

Bill No. 290 of 2015

THE PROTECTION OF REFUGEES AND ASYLUM SEEKERS
BILL, 2015

By

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BILL

to provide for, in the interest of upholding the values of international human rights, an appropriate legal framework to process matters relating to forced migration in respect of determination of refugee status, protection from refoulement and treatment during stay.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Protection of Refugees and Asylum Seekers Bill, 2015.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.

Short title,
extent and
commence-
ment.

Declaration.

2. For the removal of doubts, it is hereby declared that the main objects of this Act are:—

(a) to establish an appropriate legal framework to process matters relating to forced migration in respect of determination of refugee status, protection from refoulement and treatment during stay; 5

(b) to do the same in a way that:

(i) it is in adherence with articles 37 and 253 of the Constitution of India, which provide an administrative system free from arbitrariness and guarantee equality, fairness and due process of law;

(ii) it maintains India's commitment to upholding international human rights principles through accession to all major human rights treaties, and adoption of appropriate legislative steps to implement them; and 10

(iii) to ensure that the grant of refugee status shall be considered a peaceful and humanitarian act and will not imply any judgment on the country of origin of the refugee. 15

Definitions.

3. In this Act, unless the context otherwise requires:

(a) 'asylum seeker' means a person who seeks recognition and protection as a refugee;

(b) 'Commissioner' means the Commissioner of Refugees appointed under section 7; 20

(c) 'country of origin' means the refugee's country of nationality or if he or she has no nationality, his or her country of former habitual residence;

(d) 'prescribed' means prescribed by rules under this Act.

(e) 'refugee' means—

(i) any person who is outside his or her country of origin, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership or particular social group or political opinion; or 25

(ii) any person who owing to external aggression, occupation, foreign domination, serious violation of human rights or other events seriously disrupting public order in either part or whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refuge in another place out his or her country or origin. 30

Explanation.—In the case of a person who has several nationalities, the term "his or her country of origin" shall mean each of the countries of which he or she is a national, and a person shall not be deemed to be lacking the protection of the country of which he or she is a national, if without any valid reason based on well-founded fear, he or she has not availed himself of the protection of one or more of the countries of which he or she is a national. 35

(f) 'Refugee Committee' means the Committee referred to in section 7 as an Appellate Board; and 40

(g) 'refugee children' means children below the age of eighteen years who are seeking refuge or where protection is extended by the State to children under article 22 of the Convention on the Rights of the Child, 1989.

4. A person shall be excluded from refugee status for the purpose of this Act if:
- (a) there are serious reasons to believe that he or she has committed acts of a crime against peace, a war crime or a crime against humanity, in accordance with the applicable principles and rules of International Law and Conventions, including the SAARC Regional Convention on Suppression of Terrorism, 1987; or
- (b) there are serious reasons to believe that he or she has committed a serious non-political crime contrary to the applicable principles and rules of the SAARC Regional Convention on Suppression of Terrorism, 1987, prior to his or her admission into India as a refugee.
5. (1) No refugee or asylum seeker shall be expelled or returned in any manner whatsoever to a place in which there are sufficient reasons or well-founded fears to believe that his or her life or freedom would be under threat on account of any of the reasons set out in clause (e) of section 3.
- (2) Where an asylum seeker or refugee has been convicted by a final judgement of a crime against peace, a war crime or a crime against humanity and constitutes a danger to the community, or there are reasonable grounds to believe that an asylum seeker or refugee is a threat to the sovereignty and integrity of India, such an asylum seeker or refugee shall be excluded from the protection provided under this Act.
6. (1) Where an application is made by or on behalf of, or in relation to an asylum seeker, for the recognition of the said asylum seeker as a refugee, either at the point of entry or subsequently, the applicant shall, in accordance with the principle laid down in section 5 be directed and assisted to apply to the Commissioner of Refugees.
- (2) Where an application is made by or on behalf of, or in relation to an asylum seeker, for the the determination of refugee status, pending determination of such status, certain restrictions shall be imposed on the asylum seeker as are considered necessary in the interests of sovereignty and integrity or public order of India, or as may be prescribed.
- (3) Application under this section may be made within such reasonable time, as may be prescribed.
- (4) Where an application for refugee status is made by or on behalf of, or in relation to a child, or where a refugee child is found within the territory of India; he or she shall receive immediate and appropriate protection and humanitarian assistance in accordance with the existing policy and legal framework of the State.
- (5) The requirement of filing an application form on behalf of a child may be entrusted to a local Legal Service Authority or their representatives or any other recognised non-Governmental Organisation involved in the welfare of children.
7. (1) In order to implement the provisions of this Act, the President shall appoint—
- (a) **the Commissioner of Refugees and Deputy Commissioners of Refugees as may be necessary on the basis of the eligibility requirements and procedures laid down in section 8;**
- (b) **other officers as may be necessary after consultation with the Commissioner of Refugees; and**
- (c) **the Chairperson and Members of the Refugee Committee.**
- (2) **The Chairperson of the Refugee Committee shall appoint the staff of the Committee.**
- (3) **The Salary, Allowances Payable to and other terms and conditions of service of the Commissioner, Deputy Commissioner, Chairperson, Members and Secretarial staff of the Refugee Committee shall be such as may be prescribed.**
- Persons who shall be excluded from refugee status.
- Principle of Non-Refoulement.
- Application for recognition of refugee.
- Constitution of the Authorities.

Appointment and functions of the authorities.

8. (1) The Commissioner of Refugees shall be a sitting or retired High Court Judge and shall be appointed after consultation with the Chief Justice of India, for a period of three years.

(2) The Deputy Commissioner shall be appointed from amongst persons who is qualified to be appointed as a High Court Judge, and shall be appointed after consultation with the Chief Justice of India, for a period of three years. 5

(3) The Chairperson of the Refugee Committee shall be a retired Supreme Court Judge and shall be appointed by the President in consultation with the Chief Justice of India for a period of three years.

(4) The Refugee Committee shall consist of a sitting or retired High Court Judge, appointed by the President in consultation with the Chief Justice of India, and two independent members with knowledge and experience of refugee issues and refugee law, who shall hold office for a period of three years from the date of their appointment. 10

(5) The decision of the Commissioner of Refugees shall be final and any appeal against such decision shall lie only with the Refugee Committee, as the Appellate Board for reconsideration of the decision. 15

(6) The functions of the Commissioner of Refugees and the Refugee Committee shall be as laid down in sections 9 and 11.

(7) The Commissioner of Refugees may assign such of his functions as may be necessary to the Deputy Commissioner of Refugees appointed under this Act. 20

Determination of the refugee status.

9. (1) An asylum seeker who wishes to claim refugee status shall be heard by the Commissioner of Refugees before the determination of his or her status.

(2) During the refugee determination interview, the asylum seeker shall be provided necessary facilities by the Commissioner of Refugees, including the service of a competent interpreter where required, and a reasonable opportunity to present evidence in support of his or her case. 25

(3) The asylum seeker, if he or she wishes, shall be given an opportunity, of which he or she should be duly informed, to contact a representative of United Nations High Commission for Refugees (UNHCR), as facilitated by the Commissioner of Refugees.

(4) The asylum seeker, if he or she wishes, shall be entitled to be assisted in the determination of the status by a person of his or her choice, including a legal practitioner. 30

(5) A list of competent legal practitioners, who are conversant with refugee law, shall be provided by the Government to the asylum seeker.

(6) If the asylum seeker is not recognised as a refugee, he or she shall be given such reasonable time as may be prescribed, to appeal to the Refugee Committee. 35

(7) Where an application by the asylum seeker is rejected, the Commissioner of Refugees shall give reasons for the order in writing and furnish a copy of it to the asylum seeker.

(8) If the asylum seeker is recognised as a refugee, he shall be informed accordingly and issued with documentation, certifying his refugee status. 40

Publication of findings and decision.

10. (1) The findings as well as the orders of the Commissioner of Refugees, the Refugee Committee and other authorities established under this Act shall be published by them periodically.

(2) The Commissioner of Refugees and the Refugee Committee shall publish, every year, a report of their work which shall be made public. 45

11. (1) The Refugee Committee shall receive and consider appeals made by asylum seekers against the decision of the Commissioner of Refugees.

Appellate procedure.

(2) The Committee may also consider applications for the refugee status *suo motto*.

12. A person shall cease to be a refugee if—

Persons who shall cease to be refugees.

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

(b) he becomes a citizens of India; or

(c) he has acquires the nationality of some other country and enjoys the protection of that country; or

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

(e) he can no longer, because the circumstances in connection with which he was recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

15 *Exception:—*A person shall not cease to be a refugee for the purpose of this Act if he shows compelling reasons, arising out of previous persecution, for refusing to avail himself of the protection of the country of his nationality, such as incidences of previous persecution by any individual or groups, State or non-State actors.

20 **13.** (1) Every refugee and asylum-seeker, so long as he remains within India, shall have the right to fair and due treatment without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political group.

Rights and duties of refugees.

(2) Every refugee, so long as he remains within India, shall have the right to:—

(a) receive the same treatment as is generally accorded under the Constitution or any other laws and privileges as may be granted;

25 (b) be provided means to seek a livelihood for himself, and for those dependent on them;

(c) in the case of refugee women and children, be given special consideration to ensure their protection and material well being;

30 (d) choose his place of residence and move freely within the territory of India, subject to any regulation applicable to refugees generally in the same circumstances;

(e) be issued identity documents;

(f) be issued travel documents for the purpose of travel outside and back to the territory of India unless compelling reasons of national security or public order otherwise require; and

35 (g) access to education, health and other related services.

14. (1) The Central Government may, in appropriate cases where there is large-scale influx of asylum seekers, issue an order permitting them to reside in India without requiring their individual status to be determined under section 11 until such time as the reasons for departure from the country of origin have ceased to exist, or the Government decides that their status should be determined on an individual basis under this Act.

Situations of mass influx.

40 (2) Asylum seekers who have been permitted to reside in India under this provision, may be subject to reasonable restrictions with respect to their location and movement, in the interests of public health and order, so, however, they shall normally have the same rights as refugees under this Act.

(3) Women and children asylum seekers in mass influx shall be given special consideration as to their protection and material well being.

Refugees
Unlawfully in
India.

15. The Central Government shall not impose penalties on refugees who, coming directly from a place where their life or freedom was threatened, enter or are present in India without authorisation, provided they present themselves without delay to the authorities and are able to show good cause for their illegal entry or presence. 5

Voluntary
Repatriation.

16. (1) The repatriation of refugees shall take place at their free volition expressed in writing or other appropriate means, before the Commissioner of Refugees.

(2) The voluntary and individual character of repatriation of refugees shall be carried out under conditions of transparency and safety to the country of origin. 10

(3) The voluntary repatriation of refugees shall take place in accordance with such guidelines, as may be prescribed.

Central
Government
to provide
adequate
funds.

17. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds to the Refugee Committee for carrying out the purposes of this Act. 15

Act to have
overriding
effect.

18. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Power to make
rules.

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

(2) Every rule made under this section 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 rule 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. 20
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STATEMENT OF OBJECTS AND REASONS

Articles 37 and 253 of the Constitution provide an administrative system free from arbitrariness and guarantee equality, fairness and due process of law. Moreover, India is also committed to upholding International Human Rights principles through accession to all major human rights treaties, and adoption of appropriate legislative steps to implement them.

While India is still not a signatory to the United Nations Convention relating to the Status of Refugees, 1951 or the 1967 protocol relating to the status of refugees but India does provide protection to a steady influx of refugees every year. As per the records of the Government of India, about 10340 Afghan refugees, 4621 refugees from Myanmar, 80806 refugees from Sri Lanka and 1,01,148 stateless refugees including Tibetan refugees are staying in India.

Hence, in light of the current global scenario and the European refugee crisis, it is believed that India needs its own legal framework in the form of a uniform law in order to process matters relating to forced migration in respect of determination of refugee status, protection from refoulement and treatment during stay of refugees.

The Bill seeks to address the above issues by establishing the posts of the Commissioner of Refugees, the Deputy Commissioners of Refugees and the Refugee Committee. The Bill also assigns roles and responsibilities to the above-mentioned authorities in order to ensure that refugees in India are meted out uniform rights and privileges during their stay and are justly repatriated.

NEW DELHI;
November 13, 2015.

RABINDRA KUMAR JENA

FINANCIAL MEMORANDUM

Clause 7 of the Bill seeks to provide for the appointment of Refugee Committee. It also provides for the appointment of officers and staff for the Committee. Clause 10 provides for periodical publication of findings of the Commission of the Refugees and Refugee Committee. Clause 17 provides that Central Government shall provide adequate funds to the Refugee Committee 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 an annual recurring expenditure of about rupees five hundred crore will be incurred from the Consolidated Fund of India.

A non-recurring expenditure of about rupees one hundred crore would also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of normal character.

LOK SABHA

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