



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

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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.

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