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The EU List of Safe Countries of Origin, Individualised Asylum Assessment, and the Risk of Refoulement: The Case of India

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Abstract: *The concept of a Union wide list of safe countries of origin has been developing in European asylum policy since the 2010s. During a Justice and Home Affairs Council meeting on 20th July, 2015, such designation was first discussed. Then, on 9th September, 2015, the European Commission put forth a proposal for a Europe-wide list of safe countries .This culminated in the Council furthering discussions on safe countries of origin on 8th December, 2025, and on 18th December, 2025, the Council and European Parliament agreed on a Union-wide list of safe countries of origin . This list will enter application as part of the Migration and Asylum Pact, 2024, 12th June, 2026 onwards.*

Keywords: the eu list of safe countries of origin, individualised asylum assessment, and the risk of refoulement: the case of India

I. INTRODUCTION

I. THE SAFE COUNTRIES OF ORIGIN CONCEPT IN THE EUROPEAN UNION

A. The Denotation

A safe country of origin refers to countries whose citizens are likely to not be granted asylum or refuge, as such countries are regarded as 'safe' from persecution generally. Asylum seekers must then rebut the formal presumption of safety to succeed in their application.[1]

B. A History of Development

The concept of a Union wide list of safe countries of origin has been developing in European asylum policy since the 2010s. During a Justice and Home Affairs Council meeting on 20th July, 2015, such designation was first discussed.[2] Then, on 9th September, 2015, the European Commission put forth a proposal for a Europe-wide list of safe countries[3].This culminated in the Council furthering discussions on safe countries of origin on 8th December, 2025, and

[1] European Parliament. (2024). *Briefing on 'safe country of origin' concept in EU asylum law,* p. 2, para. 4. https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762315/EPRS_BRI(2024)762315_EN.pdf

[2]Council of the European Union. (2015, July 20). *Justice and Home Affairs Council meeting,* para.6. https://www.consilium.europa.eu/en/meetings/jha/2015/07/20/

[3]European Commission. (2015, September 9). *Managing the refugee crisis: Commission proposes common EU list of safe countries of origin,* paras. 2 and 4.1. https://ec.europa.eu/commission/presscorner/detail/en/ip_15_5596

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on 18th December, 2025, the Council and European Parliament agreed on a Union-wide list of safe countries of origin[4]. This list will enter application as part of the Migration and Asylum Pact, 2024, 12th June, 2026 onwards.

C. Criticism of the List

Widespread critique of this list states that it [i] further shifts the burden of proof onto asylum seekers and [ii] risks erroneous rejection of legitimate claims, leading to potential violations of the non-refoulement principleprohibiting countries from transporting individuals from their jurisdiction when there is substantial reason to believe that such individual would be at risk of harm upon return. This includes, but is not limited to: persecution, torture andill-treatment.[5] The European Center for Constitutional and Human Rights went as far as releasing a joint statement rejecting the list, stating that it was 'an instrument to deny access to protection and to legitimize violence and persecution,' and that one could not 'make a country safe by putting it on a list'[6]

II. THE LEGAL FRAMEWORK GOVERNING ASYLUM IN THE UNION

The European Union's intention to respect The Convention Relating to the Status of Refugees, 1951, particularly with respect to Article 33[7], has been iterated in its policies over time. Most prominently, this can be observed in the Treaty on the Functioning of the European Union, in which Article 67(2) provides for the framing of a common policy on asylum, immigration and external border control 'fair towards third-country nationals,' andin which Article 78(1)provides for the development of such policy in'compliance with the principle of non-refoulement'.[8] The Charter of Fundamental Rights of the European Union's Article 18 also guarantees the right to asylum in these respects.[9]

[4]Council of the European Union. (n.d.). *Migration timeline*. https://www.consilium.europa.eu/en/policies/eu-migration-policy/migration-timeline/

[5]Office of the United Nations High Commissioner for Human Rights. (n.d.). *The principle of non-refoulement under international human rights law,* para. 2. https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf

[6]European Center for Constitutional and Human Rights. (n.d.). *Joint statement: Reject the EU-wide list of safe countries of origin,* para. 1.https://www.ecchr.eu/en/press-release/joint-statement-reject-the-eu-wide-list-of-safe-countries-of-origin/

[7]United Nations. (1951). *Convention relating to the status of refugees – Article 33: Prohibition of expulsion or return ("refoulement").* https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees

[8]European Union. (2025, March 15). *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union.* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016ME%2FTXT-20250315

[9]European Union Agency for Fundamental Rights. (n.d.). *EU Charter of Fundamental Rights – Title II: Freedoms, Article 18: Right to asylum.* https://fra.europa.eu/en/eu-charter/article/18-right-asylum?page=2

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III.THE SOCIO-LEGAL RISKS UPON RELIANCE

A. The Introduction of Structural Bias

The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees outline principles and methods to be used during determination of status. Of this Handbook, Articles 201 and 202 are particularly relevant here.[10]

Non-Cognisance of Cumulative Harm

Article 201 recognises the accumulation of 'small' incidents making refuge seekers' fears well-founded when such incidents would not have likely been found sufficient otherwise. This reflects an important sentiment: assessment of risk to the party during their determination of status should account for the cumulative harms that have been visited upon them. However, this same strain of thinking has not been extended pertaining to the determination of safe countries of origin. A country may, in sooth, have underlying patterns of discrimination, harassment, underreporting or other harm at the societal level that may not be visible even post due-diligence. Such harm may be caused to individuals as well as persecuted groups, and the incidents stemming from such patterns may be 'small' in the larger scheme of evaluation, yet potent. These patterns may also change subsequently, in addition to the possible creation of even more patterns over time.

This approach, contradictory to the United Nations High Commissioner, has thereby resulted in an inconsistency wherein cumulative harms are accounted for and are to be recognised in individual cases by the Union, but are not accounted for in the blanket application of the tag of a 'safe country of origin' leading to a formal presumption of unnecessity during assessment.

Non-Cognisance of Influence and Underreporting

Article 202 states that since the assessor's judgment will be a decision that affects human lives, they must remain uninfluenced. It is then unclear why such principle has not been applied to formal bias introduced through the list of safe countries of origin.

Reliance on this tag shall also lead to a troubling consequence due to the aforementioned underreporting. Coming from a designated safe country and having to inadvertently submit a higher degree of proof will prove cumbersome in cases of underreporting and similar diminishment of ill-treatment on a personal, as well as a community level.

Moreover, instances in which applicants have been unable to directly document such proof shall now, as a result, also be taken less seriously – not just due to human error, but also formally recognised bias, leading to a higher degree of legitimate claims being rejected.

B. The Introduction of Procedural Bias

Detriment to Neutrality

The prima facie presumption that asylum seekers from 'safe countries' are likely to produce unfounded claims is harmful to the neutrality of the procedure of asylum determination. It produces a formal systemic bias, as well as plants personal bias in the examiner and deters his objectivity during evaluation. The examiner, in essence, works backwards from the presumption towards neutrality, and does not travel from a position of neutrality towards either acceptance or declination of the application.

[10]United Nations High Commissioner for Refugees. (2019). *Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees* (HCR/1P/4/Eng/REV.2), paras. 201 – 202. https://www.unhcr.org/in/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967

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On the reverse, this results in an applicant having to incur additional burdens in the form of having to prove their case whilst simultaneously rebutting the presumption that such harm is unlikely to befall applicants from their country.

Procedural Acceleration

The acceleration of the asylum procedure as per the Pact results in various disadvantages. These procedures, slated to be conducted at the borders of the Union and in transit zones, may not provide adequate access to legal counsel, language interpreters and contact with human rights and aid organisations. Such access is necessary for the construction of personal histories and the clear explanation of applicants' claims. Whilst already dealing with an unfamiliar legal, social and physical environment, applicants may be further restricted and demoralised due to these additional hurdles, leading to lower legal clarity and inadequate articulation of their claims.

Administrative error also arises in the face of such acceleration, with examiners likely to subconsciously rely on the designation of safety, rather than critically evaluating on a case-to-case basis.

IV. THE UNION'S CRITERIA AND THE ANALYSIS OF INDIA AS A DESIGNATED SAFE COUNTRY

Criteria for Designation

As per Common Procedure Regulation (EU) 2024/1348,a country is only able to achieve a 'safe' designation if it is proved that no persecution and real risk of serious harm exists in it.[11]

When the awarding of such tag results in a presumption that such country generally respects human rights, it is important for all required criteria for such award to be fulfilled.

Assessment of India's Designation

The criteria for the Union of India's designation were discussed in anExplanatory Memorandum[12], but they have not been met in truth, as reported below:

[i] It is stated twice that India has ratified major international human rights instruments. There is specific mention of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) being ratified, a statement manifestly untrue asIndia is only a signatory to this convention and has not ratified it yet as per the Office of the United Nations High Commissioner[13], as well as the Maharashtra State Human Rights Commission[14].

[ii] It is stated that human rights violations may be investigated and remedied by the Indian National Human Rights Commission (NHRC), created under the Protection of Human Rights Act, 1993, accountable to the Parliament. However, the Global Alliance of National Human Rights Institutions (GANHRI) had deferred its 'A' accreditation for the National Human Rights Commission in 2016, and starting in 2023, for two consecutive years, the 'A' accreditation was once again deferred. Prior to the 2025 review, various international human rights organisations even penned a joint

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[11] European Union. (2024). *Regulation (EU) 2024/1348 of the European Parliament and of the Council on asylum and migration management,* Article 61(1). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1348

[12] European Commission. (2025, April 16). *Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level (COM(2025) 186 final, 2025/0101(COD)) – Explanatory memorandum,* paras. 80 – 90. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025PC0186

[13] Office of the United Nations High Commissioner for Human Rights. (n.d.). *India – Status of ratification interactive dashboard.* https://indicators.ohchr.org

[14] Maharashtra State Human Rights Commission. (n.d.). *Core international human rights treaties, optional protocols & core ILO conventions not ratified by India.*https://www.mshrc.gov.in/pdf/india_ratification_status.pdf

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letter decrying the functioning of the Commission to the GANHRI.[15] Post this review, the downgradation of NHRC's status to a 'B' was recommended.[16] This recommendation has been challenged by it, however, if unsuccessful, the Indian Commission will be unable to vote or hold governance positions at future United Nations sessions until restoration[17].

[iii] It is stated that there isno persecution in the country within the meaning of Article 9 of the pertinent Qualification Regulation.[18] This is inaccurate on various fronts. There are numerous instances of persecution and systemic instances of human rights violations reported in India, with a recent example being the denial of bail to Sharjeel Imam and Umar Khalid in January 2026. They are still incarcerated to date, and have been awaiting trial since more than half a decade.

In all, the European Union recognises that there are various challenges faced by specific marginalised or disenfranchised groups in the country which merit particular attention, but they do not believe such reasons lend themselves to the constitution of an unsafe country.

V. CONCLUSION OF OBSERVATIONS AND FUTURE IMPLICATIONS

The European Union's list of safe countries of origin thus results in significant structural and procedural biases within the framework of asylum determination. In spite of its formal commitment to international conventions, the presumption of safety resulting from the designation of 'safe' countries greatly undermines its asylum commitments.

The on-ground state of the Union of India illustrates these risks. The multitudes of major inaccuracies in the basis for the designation reflects the gap between distant research and reality in the designated countries.

In effect, while the safe country of origin was ideated to streamline asylum requests and reduce burden on the Union, its current application is slated to weaken procedural safeguards and increase the probability of refoulement.

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