

Bill No. 45 of 2021

THE ASYLUM BILL, 2021

BY

DR. SHASHI THAROOR, M.P.

ARRANGEMENT OF CLAUSES

CLAUSES

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement
2. Definitions
3. Principles of refugee protection

CHAPTER II
PRINCIPLES OF REFUGEE STATUS

4. Criteria for recognition as a refugee
5. Exclusion
6. Cessation
7. Cancellation and revocation
8. Principle of non-refoulement
9. Provisions for removal from India

CHAPTER III
PROCEDURE TO APPLY FOR ASYLUM

10. Application for Asylum
11. Commission to determine application for asylum
12. Appeal to lie to the Appellate Board
13. Interview
14. Decision to be reasoned
15. Right to legal representation

CLAUSES

CHAPTER IV
CONSTITUTION, FUNCTIONS AND POWERS OF AUTHORITIES

16. Establishment of National Commission for Asylum
17. Composition of the Commission
18. Functions of the Commission
19. Powers of the Commission
20. Establishment of the Appellate Board
21. Composition of the Appellate Board
22. Functions of the Appellate Board
23. Powers of the Appellate Board
24. Term of office, conditions of service, etc. of the Chief Commissioner, Commissioners, Chairperson and the Members
25. Removal of the Chief Commissioner, Commissioners, Chairperson and Member from office
26. Secretary, officers and other employees of Commission or Appellate Board
27. Vacancies, etc. not to invalidate proceedings of the Commission and the Appellate Board
28. Chief Commissioner, Commissioners, Chairperson and Members to be Public Servants
29. Proceedings before Commission or Appellate Board to be judicial proceedings

CHAPTER V
MASS INFLUX SITUATIONS

30. Powers of the Central Government with respect to mass influx situations
31. Registration of mass influx refugees
32. Special provisions with regard to movement etc.
33. Modification of a mass influx situation

CHAPTER VI
PROVISIONS RELATED TO VOLUNTARY REPATRIATION

34. Provisions for voluntary repatriation

CHAPTER VII
RIGHTS AND DUTIES OF REFUGEES AND ASYLUM-SEEKERS

35. Protection and general rights of refugees
36. Rights of asylum-seekers and mass influx refugees
37. Identity and travel documents

CHAPTER VIII
TECHNICAL ASSISTANCE

38. Technical assistance

CHAPTER IX
FINANCE, AUDIT AND ANNUAL REPORT

39. Grants by the Central Government
40. Accounts and Audit
41. Annual Report

CLAUSES

CHAPTER X
MISCELLANEOUS

42. Power to make Rules
43. Empowerment of concerned Authorities
44. Bar of jurisdiction
45. Protection of action taken in good Faith
46. Act to have overriding effect

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BILL

to provide for the establishment of an effective system to protect refugees and asylum-seekers by means of an appropriate legal framework to determine claims for asylum and to provide for the rights and obligations flowing from such status and matters connected therewith.

WHEREAS, the Constitution of India requires all persons to be treated in a fair and just manner consistent with the guarantees of equality, fairness and due process of law;

5 *and whereas, the Supreme Court and the High Courts in India have extended the protection of certain fundamental rights to refugees and asylum-seekers;*

and whereas, India has acceded to all major international human rights instruments and demonstrated its commitment to international law and human rights norms including the right to seek asylum and the principle of non-refoulement;

and whereas, India has a long tradition and experience of providing humanitarian assistance and protection to refugees and asylum-seekers;

and whereas, there is a need to consolidate, streamline and harmonize the varied practices, policies and standards applicable to refugees and asylum-seekers in India.

5

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:--

CHAPTER I PRELIMINARY

Short title, extent and com- mencement.	1. (1) This Act may be called the Asylum Act, 2021. (2) It extends to the whole of India. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	10
Definitions.	2. (1) In this Act, unless the context otherwise requires— (a) “Appellate Board” means the National Appellate Board for Asylum established under section 20; (b) “applicant” means an asylum-seeker who, after entering the national territory of India, has filed an application for asylum under this Act; (c) “application for asylum” means an application for the grant of asylum made under section 10; (d) “asylum” means refugee status recognized in terms of this Act; (e) “asylum-seeker” means a foreigner who after entering the national territory of India expresses an intention to seek a grant of asylum; (f) “Chairperson” means the Chairperson of the Appellate Board appointed under section 21; (g) “Chief Commissioner” means the Chief Commissioner of the Commission appointed under section 17; (h) “child” means any person under the age of eighteen years; (i) “Commission” means the National Commission for Asylum established under section 16; (j) “Commissioner” means a Commissioner of the Commission appointed under section 17; (k) “country of origin” means the country of nationality of the refugee or asylum-seeker, or, if he has no nationality, the country of his former ordinary residence; (l) “dependant” in relation to an asylum-seeker or a refugee, includes the spouse, any dependent child or aged or infirm family member of such asylum-seeker or refugee; (m) “foreigner” means a person who is not a citizen of India; (n) “hearing” means the proceedings before the Commission or the Appellate Board, as the case may be, under the terms of this Act; (o) “mass influx” means a situation where considerably large numbers of people from a specific country or geographical area, arrive at, or cross, an international border of India, and are notified as such under section 30; (p) “Member” means a Member of the Appellate Board appointed under section 21; (q) “nationality” means the status of a person who is attached to a State by the tie of allegiance and includes but is not limited to citizenship, membership of an ethnic, linguistic or racial group;	15 20 25 30 35 40 45 50

(r) “person” does not includes any company or association or body of individuals, whether incorporated or not;

(s) “persons with special needs” include unaccompanied children, disabled persons, aged or infirm persons, pregnant women, single mothers or single fathers with accompanying child or children or persons who have been subjected to torture, rape or other serious psychological, physical or sexual violence;

(t) “prescribed” means prescribed by rules made under this Act; and

(u) “refugee” means an applicant whose application for asylum has been determined to meet the criteria under section 4 by the Commission or the Appellate Board, as the case may be, under the terms of this Act or who has been declared to be a refugee by a notification under section 30.

3. In exercising the powers conferred by this Act, regard shall be had to the following considerations, namely—

(a) that all foreigners who have faced or are at risk of facing persecution in their country of origin, and who enter India, whether directly from their country of origin or indirectly, or who are already present in India, are entitled to seek asylum;

(b) that care has to be taken to ensure that the principle of *non-refoulement* mentioned under section 8 is upheld;

(c) that the determination of applications for asylum shall be by a fair and transparent system that shall be adhered to all times with the norms of due process;

(d) that asylum-seekers are entitled to interim legal protection and shall not be expelled or returned before a final decision on asylum is reached;

(e) that asylum-seekers and refugees are vulnerable persons deserving of basic social and economic protection;

(f) that the repatriation of a refugee to his country of origin must be conducted in a safe and dignified manner and only after ensuring that the decision to repatriate is voluntary and informed; and

(g) that the unity of a refugee’s family shall be maintained.

Principles of refugee protection.

CHAPTER II

PRINCIPLES OF REFUGEE STATUS

4. (1) A person qualifies as a refugee for the purposes of this Act, if such person—

(a) is outside his country of origin and is unable or unwilling to return to or avail himself of the protection of that country because of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnicity, membership of a particular social group or political opinion; or

(b) has left his country owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

(2) The dependants of a person who qualifies as a refugee under subsection (1) shall also be deemed to be refugees.

(3) In the case of a person who has more than one nationality, the term country of origin shall mean each of the countries of which he has nationality.

Criteria for recognition as a refugee.

5. (1) A person shall be excluded from protection under this Act if—

(a) there are serious reasons for considering that—

(i) he has committed a crime against peace, a war crime or a crime against humanity, as defined in any international legal instrument dealing with any such crimes which India has acceded to; or

(ii) he has committed a serious non-political crime outside India prior to his entry into the national territory; or

Exclusion.

(iii) he has committed inhuman acts for any reason whatsoever outside of India; or

(iv) he has instigated, abetted or otherwise participated in committing the acts mentioned in sub-clauses (i), (ii) or (iii); or

(b) he poses a serious threat to the public order or national security of India and— 5

(i) has been convicted of an offence in India which is punishable by a term of imprisonment of at least ten years; or

(ii) has committed an act outside India that, if committed in India, would constitute an offence punishable by a term of imprisonment of at least ten years; or 10

(c) he has been recognised by competent authorities of India as having the rights and obligations of an Indian citizen.

(2) The exclusion of the applicant from protection under this Act shall not require the exclusion of his dependants where none of the reasons for exclusion applies to them. 15

Cessation.

6. (1) A person shall cease to be a refugee for the purposes of this Act, if—

(a) he can no longer refuse to avail himself of the protection of the country of his citizenship, because the circumstances in respect to which he was recognised as a refugee have ceased to exist; or 20

(b) he voluntarily re-avails himself of the protection of his country of origin; or

(c) he has acquired the citizenship of India; or

(d) he has acquired the citizenship of some other country and enjoys the protection of that country; or 25

(e) he has voluntarily re-established himself in the country which he left, or outside which he remained owing to fear of persecution; or

(f) he has voluntarily regained the citizenship that he had been deprived of; or

(g) he, having been stateless, is able to return to the country of former ordinary residence as the circumstances in respect to which he was recognised as a refugee no longer apply. 30

(2) In the assessment under clauses (a) and (g) of sub-section (1),—

(i) consideration shall be given to whether the circumstances upon which the status was granted no longer apply or have changed significantly and permanently; and 35

(ii) due consideration shall further be given to any compelling reasons presented by the refugee concerned, arising out of previous persecution, for refusing to return to his country of origin or his former ordinary residence.

Cancellation and revocation.

7. (1) A person's status as a refugee may be cancelled for the purposes of this Act, if— 40

(a) he, or a third party acting on his behalf, misrepresented or concealed facts that were material to the determination of refugee status, with or without fraudulent intent; or

(b) he is guilty of misconduct, including threats or bribery; or 45

(c) there was an error of fact or law in the granting of the status; or

(d) there was misconduct or administrative error at any stage in the hearing, including the wrongful issuance of relevant documents.

(2) A person's status as a refugee shall be revoked for the purposes of this Act if he subsequently engages in conduct that falls within the exclusion criteria under section 5. 50

8. No refugee present within the national territory of India shall be expelled or returned in any manner whatsoever to any country where his life or freedom would be threatened on account of his race, religion, sex, nationality, ethnicity, membership of a particular social group or political opinion. Principle of *Non-refoulement*.

5 9. (1) Subject to section 8, a refugee or asylum-seeker may be removed from India only if— Provisions for removal from India.

(a) the concerned authority of the Central Government has certified that the refugee or asylum-seeker falls within the grounds specified under sub-section (1) of section 5, or sub-section (1) of section 6 or section 7; or

10 (b) his application for asylum has been finally denied.

(2) The removal of a person on the grounds specified in sub-section (1) shall be effected only after such person has been duly informed of the intention of the Central Government to remove him and given the opportunity to show cause against such removal, within such time and in such manner as may be prescribed, with regard thereto.

15 (3) Where an order is made for the removal of a refugee or asylum-seeker from India, any dependant of such refugee or asylum-seeker, who has not been granted asylum, may be included in such an order and removed from India:

20 Provided that before any order for the removal of a dependant is made, such dependant shall be afforded a reasonable opportunity to make an application for asylum and he either fails to apply or his application for asylum is finally denied by the Appellate Board.

(4) The Central Government may, by an order in writing, cause any refugee or asylum-seeker ordered to be removed from India, to be detained pending such removal.

25 (5) Where an order for removal is made, the concerned refugee or asylum-seeker shall be removed to his country of origin:

30 Provided that where such refugee or asylum-seeker wishes to be removed to a third country, he shall be afforded reasonable time to obtain approval from such country, for his removal to that country.

(6) An order for removal shall be made only by the concerned authority of the Central Government in writing.

(7) An order for removal shall not be made until the final determination of an application for asylum under this Act.

35 CHAPTER III PROCEDURE TO APPLY FOR ASYLUM

40 10. (1) Every asylum-seeker shall have the right to make an application for asylum addressed to the Commission in such manner as may be prescribed. Application for Asylum.

(2) Where a police officer or any other person exercising powers under the Foreigners Act, 1946, intercepts a foreigner who is seeking entry into India at any port of entry or international border and who expresses the intention to seek asylum in India, such police officer or person shall not deny entry into the national territory to such asylum-seeker and shall give him the necessary information regarding the procedure for asylum, and inform him of his right to legal representation in accordance with Section 15 of this Act.

45 (3) An application for asylum shall be made within sixty days following the asylum-seeker's entry into India:

50 Provided that the Commission may extend the period for making an application for asylum if it is satisfied that the asylum-seeker was prevented for sufficient reasons from filing the application:

Provided further that the Commission may, after due consideration, admit an application for asylum after the said period of sixty days, where such application is based on a claim arising as a consequence of events which have occurred in the asylum-seeker's country of origin since his departure, or because of a significant

intensification of pre-existing factors since his departure, or because of a change in his personal circumstances:

Provided also that the Commission may, after due consideration, admit a fresh application for asylum made by the asylum-seeker after the said period of sixty days, where his previous application for asylum was finally rejected further provided that fresh application for asylum should arise out of change in the asylum-seeker's personal circumstances or change in the circumstances in his country of origin. 5

(4) The applicant may apply on behalf of accompanying family members who are not his dependants but whose applications are on the same grounds, provided a written consent of the adult family members is attached to the application, made on their behalf. 10

(5) No asylum-seeker shall be detained or subjected to any penalty solely on account of his illegal entry into, or stay in India, pending the determination of his application for asylum. 15

(6) Every applicant shall, upon submitting the application for asylum, be issued a registration document by the Commission in the prescribed form, valid for six months and containing identity information of the applicant and, where applicable, the identity information of his dependants and which shall enable those included in it to stay in India pending the determination of the application for asylum and shall be issued without being subject to any fee: 20

Provided that where the decision on the application for asylum is not issued before the expiry of the registration document, the document shall be renewed for a further period of sixty days at a time, until a decision is issued.

(7) Where the application for asylum is rejected by the Commission, the registration document shall be renewed for a period of sixty days from the date of such decision: 25

Provided that where the applicant files an appeal application before the Appellate Board, the Commission shall renew the registration document as under sub-section (2) of section 12. 30

Commission to determine application for asylum.

11. (1) The Commission shall examine every application for asylum and, after giving an opportunity to the applicant to be heard, and after making such further inquiry as is necessary under this Act, determine whether the applicant is entitled to be recognised as a refugee in accordance with the principles under this Act.

(2) During the hearing under sub-section (1), the applicant shall be informed of and provided with the services of a competent interpreter and adequate opportunity to present evidence in support of his case. 35

(3) The Commission shall, within three months of the conclusion of the hearing, issue a decision in accordance with section 14, granting or denying asylum to the applicant. 40

(4) Where an application for asylum is accepted by the Commission, or where the appeal application is accepted by the Appellate Board, the Commission shall issue a refugee certificate containing identity information and indicating the legal status of the refugee and his dependants where applicable and which shall enable those included in it to stay in India legally. 45

(5) Where an application for asylum is rejected, the Commission shall issue a rejection letter containing detailed reasons for the decision.

Appeal to lie to the Appellate Board.

12. (1) An applicant aggrieved by a decision of the Commission made under this Act, may, within sixty days from the date of such decision and in such manner and form, as may be prescribed, prefer an appeal to the Appellate Board: 50

Provided that the Appellate Board may accept an appeal application after the stipulated time period if reasonable cause for the delay is shown.

(2) On receipt of an appeal application under sub-section (1), the Appellate Board shall direct the Commission to renew the registration document issued under sub-section (6) of section 10 for a period of sixty days at a time, until a final decision is issued. 55

(3) The Appellate Board may, after giving an opportunity to the applicant to be heard, and after making such further inquiry as is necessary under this Act, confirm, modify or set aside the decision of the Commission.

5 (4) During the hearing under sub-section (3), the applicant shall be entitled to all the rights set out in sub-section (2) of section 11.

(5) The Appellate Board shall, within three months of the conclusion of the hearing, issue a decision in accordance with section 14.

10 (6) Where an application for asylum is accepted at appeal, the Appellate Board shall direct the Commission to issue a refugee certificate as under sub-section (4) of section 11.

(7) Where an appeal application is rejected, the Appellate Board shall issue a rejection letter containing reasons for the decision.

(8) The decision of the Appellate Board shall be final.

15 **13. (1)** All hearings by the Commission under section 11 and the Appellate Board under section 12 shall include an in-person interview with the applicant within ninety days of the receipt of the application for asylum, with a view to reaching an effective and fair decision:

Interview.

20 Provided that where the applicant is unable to be physically present for the in-person interview, the Commission or, as the case may be, the Appellate Board, may make alternative arrangements to ensure that the applicant has the opportunity to be heard.

(2) During the asylum interview, the applicant shall be given the opportunity to express himself in the best possible manner and upon the applicant's request, his lawyer shall be permitted to attend the interview as an observer.

25 (3) The entire hearing shall be conducted under such principles of confidentiality as may be prescribed.

(4) Due consideration shall be given to the circumstances of persons with special needs during the entire hearing

(5) All asylum hearings shall be recorded in writing.

30 (6) Where dependants are included in the application for asylum, only those above thirteen years of age shall be interviewed.

14. (1) All decisions of the Commission and Appellate Board shall contain, in writing, the reasons for arriving at the decision, and a copy of the same shall be furnished to the Applicant.

Decision to be reasoned.

35 (2) The decisions, judgements, decrees or orders of the Commission and Appellate Board shall be published, as prescribed, with due regard to principles of confidentiality.

40 **15. (1)** The applicant or refugee, as the case may be, shall have the right to seek the assistance of a legal practitioner of his choice. In case the applicant or refugee is unable to engage a legal practitioner, he can take recourse to free legal aid.

Right to Legal Representation.

(2) Legal assistance shall include legal representation throughout the hearing conducted by the Commission or the Appellate Board as the case may be.

CHAPTER IV

45 CONSTITUTION, FUNCTIONS AND POWERS OF AUTHORITIES

16. (1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint, there shall be established, for the purposes of this Act, a Commission to be called the National Commission for Asylum.

Establishment of National Commission for Asylum.

50 (2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Commission shall be at New Delhi and the Central Government may direct that additional offices of the Commission be established in any other location as may be necessary.

Composition
of the
Commission.

17. (1) The Commission shall consist of a Chief Commissioner, and not less than six other Commissioners to be appointed by the Central Government. 5

(2) The Chief Commissioner shall be a person who has been a judge of a High Court and shall be appointed in consultation with the Chief Justice of India.

(3) The Commissioners shall be appointed by the Central Government in consultation with the Chief Commissioner and shall be persons of ability, integrity and standing who have special knowledge and professional experience of not less than ten years in refugee law and policy, or not less than ten years of litigation experience in the field of human rights. 10

Functions of
the
Commission.

18. (1) The Commission shall determine:

(a) applications for asylum, in accordance with the principles under this Act;

(b) cessation of refugee status in accordance with section 6; and 15

(c) cancellation or revocation of refugee status in accordance with section 7.

(2) The Commission shall issue documentation in accordance with section 10 and section 11.

(3) The Commission may also inquire, *suo moto* or on an application presented to it either by an asylum-seeker, refugee or by someone acting on their behalf, in respect of the following— 20

(a) the detention of an asylum-seeker; or

(b) any conditions or consequent orders to be passed following the determination of asylum; or 25

(c) the repatriation of a refugee; or

(d) any other order that may be necessary under this Act.

(4) The Commission shall maintain a record of the details, as prescribed, of applicants who have been granted refugee status under the terms of this Act and shall make the same periodically available to the Central Government. 30

(5) The Commission may consult agencies of the United Nations, non-governmental organizations or experts for the purposes of this Act.

(6) The Commission shall undertake such measures and give such directions or pass such orders as are necessary for the purpose of discharging its functions under this Act. 35

Powers of
the
Commission.

19. (1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the power to regulate its own procedure.

(2) The Chief Commissioner and the Commissioners shall have the power to delegate to one another such powers or functions as may be prescribed. 40

(3) In particular and without prejudice to the generality of the foregoing provisions, the powers of the Commission shall include the power to determine the extent to which persons interested, or claiming to be interested, in the subject-matter of any proceeding before it may be allowed to be present or to be heard, either by themselves or by their representatives, or to examine witnesses, or otherwise take part in the proceedings: 45

Provided that any such procedure as may be prescribed or followed shall be guided by the principles of natural justice.

(4) The Commission, for the purposes of any inquiry or for any other purpose under this Act, shall have the same powers as vested in a civil court under the Code of Civil Procedure, 1908, while trying suits in respect of the following matters, namely— 50

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; 55

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavit;

(d) the requisitioning of any public record from any court or office;

5 (e) the issuing of any commission for the examination of witnesses; and

(f) any other matter which may be prescribed.

(5) The Commission may cause an inquiry to be made into the compliance of its orders or directions made in the exercise of its powers under this Act, and may impose such penalties as may be prescribed.

10 (6) The Commission, with a view to rectifying any mistake apparent from the record, shall have the power to amend any order or direction passed by it under the provisions of this Act:

Provided that the Commission shall not, while rectifying any mistake apparent from the record, amend the substantive part of such order or direction.

15 (7) **The Commission may, appoint such administrative, technical, and other staff as it may consider necessary.**

20 **20. (1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint, there shall be established, for the purposes of this Act, a body to be called the National Appellate Board for Asylum.**

Establishment of the Appellate Board.

(2) **The Appellate Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.**

25 (3) **The office of the Appellate Board shall be at New Delhi or such other location as directed by the Central Government.**

21. (1) The Appellate Board shall consist of a Chairperson, and not less than four other Members to be appointed by the Central Government.

Composition of the Appellate Board.

30 (2) The Chairperson shall be a person who has been a judge of the Supreme Court and shall be appointed in consultation with the Chief Justice of India.

35 (3) A Member shall be appointed by the Central Government in consultation with the Chairperson and shall be a person who has been a judge of a High Court, or has had at least five years of experience as a Commissioner, or has special knowledge of and professional experience of not less than fifteen years in, refugee law and policy.

22. (1) The Appellate Board may, suo moto or on the presentation of an appeal application, examine, confirm, modify or set aside any decision, directions, judgment, decree or order of the Commission.

Functions of the Appellate Board.

40 (2) The Appellate Board may also inquire on an appeal application presented to it either by an asylum-seeker or by someone acting on his behalf, in respect of any decision or order given by the Commission under sub-section (3) of section 19.

(3) The Appellate Board shall direct the Commission to issue documentation in accordance with section 12.

45 (4) The Appellate Board may consult agencies of the United Nations, Non-Governmental Organizations or experts for the purposes of this Act.

(5) The Appellate Board shall undertake such measures and give such directions or pass such orders as are necessary, for the purpose of discharging its functions under this Act.

50 (6) Subject to the provisions of the rules, the Appellate Board shall have the power to review any decision, judgment, decree or order made by it.

23. (1) In the discharge of its functions, the Appellate Board shall be guided by the principles of natural justice and, subject to the other provisions of this Act and any rules made by the Central Government, the Appellate Board shall have the power to regulate its own procedures.

Powers of the Appellate Board.

(2) The Chairperson and the Members of the Appellate Board shall have the power to delegate to one another such powers or functions as may be prescribed.

(3) In particular and without prejudice to the generality of the foregoing provisions, the powers of the Appellate Board shall include the power to determine the extent to which persons interested, or claiming to be interested, in the subject-matter of any proceeding before it may be allowed to be present or to be heard, either by themselves or by their representatives, or to examine witnesses or otherwise take part in the hearing:

Provided that any such procedure as may be prescribed or followed shall be guided by the principles of natural justice.

(4) The Appellate Board, for the purposes of any inquiry or for any other purpose under this Act, shall have the same powers as vested in a civil court under the Code of Civil Procedure, 1908, while trying suits in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavit;

(d) the requisitioning of any public record from any court or office;

(e) the issuing of any commission for the examination of witnesses; and

(f) any other matter which may be prescribed.

(5) The Appellate Board may cause an inquiry to be made into the compliance of its orders or directions made in the exercise of its powers under the Act and impose such penalties as prescribed.

(6) The Appellate Board, with a view to rectifying any mistake apparent from the record, shall have the power to amend any order or direction passed by it under the provisions of this Act:

Provided that the Appellate Board shall not, while rectifying any mistake apparent from the record, amend the substantive part of such order or direction.

(7) The Appellate Board may, appoint such administrative, technical, and other staff as it may consider necessary. Powers of the Appellate Board.

Term of
Officer,
Conditions of
Service, etc.
of the Chief
Commissioner,
Commissioners,
Chairperson
and the
Members.

24. (1) At the time of appointing the Chief Commissioner, Commissioner, Chairperson or Member, the Central Government shall satisfy itself that such person does not and will not have any financial or other interest as is likely to affect prejudicially his functions as such Chief Commissioner, Commissioner, Chairperson or Member.

(2) The Chief Commissioner, Commissioner, Chairperson or Member shall hold office for a term of five years from the date on which he enters his office and shall be eligible for reappointment for a further term of five years:

Provided that no person shall hold office after he has attained the age of seventy years.

(3) Notwithstanding anything contained in sub-section (2), the Chief Commissioner, Commissioner, Chairperson or Member may—

(a) by notice in writing under his hand and addressed to the concerned authority of the Central Government, resign from his office at any time; or

(b) be removed from office in accordance with the provisions of section

(4) A vacancy caused by the resignation or removal of the Chief Commissioner, Commissioner, Chairperson or Member under sub-section (3) shall be filled by fresh appointment.

(5) In the event of a vacancy in the post of the Chief Commissioner or Chairperson, one of the Commissioners or as the case may be, Members, as the Central Government may by notification authorize in this behalf, shall act as the Chief Commissioner or Chairperson, till such date on which a new Chief Commissioner or Chairperson, appointed in accordance with the provisions of this Act, enters office.

(6) When the Chief Commissioner or Chairperson is unable to discharge his functions owing to absence, illness or any other cause, such one of the Commissioners or as the case may be, Members, as the Chief Commissioner or Chairperson may authorize in writing in this behalf, shall
5 discharge the functions of the Chief Commissioner or Chairperson, till such date on which the Chief Commissioner or Chairperson resumes his duties.

(7) The salaries and allowances payable to, and the other terms and conditions of service of, the Chief Commissioner, Commissioner, Chairperson and Member shall be such as may be prescribed:

10 Provided that neither the salary and allowances nor the other terms and conditions of service of the Chief Commissioner, Commissioner, Chairperson or Member shall be varied to his disadvantage after his appointment.

(8) The Chief Commissioner or Commissioner, upon ceasing to hold such office, shall not hold any appointment under the Central Government or under any
15 State Government for a period of two years from the date on which he ceases to hold such office, except where he is appointed to the Appellate Board, subject to the provisions of this Act.

(9) A Member, upon ceasing to hold such office, shall not hold any appointment under the Central Government or under any State Government for a
20 period of two years from the date on which he ceases to hold such office, except where he is appointed Chairperson, subject to the provisions of this Act.

(10) The Chairperson, upon ceasing to hold such office, shall not hold any further appointment under the Central Government or under any State Government. Term of Officer, Conditions of Service, etc. of the Chief Commissioner,
25 Commissioners Chairperson and the Members.

25. (1) The Central Government may remove from office a Chief Commissioner, Commissioner, Chairperson or Member, who –

- 30 (a) is adjudged an insolvent; or
(b) engages during his term of office in any paid employment outside the duties of his office; or
(c) is unfit to continue in office by reason of infirmity of mind or body; or
(d) is of unsound mind and stands so declared by a competent court; or
(e) is convicted for an offence which in the opinion of the Central Government involves moral turpitude; or
35 (f) has acquired such financial or other interest as is likely to affect prejudicially the functions of his office; or
(g) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), neither the
40 Chief Commissioner or Commissioner, nor the Chairperson or Member shall be removed from office on the grounds specified in clause (f) or clause (g) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry held by it in accordance with such procedure as it may be specified in this behalf, has
45 reported that the concerned Chief Commissioner, Commissioner, Chairperson, or Member ought, on such grounds, to be removed.

26. (1) The Central Government shall appoint a Secretary to the Commission and a Secretary (by whatever name called) to the Appellate Board to exercise and perform, under the control of the Commission or, as the case
50 may be, Appellate Board, such powers and duties as may be prescribed or as may be specified by the Commission or Appellate Board.

(2) The Secretary to the Commission or the Appellate Board, as the case may be, shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission or Appellate Board:

55 Provided that the Secretary to the Commission or the Appellate Board may delegate such of his powers, as he may think fit, to any other officer of the Commission or the Appellate Board.

Removal of the Chief Commissioner, Commissioner, Chairperson and Member from Office.

Secretary Officers and Other Employees of Commissioner, Appellate Board.

(3) The salaries and allowances payable to, and the conditions of service of, the Secretary and other officers and employees of the Commission and the Appellate Board shall be such as may be prescribed.

Vacancies, etc. not invalidate proceedings of Constitution and the Appellate Board.

27. No act or proceeding of the Commission, or, as the case may be, the Appellate Board, shall be questioned on the ground merely of the existence of any vacancy or defect in the appointment of the Chief Commissioner, Commissioner, Chairperson or Member, or any defect in the appointment of a person acting as the Chief Commissioner, Commissioner, Chairperson or Member.

5

Chief Commissioner, Commissioners, Chairperson and members to be Public Servants.

28. The Chief Commissioner, Commissioners, Chairperson, Members and other permanent staff of the Commission and the Appellate Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

10

Proceedings before Commission of Appellate Board to be Judicial Proceedings.

29. The Commission and the Appellate Board shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission or the Appellate Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, 1860.

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CHAPTER V

MASS INFLUX SITUATIONS

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Powers of Central Government with respect to mass influx situations.

30.(1) The Central Government may, by notification in the Official Gazette, declare such group or category of persons in a mass influx to be refugees as defined under clause (o) of section 2.

(2) The persons who have crossed an international border as part of a mass influx but are not declared to be refugees under sub-section (1) shall be allowed to make an application for asylum under section 10 of this Act.

25

Registration of mass influx refugees.

31. (1) The Central Government may cause all mass influx refugees notified under section 30 to register their names with such authority as may be designated for the purpose in such form and manner as may be prescribed.

(2) A refugee who has registered his name in accordance with sub-section (1) shall be issued an identity card in such form and manner as may be prescribed, which shall entitle him to all of the rights set out in section 36.

30

Special provisions with regard to movement, etc.

32. (1) The Central Government may, by order, impose reasonable restrictions on the movement or location of mass influx refugees:

Provided that nothing in this sub-section shall impair the right of a refugee to seek and enter employment in such manner as may be prescribed.

35

(2) The Central Government may, by order in writing, cause any refugee found violating the restrictions imposed under sub-section (1) to be detained.

(3) Nothing in this section shall apply to any refugee who has been granted asylum in India following an application for asylum made under section 10.

40

Modification of mass influx situation.

33. (1) The Central Government may, by notification in the Official Gazette, extend, alter, substitute or withdraw a notification concerning mass influx refugees made under section 30:

Provided that such extension, alteration, substitution or withdrawal shall apply only to asylum-seekers arriving after the date of notification.

(2) Any action revoking or altering the grant of refugee status to mass influx refugees shall be reviewed by the Commission.

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CHAPTER VI PROVISIONS RELATED TO VOLUNTARY REPATRIATION

34. (1) Subject to the provisions of this Act, the Central Government may repatriate refugees to their country of origin.

(2) The Central Government shall carry out any voluntary repatriation activities in cooperation with international organisations, public institutions and agencies, and civil society organisations.

(3) A refugee who wishes to be voluntarily repatriated to his country of origin shall make a written application to the Commission in such form and manner as may be prescribed.

(4) No refugee may be repatriated unless the Commission is satisfied, after conducting an inquiry, that the written application for repatriation is voluntary and genuine, and that repatriation to the country of origin is possible in a safe and dignified manner.

(5) Any order of repatriation by the Central Government shall be placed before the Commission for its information, and for such further orders or directions as may be necessary.

(6) No order of repatriation of the Central Government shall be implemented unless it has received the approval of the Commission.

Provisions for
voluntary
repatriation.

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CHAPTER VII RIGHTS AND DUTIES OF REFUGEES AND ASYLUM-SEEKERS

35. (1) A refugee whose grant of asylum was made in pursuance of an application for asylum under section 10 shall be entitled to—

(a) a formal written recognition of asylum, in such form and manner as may be prescribed under section 11 and section 12 that constitutes an enforceable basis for his continued residence in India;

(b) an identity document of the nature described in section 37;

(c) a travel document of the nature described in section 37;

(d) apply for a residence permit and other Government documents for which he may be eligible on the strength of the documents specified in clause (a) of this sub-section;

(e) freedom from discrimination on the basis of race, religion, sex, nationality, ethnicity, place of birth or any of them;

(f) fair and just treatment in accordance with due process and procedure established by law;

(g) choose his place of residence and move freely within the territory of India, subject to any reasonable restrictions that may be imposed in the public interest;

(h) seek and enter employment in the private sector;

(i) the same healthcare rights and services that apply to Indian citizens;

(j) free and compulsory primary education; and

(k) the right to move appropriate court of law by appropriate proceedings for the enforcement of Fundamental Rights conferred by Part III of the Constitution.

(2) Every refugee and asylum-seeker shall be bound by the laws of India.

Protection and
general rights
of refugees.

Rights of asylum- seekers and mass influx refugees.	<p>36. (1) An asylum-seeker whose application for asylum under section 10 is pending, or a mass influx refugee notified under section 30 of this Act, shall be entitled to—</p> <p>(a) a temporary identity document that constitutes an enforceable basis for his continued presence in India;</p> <p>(b) seek and enter employment in accordance with government policy;</p> <p>(c) the same healthcare rights and services that apply to Indian citizens;</p> <p>(d) free and compulsory primary education;</p> <p>(e) freedom from discrimination on the basis of race, religion, sex, nationality, ethnicity, place of birth or any of them; and</p> <p>(f) the right to move relevant courts of law by appropriate proceedings for the enforcement of rights conferred by this Act and Part III of the Constitution.</p> <p>(2) The rights and benefits extended to refugees and asylum-seekers shall not be construed to provide more rights and benefits than those accorded to citizens.</p>	5 10 15
Identity and travel documents.	<p>37. (1) All refugees and asylum-seekers shall be entitled to a legally enforceable document of identity issued by the Central Government which shall mention—</p> <p>(a) the identity number of the holder, issued in the prescribed manner;</p> <p>(b) the holder's legal status in India;</p> <p>(c) the holder's surname, forename(s), sex, date of birth, and place or country where he was born;</p> <p>(d) the country of which the holder is a citizen, if any; and</p> <p>(e) a recent photograph of the holder.</p> <p>(2) The document of identity shall be valid for a period of five years and may be renewed further for a specified period as may be determined by the authority issuing such identity card.</p> <p>(3) Such document of identity shall bear the seal of the Government authority that issues it.</p> <p>(4) A refugee whose grant of asylum was made in pursuance of an application for asylum under section 10 shall be entitled to a legally enforceable document authorising his travel from and to India, subject to such restrictions as may be specified in this regard by the Central Government.</p>	20 25 30
<p>CHAPTER VIII TECHNICAL ASSISTANCE</p>		35
Technical Assistance	<p>38. The Central Government, the Commission or the Appellate Board, as the case may be, may seek the good offices of the United Nations or other relevant agencies for its expertise, technical assistance and guidance in relation to any matter arising under this Act.</p>	40
<p>CHAPTER IX FINANCE, AUDIT AND ANNUAL REPORT</p>		
Grants by the Central Government.	<p>39. (1) The Central Government, shall after due appropriation made by Parliament, by law in this behalf, pay to the Commission and the Appellate Board, by way of grants, such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.</p> <p>(2) The Commission and the Appellate Board may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section(1).</p>	45
Accounts and audit.	<p>40. (1) The Commission and the Appellate Board shall maintain proper accounts and other relevant records, and prepare an annual statement of accounts, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.</p>	50

(2) The Accounts of the Commission and the Appellate Board shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission and the Appellate Board to the Comptroller and Auditor-General.

5 (3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the Commission and the Appellate Board under this Act, shall have the same rights, privileges, and authority in connection with such audit, as the Comptroller and Auditor-General generally has in connection with the audit of Central Government accounts:

10 Provided further that the Comptroller and Auditor-General shall, in particular, have the right to demand the production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Commission and the Appellate Board.

15 (4) The accounts of the Commission and the Appellate Board, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government by the Commission and the Appellate Board.

20 (5) The Central Government shall cause the audit report forwarded under sub-section (4) to be laid before each House of Parliament as soon as may be after it is received.

41. (1) The Commission and the Appellate Board shall prepare, once in every year, in such form and at such time as may be prescribed, an annual report giving a full account of its activities during the previous year, copies of which shall be forwarded to the Central Government.

Annual Report.

25 (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER X MISCELLANEOUS

30 42. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

Power to make Rules.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for—

35 (a) the procedure for removing a refugee or asylum-seeker from India under section 9

(b) the detention of refugees or asylum-seekers;

(c) the procedure regarding an application for asylum, subject to the provisions contained under this Act;

40 (d) the salaries and allowances and other terms and conditions of service of the Chief Commissioner, Commissioners, Chairperson, and Members under section 24;

(e) the salaries and allowances and other terms and conditions of service of the Secretary and other staff for the Commission and Appellate Board under section 26;

45 (f) the reception and registration of mass influx refugees, and all other matters connected to the management of such refugees;

(g) the procedure for voluntary repatriation of refugees;

(h) the enforcement of the rights and duties of refugees and asylum-seekers; and

(i) the effective implementation of this Act.

50 (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session

or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule: 5

Provided that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Empowerment of concerned Authorities. 43. The Central Government may by order empower the concerned authorities to assist and cooperate with the Commission and the Appellate Board for the enforcement of this Act. 10

Bar of Jurisdiction. 44. On and from the appointed day, no court or authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to matters specified in this Act, except the Supreme Court and a High Court exercising powers under articles 32, 226 and 227 of the Constitution.

Protection of action taken in good faith. 45. No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, Appellate Board or any person acting under the direction either of the Central Government, State Government, Commission or Appellate Board in respect of anything which is, in good faith, done or intended to be done, in pursuance of this Act or of any rules or any order made thereunder. 15

Act to have overriding effect. 46. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. 20

STATEMENT OF OBJECTS AND REASONS

In recent years, several instances of displaced populations and mass migrations have highlighted the plight that faces refugees in seeking the protection of another country. The refugee crisis in Europe had forced the world to notice the precarious and inhumane conditions in which Syrian refugees find themselves. The Rohingya crisis put into stark relief the issues that can arise when dealing with a mass influx. This is a moment for all countries, including India, to re-examine their current response and preparedness to deal with refugees and situations of mass movements.

India hosts more than two lakh refugees and is at the centre of refugee movements in the South Asian region. India has been a home to refugees from neighbouring countries such as Tibet, Bangladesh, Sri Lanka, Afghanistan, Myanmar and Nepal. It had also hosted the largest-ever refugee crisis in human history when ten million fled persecution and genocide by the Pakistan Army in East Bengal in 1971. Despite this, India is neither a signatory to the 1951 UN Convention nor its 1967 Protocol relating to the status of Refugees nor does it have a domestic asylum framework. However, India's practice has been to adopt a humanitarian approach towards refugees under the terms of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Our country implements a refugee protection framework which is based on a combined series of executive policies.

The judiciary has also accorded constitutional protection to refugees in its judgment in *National Human Rights Commission vs. State of Arunachal Pradesh & Anr.* in 1996. The Supreme Court held that the fundamental right to equality under article 14 and the right to life and personal liberty under article 21 extends to all foreigners, including refugees. Apart from protection under the Constitution, refugees also receive support from a body of complementary law and practice such as the Right to Education Act, 2009 (RTE) and health services.

The Government of India relies on the Foreigners Act, 1946 and the Registration of Foreigners Act, 1939 to govern the entry, stay, and exit of all refugees. However, these legislation treat refugees as foreigners and fail to take into account their special status on humanitarian grounds or under international law. They are not equipped to support the country's need to deal with asylum seekers and migration movements.

As a member of the Executive Committee of the United Nations High Commissioner for Refugee (UNHCR), India is committed to protect refugees and has also offered its assistance to refugees from Syria, Myanmar and Afghanistan. Therefore, it has become increasingly important to enact a structured framework to establish a clear and consistent regime. The current global crisis clearly demonstrates that the lack of a legal framework does not so much deter refugees in the face of a crisis as leaves the host country ill-equipped to deal with the inflow. Even the National Human Rights Commission (NHRC) has underscored the need for enacting such a domestic legislation. It is important to mention that in 1997 India had drafted a model law on refugees under the guidance of Justice P.N. Bhagwati, the former Chief Justice of India, but it was not enacted. In addition it is a glaring anomaly that India is the only significant member of the UN without a refugee law, that too at a time when it is seeking recognition as a responsible international power through a permanent seat on the UN Security Council.

The proposed Bill seeks to incorporate the current policy on refugees, the principles of the Constitution, and India's international obligations. The provisions of the Bill provide clarity and uniformity on the recognition of asylum-seekers as refugees and their rights in the country. It also seeks to end a system of ambiguity and arbitrariness which, too often, results in injustice to a highly vulnerable populace. The Bill proposes to enable the Government to manage refugees with more accountability and order, while balancing humanitarian concerns and security interests of the State.

India has been, and continues to be, a generous host to several persecuted communities, doing more than many countries who are signatories to the UN Refugee Convention, 1951. The Bill, if enacted, will put India at the forefront of asylum management in the world. It will finally recognise India's long-standing and continuing commitment to humanitarian and democratic values while dealing with refugees.

Hence this Bill.

NEW DELHI;

December 3, 2020

DR. SHASHI THAROOR

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 (3)
OF THE CONSTITUTION

[Copy of D.O. Letter No. 27017/04/2020-F.IV dated 30 January, 2021 from Shri Amit Shah, Home Minister to the Secretary General, Lok Sabha].

The President, having been informed of the subject matter of 'The Asylum Bill, 2020'* by Dr. Shashi Tharoor, M.P., Member of Parliament, Lok Sabha, recommends the consideration of the Bill in Lok Sabha under article 117 (3) of the Constitution.

[*Bill, being printed in 2021, the year in the title of the Bill has been changed from 2020 to 2021]

FINANCIAL MEMORANDUM

Clause 16 of the Bill provides for the establishment of the National Commission for Asylum. It further provides that the head office of the Commissions shall be at New Delhi and enables the Commission to establish offices at other places in India.

Clause 17 provides appointment of a Chief Commissioner and six other Commissioners in the Commission. Clause 19 provides for appointment of administrative, technical and other staff to the Commission. Clause 20 provides for the establishment of the National Appellate Board for Asylum.

Clause 21 provides that the Appellate Board Commission shall consist of a Chairperson, and not less than four other Members to be appointed by the Central Government. Clause 23 provides for appointment of administrative, technical and other staff to the Appellate Board.

Clause 24 provides that the salaries and allowances payable to the Chief Commissioner, Commissioners, Chairperson and Members shall be prescribed by the Central Government.

Clause 26 provides for the appointment of a Secretary to the Commission and a Secretary to the Appellate Board to exercise the powers of general superintendence, direction and control in respect of all administrative matters of the Commission or Appellate Board. It also provides for salaries and allowances payable to the Secretary and other officers and employees of the Commission and the Appellate Board shall be such as may be prescribed by the Central Government.

Clause 35 provides that same healthcare rights which apply to Indian citizens and service and free and compulsory primary education shall be provided to the children of refugee who has been granted asylum. Clause 36 provides that same healthcare rights and services as applicable to Indian citizens and free and compulsory primary education shall be provided to asylum-seekers and mass influx refugees.

Clause 39 provides that the Central Government shall provide grants of sums of money to the Commission and Appellate Board for carrying out the purposes of this Act.

The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees fifty crore per annum would be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees twenty crore is also likely to involve.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 42 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of normal character.

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to provide for the establishment of an effective system to protect refugees and asylum-seekers by means of an appropriate legal framework to determine claims for asylum and to provide for the rights and obligations flowing from such status and matters connected therewith.

(Dr. Shashi Tharoor, M.P.)