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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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AN ARTICLE ON ASYLUM AND REFUGEE

AUTHOR – DEEWYANI SHARAD THAKRE, STUDENT AT DR. AMBEDKAR COLLEGE, NAGPUR

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I. Meaning of asylum

Asylum is a form of protection provided to individuals who face significant threats to their safety or freedom in their home country. It is often granted when a person is at high risk of persecution or harm, making it unsafe for them to continue living there. Seeking asylum is typically a last resort, as it requires individuals to leave behind their homes, possessions, and familiar surroundings to seek refuge in a foreign country.

The decision to grant asylum lies entirely with the country where the individual seeks protection. It is a discretionary act influenced by various factors, such as the relationship between the countries involved, the international legal framework, and the host country's domestic policies and priorities. While asylum can offer a vital lifeline to those in danger, the process is complex and heavily dependent on the political and legal considerations of the host country.

CRITERIA

- Fear of being persecuted back home, this dread needs to be motivated by certain factors, such as political beliefs, nationality, religion, race, or affiliation with a certain social group.
- At the time of application, asylum seekers must also be outside of their country of origin and unable or unwilling to return because of this fear. It is necessary to prove a link between the victims and the persecution they endured, which frequently calls for in-depth firsthand recollections.

It includes proof such as:-

- Proof of prior threats or persecution in writing.

- Adherence to the criteria established by applicable asylum legislation, including timely filing of applications.
- Evidence of their incapacity to approach national authorities for protection.¹

ASYLUM IN INTERNATIONAL LAW

Asylum is recognised as a fundamental human right, providing individuals the opportunity to seek protection when they flee their home country due to ongoing conflict, persecution, or other circumstances that threaten their lives or prevent them from living peacefully. Host countries should permit individuals seeking refuge to enter and provide them with safety and protection from the dangers they face in their home countries.

TYPES OF ASYLUMS

A. Territorial asylum

Territorial asylum is the most prevalent form of asylum, granted to individuals who enter a host country, whether legally or illegally, depending on the host state's decision to provide protection or expel them. This form of asylum is grounded in the principle of state sovereignty, which allows the state to determine who may reside within its borders. It is the most commonly utilized method for seeking protection from a host country. The host state

¹ [International Law Editorial](https://worldjurisprudence.com/asylum-seeking-process/), April 22, 2024, Understanding the Asylum Seeking Process: A Comprehensive Guide, <https://worldjurisprudence.com/asylum-seeking-process/>



typically considers factors such as its diplomatic relations with the individual's home country, the reasons for seeking asylum, and other relevant conditions.

B. Legal Asylum

The 1951 Refugee Convention and its 1967 Protocol are among the international treaties and conventions that provide the legal basis for territorial asylum. The concept of non-refoulement, outlined in Article 33 of the Refugee Convention, forbids nations from sending refugees back to areas where their freedom or lives would be in danger. In order to prevent people who face persecution from being forced repatriated to their home countries, this idea serves as the foundation for the practice of providing geographical refuge.

Example:- India's decision to offer sanctuary to the Dalai Lama and his supporters in 1959 is among the most prominent instances of territorial asylum. The Dalai Lama and hundreds of Tibetans were welcomed into India after fleeing Chinese oppression. There, they were given protection and permitted to form a government-in-exile.

C. Extra-territorial Asylum

Outside the borders of the state providing protection, extraterritorial asylum—also referred to as diplomatic or consular asylum—is provided. Usually, a state will offer this kind of sanctuary on its warships or on the grounds of its embassy or consulate. Because it entails providing shelter on foreign territory, extraterritorial asylum is less common than territorial asylum and is frequently fraught with diplomatic sensitivity.

D. Diplomatic Asylum

A type of extraterritorial asylum known as diplomatic asylum is given inside a state's diplomatic post, such as an embassy or consulate, in another nation. People who are in immediate danger and are unable to safely leave the host nation are usually granted this kind of asylum. International law does not always recognize diplomatic asylum, and it is frequently a divisive topic between states.

According to the Vienna Convention on Diplomatic Relations (1961), the fundamental tenet of diplomatic sanctuary is the inviolability of diplomatic premises. This principle states that local authorities cannot visit a diplomatic mission's premises without authorisation since they are seen to be the sending state's jurisdiction. However, the legitimacy of diplomatic refuge is contingent upon the particular circumstances and the relationship between the interested governments, and it is not expressly recognized by international law.

Example:- Julian Assange, the creator of WikiLeaks, sought asylum in the Ecuadorian Embassy in London in 2012, making his case one of the most well-known examples of diplomatic asylum. In order to escape being extradited to Sweden, where he was accused of sexual misbehaviour, and possibly to the United States, where he was wanted for disclosing classified documents, Assange was given asylum by Ecuador.

E. Asylum in Warships

A state may also offer extraterritorial asylum on board its warships. This kind of refuge is uncommon and is typically granted when a person is in such grave danger that they are unable to safely disembark in a foreign port. The idea behind providing refuge on warships is that, even when a warship is in international waters or a foreign port, it is still regarded as an extension of the state's territory.

Sovereign immunity, which shields a state's warships from foreign jurisdiction, provides the legal foundation for providing sanctuary on warships. However, customary rules and bilateral agreements between governments usually control the practice of providing asylum on warships, which is not specifically regulated by international law.

For instance, When a group of Chinese students requested shelter on board the USS Midway, a U.S. Navy aircraft carrier, during the Tiananmen Square demonstrations in 1986, it was a noteworthy instance of asylum being given on a warship. In order to avoid persecution in China,



the students were later permitted to disembark in a third nation that was safe.

F. Temporary Asylum

People who are escaping imminent danger but might not be eligible for full refugee status are given temporary asylum, which is a temporary type of protection. This kind of asylum is usually given when there is a large-scale displacement, including during armed conflicts or natural disasters, and the host nation offers protection until it is safe for the people to go back to their homes.

Each country has a different legal framework for temporary asylum, which is frequently derived from national laws and regulations. Although international treaties do not expressly address temporary asylum, it is acknowledged as a humanitarian solution that enables governments to address pressing issues without pledging to provide long-term protection.

For instance:-

Many European nations temporarily gave sanctuary to Syrian refugees during the Syrian Civil War. With the premise that they would return when it was safe to do so, this type of protection permitted Syrians to remain in host nations until the circumstances in their homeland stabilized.²

II. MEANING OF REFUGEE

A refugee is a person who has been compelled to leave their country due to violence, conflict, or persecution. A refugee has a legitimate fear of being persecuted because of their ethnicity, religion, nationality, political beliefs, or social group membership. They probably can't go home or are scared to go home. The main reasons why refugees leave their nations are war and violence against ethnic, tribal, and religious groups.³

Any displaced, destitute, or forced migrant who has crossed a border and is no longer under the

protection of their previous government is considered a refugee. Passports and visas were not necessary for travel between nations prior to the 19th century; the right to asylum was widely accepted and respected. Prior to the establishment of closed and defined state borders in the late 19th century, there was no refugee crisis, despite the fact that there have been multiple waves of migrants throughout history. Due in part to the historically high number of refugees and in part to a rising insensitivity to human suffering, the tradition of political asylum had significantly degraded by the 1920s and 1930s.⁴

A refugee refers to an individual who is compelled to leave their home country due to a well-founded fear of persecution or the devastating impact of conflict and war. This fear may arise from discrimination or threats based on factors such as caste, gender, religion, political opinions, or social affiliations. Refugees often flee to escape situations where their safety, freedom, or lives are at significant risk, seeking protection in another country where they hope to find security and the opportunity to rebuild their lives.

TYPES OF REFUGEES⁵

A. Asylum Seeker

An asylum seeker is an individual who has fled their home country and applied for protection in another country but has not yet been officially recognized by the host nation. The process of reviewing and accepting an asylum application can be lengthy and time-consuming. During this period, the individual remains in a state of uncertainty, awaiting a decision on their status.

B. Internally Displaced Person

Internally displaced persons are those who are forced to leave their homes due to war or conflict but remain within the borders of their own country. Wars often have devastating effects, displacing large numbers of residents

² Aishwarya Agrawal, Types of Asylums in International Law, September 10, 2024, <https://lawbhoomi.com/types-of-asylum-in-international-law/>

³ USA for UNHCR UN Refugee Agency, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>

⁴ The Editor of Encyclopaedia Britannica, Refugee- definition, history and fact, Nov 24, 2024, <https://www.britannica.com/topic/refugee>

⁵ a.basaleh, The Different Types of Refugees, 2023/07/05, <https://bonyan.ngo/displaced-and-refugees/the-different-types-of-refugees/>



and leaving them without homes or shelters. In extreme cases, these individuals may eventually be forced to flee to another country in search of safety and basic necessities.

C. Stateless Persons

Stateless individuals are those who do not have legal citizenship in any country. Nationality serves as a vital connection between a person and a state, granting rights and a sense of identity. When someone lacks this affiliation, it can lead to significant challenges. The United Nations encourages efforts to reduce statelessness by ensuring such individuals are granted nationality. Until they receive legal recognition, stateless persons may often be considered refugees.

D. Discrimination Based on Religion or Political Affiliation

Discrimination rooted in religion, gender, caste, or political views can sometimes become so severe that individuals are forced to leave their home countries to seek safety and protection elsewhere. These individuals face hostility and exclusion that make living in their home country unbearable, leading them to migrate to a safer environment.

E. War Refugees

War refugees are individuals who are forced to leave their home countries due to the destructive consequences of armed conflicts. Wars often bring catastrophic devastation, forcing people to flee in search of protection, food, and shelter. The extreme conditions created by war make it impossible for these individuals to remain in their homeland, compelling them to seek refuge in other nations.

III. CORE DIFFERENCE BETWEEN ASYLUM AND REFUGEE

Seeker of asylum A person who is looking for international protection is known as an asylum seeker. In nations with individualized processes, an asylum seeker is a person whose claim has not yet been determined by the nation where it was filed. Every refugee was once an asylum seeker, but not all asylum seekers will be officially recognized as such.

A refugee Anyone who has left their place of origin and is unable or unwilling to return due to a legitimate fear of persecution due to their ethnicity, religion, nationality, membership in a specific social group, or political beliefs is considered a refugee.⁶

IV. INTERNATIONAL LAWS OF REFUGEE AND ASYLUM

Everybody has the right to get protection on the international stage as a refugee or asylum. The United Nations encourages countries to provide protection to the person who flees from their home country, when someone cannot go back to their own country because they run the risk of being persecuted or seriously harmed and their country is unwilling to defend them, they require international protection. Persecution or major injury risks include dangers to one's life, liberty, or bodily integrity.

A. 1951, CONVENTION RELATING TO THE STATUS OF REFUGEES AND THE 1967 PROTOCOL

The themes covered in this treaty's six chapters include general provisions pertaining to refugees, their legal status, the right to gainful employment, welfare, administrative actions that the host state must perform, executory and transitory provisions, and final clauses. The rights of refugees are listed in the articles that make up each chapter. The general provisions part of the treaty defines what a refugee is and lists their fundamental rights.

According to the convention, a refugee is someone who, because of events that happened prior to January 1, 1951, and because of a well-founded fear of being persecuted because of their race, religion, nationality, membership in a specific social group, or political opinion, is outside their country of nationality and is unable or unwilling to use that country's protection; or who, because they lack a nationality and are outside their country of

⁶ A. Fazzina, 24 January 2019, What's the difference between a refugee and an asylum seeker?, <https://www.amnesty.org.au/refugee-and-an-asylum-seeker-difference/>



former habitual residence because of such events, are unable or unwilling to return there.

At the second convention on the status of refugees in 1966, this section of the definition was removed. This chapter lists a number of important rights, such as the following: the right to live in the same conditions as if they were not refugees, protection from discrimination, the obligation to follow the laws and customs of their host country, the right to freely practice one's religion, and the right to be granted the same rights as foreigners. The next chapter discusses the judicial rights of refugees, including their right to free association, their ability to access courts, and their entitlement to the same protections for their personal and intellectual property as everyone else.⁷

History of the 1951 Refugee Convention

Millions of individuals left their countries in quest of safety following World War I (1914–1918). In response, governments drafted a series of international accords to grant these individuals, who were essentially the first officially recognized refugees of the 20th century, travel permits. As millions more were forcibly relocated during and during World War II (1939–1945), their numbers skyrocketed. In order to safeguard fundamental human rights and the treatment of those compelled to escape persecution and conflict, the international community gradually compiled a number of rules, regulations, and agreements.

The 1951 Convention, which consolidated and extended earlier international instruments pertaining to refugees, was the result of the process, which started under the League of Nations in 1921 and continues to offer the most thorough international codification of refugees' rights.⁸

⁷ Sayed Quadrat Hashimy, Protection Of Refugees And Asylum Seekers, <https://www.legalserviceindia.com/legal/article-2128-protection-of-refugees-and-asylum-seekers.html>

⁸ The 1951 Refugee Convention, UNHCR, The UN Refugee Agency, <https://www.unhcr.org/us/about-unhcr/overview/1951-refugee-convention>

B. UNIVERSAL DECLARATION OF HUMAN RIGHTS

The right to apply for and receive asylum from persecution is guaranteed by Article 14 of the UDHR. This right, together with the rights to nationality (Article 15) and to leave one's own country (Article 13), can be directly linked to the Holocaust. Drafters of the UDHR from several nations were well aware that they had denied Jewish refugees entry, so condemned them to death. Furthermore, many Roma, Jews, and other targets of Nazi persecution had been unable to flee Germany in time to avoid death.

There are restrictions on the right to apply for asylum. People cannot be given asylum just to avoid being prosecuted for "non-political crimes or acts contrary to the purposes and principles of the United Nations," as stated in Article 14. Therefore, individuals who have committed crimes against humanity or the peace, as well as war criminals, are not eligible for asylum. In order to safeguard people who are compelled to escape and assist nations that provide refuge, the United Nations' 193 member states unanimously endorsed the New York Declaration for Refugees and Migrants. The adoption of two new global compacts in 2018—one on refugees and the other on safe, orderly, and regular migration—was made possible by it.⁹

C. International Organization for Migration (IOM)

IOM is the premier intergovernmental organization in the topic of migration, having been founded in 1951. IOM strives to guarantee the humane and orderly handling of migration, to foster international collaboration on migration-related matters, to support the pursuit of workable solutions to migration's problems, and to offer humanitarian aid to migrants in need, including refugees and internally displaced persons.

⁹ United Nations Human Rights Office of High Commissioner, Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 14, 23 November 2018, <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-14>



IOM became a connected agency in 2016 after entering into an agreement with the UN. The United Nations network on migration was created by the Secretary-General in 2018 and is coordinated by IOM.

IOM's three primary goals for 2024–2028 are to prevent deaths and protect individuals in transit, promote solutions for displacement, and create channels for regular migration, as stated in the organization's most recent strategic plan.¹⁰

D. EUROPEAN UNION

The terms "asylum" and "refugee" are neither defined in the TFEU or the EU Charter of Fundamental Rights, but both make explicit reference to the Geneva Convention and its Protocol. In order to provide suitable status to all non-EU persons in need of international protection and to guarantee that the principle of non-refoulement is upheld, the EU seeks to establish a single policy on asylum, subsidiary protection, and temporary protection. The Geneva Convention on the Status of Refugees, which was adopted on July 28, 1951, and its Protocol, which was adopted on January 31, 1967, must be adhered to by this policy.

The European Council determined that the Common European Asylum System should be implemented in two stages with the adoption of the Tampere Programme in October 1999. The short-term adoption of common minimum standards should result in a common procedure and, in the long-term, a uniform status for those who are granted asylum that is valid throughout the EU.

Treaty also include

- THE TREATY OF LISBON

In December 2009, the Lisbon Treaty came into effect. Common procedures for granting and withdrawing uniform asylum or subsidiary protection status;

1. a uniform status of asylum;

2. a uniform status of subsidiary protection;

3. a common system of temporary protection;

4. criteria and mechanisms for identifying which Member State is in charge of considering an application;

5. standards regarding reception conditions;¹¹

V. INDIAN LAWS AND POLICIES FOR REFUGEE AND ASYLUM

India has welcomed numerous refugee groups from nearby nations since gaining its independence, including

India has welcomed numerous refugee groups from nearby nations since gaining its independence, including: -

- The 1947 Partition refugees from Pakistan,
- The arrival of Tibetan refugees in 1959,
- Early in the 1960s, Chakma and Hajong from modern-day Bangladesh,
- Additional refugees from Bangladesh in 1965 and 1971,
- Tamil refugees fled Sri Lanka in the 1980s,
- Rohingya refugees from Myanmar, most recently, 2022.¹²

CURRENT LEGISLATION FOR REFUGEE

The Laws Now in Place to Address Refugees

A. Foreigners Act of 1946: Section 3 gives the central government the authority to identify, apprehend, and expel undocumented foreign persons.

B. Passport (Entry into India) Act, 1920: Section 5 allows authorities to forcibly remove an undocumented foreign national in accordance with Article 258(1) of the Indian Constitution.

C. Registration of Foreigners Act of 1939: This law mandates that all foreign nationals (apart from Indian citizens living abroad) who are in India for a longer period of time (more than 180

¹¹ Georgiana Sandu, [Fact Sheets on the European Union](https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy) European Parliament, Asylum Policy, 06-2024, <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy>

¹² India and Refugee Policy, 30 Nov 2022, <https://www.drishtiiias.com/daily-updates/daily-news-analysis/india-and-refugee-policy>

¹⁰ Elyor Nematov (2018), United Nations Peace, Dignity and Equality on healthy planet, International migration, [International migration | United Nations](https://www.un.org/development/desa/pd/data/stories/international-migration)



days) register with a Registration Officer within 14 days of their arrival.

D. Citizenship Act, 1955: It included clauses pertaining to citizenship deprivation, termination, and renunciation.

Additionally, the Citizenship Amendment Act, 2019 (CAA) aims to offer citizenship exclusively to immigrants who are persecuted in Bangladesh, Pakistan, and Afghanistan and who are Hindu, Christian, Jain, Parsi, Sikh, and Buddhist.¹³

HISTORY OF ASYLUM AND REFUGEE IN INDIA

India had a history of taking in refugees. Some are historical, as the case of the Zoroastrian community, who had to leave Iran because of persecution. Furthermore, more than 20 million people were displaced as a result of the 1947 Partition, which led to the Indian government enacting the Rehabilitation Financial Administration Act, 1948.

Himachal Pradesh became one of the bases for the Dalai Lama and other Tibetan refugees after they were permitted to settle in various parts of the nation in 1959. Although they were not granted citizenship, Tibetan refugees were granted a number of other rights. Similarly, during the 1971 Bangladesh Liberation War, millions of East Pakistani civilian families migrated to India, particularly to West Bengal and Assam, demonstrating India's humanitarianism despite the strain on its resources.

Many Tamil refugees left Sri Lanka in the 1980s to seek shelter in India due to the civil war. India offered assistance, but because of political and ethnic sensitivities, the situation was complicated. Rohingya Muslims also fled Myanmar to India in 2012 as a result of the Rohingya conflict. Due to security concerns and the continued political sensitivity of the refugee question, India has responded cautiously.

Thereafter International treaties like ICESCR, the 1976 ICCPR, and the Universal Declaration of Human Rights India become signatory to these treaties these treaties grant refugees certain rights, like freedom of movement, they are legally obligatory in the global context and cannot be revoked.¹⁴

The Citizenship (Amendment) Act, 2019 (CAA) and the Development of India's Asylum Framework

These legislative suggestions helped India's discussion over asylum and refugee protection to mature, even though nothing came of them. It's interesting to note, however, that the Citizenship (Amendment) Act, 2019 controversially signaled a turning point in this developing conversation.

With the exception of Muslims, a group of religious minorities from Afghanistan, Bangladesh, and Pakistan who entered India before December 31, 2014, are granted rapid citizenship under the CAA. Because this move violated both international norms and India's secular beliefs, it was widely criticized and even protested.

For some groups, this CAA offers a path to citizenship; however, it does not apply to the greater number of refugees or those who entered after the 2014 deadline. The necessity for an integrated refugee law is highlighted once more, as it highlights India's preference for ad hoc procedures over a comprehensive framework on asylum, which has left thousands of these refugees in legal limbo.¹⁵

VI. RIGHTS OF REFUGEE

Refugees are entitled to fundamental rights that ensure their safety, protection, and dignity in the host country. While host nations are encouraged to allow refugees to live as freely as possible, several essential rights have been universally recognized to safeguard their well-

¹³ India and Refugee Policy, 30 Nov 2022, <https://www.drishitias.com/daily-updates/daily-news-analysis/india-and-refugee-policy>

¹⁴ Asylum Laws in India: Can a Foreign National Seek Asylum? Rights of Refugees, September 27, 2024, [Asylum Laws in India: Can a Foreign National Seek Asylum? Rights of Refugees](#)

¹⁵ Asylum Laws in India: Can a Foreign National Seek Asylum? Rights of Refugees, September 27, 2024, [Asylum Laws in India: Can a Foreign National Seek Asylum? Rights of Refugees](#)



being. Below are some of the key rights granted to refugees:

A. Protection from Torture and Inhumane Treatment

Refugees are protected under Article 5 of the Universal Declaration of Human Rights (UDHR), which explicitly states that no individual shall be subjected to torture, cruelty, or any form of degrading or inhumane treatment. This ensures that refugees are treated with respect and dignity, free from physical or mental abuse.

B. Freedom from Discrimination

Article 7 of the UDHR upholds the principle of equality, ensuring that no individual faces discrimination on the basis of factors such as religion, gender, nationality, race, or social class. Refugees are thus entitled to equal treatment and protection under the law without prejudice.

C. Right to Seek Asylum

Under Article 14 of the UDHR, every individual has the right to seek asylum in another country when their safety, freedom, or life is threatened in their home nation. This right is a critical safeguard that allows refugees to seek international protection and escape persecution or violence.

D. The Principle of Non-Refoulement

The principle of *non-refoulement* imposes a binding obligation on states to refrain from returning refugees to any place where their life, freedom, or safety would be at risk. This principle is enshrined in Article 33(1) of the 1951 Refugee Convention and ensures that refugees are not sent back to environments where they may face persecution, harm, or death.

E. Right to Safety and Protection

It is the duty of the host country to guarantee the safety of refugees within its borders. This includes ensuring that refugees are protected from any harm or threats, particularly those similar to the dangers they fled from in their home country. By offering a secure environment, host nations uphold their humanitarian responsibilities.

F. Right to Employment

Once asylum is granted, refugees may be permitted to seek employment in the host country. This right also extends to non-discrimination in the workplace, ensuring equal opportunities and fair treatment for refugees. Access to employment allows refugees to sustain themselves, contribute to society, and regain a sense of independence and dignity.¹⁶

VII. PROCESS OF SEEKING ASYLUM

A. Initial Process

This means creating thorough supporting documentation for the asylum petition, such as identification documents, proof of persecution, and any pertinent witness statements. After preparing the papers, the asylum application is submitted. This application needs to be submitted to the relevant government office, usually within a certain amount of time after arriving in the host nation. If the application is not submitted on time, the asylum seeker's claim may be compromised.

B. Preparation of document

Passports and birth certificates are among the personal identifying documents that asylum applicants must gather, together with any supporting documentation for their allegations of persecution. Police reports, medical records, or witness testimonies that can support the person's experiences may be examples of this. Additionally, it is recommended that asylum

¹⁶ Akash Krishnan, Rights of migrant and refugee under International Humanitarian Law, December 13, 2021, <https://blog.ipleaders.in/rights-of-migrants-and-refugees-under-international-humanitarian-law/>



seekers write a thorough personal statement explaining their motivations. This statement should explain the background of their persecution and clearly express their dread of going back to their homeland.

C. Submitting an application

The application is prepared and then sent to the appropriate authority, frequently within a predetermined window of time. Since missed deadlines or delays could put the application at risk, timeliness is essential. The formal start of the asylum-seeking procedure is marked by the receipt that applicants receive after submitting their applications.

D. Interview procedure

It is essential to prepare for the interview. All necessary paperwork, such as identification, proof of persecution, and any supporting documentation, should be gathered by asylum seekers. Since the interviewer's evaluation depends on the accuracy and coherence of the information they present, it is also crucial to mentally prepare for questions about their experiences and the reasons they are seeking refuge.

The official will ask a variety of questions throughout the interview, frequently concentrating on the details of the applicant's claim. In their answers, asylum seekers should be truthful and direct. Since inconsistencies can cast suspicion on the application's legitimacy, consistency in the description of events is essential.

E. Assessment of Asylum

Immigration officers carefully consider each application during this stage to ascertain if the applicant meets the requirements for asylum established by refugee law and their unique situation. Assessors take into account a number of things, such as the applicant's own testimony, any supporting evidence, and the circumstances of the nation from which the applicant emigrated. The applicant's possible hazards upon return are also thoroughly examined.

VIII. Post Application

An interview with an immigration judge or asylum officer is planned for applicants. This interview is essential because it gives authorities the chance to evaluate the veracity of the claim and learn more about the applicant's situation. Applicants are advised to thoroughly prepare for this meeting. Furthermore, during this waiting time, asylum seekers might qualify for specific advantages like employment authorization. To guarantee adherence to immigration regulations, candidates should be made aware of these rights and any related requirements. At this stage host country may grant or refuse the asylum process based on documents, statements and interviews.

IX. Appeal for rejection

During this process, a formal request is made to examine the prior decision and point out any mistakes or misunderstandings pertaining to the asylum application.

Generally, procedural infractions, insufficient evidence analysis, or rulings that do not comply with applicable legislation are grounds for appeal. To make a stronger case during the review, asylum seekers must clearly state these concerns.¹⁷

X. CASE LAWS

1. *Dongh Lian Kham & Anr. vs. Union of India & Anr.*¹⁸

Members of the Ethnic Chin Community and citizens of Myanmar, the petitioners requested protection against deportation from India. Since the United Nations High Commissioner for Refugees (UNHCR) recognized them as refugees, they had been living in India on long-term visas. Citing their identity as Christians and as an ethnic and religious minority, the petitioners fled Myanmar out of fear of persecution by the military regime. They were found guilty of possessing pseudoephedrine

¹⁷ [International Law Editorial](https://worldjurisprudence.com/asylum-seeking-process/), April 22, 2024, Understanding the Asylum Seeking Process: A Comprehensive Guide, <https://worldjurisprudence.com/asylum-seeking-process/>

¹⁸ 2015 SCC Online Del 14338, CrI.M.A No.12618/2015, Indian Kanoon, <https://indiankanoon.org/doc/168154907/>



tablets while in India under the Narcotic Drugs & Psychotropic Substances Act, 1985, and given a prison sentence. They were held pending deportation after completing their sentences.

The term "non-refoulement," which forbids sending refugees to a nation where their freedom or lives would be in danger, was taken into consideration by the Delhi High Court. The court recognized that this idea, which safeguards everyone's life and liberty regardless of nationality, is essential to Article 21 of the Indian Constitution. With the exception of the one violation, the petitioners had lived in India in peace, the court observed, and their families had legitimate long-term visas. It emphasized the necessity to strike a balance between humanitarian concerns and national security issues by ordering the Foreign Regional Registration Officer (FRRO) to give the petitioners a chance to be heard before deciding whether to deport them.

2. NHRC v. State of Arunachal Pradesh¹⁹

In the absence of laws governing and defending the stay of refugees in India, the Supreme Court has turned to Article 21 of the Constitution. The Government of Arunachal Pradesh was mandated in *NHRC v. State of Arunachal Pradesh* to fulfil its responsibility of protecting the lives, health, and welfare of Chakmas living in the State and to ensure that their citizenship application was sent to the appropriate officials without being reserved. It has been decided in a number of other judgments that refugees have the right to petition the U.N. High Commissioner for refugee status and should not be restricted to imprisonment or deportation.

¹⁹ 996 AIR 1234, 1996 SCC (1) 742, Ayush Chandra, *Refugee Law: The Constitution Perspective*, <https://www.legalserviceindia.com/legal/article-4616-refugee-law-the-constitution-perspective.html>