

## India

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### India

<b>Is there a refugee protection program?</b>	There is no formal refugee protection program. India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol and has no legislation specific to asylum-seekers and refugees. <sup>1</sup>
<b>Who runs any available refugee protection program? Who determines which applicants qualify for refugee protection?</b>	The applicable program depends on the refugee's home country.  The Indian Ministry of Home Affairs grants asylum for refugees originating from neighboring countries, except Myanmar.  For non-neighboring countries, UNHCR determines refugee status.
<b>Is the refugee protection program functional? For example, how long does it take for decisions to be issued? What percentage of applications are granted?</b>	Although not a formalized "program," the government's refugee process appears functional, but ad hoc. There are no determination procedures in writing or that are publicly available reflecting the criteria used by the Ministry of Home Affairs to grant asylum. <sup>2</sup>  The UNHCR process appears functional. The UNHCR reported that approximately 40% of asylum applicants were granted in 2020 (1,360 recognized of 3,364 total decisions). <sup>3</sup>
<b>Do refugees have a right to work? A right to education? A right to medical care?</b>	Due to the ad hoc nature of India's refugee framework, refugees are not expressly granted rights. However, various Supreme Court judgments and other executive policies have conferred some fundamental rights on refugees. <ul style="list-style-type: none"><li>• Although courts have held that the right to work is not a fundamental right, the government has implemented</li></ul>

<sup>1</sup> Migration & Asylum Project, Handbook for Legal Practitioners and Human Rights Defenders, Module 1 ("MAP Handbook").

<sup>2</sup> *Id.*

<sup>3</sup> UNHCR Refugee Data Finder, <https://www.unhcr.org/refugee-statistics/download/?url=aJ372J>.

	<p>executive policies on humanitarian grounds to allow refugees employment in the private sector.<sup>4</sup></p> <ul style="list-style-type: none"> <li>• Refugees, in general, have been able to access education.<sup>5</sup> Courts in India have reiterated that the right to education is a fundamental right to all persons in the territory of India, including refugees.<sup>6</sup></li> <li>• The right to healthcare appears less certain. There is no explicit right to healthcare for refugees. There are also reports of refugees experiencing challenges in accessing healthcare due to a variety of reasons, including xenophobia.<sup>7</sup></li> </ul>
<p><b>Are those seeking refugee protection free to live freely or forced to reside in camps?</b></p>	<p>Refugees in India have usually had the freedom of movement within the country and can own property. The majority of the refugee population in India is urban with refugees leasing houses in urban settlements alongside the host community.</p>
<p><b>Does a grant of refugee protection result in a pathway to permanent status? In other words, can a refugee eventually become a citizen? Is there another form of legal permanent status available for people with refugee status?</b></p>	<p>It is possible, but there may be significant challenges. The Citizenship Act of 1955 previously prohibited “illegal” migrants from attaining Indian citizenship. Recent amendments to the law now provide a citizenship pathway, but only for certain communities. The amendments are specific to non-Muslim religious/minority communities (i.e. Hindu, Sikh, Christian, Buddhist, Jain, Parsi) and only apply to refugees from certain countries.<sup>8</sup> Although Afghanistan is one of those countries, the amended Citizenship Act notably omits Muslim refugees from its coverage.<sup>9</sup> Thus, Afghan refugees who do not fall into the categories specifically covered by the amendments may have more limited or nonexistent paths to citizenship.</p>

<sup>4</sup> MAP Handbook, Module II, Section IV.

<sup>5</sup> MAP Handbook, Module II, Section I.C.

<sup>6</sup> *Id.*, Section I.D.

<sup>7</sup> *Id.*, Section II.D; *Gaps in India’s Treatment of Refugees*, Migration Policy Institute, <https://www.migrationpolicy.org/article/gaps-india-refugees-vulnerable-internal-migrants-pandemic>.

<sup>8</sup> MAP Handbook, Module I, Section III.

<sup>9</sup> *Citizenship Amendment Bill: India’s new ‘anti-Muslim’ law explained*, BBC World News, <https://www.bbc.com/news/world-asia-india-50670393> (Dec. 11, 2019).

<p><b>Does the country offer temporary protections available other than refugee status? If so, what are they?</b></p>	<p>Temporary visas (i.e. tourist, medical, student) are available as alternatives to refugee status. In addition, holders of documentation provided by UNHCR are reportedly able to obtain temporary residence permits from the authorities.<sup>10</sup></p>
<p><b>What, if any, penalties are there for people without status or people who are denied refugee protection?</b></p>	<p>In the absence of an asylum law, refugees fall within the ambit of the 1946 Foreigners Act and the 1920 Passports Act, which give the executive wide powers to detain and deport foreigners for illegal entry and stay.<sup>11</sup> Notably, India appears to treat immigration infractions as criminal (not civil) violations. Thus, the same prisons and jails used for keeping convicted criminals are used for detaining immigrants.<sup>12</sup></p>
<p><b>What organizations exist in-country that can help displaced people seek available protections? What other organizations in the country may be able to help displaced people access services and rights, even if their mission is not to specifically work with refugees and displaced people?</b></p>	<ul style="list-style-type: none"> <li>• Migration &amp; Asylum Project - <a href="https://www.migrationandasylumproject.org/clients-and-service-providers/clients">https://www.migrationandasylumproject.org/clients-and-service-providers/clients</a></li> <li>• Human Rights Law Network, <a href="http://www.hrln.org">www.hrln.org</a></li> <li>• Indian Social Institution, <a href="http://www.isidelhi.org.in/">http://www.isidelhi.org.in/</a></li> <li>• Jesuit Refugee Service, <a href="https://jrs.net/en/home/">https://jrs.net/en/home/</a></li> <li>• The Other Media, <a href="http://www.theothermedia.org">www.theothermedia.org</a></li> </ul>
<p><b>Is there other information that might be valuable for displaced people arriving in that country to know?</b></p>	<ul style="list-style-type: none"> <li>• <b>Rising Hindu Nationalism:</b> The majority ruling political party in India (the Bharatiya Janata Party or BJP) has been criticized in recent years for promoting an exclusionary Hindu nationalist agenda. While some civil unrest has followed in opposition to nationalist policies, the BJP's views appear to be generally popular among the Hindu majority, as demonstrated by a Pew research in which 64% of participants agreed that it is very important to be Hindu to</li> </ul>

<sup>10</sup> UNHCR Global Appeal 2011 Update, <https://www.unhcr.org/4cd96e919.pdf>.

<sup>11</sup> MAP Handbook, Module I, Section B.2.

<sup>12</sup> *Id.*, Module 4.

	<p>be truly considered “Indian.”<sup>13</sup> The government is also implementing policies—such as population registers that could lead to detention or deportation for immigrants—that appear to be targeted at the Muslim minority.<sup>14</sup> Emboldened anti-Muslim vigilantes are also a concern in some parts of the country.<sup>15</sup></p> <ul style="list-style-type: none"><li>• <b>Strains on Healthcare System:</b> Health services, which are already reported to be somewhat inaccessible to refugees, are likely to be further strained by the COVID-19 pandemic.</li><li>• <b>Immigration Enforcement:</b> Earlier this year, the government intensified efforts to detain and/or deport Rohingya refugees living in India illegally.<sup>16</sup></li><li>• <b>Documentation:</b> The documents issued by UNHCR are the only valid documentation that refugees can use to legally remain in India once their visa, if they had any, expires.</li></ul>
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<sup>13</sup> *For Most of India’s Hindus, Religious and National Identities are Closely Linked*, Pew Research Center (July 20, 2021), <https://www.pewresearch.org/fact-tank/2021/07/20/for-most-of-indias-hindus-religious-and-national-identities-are-closely-linked/>.

<sup>14</sup> *How Hindu Supremacists Are Tearing India Apart*, The Guardian (Feb. 20, 2020), <https://www.theguardian.com/world/2020/feb/20/hindu-supremacists-nationalism-tearing-india-apart-modi-bjp-rss-jnu-attacks> (“The BJP knows its priorities. “No Hindu, Sikh, Jain, Buddhist, Christian or Parsi,” a new BJP booklet assures readers, “will find their name in the D-voter list.” Muslims, again, are conspicuous by their absence.

<sup>15</sup> *Hindu Vigilantes Work with Police to Enforce “Love Jihad” Law in North India*, The Intercept (July 3, 2021), <https://theintercept.com/2021/07/03/love-jihad-law-india/> (“Hindu nationalist groups in Uttar Pradesh are using an anti-conversion law to violently break up interfaith couples and legitimate an anti-Muslim conspiracy theory”); see also <https://www.worldpressphoto.org/collection/storytelling/2020/39755/The-Hour-of-Lynching-Vigilante-Violence-in-India>.

<sup>16</sup> <https://www.cnn.com/2021/03/08/asia/india-deport-rohingya-intl-hnk/index.html>