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EDITORIAL ANALYSIS

Renew, Do Not Renegotiate: The Refugee Convention at 75 and India's Place in It

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INTERVIEW ANGLE

"India has sheltered Tibetans, Sri Lankan Tamils, Chakmas and Afghans for decades without signing the Refugee Convention or enacting a refugee law. Is that flexibility a strength that lets India respond case by case, or an absence of rights that leaves protection at the discretion of the executive?"

Source: [Original editorial](#)

Hindustan Times

 Every fact web-verified against primary sources

THE LIFT LINE

The Convention has survived seventy-five years by being interpreted rather than amended. Its defenders now argue it must not be reopened, and they are probably right. But a treaty preserved because nobody trusts the negotiation is being kept alive by fear, not by consensus.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

Refugees sit at an unusually productive intersection for GS2: international conventions, India's neighbourhood, human rights, constitutional interpretation and the difference between treaty obligation and domestic law. India's non-signatory status is a standing question in interviews, and the anniversary makes the topic timely. The piece also supplies the **Bangkok Principles**, a genuinely under-used reference that will distinguish an answer.

GS Paper 2: Important international institutions, agencies and fora, their structure and [mandate](#); bilateral, regional and global groupings involving India; mechanisms, laws and institutions for the protection and betterment of vulnerable sections; India and its neighbourhood.

BACKGROUND AND CONTEXT

The **Convention Relating to the Status of Refugees** was adopted at Geneva on **28 July 1951** and entered into force in **1954**. It responded to the displacement of the Second World War, and was accordingly limited: it applied to persons who became refugees as a result of events occurring **before 1 January 1951**, and states could restrict its application to events in **Europe**. The **1967 Protocol** removed both the temporal and the geographic limitation, universalising the regime.

The Convention's foundational obligation is **non-refoulement**, set out in **Article 33**: no contracting state shall expel or return a refugee to the frontiers of territories where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. The definition of a refugee in **Article 1A(2)** rests on a **well-founded fear of persecution** on those same five grounds. The Convention also guarantees non-discrimination, non-penalisation for illegal entry (**Article 31**), and a range of civil, economic and social rights.

Regional instruments subsequently broadened the definition where the global one proved narrow. The **OAU Convention of 1969** in Africa extended refugee status to those fleeing external aggression, occupation, foreign domination and events seriously disturbing public order. The **Cartagena Declaration of 1984** did something similar for Latin America. Asia has no comparable binding regional instrument, which is part of why the editorial's reference to the **Bangkok Principles** matters: adopted by the **Asian-African Legal Consultative Organization in 1966** and revised in 2001, they are a non-binding but Asian-authored statement on the status and treatment of refugees, and India was closely associated with them.

India is not a party to the 1951 Convention or the 1967 Protocol, and has no domestic refugee law. It has nonetheless hosted large refugee populations for decades: **Tibetans** since 1959, **Sri Lankan Tamils** from the 1980s, **Chakmas** from the Chittagong Hill Tracts, **Afghans**, and others. India has been a member of the **UNHCR Executive Committee since 1995**, and UNHCR conducts status determination in India for certain non-neighbouring-country nationals while the government handles others directly.

THE ANALYSIS

The editorial's core claim is that the Convention has adapted without amendment, and this is empirically strong. Seventy-five years of crises, from post-war Europe through **decolonisation**, the Cold War, the Balkans, Afghanistan, Syria, Myanmar and Ukraine, have been absorbed through **interpretation, State practice and regional instruments**. A treaty that has accommodated that range of situations without being reopened is not obviously obsolete.

The argument against reopening is therefore not that the criticisms are wrong, but that the negotiation would go badly. The authors state it carefully: the concerns about protracted conflicts, mixed migration, climate-induced displacement and national security **deserve attention**, but reopening the Convention **amid rising scepticism towards asylum risks weakening existing protections**. This is a

judgement about political conditions rather than about legal design, and it deserves to be recognised as such in an answer. A renegotiation conducted by governments currently competing to appear restrictive would not produce a more generous instrument.

The first structural gap the editorial identifies is responsibility-sharing, and it is the more serious of the two. The Convention creates obligations owed by the state where a refugee arrives, and **no binding framework for distributing that burden.** The consequence is mechanical: **states neighbouring a conflict host disproportionately, purely by geography.** The overwhelming majority of the world's refugees are hosted in developing countries adjacent to the crises that produced them.

The international response has been the **New York Declaration for Refugees and Migrants (2016)** and the **Global Compact on Refugees (2018)**, which aim at more predictable responsibility-sharing, strengthened cooperation, and expanded third-country resettlement and complementary pathways. The editorial's assessment is appropriately guarded: their success **depends on whether States back these commitments with sustained political will.** Both instruments are **non-binding**, which is precisely the weakness they were designed to address and did not.

The second gap is definitional. The Convention protects those with a well-founded fear of **persecution** on five enumerated grounds. It does not, on its face, cover people displaced by **generalised violence, State collapse or the climate crisis.** The editorial's proposed remedy is sensible and is the mainstream position among protection specialists: build **additional protection frameworks** for these categories rather than reopening the core definition, on the reasoning that a wider definition negotiated today would likely come paired with narrower obligations.

On India, the editorial makes an important and slightly generous argument. India's record demonstrates that **refugee protection need not depend on treaty commitment alone**, and can be supported through **administrative practice, judicial engagement and humanitarian commitment.** That is true, and it is worth saying, because the standard critique treats non-signature as equivalent to non-protection, which is factually wrong.

But the argument's limit should be stated plainly, because it is what a strong answer adds. Protection that rests on executive discretion is protection that can be withdrawn by executive discretion. Refugees in India are governed principally by the **Foreigners Act, 1946**, the **Registration of Foreigners Act, 1939**, the **Passport (Entry into India) Act, 1920** and the **Citizenship Act, 1955**, none of which contains the word refugee or distinguishes a person fleeing persecution from any other foreigner without valid documents. Treatment has consequently varied by group and by period, which is the predictable outcome of policy without statute.

The judicial layer has partially compensated. **Articles 14 and 21** of the Constitution extend to **all persons**, not only citizens, a point the Supreme Court affirmed in **National Human Rights Commission v. State of Arunachal Pradesh (1996)** concerning the Chakmas, where it directed the State to protect them and to process their citizenship applications. High Courts have read **non-refoulement** into Article 21 in cases including **Ktaer Abbas Habib Al Qutaifi v. Union of India (Gujarat High Court, 1999)** and

Dongh Lian Kham v. Union of India (Delhi High Court, 2015). The **Supreme Court in Mohammad Salimullah v. Union of India (2021)** took a more restrictive view in the Rohingya deportation matter, holding that the right not to be deported is **ancillary** to the right to reside and settle in India under **Article 19(1)(e)**, available only to citizens. **The jurisprudence is therefore not settled**, which is itself an argument for legislation.

The final claim, that India's position gives it standing to shape refugee governance, is the most interesting and the most contestable. The reasoning is that the geography of displacement is shifting towards the Global South, that India's practice demonstrates a workable non-treaty model, and that the **Bangkok Principles** give India an Asian-authored reference point. The counter-reading is that a state which has not ratified the Convention, has no domestic refugee law, and has taken varying positions across groups is not well placed to lead a **normative** conversation about protection standards. Both readings are defensible, and acknowledging the tension is what makes an answer credible.

DATA AND INSTITUTIONS VAULT

The instruments:

- **Convention Relating to the Status of Refugees**, adopted **28 July 1951**, in force **1954**; **75th anniversary in 2026**
- **1967 Protocol**: removed the temporal (pre-1951) and geographic (European) limitations
- **Article 1A(2)**: refugee definition: well-founded fear of persecution on grounds of **race, religion, nationality, membership of a particular social group, or political opinion**
- **Article 33: non-refoulement**
- **Article 31**: non-penalisation for illegal entry
- **OAU Convention, 1969** (Africa): extends the definition to external aggression, occupation, foreign domination and events seriously disturbing public order
- **Cartagena Declaration, 1984** (Latin America): similar broadening, non-binding
- **Bangkok Principles on the Status and Treatment of Refugees**: adopted by the **Asian-African Legal Consultative Organization (AALCO)** in **1966**, revised **2001**; non-binding
- **New York Declaration for Refugees and Migrants, 2016**
- **Global Compact on Refugees, 2018**: non-binding; responsibility-sharing, third-country resettlement, complementary pathways

The institution:

- **UNHCR**, the Office of the United Nations High Commissioner for Refugees, established **1950**, HQ **Geneva**; **Nobel Peace Prize in 1954 and 1981**

- **India has been a member of the UNHCR Executive Committee since 1995** despite not acceding to the Convention

India's legal position:

- **Not a party** to the 1951 Convention or the 1967 Protocol; **no domestic refugee law**
- Governing statutes: **Foreigners Act, 1946; Registration of Foreigners Act, 1939; Passport (Entry into India) Act, 1920; Citizenship Act, 1955**
- **Article 14** and **Article 21** apply to **all persons**, not only citizens; **Article 19** rights are confined to citizens
- **Article 51(c)**: Directive Principle: foster respect for international law and treaty obligations
- **Article 253**: Parliament's power to legislate to give effect to international agreements

Case law:

- **National Human Rights Commission v. State of Arunachal Pradesh (1996)**: protection of Chakmas; Article 21 extends to non-citizens
- **Ktaer Abbas Habib Al Qutaifi v. Union of India (Gujarat High Court, 1999)**: non-refoulement read into Article 21
- **Dongh Lian Kham v. Union of India (Delhi High Court, 2015)**: non-refoulement affirmed
- **Mohammad Salimullah v. Union of India (2021)**: Supreme Court declined to bar deportation of Rohingya, linking the right against deportation to Article 19(1)(e), available only to citizens

Refugee groups hosted by India:

- **Tibetans**, from **1959**
- **Sri Lankan Tamils**, from the 1980s, many in camps in **Tamil Nadu**
- **Chakmas** from the **Chittagong Hill Tracts**, in Arunachal Pradesh and elsewhere
- **Afghans, Rohingya** from Myanmar, and others

Concepts to name:

- **Non-refoulement**: widely regarded as having attained the status of **customary international law**, binding even non-parties
- **Mixed migration**: flows combining refugees and economic migrants, which complicate status determination
- **Complementary protection**: status granted to those outside the Convention definition but who cannot safely be returned
- **Climate displacement**: largely outside the Convention; note the UN Human Rights Committee's **Teitiota v. New Zealand (2020)** views, which accepted that climate harms could in principle engage non-refoulement obligations

THE DEBATE

The case for renewal rather than renegotiation is essentially prudential, and it is strong. The Convention's core obligation has proved adaptable, non-refoulement has arguably become customary international law binding even on non-parties, and regional instruments have supplied the definitional breadth the global text lacks. Reopening a treaty requires the consent of states whose current politics is broadly restrictionist, and the realistic outcome of such a negotiation is narrower obligations dressed as modernisation.

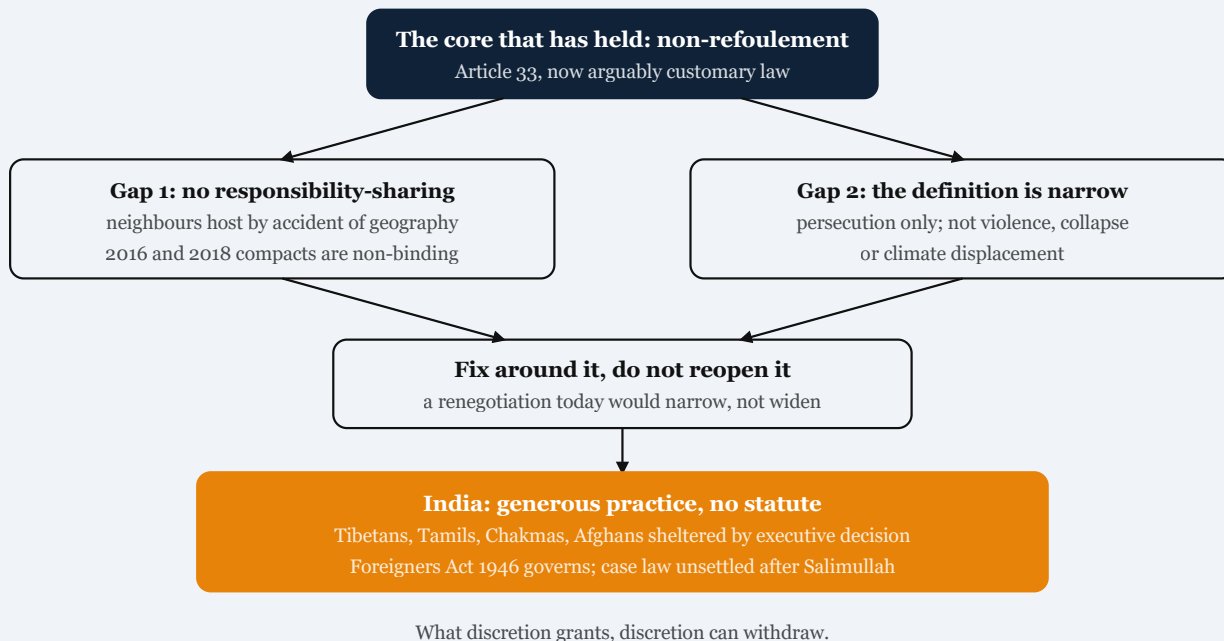
The case against is that this defence is uncomfortably circular. If the Convention genuinely fails to cover most contemporary displacement, and if responsibility-sharing genuinely cannot be enforced, then the regime is being preserved not because it works but because its supporters fear what a negotiation would produce. A framework maintained by that logic is stable only while nobody forces the question, and states are increasingly forcing it through domestic legislation, offshore processing arrangements and safe-third-country designations that hollow out the obligation without amending the text.

On India specifically, the strongest argument for a domestic refugee law is the variability the current arrangement permits. Without a [statutory](#) definition and a single status determination procedure, protection depends on which group a person belongs to, which agency handles the case, and the prevailing policy of the day. Different communities have received markedly different treatment, and the courts have not settled the question, with the Salimullah reasoning pulling against the earlier High Court line on non-refoulement.

The strongest argument against a refugee law is sovereign flexibility, and it should be stated fairly. India sits in a neighbourhood capable of generating displacement at scale, has an open and largely unfenced border with several states, and faces genuine security considerations in border regions. A [statutory entitlement](#), once created, is difficult to calibrate to circumstance. On this view India's discretionary approach has in practice produced more generous outcomes than many signatory states, and the absence of a law has not prevented protection.

The synthesis available to a good answer is that flexibility and legality are not actually opposed. A domestic refugee law can preserve executive discretion over numbers, location and entry while establishing due process, a status determination procedure, a statutory non-refoulement guarantee and clear rights to work, education and healthcare for those recognised. Several drafts along these lines, including a Model Law for Refugees prepared under AALCO auspices and private members' bills in Parliament, have existed for years without being enacted.

DIAGRAM-IN-WORDS



The global regime's problems sit outside its core rather than inside it, which is why building complementary instruments is wiser than reopening the text. India's problem is the mirror image: the practice has been generous while the legal basis is absent, so protection here depends on the decision rather than on the right.

HOW TO THINK ABOUT THIS

The transferable frame is **the difference between a right and a discretion**, and it is one of the most useful distinctions in the whole of GS2.

A **right** is claimable by the holder, enforceable against the state, and survives changes of government and of mood. A **discretion** produces the same outcome only for as long as the decision-maker chooses. India's refugee record demonstrates that a discretionary regime can deliver protection at scale, sometimes more generously than statutory regimes elsewhere. It also demonstrates the characteristic weakness: **variation**. Different groups have been treated differently, and no affected person can point to a provision and demand equal treatment.

Apply the distinction widely. **Welfare delivered as a scheme versus a legal entitlement**, which is precisely why the right to food, the right to education and the employment guarantee were converted into statutes. **Administrative relaxations versus statutory exemptions. Executive assurances versus notified rules**. In each case the question to ask is: *if the decision-maker changes their mind tomorrow, what does the affected person have?*

The second frame is **the negotiation-risk argument**, which is more general than it looks. The editorial's case for not reopening the Convention is not that the treaty is perfect but that the present balance of political forces would produce something worse. This reasoning recurs across institutional reform: on **UN Security Council reform**, where opening the Charter risks outcomes India would like less than the status quo; on **WTO reform**; and in domestic constitutional debate, where the case against amending a provision often rests on who would control the amending process rather than on the provision's merits. **Recognising when an argument is about political conditions rather than about design is a mark of analytical maturity.**

Third, note the **binding versus non-binding** distinction and its consequences. The New York Declaration and the Global Compact on Refugees address exactly the right problem, responsibility-sharing, and address it with exactly the wrong instrument, voluntary commitment. When you are asked to evaluate any international framework, separate what it *identifies* from what it can *compel*. Soft law shapes expectations and creates reporting hooks; it does not distribute burdens.

WAY FORWARD

Preserve the Convention's core and build complementary instruments around it. Climate displacement and flight from generalised violence should be addressed through additional protection frameworks and regional agreements rather than by reopening Article 1A(2).

Give the Global Compact on Refugees measurable commitments. Responsibility-sharing that is pledged at a Global Refugee Forum and never audited is not responsibility-sharing. Resettlement quotas, financing targets and reporting against them are the minimum.

Enact a domestic refugee law in India. A statute providing a refugee definition, a single status determination procedure, a statutory non-refoulement guarantee and defined rights to work, education and healthcare would convert a generous practice into an enforceable entitlement while leaving the government its legitimate discretion over admission and location.

Settle the constitutional position. The tension between the High Court line reading non-refoulement into Article 21 and the reasoning in *Mohammad Salimullah* leaves protection uncertain. Legislation is the cleaner route to resolution than further litigation.

Use the Bangkok Principles as the basis of an Asian regional conversation. Asia hosts an enormous share of the world's displaced and has no binding regional instrument. India, with AALCO, is unusually well placed to convene that discussion.

Separate refugee policy from migration policy in law and in language. Conflating the two is what allows protection obligations to be dissolved into border management, and the distinction is the first thing a domestic statute should establish.

PYQ LINKAGE AND PRACTICE

Connects to standing UPSC themes on **international conventions and India's position, human rights institutions, India and its neighbourhood**, and the constitutional question of **rights available to non-citizens**, and pairs naturally with questions on climate migration and on internal displacement.

Practice question: *“India has offered refuge without offering rights. Examine the constitutional and statutory basis of refugee protection in India, and critically evaluate the case for a domestic refugee law.”*
(250 words)

Sources: *Hindustan Times, UNHCR*

Source: Renew, Do Not Renegotiate: The Refugee Convention at 75 and India's Place in It — Ujiyari.com | Free
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• KEY ARGUMENTS AT A GLANCE

Writing in Hindustan Times on the 75th anniversary of the 1951 Refugee Convention, two international law scholars argue that the treaty should be renewed rather than renegotiated, because its framework has adapted successfully through interpretation, State practice and regional instruments, and reopening it amid rising scepticism towards asylum would weaken existing protections rather than modernise them.



SUPPORTING

- The Convention's core contribution, the principle of non-refoulement barring States from returning refugees to territories where their life or freedom would be threatened, has proved durable across seven decades of crises from Myanmar to Ukraine, and has been extended through interpretation without formal amendment.
- The genuine gaps are real but addressable outside the treaty text: the Convention establishes no binding framework for equitable responsibility-sharing, so neighbours of conflict-affected states carry a disproportionate burden by accident of geography, which the New York Declaration of 2016 and the Global Compact on Refugees of 2018 sought to remedy through predictable cooperation and expanded resettlement pathways.
- The refugee definition, framed around persecution, excludes many displaced by generalised violence, State collapse and the climate crisis, but additional protection frameworks can respond to these forms of displacement without diluting the Convention's core guarantees.
- India, though not a party, has provided refuge to Tibetans, Sri Lankan Tamils, Chakmas, Afghans and others through executive action, judicial intervention and constitutional protections, demonstrating that refugee protection need not depend on treaty commitment alone, and its position reflected in the Bangkok Principles places it in a distinctive position to shape refugee governance as displacement shifts towards the Global South.



COUNTER

A framework that has to be defended by arguing it must not be examined is a framework in trouble: if the definition genuinely excludes most contemporary displacement, and if responsibility-sharing is genuinely unenforceable, then a treaty preserved intact chiefly because its supporters fear the negotiation would produce something worse is being maintained by political weakness rather than by legal adequacy.

**WAY FORWARD**

Preserve the Convention's core and build around it: strengthen the Global Compact on Refugees with measurable responsibility-sharing commitments, develop complementary protection instruments for climate and generalised-violence displacement, and, for India, enact a domestic refugee law establishing a single status determination procedure and a statutory non-refoulement guarantee, so that protection rests on law rather than on discretion.


MAINS ANSWER FRAMEWORK
QUESTION

India is not a party to the 1951 Refugee Convention yet has hosted large refugee populations for decades through executive action and judicial intervention. Examine the constitutional and legal basis of refugee protection in India, and evaluate the case for a domestic refugee law. (250 words)

INTRODUCTION

The 1951 Convention Relating to the Status of Refugees completed 75 years in 2026, at a moment when asylum systems are under political strain across the democratic world and calls to reopen or replace the treaty have grown louder. The question of whether to renegotiate is not primarily legal; it is a judgement about what a negotiation conducted in the present political climate would actually produce.

BODY

The Convention's central obligation is non-refoulement: no State shall return a refugee to a territory where life or freedom would be threatened on the protected grounds. Around that core the regime has adapted without amendment, through the 1967 Protocol removing the original temporal and geographic limits, through regional instruments such as the 1969 OAU Convention and the 1984 Cartagena Declaration which broadened the definition to include generalised violence, and through State practice and judicial interpretation.

Two structural gaps remain. First, the Convention imposes no enforceable responsibility-sharing, so states neighbouring conflicts host disproportionately by geography, which the New York Declaration of 2016 and the Global Compact on Refugees of 2018 addressed only through non-binding commitments.

Second, the persecution-based definition excludes those displaced by State collapse, generalised violence and climate change. India's position is distinctive: not a party to the Convention or its Protocol and without a domestic refugee statute, it has nonetheless hosted Tibetans since 1959, Sri Lankan Tamils, Chakmas and Afghans, through executive decision, and its courts have read non-refoulement into Article 21, which extends to all persons and not only citizens.

CONCLUSION

The editorial's prescription, renewal rather than renegotiation, is prudent given the present climate, but it leaves India's own gap unaddressed. Protection extended through executive discretion can be withdrawn through executive discretion, and a domestic refugee law providing a single status determination procedure and a statutory non-refoulement guarantee would convert a generous practice into an enforceable entitlement.

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