

**ASIA'S WAY OF BEING A HOST: AN EXHAUSTIVE RESEARCH WITH SPECIAL
REFERENCE TO INDIA AND ITS REFUGEE LAWS**

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INTRODUCTION

The Continent of Asia has a discussable history in terms of its physical, political as well as cultural segments. May it be the freedom of Indians from the Britishers or the China's power over Hong Kong or the making of Bangladesh, Afghanistan or Pakistan or the conjoined existence of Russia in the continent of Eurasia, the continent of Asia has seen significant embarkment of changes and has been one of the most dynamic continents of the world. Asia is a habitat of 60% population of the world and therefore, it is an indispensable area of topic whenever the discussed issue is of an international or humanitarian concern.

However, the track record of Asia and its Human Rights Policies hasn't been great enough. The top countries with highest Human Rights Issues are a part of Asia. The very toppers of the list include Yemen (the Human Rights and Rule of Law index- 9.9), Iran (9.8), China (9.7), Egypt (9.6).² If the Refugee Policy of Asia is concerned, there are no much expressed or codified laws that deal with the admissibility, hosting and repulsion of Refugees from the country. However, in order to understand the concept of Refugees through the Asian Context, it is a needful aspect to understand the concept of Refugees as a whole.

The world has scars of many described and undescribed battles and these scares are the sign of agony of millions of people being insecure about their very own lives. Way back when the world witnessed two magnificently dangerous wars, the World War 1 and the World War 2, balanced settlement and safety of lives was something that unimaginable amount of people begged for. The ones who were dead were gone and the ones who stayed, fled from their homeland in furious and curious search of a place to peacefully reside and therefore, after the World War 1 ended, the governments of various countries around the world started responding to the issue and

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²TheGlobalEconomy.Com, *Human Rights and Rule of Law Index- Countries*, (Last Visited: 2nd May, 2023),

[<https://www.theglobaleconomy.com/rankings/human_rights_rule_law_index/>](https://www.theglobaleconomy.com/rankings/human_rights_rule_law_index/)

framing policies and international agreements to regulate the hostage policy for these refugees. Later, came the World War 2 which increased the number of refugees even more.

The after calculation and compensatory steps of world restoration as much as possible, huge amount of time was spent for the drafting of an international multilateral convention known as **the 1951 Convention Relating to the Status of Refugees**³(amended only once, i.e., 1967., popularly known as the 1967 Protocol). After the convention being successfully accepted by the United Nations General Assembly, the world got an internationally recognized definition for Refugees and various other rights. The convention mentioned the basic rights, welfare, administrative measures, executory and transitory provisions and non-refoulment provisions pertaining to the times when a state hosts a refugee. There are 149⁴ State Parties for this convention and has agreed to follow and accept the definition and privileges given to Refugees under the provisions of the Convention. However, only 15⁵ out of 48 Countries of Asia is a part of this Convention, ironically holding the more than half of the world population. Highly populated countries of Asia like India, Indonesia, Pakistan, Vietnam, etc are not a part of the convention as well as only two of the top five economies of Asia is a part of convention, i.e., only China and Japan are a part of this Convention and India, Korea, Saudi Arabia are not a part of this Convention, as well as strategically important countries like UAE, Iran or Turkey are also not a party to the Convention. The most populated Country and the second largest economy of Asia, India, is not a part of the Convention and there are various political as well as planned reasons regarding that. However, through human rights perspective, there are various aspects that need very minute understanding. *Therefore, through this article, core reasons, advantages, disadvantages, and political positioning with regard to the choice of not being a party to the convention would be discussed and understood in a very scrutinized and specific way that could exhaust every element concerned.*

³Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)

⁴ United Nations Higher Commission for Refugees, *The 1951 Conventions and Key International Conventions*, (Last Visited on 2nd May, 2023), <<https://www.unhcr.org/il/en/1951-refugee-convention-and-international-conventions>>

⁵ United Nations Treaty Convention, *Refugees and Stateless Persons, Convention Relating to Status of Refugees, 1951*, Geneva (Last Visited: 2nd May 2023), <<https://treaties.un.org/>>

ITS ALL ABOUT DOMESTIC STRATEGIES VERSUS INTERNATIONAL PRIORITIES!

METHODOLOGY

The making of this piece of researchon “*Asia’s Way of Being a Host: An Exhaustive Research with Special Reference to India and its Refugee Laws*” is an outcome of an exhaustive research through the academic search engines.

Descriptive Research Methodology

The methodology has been chosen in order to inculcate the information regarding the actual characteristics that justifies the decision of states in whatever laws they put forth with regard to the issue of refugees. A descriptive and detailed research has been conducted in order to understand the core concept as well as various comparisons have been stipulated in a descriptive manner in order to highlight very extensive research conducted while the intensive efforts were put in for maintaining the accuracy and logic of the discussed sensitive issue.

This methodology entails into exhibiting extensive strength to know the deepest phenomenon or circumstance that is connected to the issue on hand. Therefore, this particular methodology is a significant epitome that is required to make sure when true characteristics of reality on field is to be estimated.

Deductive Research Methodology

Various Search engines have been used as an indication of ***secondary research methodology*** in order to highlight general laws and provisions pertaining to the Refugees on land. The core applicability and the anticipated and unanticipated advantages and disadvantages that come with the generality in acceptance of this general binding laws developed by the UN regarding the handling and hosting of refugees is an important concern and to understand that aspect precisely, this particular methodology has been chosen.

RESULTS

Factual Aspect

The Asia-Pacific continent have been known to be an area that has rejected the convention which means that the basic rights and welfare that the convention talks about is not binding over these countries. Well, there are definitely two sides of a coin and every country has their own reasons and strategies for denying the convention, however, being one of the most Refugee populated Continent, the connotations are very serious and important from the Human Rights point of view. There are almost 2.7 million refugees just in the South Asia Region⁶.

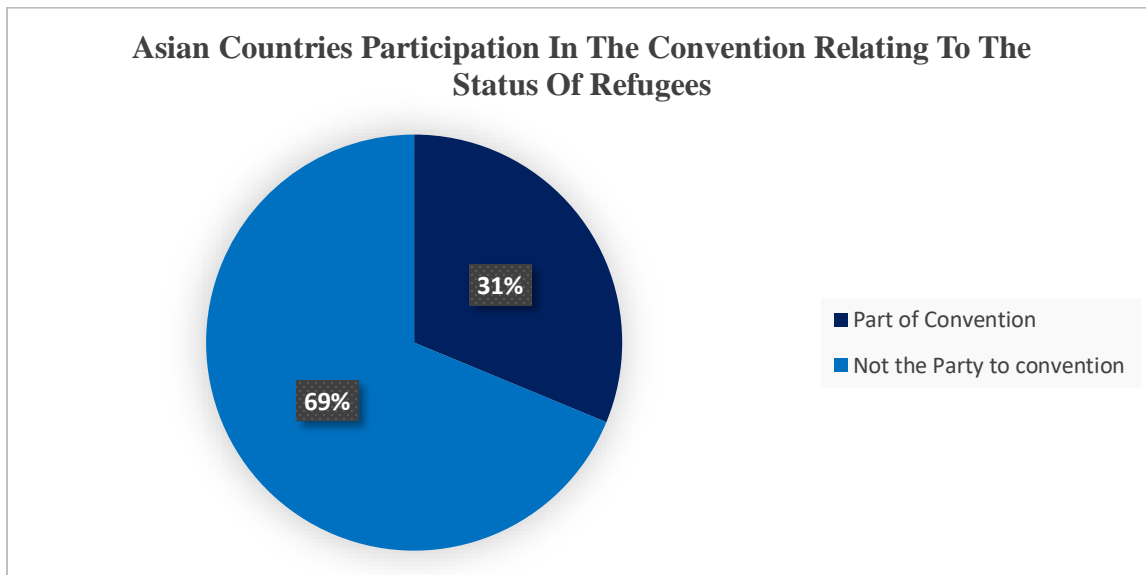
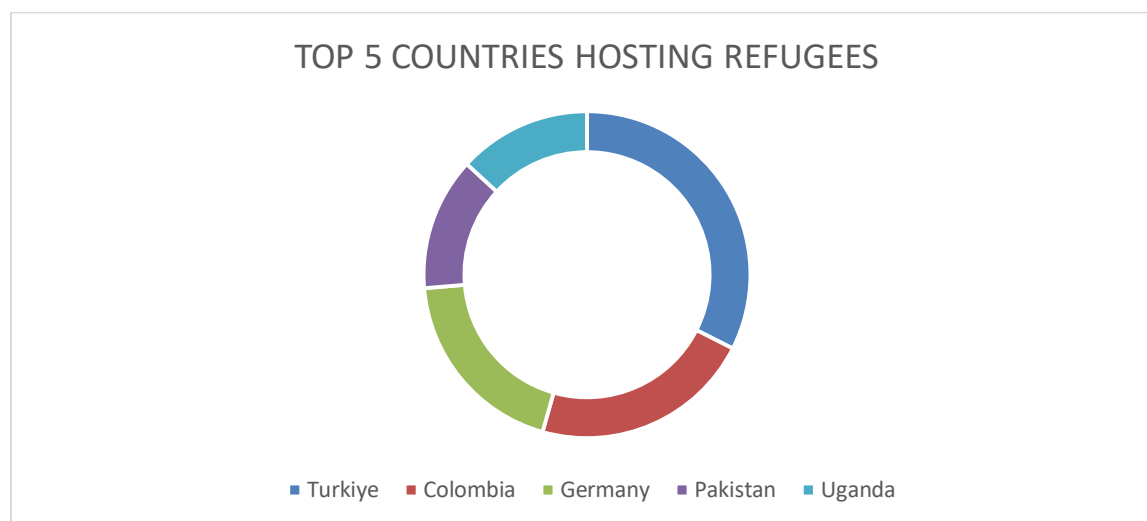


Chart showcasing the percentage of countries that are party to the 1951 Convention Relating to the Status of Refugee

⁶ World Bank, Refugee Population by Territory or country, Via United Nations Refugee Data Finder, (Most Recent year-2021), (Last Visited on: 3rd May, 2023), <<https://data.worldbank.org/>>

Furthermore, the top 5 countries that host the greatest number of Refugees around the world, the *two of which are Asian Countries*. The below mentioned graph has been designed in a manner that could showcase the highest number of distribution of Refugees in the country of *Türkiye*, Colombia, *Pakistan*, Germany, Uganda.



The above chart is a description of the distribution of Refugees among the top 5 hosts

The greatest number of Refugees are found in Türkiye i.e., 3.5 million, followed by Colombia to be 2.5 million, Germany to be hosting 2.2 million, Pakistan to have 1.5 million Refugees and 1.5 million in Uganda as well.⁷

About India

The top populated country *India*, holding a population of millions and not a party to the convention, the estimated number of **registered** refugees as per 2021 report is 2,12,413 people.⁸

⁷ United Nations Higher Commission for Refugees, Refugee Data Finder, UNHRC'S Refugee Population Statistics Database, (Last Visited On- 3rd May, 2023), <<https://www.unhcr.org/refugee-statistics/>>

⁸ The World Bank, Refugee Population by country or territory of Asylum – India, (Last Visited on 2nd May 2023), <<https://data.worldbank.org/indicator/SM.POP.REFG?locations=IN>>

The basic policy followed in India is that the Refugees, when enter the country should register themselves with the UNHCR and after which they would be given a blue colored document, generally known as *blue paper* that serves as their identity in the country. However, the Afghanistani Refugees had protested in 2021 showcasing the atrocities that they had to face even when they hold a UNHCR issued blue paper. This is mainly because India is not a party to the convention and the Rights and Welfare provisions are not binding.

However, there are a certain provision that deal with the foreign undocumented Refugees which are as follows:

1. *Section 3 of The Foreigners Act, 1946*⁹, empowers the Central Government to detect, detain, deport any illegal foreign national
2. *Section 5 of The Passport (Entry into India) Act, 1920*¹⁰, mentions that authorities can Remove an illegal foreigner by force under *Article 258 (1) of the Constitution of India*¹¹.
3. Furthermore, in the *Registration of Foreigners Act, 1920* prescribes that the Registration of any person who has come on a long-term visa should be done with the Registration officer within 14 days of arrival.
4. *The Citizenship Act, 1955 and The Citizenship Amendment Act, 2019* prescribes various aspects relating to renunciation, termination, deprivation of citizenship and specifically mentions the religious belongings of people of Bangladesh, Pakistan and Afghanistan who can acquire the Indian Citizenship.

Nevertheless, these provisions are more about the powers of the government to control the hosting of Refugees in the country and there is no specific provision of frame of rules that mentions the rights and privileges that is given to the refugees by the Indian Government. Owing to the already expellable amount of population, the country fits it better to have that set of arbitrariness with themselves in order to make sure that they do not bestow such a power to

⁹The Foreigners Act, 1946, Section 3, Act No. 31, Acts of Parliament, 1946

¹⁰ The Passport (Entry Into India) Act, 1920, Act No. 34, Acts of Parliament, 1920

¹¹ Indian Constitution, Article 258, cl 1, Residuary powers of legislation- Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List

regulate the inflow of refugees to anyone else but themselves and act according to the persisting situations and needs of the country.

Inter alia, an important fact to note is that India has not signed the Convention for Refugees however has some finely drafted provisions protecting certain basic Human Rights in the Constitution of the country. The country is a party to various basic International Human Rights instruments like *The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987*, *International Covenant of Civil and Political Rights 1966* and has adopted various provisions from the *Universal Declaration of Human Rights 1948* as well.

Note: Mostly, the Refugees residing in India are the Partition Refugees from Pakistan (1947), The Tibetan Refugees of 1959, The Bangladeshi Refugees of 1965, The Shri Lankan Tamils of 1980s, The Rohingya Refugees of 2022.

1. Analytical Aspect

A. *The Definition of Refugee*

The only universally recognized definition given by the convention is mentioned in its *Article 1*¹². As per the definition, the Refugees are categorized as persons who have well-founded fear of persecution in their own country due to conflicts arising out of reasons relating to *race, religion, political opinion or the person is unwilling to avail protection of such country owing to such fear*. The definition also mentions who *ceases* from being a refugee which includes reasons relating to situations when a person *voluntarily has re-availed himself to his native country, has re-acquired the citizenship of his country, has new nationality, is able to return to his own country, is given assistance or protection from UNHCR, or has committed some serious non-political crime*.

¹²Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1

(i) Positive Aspect of the Definition

It is important to estimate the positive aspect of the definition because it could be the basis over which a basic idea of what the non-party of the convention have been missing in their human rights list can be estimated. The definition is a basic meaning and element of any object and therefore, it becomes important to enlist the good aspects of the definition to draw an estimation about what are the points of concern that the human rights in certain states are facing due to the definition not being a binding statement in that area.

The definition mentioned in the Provision is a very multi-faced juncture of words and the merits are:

- The definition significantly highlights several aspects of insecurity that a person had to face in their own country. Therefore, when a country is a party to the convention, that country becomes bound to accept the Refugees without any discrimination because it is discrimination and injustice relating to race and religion out of which they are seeking asylum for.
- The definition clearly stipulates who are ceased from being Refugees. It is also an important aspect because it clears all the ambiguities about the aftermath of situations when a person is recognized as a refugee.
- Most importantly, the definition is a part of such a convention that exclusively talks about the status of refugees and therefore, rightfully, the definition is designed in a manner that actually covers the status that a person falling into certain category should be given and maintained.
- The definition is not favoring a single side because it also mentions about the fact that people who have committed certain crimes can be ceased from being considered to be refugees. The definition is a beautiful construction of rights as well as caution as it clearly says off that a person could be entitled to rights only when he has cleared the tests for his innocence.

It is important to study the drawbacks because it could eventually contribute into digging out the reasons that are good enough to hold a country or an area away from being the party to the convention. The possible demerits of the definition are as follows:

- The definition is surely multi-faced but it is not wide enough and broader in sense to cover all those aspects that could serve as a reason for people to go away from their homeland.

The definition fails to differentiate the people who have moved for various other reasons like poverty, job opportunities, economic upliftment etc., It is important to lay down substantial difference of immigration from the term “Refugees” because both are very different terms used for people in different kind of situations.

- Considering India, due to availability of labor work higher than a few nearby countries in Asia, there is a higher flow of immigrants into the country and therefore, for such countries a clearer definition that actually puts forth specificity with regard to who are refugees over immigrants is an important aspect.
- The definition talks about the people who are ceased from having the status of refugees. However, the points given under the provision gives very less power to the states to control the status because these points are more about voluntary choice of the refugee and the situational or intentional efforts of that person. For countries, it is very important to have something like “or what the country deems fit as per the current situation prevailing in the country” because it is only then that developing countries like India could agree to bind itself to such a definition.

B. The Provisions

- (i) Perspective I – Need to rectify the Convention- Understanding through Indian Context

As per this perspective, India should become a party to its convention because this convention is in relation to a very important human right concern and India has been a part of various basic human rights conventions which are binding on them. The fullest justice for those convention is practically possible only when the provisions of these conventions are followed because otherwise, the chances of torture and inhumane treatment could never be ruled out of the story.

Being a party to the convention would give various important rights as per the Chapter 2 of the convention. India would be binding to make sure that the Refugees are given *Personal*

Status.¹³ Furthermore, the refugees should be given *Right to movable and immovable property*¹⁴, *Right to form Association*¹⁵, *Right to Access Courts*¹⁶, etc., because these provisions are not just important for this particular convention but these are the basic rights and therefore, any country who has said to have accepted the UDHR documents should be giving these rights to Refugees as well because these rights are the most ground level rights that deals with physical, personal, economic, and judicial freedom and opportunities for people who reside in the country.

Furthermore, the convention also guarantees gainful employment under its Chapter 2 with provisions relating to earning employment, self-employment, liberal professions or welfare related provisions in Chapter 4 with regard to Rationing, Housing, Public Education, etc., along with administrative measures as discussed in the Chapter 5 of the convention about freedom of movement, Identity Papers, Travel Documents, and most importantly *Refoulement*.¹⁷

As soon as India becomes a party to the convention, all these welfare and basic rights would become binding and all the goals set for any United Nations member nation could be met in a more accurate and better way.

(ii) Perspective 2- Why does India refrain from signing the Convention?

For India, the current necessity is not the convention but definitely a municipal law that could govern and guide the government in times when extraordinary situations take place. India is a population billionaire and therefore, has to have a strict and arbitrary control over the foreign population in India. When India's own employment rate is questionable it cannot necessarily think about providing sure sort employment to the refugees, also when India's own people have various pending cases and the burden is very high on the courts, a whole-time access to the

¹³Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 12

¹⁴Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 13

¹⁵Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 15

¹⁶Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 16

¹⁷Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 33

judiciary for the refugees can only be given after a detailed study and mentioning in the municipal law about the same. Furthermore, in Indian Context the stateless people have various forms, some appear to be the victims, some appear to be normal people seeking opportunities, some appear criminals themselves and therefore the distinction has to be made specifically and therefore, applying a general law over these specifically important cases can conclude to be a threat for the country.

Additionally, assuming that the human rights of these refugees wouldn't be taken care of just because this convention is not binding on the land is wrong and the example for it could be the judgement given by the apex court of India in the case of *NHRC Vs. State of Arunachal Pradesh*¹⁸ in which it was held that *rights are available to citizen persons including foreign citizens and they are entitled to Right to Equality and Right to Life among others*. This particular judgement is landmark as it talks about the Right to Life and equality being applicable not just to the citizens of the country.

Being a diverse country, India is accountable to think upon various areas, demographics and geopolitics and therefore, that set of arbitrariness is indeed what India wishes to have with itself to pois a little less burden over itself.

The Results have been discussed in a scrutinized manner and the analytical aspect has been discussed through both the angles in order to cover the entirety of the discussion.

¹⁸ 1996 AIR 1234

DISCUSSION & CONCLUSION

The Research and its Results has been crafted in order to put forth perfect blend of relevancy and application. In order to facilitate a moving thought process for the readers it is important to discuss the outcomes that can be remembered through the article which are:

- Asia's population, internal security issues and demographic settlement makes it an important area with human rights point of view.
- One of the most prevalently insecure people internationally are refugees and therefore, it becomes significant to discuss the laws and general principles that govern this section of human beings.
- The International instrument dealing with Refugee Laws is the Convention Regarding Status of Refugees and only 31% of Asian countries have ratified the convention.
- There are millions of Refugees receding in Asia-Pacific region and 2 countries (Turkiye and Pakistan) are in the top 5 countries having the greatest number of Refugees.
- There is no codified municipal or multilateral treaty that these countries have been binding themselves in order to keep the arbitrariness to themselves.
- Through Indian context it can be understood that the definition mentioned in the convention is well crafted yet is very narrower for a country like India with huge diversity to accept because it lacked addressing concerns for difference in various kinds of internally displaced and stateless people.
- Even though the provisions in the convention are very human-rights friendly but doesn't mean that the countries who are not the signatories do not take care of the human rights of these people or torture these people. On various instances, the judiciary has extended the ambit of Article 21 in order to provide protection to the foreigners.
- Not being a party to convention is neither a surety of doubt for countries action to be torturous or inadequate.

Moreover, the objectives of the Research are fulfilled because the basic concept and the underlying undiscussed aspects have been simultaneously mentioned with the most recent available statistics.