INTRODUCTION
CHAPTER - I

INTRODUCTION

Migration of people from one area to another has taken place all around the world. There are several reasons for migration. These reasons range from voluntary migration for economic reasons to that more involuntary types of migration due to political reasons. These later type of migrants are called refugees. Encyclopedia of Social – Science defines refugees as “All refugees have in common these characteristic: they are uprooted, they are homeless and they lack natural protection and status” and it goes further and says: “The refugee is an involuntary migrant, a victim of politics, war or national catastrophe,”2 Purely involuntary migration become more common in the last 70 – 80 years; they are the offspring of the growth of nationalism and the nation states all around the world.2 So in every part of world, people have been uprooted and displaced by persecution, conflicts or environmental disaster, genocide, etc. what is unique at the present time is the massive scale and global nature of such movement, which become subject of interest not only of individual but to the international community.3 In the course of nineteenth and twentieth centuries this problem became quite prominent and has seriously affected all over the world.

In most refugee crises, one need only to take a cursory look to realize that the violation of human rights is one of the principle causes of refugee flows. Human Rights are important for every human being because these are linked with everyone’s dignity as a human being. Refugees are undoubtedly human being though deprived one human being though deprived one who need more care during the period of deprivation. The human rights violations are a major factor in causing the flight of these people as well as an obstacle to their safe and

3. Ibid.
voluntary return to their home. The impact of this is felt worldwide and its influences on international scenario are increasingly becoming more pronounced. Before discussing about human rights of refugees it is essential to understand concept of Human Rights and meaning of Refugees.

**Concept of Human Rights**

Human rights are understood as those inherent rights of an individual which are essential for the development of human dignity and personality. These rights have been identified as those rights, which are important moral and universal. Because of their immense significance to human beings, human rights are also called 'Fundamental Rights' or 'Natural Rights' or 'Basic Rights'. These inalienable rights are, in fact, the touchstone of a civilized political system and have been recognized as core principles essential for dignified human survival. With the passage of time, term 'Human Rights' has acquired an expanded meaning.

Today 'human rights' as understood generally refer to those rights possessed by human beings because they are human being. The dictionary meaning of the expression would be: Human refers to mankind and rights to truth and justice. Thus, these are the rights which entitled mankind a decent, civilized life in which the dignity of each human being will receive respect and protection. The human rights are the birth rights of people the world over. Hence, profounder of human rights regards them as being inherent, inalienable and universal. Inherent in the sense that they are the birth rights of all human beings,

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in that people enjoys these rights, simply by reason of their being human beings. Inalienable in the sense that people cannot agree to give them up or allow them to be taken away, and universal in the sense that they do not just apply to ‘men or ‘citizens’ or ‘minorities’, but to all persons regardless of their nationality, sex, religion or race. The term ‘human rights’ covers in its ambit those essential rights, defined or undefined which lead and contribute to the balanced development of human beings, irrespective of their caste, creed, religion, sex and nationality, etc. simply because he or she is a human being.

Human Rights are a twentieth century name for what has been traditionally known as ‘natural rights’. The concern of human rights becomes popular particularly in the twentieth century with the universal acceptance of human rights by most of the nations and with the recognition at the international level. The global movement of human rights is founded on and inspired by the United Nation Charter. The immense work done by the United Nations in the area of human rights in the past is a strong proof to state United Nation’s concern with human rights. In the language of United Nations Centre for Human Rights, “human rights could be generally defined those rights which are inherent in our nature and without which we cannot live as a human being.”

The Universal Declaration of Human Rights Under article I says; “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood.”

Further the World Conference on Human Rights in 1993 in Vienna stated in the Declaration that, “all human rights are derived from the

12. Supra n.8.
13. ibid.
dignity and worth inherent in the human person, and that the human 
person is the central subject of human rights and fundamental freedom.”\textsuperscript{15}

In India, the Protection of Human Rights Act, 1993 had defined the 
term Human Rights under Section 2(d) as: “Human rights mean the rights 
relating to life, liberty, equality and dignity of the individual guaranteed by 
the constitution or embodied in the International Covenant and enforceable 
by the court in India.”\textsuperscript{16}

So Human rights are those minimum rights, which every 
individual must have against state or authority by virtue of his being a 
member of human family, irrespective of any other consideration. Above 
all, human rights are fundamental in our nature and in the absence of 
these rights we cannot live as human beings. These rights, belongs to all 
human beings at all times and in all places and these comprise right of 
individual or a group in a society in all spheres of life.\textsuperscript{17}

Concept of Refugees

The term ‘refugee’ is as old as mankind itself. It is derived from 
Latin word ‘fugere’, which means to flee for safety.\textsuperscript{18} Broadly speaking, a 
refugee is a person (an alien) who finds himself outside his country of 
origin or habitual residence for reason of persecution or violation of 
human rights or due to disasters, natural or man made.\textsuperscript{19} Thus refugee 
is a person who has fled from one place to another to escape persecution 
or danger, usually during time of war or political upheaval, 
discrimination against particular racial, religious, or political group has 
historically developed into threats to life and liberty, precipitating the 
flight of refugees, in many instances across national boundaries and

\begin{thebibliography}{9}
\bibitem{16} The Protection of Human Rights Act, 1993, Sec. 2(d).
\bibitem{17} Arun Ray Mahapatra, \textit{National Human Rights Commission of India – Formulation, Functioning 
\bibitem{18} R.C. Chhangani, “Rights of Refugees Under Nigerian Law”, \textit{Journal of Constitutional and 
\bibitem{19} \textit{ibid}.
\end{thebibliography}
without guarantee of asylum. So a refugee can be a man, a woman or a child who has been forced to leave his or her home and country because of well founded fear of persecution on the ground of race, religion, nationality, sex, membership of a particular social group or political opinion. Refugees and displaced persons are among the most tragic victim of social disintegration and human rights violations, and gross social inequalities which uproot people.

Human rights violation and war affects more people than ever before, leading to increased pressure for migration and to the mounting flow of refugees and displaced persons worldwide. An analysis of the refugee problems call for definition of who constitutes a refugee. There have been various attempts to produce a legal definition of refugees. Between the two world wars international instruments on refugees contained ad-hoc and generalized definition of the term. In that time refugees were identified by reference to a certain nationality. Implicitly it was indicated that political events in any country had forced the person to escape to safer place.

A refugee, therefore, may be defined a person who would not like to migrate from his homeland but for reasons beyond his control, political, religious or economic that might rendered his life unbearable and unlivable. The refugees were frightened, frustrated, dislocated and confused, with no ideas of the future. They had lost all they had and had been cut off from their own family members without knowledge of what

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had become of them. So, the refugees, themselves become uprooted people with very little or no state protection and continue to face the hostility of the local people wherever they are forced to stay.

The convention relating to the status of refugees of 1951 states that “refugees is a person who flee from his country of origin due to political or other forms of persecutions and is unable or unwilling to avail the protection of that country and thus loses his nationality.”

Human Rights of Refugees – an International Concern

Main issues regarding refugee is the respect for their human rights. Because refugees are for the most part victim of human rights abuses and more often than not, the great majority of them are likely to suffer a double violation: In the first instance the rights of refugees are violated in the country of its origin and subsequently where they get asylum. There is a little doubt that refugee problem is a human problem and is one of the most dramatic concerns of the contemporary world. This problem cannot be and should not be ignored and tolerated and therefore, must be handled with humanitarian aspects, after all refugees are also human beings, people who are deprived from their basic human rights in their own land.

The global community has shown due concern for refugee’s rights which is evident from the existing international legal frame work on refugees, recognizing a variety of basic human rights to them and shows that there is a global consensus recognizing the human rights of refugee population in a foreign land. The humanitarian aspects of the refugee problem, recognized by the different international organizations also provide respect and protection for human rights of refugees. The

humanitarian assistance of International Organizations is very helpful to solve their problem to some extent.  

Although there are international institutions for the protection of refugees, still ultimately the protection of refugees depends on individual sovereign states that have to follow their respective national legislation. States have the responsibility to protect refugees by reasons of their accession to international instruments, by reason of their own legislation, by reason of their political and moral commitment, or by reason of Customary International Law. The customary international laws applicable to refugees are those pertinent fundamental human rights found in the International Bill of Human Rights. All states should protect the fundamental human rights of refugees under customary international law, if these states are not parties to the Conventional International Law.

United Nations actions for the advancement of the refugees' protection began with the signing of the United Nations Charter. Since then, many international laws and treaties on refugee's rights, were adopted, the United Nations has helped to set a common standard for helping the persecuted people worldwide. The Conventions, or international treaties, that the United Nations had adopted are legally binding on all the signatory nations. The primary standard of refugee's status today is derived from the 1951 Convention relating to the status of

29. Supra n. 27 at 51.
30. Id. at 120.
31. The International Bill of Human Rights is Consisting of:
   a) The Universal Declaration of Human Rights Adopted by General Assembly in December 10, 1948.
32. Supra n. 27 at 120.
33. In October 1945, Charter was brought into force and the United Nations was formally set up.
Refugees. The 1951 Convention for the first time, offered a general definition of refugees, and by the 1967 Protocol, extended its protection to such persons irrespective of nationality or geographical location.

According to Convention Relating to the Status of Refugees: "Refugee" is some one who is outside his country of origin and has a well founded fear of persecution because of his race, religion, nationality, membership in a particular social group or political opinion, and is unable or unwilling to avail himself of the protection of the country, or to return therefore fear of persecution. It must be stressed that basic Conventional Law concerning refugee, hark back to the 1948 Universal Declaration of Human Rights; Article 14, which sets out, "that every one has the right to seek and enjoy in other countries asylum from persecution." In this context, refugee law is essentially human rights based and is without question the international community's single most effective mechanism of human rights protection. The other major attempt by the United Nations to define a refugee was made in 1950 in drafting the Statute of the office of the United Nations High Commissioner for Refugees. Refugee's status under international law and UNHCR's competence were formally treated as closely related. This was because the enumeration in the statute of UNHCR of persons to whom the competence of the High Commissioner shall extend is the same as the definition of the term (refugee) contained in the 1951 convention relating to the status of refugees and its 1967
protocol. Further the idea of regional arrangement for the protection of refugee has been gaining recognition since the adoption of the different international instruments on refugees due to the absence of any effective international agency for the protection of refugees in different region world – wide. Thus, four regional groups have enacted standards of refugee protection that extend the convention definition in ways similar to the evolution of the UNHCR mandate.

These above mentioned conventions and protocol at international as well as at regional level gave immense rights to the people who are living in other countries as asylum seekers. But it is not enough to sign and ratify conventions and conclude bilateral and multilateral agreements if the signatory parties are not determined to enforce such provisions honestly and effectively. The different conventions and treaties that deal with the human rights of refugees are as below:

i) Universal Declaration of Human Rights.


iv) Human Rights of Refugees Under Regional Arrangements:

39. The Regional groups are:
   a) The Organisation of African Unity (OAU).
   b) The Organisation of America States (OAS).
   c) The Council of Europe (COE).
   d) Principles Concerning treatment of Refugees (The 1966 Bangkok Principles)

40. Supra n. 28 at 444.


v) The Organization of African Unity (OAU)\textsuperscript{44}
vi) The Organization of American States (OAS)\textsuperscript{45}
vii) The Council of Europe (COE).\textsuperscript{46}
viii) The Bangkok Principles, 1966.\textsuperscript{47}

To averts the new massive flows of refugees, the governing “International instrumental norms and principles,” in this field are adequate, but there is need of their effective implementation with transparency and accountability. The international community is placing growing emphasis on the provision of humanitarian assistance, protection and creation of conditions which could contribute to the early solution of the refugee problems in the countries of origin.

In the end of 2007, roughly one third of all refugees were residing in countries in Asia and pacific region. According to UNHCR, number of refugees worldwide rises to 11.4 millions compared to 9.9 million in 2006.\textsuperscript{48} These are the figure of recognized refugees by the UNHRC in world today. But the actual number of refugees is more than this.

Today more than 21 millions refugees are concern of the international community because of two basic reasons:\textsuperscript{49}

Firstly, there exist clear humanitarian aspects of matter duly recognized by the Charter of the United Nations which has distinct provisions for respect and protection of human rights of refugees.

\textsuperscript{44} Organisation of African Unity (OAU) Convention governing the Specific aspects of refugee problem in Africa, adopted by the Assembly of Heads of States and government at its sixth ordinary session (Addis Ababa, 10 September 1969) entered into force on 20 June, 1974, UNTS No. 14691, Art XI.
\textsuperscript{45} The Declaration was adopted at the conclusion of a colloquium organized by the National University of Colombia and the Centre Regional de Estudios del Torcer Mundo in Cartagena in Nov., 1984.
\textsuperscript{46} In 1948, the ‘Congress of Europe”, called for the creation of United Europe, including a European Assembly. This proposal was the Origin of the Council of Europe, which has 24 members state.
\textsuperscript{47} Principles concerning treatment of Refugees as adopted by the Asian – African Legal Consultative Committee as its eight session – Bangkok, August, 1966.
\textsuperscript{49} Supra n. 25 at 1.
Second reason which draws attention to the need for recognition of the problem as one of international concern is the basic fact that it inevitably involves the interest of more than one state.

**Refugees in India and Laws Pertaining to their Human Rights**

Coming to Indian Scenario, it is curious to observe how most populous country in the world with limited resources view refugees. The purpose of this study in Indian perspective is to highlight refugee problem, to bring together for the first time the rich studies which have illuminated people thinking about this typical aspects of refugees and their human rights. This is particularly true if one wishes to understand such a problem not just as an academic but as concern of human being. Further it was necessary to understand the role and attitude of Indian government with regard to refugees and their human rights in India.

As India occupies a geostrategic location in South Asia, it makes India bears the brunt of cross-border population movements from neighbouring countries and beyond. Since it gained independence, India has hosted some of the largest refugee movements in history, including the massive flows between India and Pakistan in 1947 during partition, when more than 10 million refugees came in the country after the partition and millions left the country to establish themselves in new established state of Pakistan. India had faced another refugee influx in 1959 of Tibetan refugees with overtake of Tibet by China. After that, another massive influx in 1971 when more than 10 million refugees from the erstwhile East Pakistan which emerged as the Independent State of Bangladesh, reached India as refugees. Then again India was severely affected by the influx of thousands of refugees from Sri Lanka, Afghanistan and Bangladesh since 1983 and 1986 respectively. Apart from these refugees in India, there are also refugees like Iranian, Burmese and Sudanese in small numbers. The Government of India...

50. *Supra n. 27* at 104.
(GOI) has directly assisted groups such as the Tibetans, Sri Lankans and the Chakmas from Bangladesh, while refusing assistance to groups such as the Afghans, Burmese, Sudanese and other, who are taken care of by the United Nations High Commissioner for Refugees (UNHCR) in India.\(^5\)

The question of protection of human rights of refugees has generally been regarded as a vibrant and current issue to study. India presently homes a huge population of refugee and is not free from the problem of refugees. It has given humanitarian assistance and protection to million of refugees who came from its neighbouring countries, namely Pakistan, Sri Lanka, Bangladesh, Afghanistan and Tibet. But in present scenario the movements of refugees and displaced persons have seriously affected India where the total number of refugees and displaced persons are approximately 25 million, which is more than the combined population of Sri Lanka, Singapore, Bhutan and Maldives.\(^5\) The issue of protection, preservation and promotion of their human rights becomes a stupendous and unwieldy task for India.

It is well known that India is not signatory to the 1951 Convention relating to the Status of Refugees, and the Protocol of 1967 and did not formally recognize the presence of the UNHCR on its territory. There is till date no domestic law or procedure governing the protection of refugees in India. Furthermore, there is no binding regional agreement concerning refugees in South Asia as there is in Africa and in Central America. Refugees are simply viewed as foreigners here in India. However, India has acceded to other international instruments whose provisions are relevant to the rights of refugees, for this reason India can not refuse asylum to bonafide seeker's of shelter from other countries,

consistent with India’s commitment to human rights. While India lacks a formal legal framework for refugee protection, its administrative policies over the years have generally been in line with international refugee law principles.

In India refugees are treated under the law applicable to aliens. The principal Indian laws relevant to refugees are: *Foreigners Act 1946 (Section 3, 3A, 7, 14); Registration of Foreigners Act 1939 (Section 3, 6); Passport (Entry into India) Act, 1920; Passport Act, 1967; Extradition Act, 1962; The Protection of Human Rights Act, 1993.* Jurisdiction over issues of Citizenship, naturalization and aliens rests with the Union legislature. However, influxes of refugees have been handled by administrative decisions rather than through legislative requirements. This administrative discretion is exercised within the framework of the 1946 foreigners Act, and refugee policy in the country has essentially evolved from a series of administrative orders passed under the authority of section 3 of the said Act. Despite the de facto protection offered by the Government of India (GOI), the absence of a legislative based refugee protection regime renders the status of refugee population in India somewhat precarious in that it is based on the tolerance and goodwill of the Government in power rather than on the law. The Indian Government’s position in relation to refugees is reflected in the fact that different refugee groups have been granted different rights and privileges, and also different legal status, accorded under domestic laws and regulations. However, although UNHCR refugee certificates are legally recognized by the Government, in practice the Ministry of Home Affairs, the Foreigners Regional Registration office, and the local police

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55. *ibid.*
56. *ibid.*
authorities have taken cognizance of them and 'extended stay' has, to date, normally been granted to UNHCR recognized refugees.\(^{57}\)

Almost all human rights of the refugees are recognized by the Indian Constitution, i.e. *Equality before law or Equal Protection of Law,\(^{58}\) Right to life and Personal liberty, etc.,\(^{59}\) Protection against arrest and detention,\(^{60}\) Right against traffic in human beings,\(^{61}\) Religious freedom\(^{62}\) and Right to constitutional Remedies, etc.\(^{63}\) Indeed, any law or administrative action in violation of these rights is null and void and can be so declared by the courts. In the absence of separate law exclusively dealing with status and rights of refugees, India has a three pronged strategy to deal with refugee problem:\(^{64}\)

i) The Home Ministry deals with the formulation of policies of rehabilitation and settlement of refugees.

ii) The Ministry of External Affairs is empowered with the responsibility of bilateral negotiations and to deal with the issues internationally.

iii) The state governments are entrusted with the responsibility of protection and maintenance of the refugee camps at the local level.

Further the judiciary in India has done matchless service in protecting the people's human right. Courts in the country have been lenient in their treatment of asylum seekers, but they have been essentially hampered by their inability to enforce provisions of international human right's instruments and refugee law norms in the absence of

57. *Supra* n.51 at 398.
59. Article, 21 of Indian Constitution.
60. Article, 22 of Indian Constitution.
61. Article, 23 of Indian Constitution.
62. Article, 25 of Indian Constitution.
63. Articles, 32 and 226 of Indian Constitution.
incorporating national legislation. Even then, the Indian judiciary has commendably intervened in some cases of refugees and asylum seekers in accordance with international refugee law. The Indian judiciary has introduced refugee law into our legal system through the backdoor, as it were, since the front door has been shut by the executive. According to Justice J.S. Verma, "The provisions of the (1951) Refugees Convention and its Protocol can be relied on when there is no conflict with any provisions in the municipal laws." Judiciary has played a constructive role in protecting the interests of the refugees and has sought to fulfill the void created by the absence of domestic legislation by its landmark judgments in the area of refugee protection. The Constitution of India really enables the Indian courts to accord due recognition to human rights. While the executive branch of India does not recognize refugee or refugee law, the judicial wing of our state does recognize refugees and refugee law to a certain extent. The judiciary served to increase awareness of challenges to refugee protection and courts have made tremendous advancements in promoting the interest of refugees.

Tibetan Refugees in India

The main thrust of the study is on the Human Rights of Tibetan refugees in India, in generally and specifically in the Tibetan refugees Settlement at Dharamshala, in Kangra Himachal Pradesh. The study is an attempt knows how far in the absence of specific legislation and statutory provisions for refugees and their human rights India is successfully providing the basic human rights to Tibetan refugees for the

65. Supra n. 54 at 230.
last fifty years, only on the basis of administrative policies and bilateral negotiations. As Tibetan refugees was the first recognized stream of international refugees in India after independence. The study is an attempt to evaluate how the government of India in the absence of a special legal regime on the status of refugees is providing protection, all necessary supports and humanitarian assistance to these Tibetan refugees in spite of India's own hardship and economical constraints.

In March 1959 when People's Republic of China entered Tibet and invaded Tibet forcing the His Holiness the Dalai Lama, the spiritual leader of Tibet to flee across the India frontier with 80 – 85000 Tibetan refugees. The then Prime Minister of India Pandit Jawahar Lal Nehru decided to provide all humanitarian assistance to Tibetan refugees to settle down in India for some time, till their eventual return. These Tibetans were granted official refugee status by the government of India and thus legally permitted to stay in India and are often considered to be in more advantageous position than other refugees in India. Today the support from the government of India had resulted in self-sufficient Tibetan refugees in India and they are by and large content and well settled in 37 Tibetan Settlements in India.

Tibetan refugees were granted asylum by the government of India under the principle of non-refoulement i.e. protection against compulsion to return to home country, has been strictly adhered to. As India has no separate refugee legislation, the law governing the entry stays and exit of refugee is subsumed under the laws governing all foreigners. At the time of initial fluxes of Tibetans in to India, no formal

71. Supra n.27 at 153.
72. The Primary legislative instrument of this foreigner's regime is the Foreigners Act, 1946. The Act gives the Government of India the power to make orders "Prohibiting, regulating or restricting the entry of foreigners into India or their departure there from or their presence or continued presence theirin".
refugee status determination was undertaken and the Tibetans were issued “Indian Registration Certificates” on a prima facie basis under executive decision. These certificates are valid for one year and are renewable. They identify the bearer as “refugee” with “Tibetan nationality.” Children of registered Tibetan refugees have to be in turn registered at age 18. This certificate serves as an identity document and a residential permit. Registration Certificates have not been issued to Tibetans entering the country after the initial mass influxes. Tibetans who arrived in India between 2002 to May 2003, classified in a separate category of long term stay and issue ‘Long Term Stay’ (LTS) permit only for those attending Schools and monasteries. After May 2003 only Special Entry Permit (SEP) be accepted for the purpose of registration. This permit is issued under the categories of either for pilgrimage or education or other for the duration of one month and for one year respectively. Many Tibetan refugees take the longer Special Entry Permit (SEP) and than apply for a Registration Certificate. A travel document called the “Identity Certificates” is also issued by the government of India upon completion of the “Application for Issuance of Certificate of Identity” and after obtaining the “No objection to Return to India” (NORI) Certificate by the concerned state government. NORI’s renewable every two years while the Identity Certificates is renewable after six yeas period.

Initially the Indian government considered Tibetans refugee problem as a temporary one and hoped that they could be repatriated. But on the request of the Dalai Lama, India Under took some long term rehabilitation programmes and Tibetan refugees’ community in India has

73. Supra n.54 at 234.
76. Supra n.54, 235.
been rehabilitated mainly in three sectors in order to make them self-sufficient during their period of exile, namely.\textsuperscript{77}

a) Land based agricultural sector i.e. settlements in agricultural, horticulture or animal husbandry.

b) Agro-industry based sector i.e. the creation of small industries to be run by Tibetans, and

c) Handicraft based sector i.e. establishment of centers for training refugees in the production and sale of Tibetans handicraft and carpet weaving.

The refugees, who are living in scattered camps,\textsuperscript{78} are very much involved in street marketing, selling woolen sweaters, seasonal goods, running small petty shops and restaurants etc.\textsuperscript{79}

In the recent years the increasing population of Tibetan refugees has become a problem to India, in addition to the increasing number of birth in exile, there is a constant flow of new Tibetans refugees from Tibet since 1980. Moreover, the free environment, freedom to practice democratic rights, education, medical facilities, attracts Tibetans to escape India. Further, India provides the basic needs of Tibetans, mainly shelter and opportunity for an economic livelihood.\textsuperscript{80} The number of Tibetan refugees in India fluctuates because of the arrival of number of refugees from Tibet every year and the return of Unknown numbers to Tibet who came for pilgrimage or education purpose only.

Many national and international voluntary agencies had provided and become concerned with relief efforts.\textsuperscript{81} United Nations High Commissioner for Refugee (UNHCR) provided assistance to the Tibetan

\textsuperscript{77} Rajesh Kharat, Tibetan Refugees in India, 2003, p. 56 also see, T.N. Giri, Refugee Problem in Asia and Africa: Role of the UNHCR, 2003, p. 201.

\textsuperscript{78} Scattered Camps are a spontaneous gathering at one place, Refugees in Scattered camps do not have consent from the local people and they do not get any economic opportunities by government as cited in Rajesh Kharat, Tibetan Refugees in India, 2003 p. 56.

\textsuperscript{79} Supra n.24 at 208.

\textsuperscript{80} Supra n.77 at.80.

\textsuperscript{81} Supra n.70 at 294.
refugees in India from 1964 – 1974. The UNHCR has been instrumental in helping the refugees' secure safe passage from Nepal to India. After the escape of the Karmapa Lama from Tibet, the refugees are facing problems in Nepal, such as arrest, non-cooperation at the Tibet – Nepal border, and forceful repatriation to Tibet. These problems were handled by the UNHCR on humanitarian grounds. Today with the assistance of Government of India, State government, foreign donor agencies and with hard work, faith and tenacity of Tibetan refugees themselves, 37 refugee settlements have been successfully established in India in the state of Jammu and Kashmir, Himachal Pradesh, Uttar Pradesh, Sikkim, West Bengal, Orissa, Madhya Pradesh, Karnataka and Arunachal Pradesh.

According to this study, Tibetan refugees in India are generally able to lead productive and peaceful lives and Government of India does not harass or mistreat Tibetans, nor does it threaten to return Tibetans, to Tibet. Tibetan refugees in India are living here with human dignity, they are free to professor/practice their religion, getting medical facilities, having right to travel, right to rationing, having right to identity papers, right to judicial remedy, right to work in Indian right to education etc. Almost all the basic human rights are available to the Tibetan refugees despite there is no legislation in India dealing exclusively with the status and rights of refugees. They are quite happy and contented with the rights provided to them in exile. Various authorities of Tibetan government and Tibetan refugees at the Dharamshala Settlement admitted that the government of India and the people of India accepted the new challenges and adopted generous attitude towards them on humanitarian grounds.

While India has a human rights law regime, an effective National Human Rights Commission and an innovative creative and activist judiciary, yet now there is urgent need for a domestic refugee law regime,
because with a continuously enlarging population of refugees and asylum seekers, a large section of who may not be repatriated in the near future, a uniform law would allow the government to maintain its huge non-citizens population with more accountability and order apart from allowing them to enjoy uniform rights and privileges. This will be one step towards supporting a humanitarian law for those who need it. The current watchdog of India’s refugee policy, the National Human Rights Commission (NHRC), had made numerous recommendations advising the formulation of such a law, in accordance with the articles of the convention, but with Indo-centric nature and content. The national Human Rights Commission (NHRC) had proposed a national law to the government and it is still under consideration. India now needs to consolidate, streamline and harmonies into legislation, its long tradition and experience in accommodating the inflow of refugees, its faith in the principles of non-refoulement and its commitment to uphold the principles of international human rights.

REVIEWS OF LITERATURE

The review of allied literatures as well as previous research work is of paramount importance in research endeavour. Under this review of related literature an attempt has been made to review literatures

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85. ibid.
86. In 1996, a Pilot group led by Justice P.N. Bhagwati Former Chief Justice of India drafted a Model National law on Refugees and presented it for appraisal at an earlier SAARC LAW/UNHCR seminar held in May 1997 at New Delhi. An amended draft law was formally adopted at the Fourth Regional Consultation held Dhaka in November 1997. Consequently, the Fifth Regional Consultation held in Kathmandu in November 1998 agreed that the draft law may be individually taken up by members with their, respective countries for further country-specific refinement and consideration at the national level. The Proposal was never considered by parliament. The draft, besides specifying the rights and duties of refugees, is aimed at protecting refugees from being forced home to face unsafe conditions or persecution as cited in Parmod Mishra, “Human Rights in South Asia”, 2000, p. 87 also see, Anil Shrivastav, “Need for domestic: Refugee Law”, Halsbury’s Law Monthly, December 2008; p. 2, http://www.halsbury.in, visited on 01.08.2009.
available so as to draw some meaningful guidelines for the present research work. For the purpose of the present study all the writings and studies were divided into three broad categories:

i) The studies depicting the human rights of refugees in general,

ii) The studies dealing with the human rights of refugees in India and

iii) The studies dealing with the Tibetan refugees and their human rights in India.

I. The theoretical perspective of human rights of refugees at international as well as at national level are represented in a large number of writings since its very inception.

Manik Chakrabarty (2001) has done an extensive and in-depth study of the human rights of refugees. Author has highlighted and expounded the basic norms of international refugee law. He further concentrated on the present Indian practices of the international refugee law and has concluded the study with an appeal to the India Government to ratify the 1951 UN Refugee Convention

Harun Ur Rashid (2000) has studied briefly the basic issues of refugees under international law and the position of Bangladesh on the refugee issues. Author explained the “Principle of Non – refoulement” and its legal norms. He examined the causes of the increase in the number of refugees with various other issues. Author has appreciated the role of UNHCR for providing humanitarian assistance to refugees.

T.N. Giri (2003) enabled the readers to understand the refugee problem from international perspective. Author examined the socio-political and economic reasons which cause refugee problem. He studied the specific refugee situation in the Third World Countries, Keeping in

view the grand efforts ever undertaken by the World Organisations to help refugees.\(^{89}\) He also studied the structural and functional aspects of the office of the United Nations High Commissioner for Refugee (UNHCR) with its contribution in providing relief to millions of refugees over decades.\(^{90}\)

Darren J. O’ Byrne (2004), discussed how human rights can be protected and how human rights awareness can be promoted with ultimate goal that is the eradication of all forms of human rights abuse. Author studied the contemporary issues and human rights in theory and practice.\(^{91}\) He discussed the refugee problem in the ancient, medieval and early modern world. Author considered 1951 UN Refugee Convention’s definition of a refugee as possibly outdated.\(^{92}\)

U.N. Gupta (2004), has made in-depth study of recent developments, particularly since 1970, in the international concern for promotion of basic human rights within and beyond national boundaries. Author has highlighted the causes and concerns of the refugees. He has equated the terms asylum and refugees and highlighted the human rights of the refugees in the light of international conventions.\(^{93}\) He has suggested solutions to the problem of international refugees.\(^{94}\)

Justice Palok Basu (2002) adequately discussed the concept of human rights in the constitution of India. Author touched in detail all

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89. Particularly the case of East – Pakistani (Bangladeshi) refugees as the biggest war refugee problem handled by UNHCR, Afghan refugees in India, Pakistan and Iran and Somali refugees in Ethiopia, Kenya and Djibouti, Sri Lankan Tamil refugees in Indian and the Tibetan refugees in India and Nepal.


91. Like censorship, torture. Slavery, genocide, apartheid, refugees political prisoners, rights of women and children, death penalty, etc.


the aspects of human rights of different subject in India. Author has discussed India’s long historical tradition of welcoming refugees. He discussed the implementation of international Humanitarian Treaties and conventions in India with the latest judicial decision on the issues of refugees. Principle of non – refoulement had also been discussed.

B.C. Nirmal (2001), has discussed some of the basic human rights of refugees and their implications in the area of refugee protection. Author did not considered problem of refugees as a humanitarian one, but stressed on the integration of the human rights law and humanitarian law with refugee law. He gave a brief account of the impact which human rights principles have made on the current programmes and policies of UNHCR.

Peter Macalister - Smith (1997) studied the global causes responsible for the mounting flow of refugees and displaced person. Author described in detail the policies of UNHCR for refugee protection and accepted that there is a wide gap in respect of the significance of UNHCR between the developed and developing countries. He gave the further prospects and limitation of UNHCR in respect of humanitarian

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95. i.e. Human Rights of Juveniles, child exploitation, child labour, Right to life, Backward classes and scheduled tribes, Gender Equality, crimes against Women, Refugee, Foreigners, Speedy trial, etc.


98. That is
- Right to Protection Against Refoulement,
- Right to seek asylum
- Right to Equality and Non Discrimination
- Right to Life and Personal Security
- Right to Return
- Right to Remain, etc.

assistance and protection for refugees in the absence of consolidated legal frame work.\textsuperscript{100}

Harpal kaur Khera (1990) concentrated her study on the rights of refugees in the country of asylum. She stated that there is no doubt that the various treaties and instruments on refugees have made a modest contribution to the improvement of the position of individual in international law vis-à-vis his state. Author has expressed the view that the office of the UNHCR as a supervisory body for the protection and promotion of the rights of refugees can and does play a useful role.\textsuperscript{101}

B. Sen (1992) has analysed the status and treatment of refugees under Bangkok Principles.\textsuperscript{102} He stated that since the Bangkok Principles were adopted the problem of refugees has increased both in its enormity and complexity. He further stated that though principles had been reviewed from time to time and new principles had been incorporated,\textsuperscript{103} but that is not enough. He was of the view that law must be developed and adopted to meet the needs of the new situations.\textsuperscript{104}

Joan Fitzpatrick (2000) briefly discussed whether formalization of temporary protection, at the Universal or regional level is either likely or advisable. He considered temporary protection as a means to handle ass influx and described it as a regional solution to forced migration. Author was of the view that the uniform standards of treatment for temporary


\textsuperscript{102} In March 1964 the Government of the Arab Republic of Egypt by a reference made to the Asian – African Legal Consultative Committee (AALCC) under a mandatory provision of its statutes, requested it to consider the question of status and treatment of refugees and make its recommendation there on. The issues before the committee were, however, broadened to cover wider aspects of refugee situations generally and more particularly those Asia and Africa, at the initiative of the United Nations, High Commissioner for Refugees, which had led to the adoption of a set of recommendations known as the “Bangkok Principles” in August 1966.

\textsuperscript{103} That is the acceptance of the ‘doctrine of non – refoulement’ in the practice and the ‘Principle of Burden Sharing’ has been translated in to a legal norm.

protection of beneficiaries can be articulated, taking into consideration both economic, social and cultural guarantees of the 1951 Refugee Convention and provisions of general international human rights law.\textsuperscript{105}

Dr. Naim Ahmed (2006) discussed the status and role of international refugee Law. Author stated that the International refugee law mainly comprised international instruments that define basic standards for the treatment of refugee which was developed to protect human being in situation of persecution. He explained that without signing the convention on the status of Refugees, states are obliged by the rule of customary international law.\textsuperscript{106}

M. Afzal Wani (1999) has made an attempt to overview the developments in international human rights instruments, which provided the rights to refugees. Author stated that number of international instruments showed global community’s concern for the refugee’s right but advantage, should be available only to the real refugees as per the standards prescribed by the 1951 convention on the status of Refugees. He appreciated the UNHCR, which has played a significant role in the resolution of refugee crisis in different parts of the world.\textsuperscript{107}

Brain Gorlick (2000) provided an overview of the current barriers to refugee protection. Author reviewed the system of refugee protection which has been established by international law and legal obligations of states under international human rights law. He examined the role of the principle UN human rights mechanism\textsuperscript{108} in the protection of refugees and stated that UN human rights enforcement mechanism can, in practice, be effectively used to uphold and enhance the protection of


refugees. He concluded with an argument that UNHCR and other international bodies should continue to actively develop and promote the practical and analytical links between human rights and refugee protection. 109

Roque Raymundo (1996) focused his study on refugees and their legal conditions in Asia. Author analysed the displacement of people from the country of origin their period of entry and stay in country of asylum. He examined the broad human rights aspects of the refugee problem. He stated that in Asia, majority of states have not acceded to the international instruments governing the protection of refugees, 110 which deprived the refugees from their basic human rights. 111

Anna C. Bramwell (1988) compiled different works on refugees. Author edited a series of case studies of the creation of refugees and their treatment in host countries. He enabled readers to understand that rather than lofty humanitarian principles, internal politics and economic consideration has been decisive in determining refugee policies over much of this century. He highlighted the creation of United Nations and its refugee agencies, the development of inter-governmental measures and the role of voluntary and religious institutions. 112

Nagender Singh (1984) provided an overview of the activities of United Nations High Commissioner for Refugees (UNHCR) since its inception. Author explained the mandate of the office and the successive resolutions which expanded the High Commissioner’s role with its administrative and financial structure as well as the international instruments related to the status of refugees. 113

110. i.e. The convention relating to the Status of Refugees, 1951, and the 1967, protocol which removed the temporal and geographical limitation of the convention.
112. Anna C. Bramwell, Refugees in the Age of Total War, 1988, see pp. 16 – 20.
Satish Kanitkar (2000) has studied the refugee issues in a limited context of South Asian region. \(^{114}\) Author highlighted the lack of an adequate legal regime to ensure the rights of refugees, who as aliens are often among the most vulnerable member of society. He explained how refugee lost the protection of their basic rights in the country of origin and further the inadequacy of the legal regime in the host countries where refugees got asylum. \(^{115}\)

Besides this, seminars, conferences and workshops provided information and description of status of refugees and their rights at international level as well as the development of regional approaches to refugee problems. \(^{116}\)

II. The rich aspect of theoretical writings on the human rights of refugees in India indicates its popularity among academicians from different social arena such as law academics, journalism and social sciences, etc.

Ranbair Samaddar (2003) compiled different studies on refugees in India and considered refugees asylum as an integral part of Indian culture and civilization. The authors enabled readers to understand India's contribution in the area of protection and assistance to refugees. The authors reconstructed and analysed the periodic presence of refugees in Indian Society and highlighted India's generous humanitarian

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114. The generosity of South Asian Countries in granting asylum to refugees despite their strained resources and ad-hoc policies towards refugees has also been explained.
    b) Fourth Informal Consultation on Refugees and Migratory Movement in South Asia, Dhaka, 10-11 November, 1997.
    c) Round Table Workshop on Refugees in the SAARC Region: National Legislation on Refugees, 30th April, 1999, New Delhi.
tradition of receiving refugees. Some shortcomings in the refugee policies of India have also been highlighted.\textsuperscript{117}  

Sanjay Parikh (2001) studied the issue of refugees at international as well as at national level. Author considered the Universal Declaration of Human Rights (UNHR) as one of the major instrument which further helped to adopt Convention and Protocol for the status of refugees.\textsuperscript{118} He stated that India has no law or consistent policy to deal with the problem of refugees, only the courts and National Human Rights Commission which are enlarging the scope of Article 21 of the Constitution is giving protection to the refugees. He stressed on the need of policy or legislation for the enforcement of human rights of refugees in India.\textsuperscript{119}  

T. Ananthachari (2001) stated that in spite of India’s own security concerns, particularly in the last couple of decades, and pressure of population and other economic factors India continues to take a humanitarian view of the problem of refugees. Author stated that even though India has not enacted a special law to govern ‘refugee’ but some important steps and measures have been taken by India to fulfill its international obligations in respect of refugees. Author felt that there is need to evolve a practical balance between humanitarian obligations on the one hand and security and national interest on the other. He stated that when a separate ‘Refugee Law’ for the country is enacted, the national and security interest should be given due consideration.\textsuperscript{120}  

Manoj Kumar (2001) discussed the legal status of refugees under various international legal framework. Author admitted that India lacks

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a comprehensive refugee policy though the provisions of international conventions on refugees are followed by India in practice. He stated that though international refugee law regime recognized a very broad concept of human rights but highlighted some problems.\textsuperscript{121} He stressed the need of global consensus for recognizing the human rights of refugees.\textsuperscript{122}

Tapan K. Bose (2001) studied the policies and laws applicable to refugees in India. Author described the rights available to refugees under the Indian constitution and appreciated that National Human Rights Commission is functioning effectively as a watch dog for the protection of refugees. He stated that while India is following a programme of humane treatment of refugee, there is still an absence of uniform treatment of different refugee groups with respect to rights. He stressed the need of a national law for refugees in India.\textsuperscript{123}

Anil Shrivastav (2008) gave an opinion that India now need to harmonise into legislation its long tradition and experience of accommodating the in low of refugees. Author stated that though India is not party to the 1951 convention on the status of refugees get India never refused or to acknowledge the rights of refugees. He stated that while India has a human rights law regime, an effective National human Rights Commission and innovative and creative judiciary, now there is urgent need for a domestic refugee regime to uphold the principles of international human rights for which India is committed.\textsuperscript{124}

Isha Bothra (2007) studied Statutory as well as Constitutional provisions, protecting rights of refugees in India. Author explained the

\begin{itemize}
  \item \textsuperscript{121} i.e. the definition of ‘refugee’ given in the convention is quite limited, many important refugee rights are not absolute. Most of them are subject limitation imposed by the legal instruments themselves, like: security of state, safety of own community, public health, public order, etc.
  \item \textsuperscript{124} Anil Shrivastav, “Need for Domestic: Refugee Law”, Halsbury’s Law Monthly, \url{http://www.halsburys.in} visited on 01.08.2009.
\end{itemize}
Indian Government's practice to deal with refugee and appreciate the Indian courts for their wider and more humane approach to protect the rights of refugees in India. She concluded the study with a view, that there is a need for a stable and secure guarantee of refugee protection in India.\textsuperscript{125}

Arjun Nair (2007) stated that Indian legal system has no uniform law to deal with its huge refugee population. Author discussed whether a uniform national law would be beneficial to the interest of the three main parties involved in refugee policy in India i.e. the Government of India, the UNHCR and the refugee communities themselves. He discussed the current condition of refugees in India, the rights conferred upon them, the political objections to the framing of a uniform law. He summed up his study with a opinion that the need for a refugee law is immediate in India.\textsuperscript{126}

Rajeev Dhavan (2004) considered refugee problem as a global one. Author stated that India is a refugee prone region and needs to review its ambivalent refugee law policy, evolve a regional approach and enact legislation to protect persecuted refugees. He considered it as a one step towards supporting a humanitarian law for those who need it.\textsuperscript{127}

H. Knox Thames (1999) assessed the treatment given to the refugees in India without having specific legislation for them. Author stated that India's lack of clear standards for the treatment of refugee groups, is resulting in violations of the international norms for the treatment of refugees. He considered India's policies as discriminatory and inequitable, even to the same group.\textsuperscript{128} He concluded his study with the suggestion that India should adopt basic standard of treatment for

\textsuperscript{125} Isha Bothra, "The Law, Policy and Practice of Refugee Protection in India", 2007, \url{http://www.legalservice.india.com} visited on 21.07.2009
\textsuperscript{128} In this respect, author discussed in detail Tibetan refugees in India prior to 1980 and after 1980.
the refugees and must improve its domestic laws. He further stated that India should reform its refugee policies and accede the Refugee Convention or its Protocol.\textsuperscript{129}

V. Suryanarayan (2001) stated that giving asylum had been an integral part of Indian tradition, but in modern times, the movement of refugees and displaced person has seriously affected India. Author stated that there is urgent need of the establishment of a fairly well experienced bureaucratic machinery conversant with the problems of refugee administration. He appreciated the judiciary for playing a constructive role in the protection of the interests of the refugees. He stressed the need of a national legislation for refugees.\textsuperscript{130}

III. Tibetan refugee’s issue being a very vibrant topic considerable number of writing have been found on the topic, where various aspects of Tibetan refugees in India such as migration to India, settlements, treatment by Government of India, humanitarian assistance, education, religion, etc. have been discussed in detail. Hence in view of the dearth of legal literature, heavy reliance is placed upon the sociological literature.

Chanakya Sen (1960) offered a documentary account of the Tibet that disappeared in the fire and smoke of the March Rebellion and on the consequence of its disappearance. Author cited the treaties, debates, discussion, resolutions and statements made by prominent men and organizations, in India, China and the United Nations.\textsuperscript{131}

Gyatsho Tshering (1968) discussed how Tibetans after their migration to India, gradually recognized their disrupted lives in exile. The

\begin{footnotesize}
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    \item Chanakya Sen, Tibet Disappears: A Documentary History of Tibet’s International Status the Great Rebellion and its aftermath, 1960 see. pp. 94 – 97, 98 – 106.
\end{enumerate}
\end{footnotesize}
author has also discussed the settlements and number of institutions established for the educational needs of the younger generations. Author also appreciated the great efforts made by the Tibetan refugees for the preservation of their cultural and religious tradition.\textsuperscript{132}

T.C. Palakshappa (1976) in his empirical work studied the adjustment patterns of Tibetans in Mundgod to the socio cultural and physical conditions prevalent in the local area with the identity change\textsuperscript{133} of Tibetans in exile and the host group.\textsuperscript{134}

Tanka B. Subba (1990) in his empirical work studies Tibetan adaptation to new physical and socio-cultural environment without losing their sense of Tibetan identity. He discussed the new challenges they are facing and has made an attempt to make some generalization about the Tibetan refugees as a whole, including these living outside India.\textsuperscript{135}

Jyanti Alam (2000) presented study on the Tibetan Society in exile (India) with special attention to the position and the socio-economic condition of Tibetan women. Author discussed and analysed the gender equal society that already existed among the pre-1959 migrants in the Darjeeling district of West Bengal. Author admired the Tibetan society in exile as a model in gender equality and equity.\textsuperscript{136}

Tsewang Phuntso (2010) has made an attempt to know, how after four decades in exile, the Tibetan refugee community has managed to rebuild their lives in a complete alien environment. He credited the hard-work, spirit of independence and adaptability for the success of Tibetan refugee community in India. He felt that there is a need to review and

\begin{itemize}
\item \textsuperscript{133} T.C. Palakshappa, \textit{Tibetans in India: A Case Study of Mundgod}, Tibetan, 1976, pp. 1-21.
\item \textsuperscript{134} The Identity change Primarily of Tibetans i.e. Changes in how Tibetans see themselves in exile and secondarily of the host group i.e. how their view of themselves may be modified in situations of contact with migrant group.
\item \textsuperscript{136} Jayanti Alam, \textit{Tibetan Society in Exile}, 2000 see pp. 15 – 24, pp. 27 – 44, pp. 58 – 68.
\end{itemize}
redesign the rehabilitation schemes in exile with the increase in number of new arrivals from Tibet.\textsuperscript{137}

Dr. Nawang Jorden (2004) has done a comprehensive study on the education of Tibetan refugee children in exile. Author stated that the objectives of having separate schools for Tibetan refugees were to provide an education that would make them understand and appreciate their own culture, religion and language. He stressed the need to redefine goal of Tibetan education to be successful in life in exile.\textsuperscript{138}

Suzan Okar (2007) examined the situation of Tibetan refugees from the very beginning of the exodus and the different phases of their displacement. Author appreciated their adjustment in the Indian environment and their Endeavour to be self-sufficient and not becoming burden on the host country. He has also discussed the relationship between host and refugee community.\textsuperscript{139}

Rajesh Kharat (2003) has made an attempt to find out how government of India managed to assist and rehabilitate the mass influx of Tibetan refugees with available resource. Author surveyed the grievances of Tibetan refugees who are scattered all over India and yet not rehabilitated in the settlement camps. He also investigate how far Tibetan refugees were successful in preserving and protecting their unique culture, art and tradition while in exile (in India).\textsuperscript{140}

Jassica Falcone, Tsering Wang Chuk (2008) examined to what extent have Tibetan refugees embraced Indians, and conversely, to what extent have Indians embraced Tibetan refugees. Author investigated the relationship between Tibetan in exile and India through attention to the documentation of refugees by Tibetan and Indian administration. Author


\textsuperscript{140} Rajesh Kharat, \textit{Tibetan Refugees in India}, 2003, pp. 1-94.
discussed the importance of legal citizenship or the lack there is to Tibetan refugees in India.\textsuperscript{141}

Thus from the review of literature available, no empirical study with reference to the Human Rights of Tibetan refugees has been conducted so far. There are few studies relating to flight of Tibetan from Tibet, etc. of Tibetans living in exile (India). The researcher has not come across any empirical legal writing in India focusing attention on the human rights of Tibetan refugees in India. Hence merit of the work lies in the selection of Dharamshala settlement, Himachal Pradesh of Tibetan refugees and enjoyment of human rights by them.

\textbf{Rationale for Selection of the Theme}

Human Rights of refugee are a topic of growing importance and significant efforts have been made towards the promotion and protection of human rights of refugees' world wide. Basically it is an important subject in the present scenario, full of thoughts and impressions. A lot of work has already been done on this complex problem. But no independent and exhaustive study on the Tibetans refugees and in respect of their human rights in exile has been done. Although some scholars as mentioned in the bibliography have made an attempt, but very few of them had done in – depth analyses of Tibetan refugees and their human rights in India. The study of the Human Rights of Tibetan refugees in India is important, because it exhibit how India assisted Tibetans refugees and provided them all basic rights despite being a non party to Refugee Convention of 1951 and without having a specialized statutory framework in India for refugees. Based on the findings of this research, cone thrust areas for future research can be made.

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CHAPTER - I

Objectives of the study

Keeping in view the importance of the topic, the researcher has undertaken the present study with the objective to see that to what extent the Human Rights mentioned in International documents are available to the refugees at the place where they get asylum. An endeavour has been made to assess the practical implementation of the convention on the status of refugees and its 1967 protocol by the countries, which have signed and ratified these international documents. The earnest attempt has been made to recognize, the humanitarian nature of the problem of refugees. This study is an attempt to understand the position of refugees at international scenario and to ascertain whether the Human Rights of refugees have progressively emerged as the new norm of customary international law.

The major focus of the study is centered on the promotion and protection of the human rights of Tibetan refugees in India. As India is not party to the Convention, it follows some internationally accepted and recognized standards which is often termed as the customary international law, further India recognized the principle of non-refoulement which means that no person may be returned to a territory where he or she may be exposed to persecution. Keeping this in mind the researcher had made earnest efforts to find out the extent to which government of India have been successful in bringing the desired results in the light of constitutional as well as International Commitments done by India and thereby see as to how far these efforts have enabled the refugees in India to live as a human being with dignity.

The study further evaluates the judicial trend for protection preservation and extension of refugee's human rights in India in the light of judicial opinion expressed by judiciary in numerous judgments of the apex court of India.
The researcher has also undertaken the present study with the following objectives:

1. To highlight the position of refugees in India and world over.
2. To examine the human rights of refugees in Indian law as well as in other International documents.
3. To critically evaluate the judicial attitude in the furtherance and extension of refugee's human rights in India.
4. To critically examine the existing legal framework and to find out defects and drawbacks.
5. To examine the status of Tibetan refugees and their human rights.
6. To explore the legal possibilities, for improving the conditions of refugees in India and world over.
7. Lastly, some suggestions have been made to improve upon the existing legal framework for protection and promotion of Human Rights of refugees.

Hypothesis

This study shall proceed on the following hypothesis:

◆ That the human rights of refugees' have progressively emerged as the new norms of customary international law.

◆ That Indian judiciary is recognizing the importance of international documents for promotion and protection of refugee’s human rights and is giving effect to the provisions of the documents in letter and spirit while interpreting the constitution and the laws.

◆ That the existing legal framework national as well as international, governing human rights of refugees need modification in order to overcome drawbacks and defects.

◆ That the human rights of Tibetan refugees are satisfactorily protected in India, but there is urgent need to formulate policies and programmes for them with the increase of Tibetan refugee’s population in India.
Universe of the Study

As the problem of refugees is growing one, much attention has already been given to the rights of refugees by International Conventions and Protocol. To find out how far these Conventions and protocols are implemented truly, this study has been undertaken. This study is also to evaluate the Constitutional set up which India has today to provide some basic rights to refugee.

The study undertaken will focus on the Human Rights of Tibetan Refugees at Dharamshala in the State of Himachal Pradesh. The reason to confine this study to Dharamshala Tibetan refugee settlements is that it is one of the most populated settlements of Tibetan refugees in Himachal Pradesh and is the head quarter of Tibetan Government – in – exile. Bearing the limitations of time and resources in mind, the researcher has restricted the scope of empirical study to Dharamshala settlement only since it is difficult to study the 37 settlement as a whole. Regarding the research it is important to state the limitation under which it has to be conducted. The data was collected through questionnaires, interview schedule and observations schedule.

Methodology

The research methods employed in this study are descriptive and analytical.

Bearing the limitations of time and resources in mind the researcher has restricted the scope of present study to Dharamshala Tibetan refugee settlement in District Kangra, Himachal Pradesh, for reasons discussed under the sub-title “Universe of the Study” above. The study comprises of two parts – The first part contains a detailed discussion on the theoretical aspects of International Conventional Law on refugees, United Nations treaties and covenants which contains provisions, directly related to the rights of refugees along with other non – political agencies working for refugees on humanitarian grounds,
worldwide. This theoretical concern continue further on the constitutional set – up and statutory provisions which we have in India along with Non – governmental agencies, National Human Rights Commission and judiciary to provide and protect human rights of refugees respectively. The discussion is bases on secondary data collected from various sources mainly from the literature available in the libraries, United Nations Reports regarding Human rights of refugees, data of Non – governmental Organisations (NGOs), court judgments, Newspapers, Reports, articles and other relevant documents including review of books, legal and extra – legal relevant literature shall be studied, surveyed and scanned for the present study.

The second part of the present work is exclusively devoted to the functional aspects of the existing laws governing human rights of refugees with a view to analyze the impact of these laws i.e: National as well as International on Tibetan refugees’ life in Dharamshala settlement. The major part of the present research work dwells on the investigation. An earnest efforts has been made to collect first hand information from the Tibetan refugees at Dharamshala Settlement. The researcher has confined the present study to this settlement on the reasons that population of Tibetan refugees in this settlement is quite high and it is the head quarter of Tibetans government in exile. Further it is neither feasible nor desirable to contact all the Tibetans for the purpose of data collection. The study therefore is limited only to the Tibetan population accessible to researcher. The sample population roughly constitutes the 10 percent of the population on random sampling basis to ensure the correctness of the study. It includes Tibetan refugees of all age group i.e. above 18, who were available and have shown keen interest in this study.

Sources of Data
The tool for the collection of data includes:

- Collection of information from the refugees through questionnaire,
Interviews of the Tibetan administrative authorities as well as local administrative authorities at Dharamshala.

Researcher's personal observation.

The language used for all aspects of field work is English because maximum numbers of respondents speak and understand English well. Exceptions occurred when interacting with old aged Tibetans who were familiar with their Tibetan language, particularly those who have fled from Tibet and not educated in India. In such settings the assistant was required.

FRAME WORK OF THE STUDY

The present study is divided into seven chapters:

Chapter one is devoted to the general introduction of the subject. It explains the scope of the study and provides the conceptual basis by discussing the problem. In addition it describes the objectives, methodology and other aspects of study in general.

Chapter two focuses on the historical background and development of the concept of human rights and refugee problem in general. It explains the causes of refugee problem. The genesis of human rights and refugee problem in India is separately discussed. In addition to these the roots causes of Tibetan's asylum in India have been described in detail along with the historical background of Tibetan Settlement at Dharamshala.

Chapter three explain the concept of refugee law. It discuss the criteria of determining the refugee status and situation in which one can be deprived of refugee status. Further chapter explains in detail the
human rights of refugees as mentioned in various international as well as regional instruments, covenants, treaties, documents, etc.

Chapter four critically examines the legal status and rights of refugees in India. An attempt has been made to discuss the human rights mechanism in India in detail with constitutional as well as statutory provisions. Chapter describes the role of judiciary in protecting the interest of the refugees. It also discussed the humanitarian assistance provided by the UNHCR in the protection of rights of refugees. Finally an attempt has been made to address the need of a national refugee law.

Chapter five of the study narrates the role of the Government of India in promotion and protection of Human Rights of Tibetan refugees. An attempt has been made to discuss the legal status of Tibetan refugees along with rehabilitation and settlements of Tibetan refugees in India. Chapter highlighted the humanitarian assistance provided to Tibetan refugees by national as well as international agencies.

Chapter six is based on the empirical study carried out in Tibetan refugee settlement at Dharamshala specifically. An endeavor has been made to know the status of Tibetan refugees and human rights availed by them as a refugee in India. The study is an attempt to evaluate how far the government of India is successful in providing protection, all necessary support and humanitarian assistance to Tibetan refugee without having any specific legislation and statutory provisions for refugees and their human rights.

Chapter seven concludes the study with a summary of the discussion and tries to make some concrete suggestions. It summarizes
the strength and weaknesses of the laws and makes some suggestions and recommendations for the better protection of the human rights of the refugees. Further some additional information on the topic has been included in the annexure and bibliography appended at the end of this study.