UNHCR, 2024). Public healthcare access is irregular and often exploitative, with refugees frequently denied treatment or coerced into paying bribes due to inadequate documentation. Employment opportunities are limited and informal; even qualified professionals are forced into low-wage, precarious jobs, reflecting both legal exclusion and systemic marginalization. (Haksar, 2025). One man interviewed by *The Hindu* lamented, “I taught high school history in Kabul. Here, I deliver groceries on a bike. I cannot explain to my children why this is our life now”.

The refugee experience in India is deeply gendered, with Afghan men and women encountering distinct but intersecting vulnerabilities rooted in both legal exclusion and societal roles. Afghan men, particularly young adults, face the burden of economic responsibility without access to formal employment due to the absence of legal refugee status and work authorization. The process to obtain refugee documentation is slow and complex, forcing many into unregulated labour markets where they face exploitation, abuse, low wages, and police harassment under the Foreigners Act, 1946, which permits broad state discretion over “illegal” foreign nationals (Kaul, 2022). For Afghan women, these structural barriers are compounded by patriarchal norms, rendering them doubly marginalized—as refugees and as women. Without legal recognition, they are at heightened risk of trafficking, sexual violence, and domestic abuse (Rajan, 2022). Since they are not officially recognized by the state, they often cannot turn to the police or courts for protection (Kaul, 2022). This condition is shaped not just by a lack of legal protection but also by their invisibility in public and political spaces. Afghan women face multiple levels of exclusion—from the law, policy discussions, and academic attention. Since they are not officially recognized as refugees, they are frequently left out of decision-making processes and public debates. Their legal invisibility worsens the effects of xenophobia and patriarchy, leaving them exposed to harm from society and neglect by the state. Even within progressive urban spaces, Afghan women’s narratives are frequently mediated through NGOs or international agencies, not articulated in their own terms. Despite these hardships, many

Afghan refugees continue to resist marginalization and rebuild their lives. Some run beauty salons, sew clothes, or act as translators for NGOs, yet these jobs are unregulated and offer little protection (Rajan, 2022, Krishnan, 2023; Al Jazeera, 2024). The refugees also receive some support from civil society and NGOs that collaborate with UNHCR to offer vocational training, legal aid, and schooling support. However, these efforts cannot substitute for formal legal recognition. Despite India's humanitarian claims, protection remains discretionary and inconsistent. A reformed policy must ensure not just visibility, but meaningful legal participation and rights—especially for Afghan refugee women (Rajan, 2022).

Need For Refugee Law

India urgently requires a formal refugee policy to replace the current ad hoc approach, which lacks legal clarity and procedural uniformity. Without codified law, it becomes challenging to differentiate between refugees, illegal immigrants, and asylum seekers, leading to policy ambiguities, legal grey areas, and administrative inefficiencies (Singh & Nandini, 2022). Thus, a structured framework would ensure fairness, coherence, and adherence to constitutional and humanitarian principles.

Moreover, a formal refugee law is necessary for protecting human rights and fulfilling India's humanitarian responsibilities. Although India is not a party to the 1951 Refugee Convention or its 1967 Protocol, (G.C. 2022) a domestic law aligned with the principle of non-refoulement would reinforce its commitment to justice and humanitarian norms and establish regional leadership in addressing displacement and asylum with fairness and dignity (Kaul, 2022).

Afghan refugees—especially Afghan women—are fleeing because of political instability, gender-based oppression, systemic exclusion from education and employment, and the constant threat of violence under Taliban rule. Their experience of displacement is uniquely gendered and must be acknowledged as such. Their displacement is distinctly gendered, necessitating legal protections such as safe shelter, healthcare, anti-trafficking measures, and legal remedies to ensure justice (Gender Perspectives on Afghan Refugee Integration, n.d.; Rajan, 2022).

Critics, however, argue that formalizing refugee law can endanger India's national security. They contend that the law may be exploited by extremists, particularly from volatile regions like Afghanistan—a concern heightened by India's porous borders and ongoing tensions with neighbouring Pakistan (Shah, 2023). While these fears are valid, they can be more effectively

addressed by formalizing refugee law that institutionalizes screening, biometric registration, and centralized surveillance systems. In fact, the lack of formalized refugee law increases the risk of undocumented movement and infiltration, but a robust law would enable the government to track and monitor refugees systematically, replacing informal mechanisms with accountable and transparent procedures (Kaul, 2022).

Another argument raised is that of the financial burden and strain on national resources. Some argue that the formal recognition of more refugees could further stress urban infrastructure, state budgets, and the Indian economy, which already faces unemployment, poor healthcare, and limited education. However, past experiences with Tibetan, Tamil, and Afghan refugees show that public services do not collapse. Many refugees start small businesses and support local economies (Haksar, 2025). Furthermore, a formal law would enable India to attract structured international aid and collaborate with agencies such as the UNHCR, thereby distributing fiscal responsibility more evenly (G.C. 2022, Kaul 2022).

It is also argued that a refugee law may trigger political and communal tensions, especially when the majority of refugees originate from Muslim-majority countries. The CAA and NRC debates showed how such issues can become politicized. However, it is important to note that these tensions stem from policy ambiguity and selective protection—not refugees themselves. A well-drafted refugee law with neutral, religion-blind language based on persecution and vulnerability would reduce scope for politicization (Singh & Nandini, 2022).

Another concern is India's diplomatic and strategic flexibility. It is argued that the current approach allows India to handle refugee situations based on geopolitical considerations, however a formalized refugee law may restrict India's ability to act tactically. However, this argument overlooks the possibility of incorporating flexibility within the law itself. Certain clauses—such as strategic exceptions, national security provisions, and emergency override mechanisms—can be built into the framework to allow India to balance sovereign interests with its moral and humanitarian duties, enhancing its credibility on the global stage (Kaul, 2022).

Conclusion

In conclusion, the plight of Afghan refugees in India is not just a humanitarian crisis—it is a structural, legal, and deeply gendered issue that demands urgent reform. While national security and resource concerns are valid, they cannot justify the continued reliance on ad hoc policies. A comprehensive refugee law, rooted in constitutional values and informed by global standards, is essential. Such a framework must be gender-sensitive, ensuring identity cards, healthcare access, and protection from detention—especially for women who face unique

forms of violence and erasure. Academic institutions can partner with legal clinics and UNHCR to document refugee experiences and guide policy development. India has a proud tradition of sheltering the displaced, but it is time to translate moral legacy into legal obligation. A formal refugee law is not just about legality—it is about justice, dignity, and giving voice to the most vulnerable (Rajan, 2022).

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