



## Legislation for Refugees

**For Prelims:** NHRC, 1951 Refugee Convention.

**For Mains:** India's Refugee Policy, Article 21 of the Constitution.

### Why in News?

The [National Human Rights Commission \(NHRC\)](#) recently held a discussion on “protection of the basic human rights of refugees and asylum seekers in India”.

- Many participants raised the issue of **India not having a specific law for refugees and asylum-seekers.**
- The discussion noted that, though **India has not signed the United Nations Refugee Convention, 1951**, the refugees and asylum seekers are entitled to the rights in [Articles 14 \(Right to Equality \)](#), [20 \(Protection with Respect to Conviction of Offences\)](#) and [21 \(Right to Life\) of the Constitution.](#)

### What is India's Refugee Policy?

- India lacks **specific legislation** to address the problem of refugees, in spite of their increasing inflow.
- India is **not a party to the 1951 Refugee Convention and its 1967 Protocol**, the key legal documents pertaining to refugee protection.
- Moreover, the **Foreigners Act, 1946**, fails to address the peculiar problems faced by refugees as a class.
  - It also gives unbridled power to the **Central government to deport any foreign citizen.**
- In spite of not being a party to the 1951 Refugee Convention and its 1967 Protocol, India has had a stellar record on the issue of refugee protection.
  - India has a moral tradition for **assimilating foreign people and culture.**
- Further, the constitution of India also respects the life, liberty, and dignity of human beings.
  - The Supreme Court in the **National Human Rights Commission vs. State of Arunachal Pradesh (1996)** held that “while all rights are available to citizens, persons including foreign citizens are entitled to the right to equality and the right to life, among others.”
- Further, **Article 21 of the Constitution** encompasses the **right of non-refoulement.**
  - Non-refoulement is the principle under international law which states that a **person fleeing persecution from his own country should not be forced to return** to his own country.

### Why Hasn't India Framed a Law on Refugees Yet?

- **Refugees vs Immigrants:** In the recent past, many people from neighboring countries tend to illegally immigrate to India, not because of state persecution but in search of better economic

opportunities in India.

- While the reality is that much of the debate in the country is **about illegal immigrants, not refugees**, the two categories tend to get bunched together.

- **Misuse of Law:** Such a law could be misused by **anti-nationals, terrorists and criminal elements** and it would cause a financial burden on the country.
- **Open Scope of Maneuver:** Absence of legislation has allowed India to keep its options open on the question of refugees. The government can declare any set of refugees as illegal immigrants.
  - This was the case that has happened with **Rohingya** (They are stateless, Indo-Aryan ethnic group who reside in **Rakhine State, Myanmar**), despite the **UNHCR verification**, the government decided to deal with them as trespassers under the **Foreigners Act or the Indian Passport Act**.

## Why is there a Need for a law on Refugees?

- **Long-term Practical Solution:** India frequently experiences a large influx of refugees. Therefore, a long-term practical solution requires that India make a shift from its **charitable approach to a rights-based approach** by enacting a national refugee law.
- **Adhering to Human Rights:** A national refugee law will **streamline refugee- status** determination procedures for all kinds of refugees and will guarantee them the rights they have under international law.
- **Addressing Security Concerns:** It could sufficiently address **India's security concerns**, while at the same time **ensuring that there is no unlawful detention** or deportation carried out in the garb of national-security concerns.
- **Inconsistency in the Treatment of Refugees:** The bulk of the refugee population in India originates from Sri Lanka, Tibet, Myanmar and Afghanistan.
  - However, only Tibetan and Sri Lankan refugees are recognized as such by the government. They are provided protection and assistance directly through specific policies and rules formulated by the government.

Refugee	Asylum-seeker	Migrant
<ul style="list-style-type: none"> <li>▪ A refugee is a person who has fled their own country because they are at risk of serious human rights violations and persecution there.</li> <li>▪ The risks to their safety and life were so great that they felt they had no choice but to leave and seek safety outside their country.</li> <li>▪ This is because their own government cannot or will not protect them from those dangers.</li> <li>▪ Refugees have a right to international protection.</li> </ul>	<ul style="list-style-type: none"> <li>▪ An asylum-seeker is a person who has left their country and is seeking protection from persecution and serious human rights violations in another country.               <ul style="list-style-type: none"> <li>◦ However, he/she hasn't yet been legally recognized as a refugee and is waiting to receive a decision on their asylum claim.</li> </ul> </li> <li>▪ Seeking asylum is a human right.</li> <li>▪ This means everyone should be allowed to enter another country to seek asylum.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no internationally accepted legal definition of a migrant.</li> <li>▪ Migrants can be understood to be people staying outside their country of origin, who are not asylum-seekers or refugees.</li> <li>▪ Some migrants leave their country because they want to work, study or join family, for example.</li> <li>▪ Others feel they must leave because of poverty, political unrest, gang violence, natural disasters or other serious circumstances that exist there.</li> </ul>

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## Way Forward

- **Revision of Model Laws by Expert Committee:** Model laws on asylum and refugees that were drafted by the **National Human Rights Commission (NHRC)** decades ago but not implemented by the government could be revised by an expert committee.
  - If such laws are enacted, it would give legal sanctity and uniformity, ensuring the

protection of human rights.

- **Law can Act as a Deterrent:** If India had domestic legislation regarding refugees, it could have deterred any oppressive government in the neighborhood to persecute their population and make them flee to India.

**Source: TH**

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