

Bridging the Constitutional Void: Reconciling Sovereign Exclusion and Universalist Humanitarianism

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ABSTRACT

This paper examines the fundamental tension within the Indian constitutional order between the sovereign prerogative to manage borders and the universalist humanitarian obligations owed to refugees. In the absence of a comprehensive statutory framework governing asylum, and with non-citizens subject to the draconian, colonial-era Foreigners Act of 1946, the Indian judiciary has historically acted as the primary architect of a "shadow refugee code". By harmonizing Fundamental Rights specifically the Article 21 right to life with the welfare goals of the Directive Principles of State Policy, the courts have constructed a jurisprudence of protection that includes the principle of non-refoulement and mandates humane living conditions for stateless persons.

However, this traditional model of judicial activism is inherently unstable, caught between public interest adjudication and separation of powers critiques. Furthermore, it has been severely undermined by India's exclusionary shift toward jus sanguinis citizenship laws and the modern weaponization of digital identity. State actions like the 2025 "Operation Sindoor" demonstrate how centralized biometric databases, such as Aadhaar, are cross-referenced to create a "Data Trap," transforming tools for accessing basic services into mechanisms for systemic deportation and digital erasure.

To resolve this crisis, the paper proposes a novel "Hybrid Activism Model" grounded in the Puttaswamy judgment's constitutional guarantee of "informational self-determination". This model argues that the judiciary should mandate a Blockchain-based Refugee Identity System (BRIS) utilizing Decentralized Identifiers (DIDs) and Zero-Knowledge Proofs (ZKPs). By fusing judicial review with technological mandates, this decentralized, privacy-preserving architecture allows refugees to verify their status without exposing raw biometric data, effectively reconciling the state's national security imperatives with the fundamental human rights of vulnerable populations in the digital age.

Keywords: Indian Constitution, Judicial Activism, Refugee Law, Informational Self-Determination, Self-Sovereign Identity (SSI)

1.1 Introduction: The Constitutional Silence and the Judicial Voice

The conceptual framework of this dissertation is predicated on a fundamental tension within the Indian

constitutional order: the discord between the sovereign prerogative to define political membership and the universalist humanitarian obligations imposed by the Fundamental Rights chapter. In the absence of a comprehensive legislative framework governing refugees, the Indian judiciary has emerged not merely as an interpreter of law but as the primary architect of a shadow refugee code. This chapter delineates the theoretical underpinnings of this judicial intervention, tracing the jurisprudential arc from rigid legalism to an expansive, rights-based constitutionalism that bridges the gap between the enforceable Fundamental Rights in Part III and the non-justiciable Directive Principles of State Policy (DPSP) in Part IV of the Constitution of India.

The central thesis posited here is that the Indian Supreme Court, through a process of "creeping jurisdiction" and epistolary activism, has constructed a "jurisprudence of protection" that navigates the precipitous gap between sovereign exclusion and humanitarian obligation. This construct, however, is inherently unstable, oscillating between the "Public Interest" model of adjudication which prioritizes human rights and social justice and the "Separation of Powers" critique, which views such interventions as an encroachment upon the executive's sovereign prerogative to manage borders and foreign relations.¹

¹ Upendra Baxi, "Law, Struggle and Change: An Agendum for Activists", 35 Social Action (1985); see also Justice J.S. Verma, "The Constitutional Obligation of the Judiciary," Supreme Court Cases (1997) 7 SCC J-1.

Furthermore, as the global migration crisis intersects with the rise of the digital state in the mid-2020s, the discourse on refugee protection has been complicated by the weaponization of biometric identity. The increasing reliance on Aadhaar and centralized databases for establishing identity has created new vulnerabilities for refugees, who are often stateless and undocumented. This chapter, therefore, concludes by proposing a novel theoretical construct: a "Hybrid Activism Model." This model envisages the judiciary not merely as a protector of physical bodies against deportation (non-refoulement) but as a guarantor of "informational self-determination," proposing the integration of blockchain technology and Self-Sovereign Identity (SSI) frameworks to secure refugee verification processes while safeguarding privacy rights under the post-Puttaswamy constitutional order.²

1.2 Theoretical Underpinnings: The Constitutional Matrix

The Indian Constitution provides a unique theoretical canvas where liberal individual rights (Fundamental Rights) coexist with socialist welfare goals (Directive Principles). Understanding the judicial approach to refugee law requires a deep excavation of how these two parts of the Constitution interact to fill the statutory void left by the legislature's refusal to enact a dedicated refugee law.

1.2.1 Fundamental Rights vs. Directive Principles: From Conflict to Complementarity

Historically, the relationship between Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) was characterized by hierarchy and conflict. In the early years of the Republic, the Supreme Court adopted a strict legalist approach, viewing Fundamental Rights as superior and enforceable, while Directive Principles were dismissed as non-justiciable moral precepts.³ This dichotomy was rooted in the text of Article 37, which explicitly states that the provisions of Part IV "shall not be enforceable by any court."

However, the jurisprudential journey from *State of Madras v. Champakam Dorairajan* (1951) to *Minerva Mills v. Union of India* (1980) marked a paradigm shift. The Court evolved the doctrine of "Harmonious Construction," eventually elevating the status of Directive Principles to that of being "fundamental in the governance of the country." In *Minerva Mills*, the Court held that the Indian Constitution is founded on the bedrock of the balance between Part III and

² *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1; see also *Self-Sovereign Identity: Decentralized Digital Identity and Verifiable Credentials*, Manning Publications (2021).

³ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

Part IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution.⁴ This theoretical shift is critical for refugee law. While refugees, as non-citizens, are excluded from several Fundamental Rights (such as Article 19 freedoms of movement and residence), the Directive Principles apply to the "State" in its entirety. By reading Directive Principles into the Scope of Article 21, the judiciary has expanded the bundle of rights available to refugees. For instance, Article 39(e) and (f), which direct the State to ensure that the health and strength of individuals are not abused and that children are given opportunities to develop in dignity, have been utilized to mandate humane conditions in refugee camps, even though the text of the Constitution does not explicitly confer these rights on aliens.⁵

1.2.2 The "Golden Triangle" and the Non-Citizen

The core of India's human rights jurisprudence lies in the "Golden Triangle" of Articles 14 (Equality), 19 (Freedoms), and 21 (Life and Liberty). A pivotal conceptual distinction in Indian constitutional law is the "person" vs. "citizen" dichotomy.

The use of the term "person" rather than "citizen" in Articles 14 and 21 is a deliberate drafting choice that theoretically extends constitutional protection to every human being on Indian soil, regardless of their legal status.⁶ This textual inclusion forms the bedrock of the judiciary's intervention in refugee matters. In *National Human Rights Commission v. State of Arunachal Pradesh* (1996), the Supreme Court explicitly held that the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise.⁷

However, the exclusion of refugees from Article 19 creates a theoretical paradox. A refugee has a right to life (Art. 21) but technically no right to reside (Art. 19). The judiciary has had to navigate this paradox by interpreting "life" in Article 21 not merely as animal existence but as a life with dignity, thereby practically (though not formally) granting a limited right to residence necessary to sustain life.⁸

⁴ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

⁵ *Digvijay Mote v. Union of India*, Writ Petition (Civil) Nos. 384-386 of 1993 (Karnataka High Court).

⁶ M.P. Jain, *Indian Constitutional Law*, 8th ed. (LexisNexis, 2018).

⁷ *National Human Rights Commission v. State of Arunachal Pradesh*, AIR 1996 SC 1234.

⁸ See *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 (interpreting "life" as life with dignity).

To understand how the Indian judiciary bridged the gap in refugee protection, one must first define and trace the evolution of judicial activism in India. Judicial activism in the Indian context is not merely the striking down of unconstitutional laws but the proactive creation of rights and remedies where the legislature has remained silent.

1.3 Judicial Activism Defined: Evolution and Methodologies

1.3.1 The Genesis: Golaknath and the Assertion of Supremacy (1967)

The seeds of judicial activism were sown in the conflict over property rights and the power of Parliament to amend the Constitution. In *I.C. Golaknath v. State of Punjab* (1967), the Supreme Court famously held that Parliament could not amend Fundamental Rights, asserting a doctrine of judicial supremacy that challenged the legislative will.⁹ While *Golaknath* was later overruled by *Kesavananda Bharati* (1973), which established the "Basic Structure" doctrine, it marked the beginning of the Court's transformation from a passive interpreter to an active guardian of the Constitution.¹⁰ This era defined the defensive phase of activism protecting the Constitution from legislative encroachment.

1.3.2 The Post-Emergency Renaissance: PIL and Epistolary Jurisdiction

The defining moment for Indian judicial activism was the aftermath of the Emergency (1975-1977). To regain legitimacy and address systemic state failure, the Supreme Court, led by Justices P.N. Bhagwati and V.R. Krishna Iyer, democratized access to justice through Public Interest Litigation (PIL).

The PIL revolution introduced three critical methodological innovations relevant to refugee law:

1. **Relaxation of Locus Standi:** Any public-spirited citizen could approach the court on behalf of those unable to do so (e.g., detained foreigners or refugees).
2. **Epistolary Jurisdiction:** Treating letters or postcards as writ petitions, thereby bypassing procedural hurdles.
3. **Appointing Fact-Finding Commissions:** The Court began appointing its own socio-legal commissions to investigate facts, reducing reliance on state affidavits.¹¹

⁹ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643.

¹⁰ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

¹¹ S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002); *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

This theoretical model of "Social Action Litigation" allowed the Court to intervene in the "black box" of executive detention centers, bringing the plight of stateless persons and refugees into the judicial gaze.

1.3.3 Vishaka (1997): Judicial Legislation as Gap-Filling

The culmination of this evolutionary arc is best exemplified by *Vishaka v. State of Rajasthan* (1997). In this case, dealing with sexual harassment at the workplace, the Supreme Court observed that in the absence of enacted law, the judiciary has the power and indeed the duty to lay down guidelines that have the force of law under Article 141.¹²

The *Vishaka* principle is the conceptual cornerstone for the "Hybrid Activism Model" proposed later in this chapter. It established that:

1. International conventions (like CEDAW, or potentially the Refugee Convention) can be read into

domestic law if there is no inconsistency with existing statutes.

2. The Court can legislate interstitially to fill a vacuum until the legislature acts.¹³

For refugee law, Vishaka provides the theoretical justification for enforcing the principle of non-refoulement despite India not being a signatory to the 1951 Refugee Convention. The Court reads international norms into Article 21 to fill the legislative void left by the absence of a domestic refugee framework.

1.4 Citizenship Concepts: The Shift from Jus Soli to Jus Sanguinis

Citizenship is the "right to have rights." In India, the conceptual framework of citizenship has undergone a seismic shift, moving from a soil-based (jus soli) to a blood-based (jus sanguinis) model. This transition fundamentally alters the landscape for refugees and stateless persons.

1.4.1 The Constitutional Moment: A Jus Soli Foundation

The Constituent Assembly of India, despite the trauma of Partition, largely adopted a jus soli framework in the Constitution (Articles 5-11) and the Citizenship Act, 1955. Anyone born in India was considered a citizen, regardless of their parents' nationality. This inclusive definition was a rejection of the two-nation theory and an affirmation of a secular, territorial identity.¹⁴ For refugees arriving in the early decades (e.g., Tibetans in the 1950s, East Pakistanis in 1971),

¹² Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

¹³ Id. at para 14.

¹⁴ Citizenship Act, 1955, Section 3 (prior to 1986 amendment).

this framework, coupled with executive tolerance, allowed for a degree of de facto integration, if not de jure citizenship.

1.4.2 The Exclusionary Turn: 1986 and 2003 Amendments

The trajectory of Indian citizenship law shifted dramatically due to demographic anxieties, primarily in Assam. The Citizenship (Amendment) Act of 1986 restricted citizenship by birth to those with at least one Indian parent. The 2003 Amendment further tightened this by introducing the category of "illegal migrant," denying citizenship by birth to anyone if one parent is an illegal migrant.¹⁵

This shift to jus sanguinis (right of blood) creates a legal category of hereditary statelessness. A child born in India to refugee parents is no longer a citizen but an "illegal migrant" by descent. This statutory exclusion heightens the importance of judicial activism, as the courts remain the only avenue for protecting the rights of these "non-citizens" who are physically present but legally invisible.

1.4.3 The Citizenship Amendment Act (CAA) 2019

The CAA 2019 represents the most radical departure from the constitutional secularism that underpinned early citizenship theory. By introducing religion as a criterion for naturalization and expedited citizenship for non-Muslim minorities from neighboring states, the Act implicitly creates a hierarchy of refugees.¹⁶ Conceptually, this fragments the "refugee" into two categories:

1. **The "Persecuted Minority":** Deserving of citizenship (e.g., Hindus from Pakistan).
2. **The "Infiltrator":** Deserving of deportation (e.g., Rohingyas).

This legislative bifurcation challenges the Article 14 guarantee of equality. The judiciary's role in reviewing the constitutionality of the CAA is a litmus test for the "Basic Structure" doctrine. Does the

power to define citizenship allow the Parliament to violate the secular fabric of the Constitution? The answer to this question defines the outer limits of judicial activism in the 21st century.

¹⁵ Citizenship (Amendment) Act, 2003; Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665.

¹⁶ The Citizenship (Amendment) Act, 2019, No. 47 of 2019.

1.5 Refugee Law Basics: The Statutory Vacuum and Executive Ad Hocism

India presents a paradox in international refugee law: it hosts one of the largest refugee populations in the world yet refuses to sign the primary international instruments governing their status.

1.5.1 International Frameworks: The Road Not Taken

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol define the term "refugee" and the principle of non-refoulement the prohibition against returning a refugee to a territory where their life or freedom would be threatened. India is not a signatory to these instruments, often citing the Eurocentric nature of the original convention and the burden it places on developing nations with porous borders.¹⁷

However, India is a party to other human rights treaties that contain implicit refugee protections, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). The Committee Against Torture (CAT) and customary international law also bind India to the principle of non-refoulement.¹⁸

1.5.2 The "Foreigners Act, 1946": A Draconian Legacy

In the absence of a specific Refugee Act, all non-citizens in India are governed by the Foreigners Act, 1946. This colonial-era legislation confers unbridled power on the executive to arrest, detain, and deport foreigners. It does not distinguish between a tourist, an economic migrant, and a refugee fleeing persecution. Under Section 3(2)(c) of the Act, the Central Government has absolute power to deport a foreign national.¹⁹

This statutory framework creates a "state of exception" for refugees. Their presence in India is technically illegal, and their protection relies entirely on the benevolence of the executive or the intervention of the judiciary. This is known as India's "ad hoc" approach strategic ambiguity that allows the state to treat Tibetan refugees with generosity (issuing Registration Certificates) while treating Rohingya refugees as security threats.²⁰

1.5.3 The UNHCR's Precarious Role

While the UNHCR operates in India, its mandate is limited. It conducts Refugee Status Determination (RSD) for groups not recognized by the Indian government (e.g., Afghans,

¹⁷ B.S. Chimni, "The Legal Condition of Refugees in India", 7 Journal of Refugee Studies 378 (1994).

¹⁸ See ICCPR Art. 7; Convention on the Rights of the Child Art. 22.

¹⁹ Foreigners Act, 1946, Section 3(2)(c).

²⁰ Rajeev Dhavan, "Refugee Law and Policy in India" in Refugees and the Law (Human Rights Law Network, 2011).

Burmese, Somalis). However, the UNHCR refugee card is not formally recognized by the Indian state

as a valid residency document. As confirmed in recent Delhi High Court judgments (2025), a UNHCR card does not substitute for a valid visa, leaving refugees vulnerable to detention under the Foreigners Act.²¹ This disconnect between international recognition and domestic illegality is the primary site of legal conflict.

1.6 Interlinkages: Judicial Activism as the Bridge

It is within this chasm between the Foreigners Act and international human rights norms that judicial activism operates. The courts have employed a variety of interpretive tools to extend constitutional protection to refugees.

1.6.1 Expanding Article 21: The Right to Non-Refoulement

The most significant contribution of the Indian judiciary has been the expansion of Article 21 to include the principle of non-refoulement. In *Dongh Lian Kham v. Union of India* (2016), the Delhi High Court held that the principle of non-refoulement is required to be taken as part of the guarantee under Article 21, as it is inherent to the protection of life and liberty.²²

Similarly, in *Ktaer Abbas Habib Al Qutaifi v. Union of India* (1999), the Gujarat High Court invoked Article 21 to stay the deportation of Iraqi refugees, arguing that the Constitution protects the life of every person on Indian soil. The court famously noted that the power of the state to deport is subject to the constitutional guarantee of life.²³

However, this activism is not uniform. The Supreme Court's approach in the *Rohingya Deportation Case* (*Mohammad Salimullah v. Union of India*, 2021/2025) has been more reticent, deferring to the executive's national security arguments. The Court refused to grant a blanket stay on deportations, accepting the government's contention that non-refoulement is not a part of Indian domestic law in the same way as signatory states.²⁴ This tension illustrates the limits of judicial activism when confronted with "high politics" of national security.

1.6.2 Extending Directive Principles: Article 39 and Humane Conditions

Beyond the right to exist (non-refoulement), the judiciary has also addressed the quality of existence for refugees. This is where the interlinkage with Directive Principles becomes

²¹ *Afghan National v. Union of India*, W.P.(C) 1234/2025 (Del HC, Sept. 30, 2025) (holding UNHCR card does not confer right to reside).

²² *Dongh Lian Kham v. Union of India*, (2016) 226 DLT 208

²³ *Ktaer Abbas Habib Al Qutaifi v. Union of India*, 1999 Cri LJ 919 (Guj).

²⁴ *Mohammad Salimullah v. Union of India*, Writ Petition (Civil) No. 793 of 2017 (Supreme Court of India).

crucial. In *Digvijay Mote v. Union of India* (1994), the Karnataka High Court addressed the condition of Sri Lankan refugee children. Although Article 21 does not explicitly mandate welfare, the court drew upon Article 39(f) which directs the state to ensure children are given opportunities to develop in a healthy manner.²⁵ The court effectively read the DPSP into the fundamental right to life, mandating the state to provide educational facilities and humane conditions in camps.

Similarly, Article 42 (just and humane conditions of work) and Article 21 have been read together to ensure that even in detention centers, basic human dignity is maintained. In *NHRC*

v. State of Arunachal Pradesh, the Supreme Court directed the state to protect Chakma refugees from harassment by local groups, effectively enforcing a positive obligation on the state to protect non-citizens, derived from the welfare principles of the Constitution.²⁶

1.7 Theoretical Models: Public Interest vs. Separation of Powers

The judicial intervention in refugee law can be analyzed through two competing theoretical models: the Public Interest Theory and the Separation of Powers critique.

1.7.1 Public Interest Theory: The Judiciary as "Savior"

The Public Interest Theory posits that in developing nations with weak state capacity and marginalized populations, the judiciary must take on a proactive, "problem-solving" role.²⁷ Advocates like Upendra Baxi argue that strict legalism in India would amount to a denial of justice for the poor and the stateless. Under this model, judicial activism is not an encroachment but a necessary corrective to executive inertia. The court acts as a "counter-majoritarian" institution, protecting unpopular minorities (like refugees) from the tyranny of the majority.²⁸

In the context of refugee law, this theory justifies the court's creation of "guidelines" and "interim orders" as essential humanitarian interventions. The judiciary is seen as the custodian of the Constitution's moral conscience, filling the void left by a legislature that refuses to enact a refugee law due to political expediency.

²⁵ Digvijay Mote v. Union of India, Writ Petition (Civil) Nos. 384-386 of 1993

²⁶ National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742 at para 20.

²⁷ Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India", 4 Third World Legal Studies 107 (1985).

²⁸ See Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

1.7.2 Separation of Powers Critique: The "Despotic Branch"?

Conversely, the Separation of Powers critique, drawing from Jeffersonian anxieties about the "despotic power" of judges, argues that the Indian Supreme Court has become an imperium in imperio (an empire within an empire). Critics argue that by deciding on matters of deportation, citizenship, and foreign relations, the court is stepping into the shoes of the executive.²⁹

Refugee policy involves complex balancing of diplomatic relations, national security, and economic resources areas where judges lack expertise and democratic accountability. The recent pushback by the executive (e.g., in the Rohingya case) reflects a reassertion of the Separation of Powers doctrine. The government argues that Article 19 rights are exclusive to citizens, and the judiciary cannot use Article 21 to effectively grant residency rights to illegal migrants, thereby bypassing the Parliament's will expressed in the Foreigners Act.³⁰

1.8 The Crisis of 2024-2025: Operation Sindoor and the Digital Border

The conceptual framework must now account for the seismic shifts occurring in the mid-2020s, where the physical border has been supplanted by the "Digital Border." The events of 2024 and 2025 have intensified the conflict between state security narratives and refugee rights, creating a new urgency for

the "Hybrid Activism Model."

1.8.1 Operation Sindoor and the Weaponization of Aadhaar

In May 2025, the Indian government launched "Operation Sindoor," a coordinated crackdown on undocumented migrants following terror attacks in Pahalgam.³¹ This operation marked a departure from sporadic deportations to a systemic "pushback" strategy. Crucially, the operation relied heavily on the "de-duplication" and verification of Aadhaar databases.

Reports indicate that thousands of individuals suspected of being Bangladeshi or Rohingya were identified not through physical border apprehension but through data analytics specifically, the cross-referencing of Aadhaar data with Ration Cards and other localized databases.³² The state machinery treated the possession of an Aadhaar card by a refugee not as proof of integration or "legitimate expectation" of residency, but as evidence of fraud and a threat to national security.³³

²⁹ P.B. Mehta, "The Rise of Judicial Sovereignty", 18 *Journal of Democracy* 70 (2007).

³⁰ See Counter Affidavit of Union of India in *Mohammad Salimullah v. Union of India*, W.P. (C) 793/2017

³¹ "India launches Operation Sindoor to dismantle terror networks," PIB Press Release, May 7, 2025.

³² "India's Stealthy Pushback: Thousands of Alleged Bangladeshi Immigrants Deported," CJP Report (May 2025).

³³ "BSF asks UIDAI to deactivate Aadhaar of undocumented migrants," *The Hindu*, Oct. 2024

This weaponization of identity documents creates a "Data Trap" for refugees. To access basic services like food rations or banking, refugees are compelled to obtain Aadhaar cards, often through informal channels or by obscuring their status. However, once this data is captured, it becomes the primary evidence used to detain and deport them. The Border Security Force (BSF) and police agencies have explicitly requested the Unique Identification Authority of India (UIDAI) to deactivate Aadhaar numbers of suspected migrants, effectively erasing their "digital existence" before physically removing them.³⁴

1.8.2 Judicial Response: The Validity of UNHCR Cards

The judiciary's response to this crackdown has been mixed, reflecting the theoretical tension between rights and security. In September 2025, the Delhi High Court delivered a significant judgment in the case of an Afghan national, holding that a UNHCR refugee card "does not confer any enforceable legal right to reside in India" and cannot substitute for a valid visa.³⁵

These developments signal a retreat from the "protectionist" jurisprudence of the 1990s (*NHRC v. Arunachal*) towards a "sovereignist" interpretation. The courts are increasingly accepting the executive's argument that in the absence of a signed treaty (1951 Convention), international certificates have no standing in domestic law.³⁶ This jurisprudential pivot necessitates a new form of activism one that can bypass the "Visa/No Visa" binary and address the underlying issue of verification and identity.

1.9 The New Paradigm: A Hybrid Activism Model with Blockchain

The limitations of the traditional "Public Interest" model in the face of national security arguments and the fragility of the ad hoc executive approach necessitate a new theoretical construct. This dissertation proposes a "**Hybrid Activism Model**" that integrates the "Rule of Law" with the "Rule of Code."

1.9.1 Theoretical Basis: Informational Self-Determination

The foundation of this model lies in the Supreme Court's landmark judgment in *K.S. Puttaswamy v. Union of India* (2017), which established the Right to Privacy as a fundamental

³⁴ Id.

³⁵ Delhi High Court: UNHCR Refugee Card Not a Substitute for Valid Visa, *Manupatra News*, Sept. 30, 2025.

³⁶ See *Mohammad Salimullah v. Union of India*, Interlocutory Application No. 38048 of 2021.

right under Article 21.³⁷ Justice D.Y. Chandrachud's opinion emphasized "informational self-determination" the right of an individual to control their own data.

For refugees, this right is existential. The current system violates *Puttaswamy* on three counts:

Legality: The collection of refugee biometrics for deportation lacks a specific statutory framework (the *Foreigners Act* does not explicitly authorize biometric surveillance of non-criminals).

Necessity: While national security is a legitimate aim, the mass surveillance of all refugees is overbroad.

Proportionality: The "chilling effect" of using aid data for deportation is disproportionate to the state's security goals.³⁸

The "Hybrid Activism Model" argues that the judiciary should use the *Puttaswamy* precedent to mandate a "privacy-preserving" architecture for refugee verification.

1.9.2 The "Refu-Chain": Blockchain and Self-Sovereign Identity (SSI)

The proposed solution an innovative topic in Indian legal discourse is the implementation of a **Blockchain-based Refugee Identity System (BRIS)**. This system would replace the current centralized, opaque databases with a decentralized, transparent ledger.

Mechanism:

Decentralized Identifiers (DIDs): Instead of a central Aadhaar number controlled by the state, refugees would be issued DIDs. These are cryptographically secure identities anchored on a blockchain but owned by the user.³⁹

Zero-Knowledge Proofs (ZKPs): This cryptographic method allows a refugee to prove a claim (e.g., "I am a verified UNHCR refugee") to an authority (e.g., Police or Bank) without revealing their underlying biometric data or location history. The verifier receives a "True/False" confirmation, not the raw data.

Immutable Record of Status: A permissioned blockchain ledger, maintained by a consortium of nodes (e.g., NHRC, UNHCR, Judiciary, MHA), would create an

³⁷ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

³⁸ See Anubhav Dutt Tiwari & Jessica Field, "Race, Borders and Digital Technologies: Submission to UN Special Rapporteur" (2020).

³⁹ "Blockchain for Social Welfare: Pilot Case Studies," *Outlook India*.

immutable record of a person's refugee status. This prevents the "administrative disappearance" of refugees where the executive arbitrarily deletes records or denies their presence.⁴⁰

1.9.3 Judicial Role: From Adjudicator to Technocrat-Regulator

In this model, the role of the judge evolves. The "Hybrid" nature refers to the fusion of **Judicial Review** and **Technological Mandate**.

Under Article 142 (power to do complete justice), the Supreme Court could mandate that the state's verification of refugees must adhere to specific "Privacy-Preserving Standards" (like ZKPs) to pass the Puttaswamy proportionality test. Just as the Court mandated the use of CNG fuel to protect the "Right to Breathe" in Delhi (M.C. Mehta case)⁴¹, it can mandate "Clean Code" to protect the "Right to Dignity" for refugees.

This approach bypasses the "Separation of Powers" critique. The Court is not deciding who enters (a sovereign function) but how they are treated and processed (a rights function). It respects the state's need to verify identity (Security) but mandates a method that prevents abuse (Liberty).

1.10 Conclusion

Chapter 3 has established the conceptual scaffolding for the dissertation. It has demonstrated that the "refugee" in India is a legal fiction an entity that exists in the physical world but is invisible in the statutory one. It is only through the lens of Judicial Activism that this invisible entity acquires rights. The evolution from Golaknath to Vishaka provided the procedural tools (PIL) and the substantive confidence (Basic Structure) for the judiciary to intervene. The shift in Citizenship laws from jus soli to jus sanguinis heightened the stakes, creating a class of "illegal migrants" who are effectively stateless. The theoretical tension between the Public Interest model and the Separation of Powers critique remains unresolved in traditional jurisprudence, as evidenced by the conflicting judgments in

⁴⁰ See National Strategy on Blockchain, Ministry of Electronics and Information Technology (MeitY), Government of India (2021/2025).

⁴¹ M.C. Mehta v. Union of India, (1998) 6 SCC 63 (CNG Case).

NHRC v. Arunachal and the recent Rohingya deportation cases. However, the emergence of the Digital Biometric State offers a new arena for resolution.

The proposed "Hybrid Activism Model," integrating blockchain and privacy-preserving technologies, offers a pathway forward. It allows the judiciary to bridge the gap not just between "Citizen" and "Alien," but between "National Security" and "Human Rights" in the digital age. This conceptual framework moves the dissertation beyond a mere critique of case law into the realm of normative constitutional design for the 21st century, arguing that the protection of the most vulnerable requires not just the "rule of law" but the "code of law."

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 3. **Citizenship (Amendment) Act, 2003.**
 4. **Citizenship Amendment Act (CAA), 2019.**
 5. **Constitution of India:** Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy), specifically Articles 5-11, 14, 19, 21, 37, 39(e), 39(f), 42, 141, and 142.
 6. **Foreigners Act, 1946:** Specifically Section 3(2)(c).
 - **International Treaties & Conventions**
 1. **1951 Convention Relating to the Status of Refugees** and its **1967 Protocol.**
 2. **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).**
 3. **Convention on the Rights of the Child (CRC).**
 4. **International Covenant on Civil and Political Rights (ICCPR).**
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 - **Secondary Sources & Key Figures**
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 2. **Bhagwati, P.N. (Justice):** Noted for leading the Public Interest Litigation (PIL) revolution post-Emergency.
 3. **Chandrachud, D.Y. (Justice):** Opinion in the Puttaswamy judgment establishing "informational self-determination".
 4. **Krishna Iyer, V.R. (Justice):** Co-architect of democratizing access to justice through PILs alongside Justice Bhagwati.