HUMAN RIGHTS AND REFUGEES PROBLEM: A HISTORICAL PERSPECTIVE
CHAPTER II

"HUMAN RIGHTS AND REFUGEE PROBLEM: A HISTORICAL PERSPECTIVE"

PRELUDE

The refugee problem is a serious international issue with diverse and complex socio-political, economic and religious reasons contributing to it. People are being uprooted from their homes and face hardships and lead miserable lives. The flight of these people in quest of refuge is as old as history and so are the inevitable sufferings of the uprooted and homeless. Forced by Man’s inhumanity to man, to flee the ravaged lands of their birth, they are in search of a dignified existence, following only one law: the law of survival. They are the people fleeing from their country, because of fear or have suffered oppression, they are the people who have persecuted in their own land, they are the people who discriminated in there own land, they are the people who discriminated in their own place, they are the people who denies their basic rights in their own home.

Further the struggles of these uprooted people from their usual habitats due to violation of their human rights are never ending because they have another war to fight to get their basic human rights in the place where they get asylum. This situation further adds to their misery. A person becomes refugee when he or she can not safely return home by reason of a genuine risk of serious human rights abuse. So the human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safe and voluntary return home.

India is one of the few countries in the world which has experienced refugee situation in a gigantic scale during the last six decades. India presently homes a huge population of
refugee. Regarding refugee problem there was moral and philosophical basis in ancient Indian thoughts. India had a notable tradition of generosity and deep rooted culture of compassion for refugees. India shelters one of the largest refugee populations in the world. Tibetans are the largest refugee group in South Asia and majority of them live in India. India gave asylum to Tibetan refugees in 1959 when Dalai Lama and over 10,000 of his followers took asylum in India.\(^1\) India has quietly shown its support for "Tibetans" human rights. Before drawing a detail study about the treatment met out to Tibetans refugees in India and their Human Rights in India, it is of course important to know the development of human rights and refugee's problems. As both are interlinked with each other and further to know the historical background of Tibetan Refugees and the causes of their flight of from their native land to India.

**Origin/Evolution of the Concept of Human Rights**

The discourse on human rights may be a relatively modern creation, but the ideas Underlying it can be traced back at least as far as the classics if not before. Indeed, most ancient religions included codes of practice which might be interpreted as implying certain rights, even if these were largely stratified. Ancient and classical philosophers also contributed to this discourse.\(^2\) So the human rights are a concept that has been constantly evolving throughout the human history. They have been intricately tied to the laws, customs and religions throughout the ages. The phrase "Human Rights" was adopted only in the present century from the expression previously known as "Natural Rights" or

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"Rights of men". The recorded history and the ancient scriptures, there have been reference to the basic human rights, though they were not referred to by that name. They were termed as 'jus natural' for Romans, 'lex naturalis' for medieval Christian thinkers, 'Rita' and 'Dharma' for ancient Hindus, and in christened as 'natural law' by modern jurists. The concept of human rights has gradually evolved over the past several centuries, but the concern for Human Rights become popular particularly in the twentieth century.

The origin and development of human rights is a mute witness to the most inhuman sufferings that man has inflicted on man. The roots for the protection of the rights of man may be traced as far back as in the Babylonian law, Assyrian law, and Hittite laws and in the Dharma of the Vedic period in India. Although different religions all over the world upholds human rights in same form or other in ancient period, but the position of men was not good, there life was highly excruciating, it was bitter without any hope of redemption.

In the medieval ages the position was not different, the renaissance, the decline in power of the church led society to place more emphasis on the individual, which in turn caused the shift away from feudal to monarchist societies,

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letting individual expression flourish. During this period thoughtful man all over the world spoke of 'Rights' which common and inherent in the sense they were based on man's "rational and social nature". These rights they said were the natural rights, because they could not be taken away by any man whosoever he may be since they were created by nature itself. In the development of the notion of natural rights the stoic philosophers were first who developed natural law theory. The central notion of their philosophy was that principles of natural law were universal in their nature and applied to everywhere in the world. Further when natural law was dealt by the scholastic philosophers like Abelard and Thomas Acquinas, St. Augustine, St. Paul, they changed the contents of natural law from 'human reason to divine reason'. Much attention was focused on the development of the principle of the sovereignty of states rather than on the development of the respect for human qualities. Man's condition remained unchanged; though he had known to the 'natural rights of man'. The next fundamental philosophy of human rights arise from the idea of positive law-Thomas Hobbes, (1588-1679) saw natural law as being very vague and hollow and too open to vast differences of interpretation. Therefore, under positive law, instead of human rights being absolute, they can be given or taken away, and modified by the society to suit its needs. Jeremy Bentham, another legal positivist sum up the positivist view:

8. Id. at 3., also see Supra n. 6 at 28.
"Right is a child of law; from real laws came real rights, but from imaginary law, from "law of nature", come imaginary rights ..., natural rights is simple non sense." The term natural rights eventually fell into disfavor, but the concept of universal rights took root. Philosophers such as Thomas Paine, John Stuart Mill and Henry David Thoreau expanded the concept of natural rights. Thoreau is first philosopher, who used the term, "Human Rights", and does so in his treatise, 'Civil Disobedience'. Other early proponents of Human Rights were English philosopher John Stuart Mill, in his ‘Essay on Liberty’, and American Political Theorist Thomas Paine in his essay, 'The Rights of Man'.

The middle and late nineteenth century saw a number of issues takes centre stage, many of the issue we in the late twentieth century would consider human rights issues.

Precursors of Twentieth Century Human Rights Documents

In the middle ages, a small number of Acts were enacted to show the superiority of natural law and natural rights. One of the earliest of these came in A.D. 1188, when cortor the Feudal Assembly of the kingdom of Leon on the Iberian Peninsula, received from king Alfonso IX, his confirmation of rights, including the right of accused to a regular trial and the rights of inviolability of life, honour, home and property. In the Golden Bull of King Andrew II of Hungary (1222 A.D.), the king guaranteed, among other things, that no noble would be arrested or ruined without

11. Human rights issues included slaverly, serfdom, brutal working conditions, Starvation Wages, Child labour etc.
first being convicted in conformity with judicial procedure.\textsuperscript{13}

But the most influential commitment of this kind was in English Magna Carta accepted by King John at Runnymede in 1215 A.D.\textsuperscript{14} It has been claimed that the history of human began with the Magna Carta on 1215 A.D., (the original Carta was in Latin consisted of 70 clauses) and it was considered as first milestone on the road to the liberties of the people of England.\textsuperscript{15} Truly speaking, Magna Carta has set a trend. Further document asserting individual rights, was the English Bill of Rights (1689),\textsuperscript{16} in England which was added as proof of the development of natural rights in Seventeenth Century. The progressive vision of rights took a real meaning as natural rights in eighteenth century with the American Declaration of Independence in (1776) and the Virginia Declaration of Rights (1776), the American Bill of Rights (1791), carried the idea and text of earlier English documents. French Revolution gave birth to the Declaration of Rights of Man and of Citizens in 1789\textsuperscript{17} led other European countries to include the provisions in their laws for the protection of human rights.\textsuperscript{18} The Russian Revolution of 1917, The Mexican Constitution of Republic of 1917, the

\begin{itemize}
  \item When King John of England Violated a number of ancient laws and custom by which England has been governed, his subjects forced him to sign the ‘Magna Carta’ or Great charter, which enumerates a number of what later came to be thought of as human rights among them were the:
  \begin{itemize}
    \item[i)] rights of the church to be free from governmental interference
    \item[ii)] the rights of all free citizens to own and inherit property and
    \item[iii)] to be free from excessive taxes. For detail see, Rayner Moria, “A short History of the Human Rights Movement – Early Political, Religious and Philosophic Sources”, at http://www.hrweb.org
  \end{itemize}

  \begin{itemize}
    \item[13.] \textit{Ibid.}
    \item[14.] \textit{Ibid.}
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    \item[16.] British Bill of Rights of 1689, established the idea of representative Government formally and became the character of Liberty of English; as quoted in Supra note3 at p. 648.
    \item[17.] In 1789 the people of France overthrew their Monarch and established the First French Republic. Out of the Revolution came the “Declaration of Rights of Man and Citizens”; as quoted in Supra n. 3 at 548.
    \item[18.] Sweden in 1839, Spain in 1812, Norway in 1814, Belgium in 1831, Denmark in 1849, Prussia in 1850 and Switzerland in 1874 made a provision for the fundamental rights of man; as quoted in Supra n. 3 at 648.
\end{itemize}
Constitution of the Republic of Spain of 1931 covered the area of civil rights in which human rights at least were noted on paper, though they remain 'abstract'. So many attempts were made to promote and universalize human rights.

**Human Rights Thinking in the Contemporary World**

Contemporary international human rights law and the establishment of the United Nations (U.N.) have important historical antecedents. Efforts in the 19th century to prohibit the slave trade and to limit the horrors of war are prime examples. In 1919, the initiative was taken by the *League of Nations* for the promotion of human rights and humanitarian idea and policy. In 1919, countries established the *International Labor Organization (ILO)* to oversee treaties protecting workers with respect to their rights, including their health and safety. The League floundered because the United States refused to join and it further failed to prevent Japan's invasion of China and Manchuria (1931) and Italy's attack on Ethiopia (1935). It finally died with the onset of the Second World War (1939).

**The Birth of the United Nations and the Universal Declaration of Human Rights**

The idea of human rights emerged stronger after World War II. The widespread destruction caused by the World War II gave impetus to a new move for the establishment of respect for human rights as a cornerstone of post war world. During the war shocking crimes were committed against humanity and there was a total suppression of fundamental

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19. *Supra* n. 12 at p. 5.
20. League of Nations was established in 1919 after First World War. But it became ineffective in its role as an international organization to establish peace and security in the world.
human rights. Moreover, the brutality committed by the Nazis and Fascists during the Second World War made it imperative for a world Organisations to proclaim and advocate the protection of human rights.23

Governments24 then committed themselves to establishing the United Nations, with the primary goal of promoting international peace and preventing conflict. The first concern shown for human rights seems to have been by President F. Roosevelt of United States in his message to the Congress on 6th January, 1941. He referred to the four essential human freedoms to which he look forward as the foundation of a future world.

These were: 25
1. Freedom of speech and expression;
2. Freedom of every person to worship God in his own way;
3. Freedom from want; and
4. Freedom from fear.

The calls came from across the globe for human rights standard received adequate attention and finally it was the San Francisco Conference held from 25th April to 26th June 1945 at which the charter of the United Nations had emerged with the provisions for promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.26 The United Nations charter represents a significant advancement so far as faith in and respect for human rights is concerned.

24. Fifty one nations – states originally came together to form the membership of the United Nations.
25. Supra n. 7.
The Universal Declaration of Human Rights

Member states of the United Nations pledged to promote respect for the human rights of all. To advance this goal, the UN established a Commission on Human Rights and charged it with the task of drafting a document spelling out the meaning of the fundamental rights and freedom proclaimed in the charter. The United Nations charters concerning human rights provide a foundation and an impetus for further improvement in the protection of human rights.

It was on December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the 56 members of the United Nations. This declaration has been hailed as the historic event and one of the greatest achievements of United Nations. The Universal Declaration of Human Rights, commonly referred to as the international Magna Carta, extended the revolution in international law ushered in by the United Nations charter.

The rights proclaimed in the Universal Declaration of Human Rights may be classified into following four categories:

(i) General (Articles 1 and 2);
(ii) Civil and Political (Article 3 to 21);
(iii) Economic, Social and Cultural Rights (Article 22 to 27) and
(iv) Concluding (Article 28 to 30).

27. Supra n. 21.
28. Ibid.
The influence of the Universal Declaration of Human Rights has been substantial. Its principles have been incorporated into the constitution of most of the more than 185 nations now in the UN. Although a declaration is not a legally binding document, the Universal Declaration has achieved the status of Customary International Law because people regard it “as a common standard of each achievement for all people and all nations”.30

The Human Rights Covenants

With the goal of establishing mechanism for enforcing the UDHR, the UN Commission of Human Rights proceeded to draft two treaties:

• The international Covenant on Civil and Political Rights (ICCPR) and its optional Protocol,31 and
• The International Covenant on Economic, Social and Cultural Rights (ICESR).32

Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights. Both covenants trumpet the extension of rights to all people and prohibit discrimination.

As on 2007, over 130 nations have ratified these covenants.

Important World Conferences on Human Rights

(i) International Conference on Human Rights or Tehran Conference (22 April to 13 May, 1968).

30. Supra n. 21.
32. International Covenant on Economic, Social and Cultural Rights is divided into 5 parts with 31 Articles.

(iii) Fourth World Conference on Women, Beijing (China), 1995.

Subsequent Human Rights Documents

In addition to the covenants in the international Bill of Human Rights, the United Nations had adopted more than twenty principal treaties further elaborating human rights. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect especially vulnerable populations, such as refugees, women and children. 33

Some of Key International Conventions on Human Rights


(v) Convention against Torture and other cruel, Inhuman or Degrading Treatment & Punishment, 1984.


In Europe, America and Africa, regional documents for the protection and promotion of human rights extend the International Bill of Human Rights.

33. Supra n. 21.
Some of Key Regional Conventions on the Protection of Human Rights


(iv) Cairo Declaration on Human Rights in Islam (1990), etc.34

Human rights are an idea whose time has come. The emphasis on human dignity lay down in the United Nations (U.N.) charter, Universal Declaration of Human Rights and the several international covenants are a call to freedom and justice for people throughout the world. Every day human being world-wide mobilizes and confronts injustice and inhumanity. Like drops of water falling on a rock, they wear down the forces of oppression and move the world closer to achieving the principles expressed in the Universal Declaration of Human Rights.

Evolution of the Human Rights in India

The concept of natural, or fundamental, or human rights is not a contribution exclusively of the western countries. Since the idea of such rights is the common heritage of mankind, every civilized country may claim their protection and observance from ancient times to the present.35 The concept of human rights is embedded in the deep-rooted culture and tradition of India. Indian civilization

34. Supra n. 29, at 770.
is one of the oldest of all the civilizations of the world and human rights occupied a place of prime importance in India's rich legacy of historical tradition and culture. There was a rich jurisprudence of human rights in ancient India. The present situation of human rights in India is a complex one as a result of the country's large size and tremendous diversity and its status as a developing country and a sovereign, secular, democratic republic, and its history as a former colonial territory. But we cannot understand or evaluate human rights divorced from the historical and social context of India.

**Concern for Human Rights in Ancient India**

U.N. Ghoshal an eminent historian, points out a number of civil rights, enjoyed by the individual in ancient India. He says that they occupy an important place in Literature of the Samritis. To Indians the sense of enjoying rights has its roots in the ancient days. The ancient period law was understood as a branch of 'Dharma'. According to religious philosophical views the basis of human rights was 'Dharma', which is vitally concerned with humanity. It is Dharma which has impelled men since Vedic ages to strive for 'Righteousness'. Dharma or Rita is the Vedic legal concept which can be described as the law of nature. The idea of equality was germane to the Vedas. Vedic ethics had idealized an equality of treatment among equals. All human

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39. *Supra* n. 36.
40. Righteousness was also Dharma.
41. *Supra* n. 36 at 96.
beings are equal and that conduct is moral which is based on the principle of equality.\(^42\)

According to the Hindu religious views, human rights may be considered as follows.\(^43\)

\[\textit{Sarve Bhaventu-Shukhina, Sarve Santu Niramaya, Sarve Bhadrani Pashyatu Ma, Kashchid Dukhbhag Bhawet}\]
(Mahabhartta)

Hindu thinkers always held law or Dharma superior to state or government. The philosophy of human rights from time past can be evidenced in the declaration made in the Rig Veda:

\[\text{"No one is superior or inferior. All are brothers; all should strive for the interest of all and should progress collectively."}\(^44\)

It may be recalled that from time immemorial Indians have a rich ‘human culture’ that is \textit{Manav Dharm/Manav Sanskriti}. Indian society right from Vedic times has been attaching greater significance to Dharma or righteous Karm and it was from this holy land that the highest ideal of human rights was echoed: \(^45\) In fact, the protection and promotion of human rights are possible only in a society where all people, irrespective of their castes, creeds, sex and religions, live happily. So in ancient Indian text the old

\(^{42}\) Dr. Sunil Deshta, & Dr. Partap Singh, \textit{Human Rights in India}, 2004, p. 12.

\(^{43}\) As quoted in Gokulesh Sharma, \textit{Human Rights and Legal Remedies}, 2000, p. 20.

\(^{44}\) The Original test is in Sanskrit and is taken from Rig Veda – Mandala 5, Sukta 60, Mantra 5, which states: Ajyestas etc., Sambharta Va Vridhushu Sowbhagya as quoted by Sanjay Joshi, "The right to equality, life and liberty under the constitution of India, (ed.), Abdulrahim P. Vijapur and Suresh Kumar, \textit{Perspectives on Human Rights}, 1999, p. 83.

literature reveals aspects of humanitarian principles and human rights.

During the middle ages, because of political upheavals and dynastic clashes due to wars and invasion, the concept of human rights got lost, and no respect was paid to the right of people. With the invasion of India by Muslim created new situation where in the Muslim rulers or Sultans followed a policy of discrimination against Hindus.\(^4^6\) The Muslim rulers in India were fundamentalists and despotic who forced upon the Hindus their own laws, customs and religious practices.\(^4^7\) Muslim rule in India was not founded on the basic principles of human dignity, equality and justice and was essentially autocratic, irresponsible to the rules of law, morality, justice, tolerance and social harmony.\(^4^8\) So the significance of Muslim rule in India from the point of view of the human rights was counter productive to harmony, justice and equality and the concept of human right got lost on its way, in the dark and narrow alleys of the middle ages.\(^4^9\)

The Mughal rulers-especially Akbar brought about a basic change in the Mughal administration. He adopted a policy of tolerance and non-discrimination towards Hindus and saw that no injustice is committed. In his realm, he offered equal treatment to people belonging to different religions.\(^5^0\) It was further during the medieval period that the natural law so revealed in Vedas, Puranas, Mahabharata, Bhagwad Gita, etc. was extolled by the mystic poets, saints and philosophers like Shankara, Ramanuja, Madhava,

\(^{46}\) Supra n. 36 at 142 – 143.  
^{47}\) Aurangjeb imposed Jajia a religious tax on Hindus.  
^{48}\) Supra n. 36 at 148 - 149  
^{49}\) Id., at 143.  
^{50}\) Id., at 149.
Tulsidas, Kabir, Nanak, Swami Ram Krishna, Swami Dayananda Saraswati, Raja Ram Mohan Roy and others to revive and regenerate the old, Indian value of truth, righteousness, justice and morality.\(^\text{51}\) In their messages they emphasised on the equality of human being and laid stress on the moral and ethic values. The cult of Sufism prevalent in medieval India spread the message of secularism by the symbiotic synthesis of the core value of different religions to bind the pluralist society. Saints and holy person’s emphasis that difference between human being is manmade, all beings born equal.\(^\text{52}\) It was in the late medieval period, the principles of human rights and humanitarian ideas and policy emerged.

**Concern for Human Rights in Modern India**

Due to foreign invasion and assertion of political power, there occurred a long gap between the ancient and modern history. That is why most of the contemporary scholars traced origin of human rights, back to the Indian freedom struggle. To Indians the sense of enjoying rights has its roots in the ancient times. But the modern version of human rights jurisprudence may be said to have taken birth at the time of British Rule. Britishers ousted the applicability of Indian legal system. Principles of English law were enforced on Indians irrespective of there relevance.\(^\text{53}\) The British government in Indian had not only deprived the Indian people of their freedom but had based itself on the exploitation of the masses, and ruined India economically, politically, culturally and spiritually. Resistance to this four-

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\(^{51}\) *Id.*, at 84.


fold disaster was manifested in the form of demand for fundamental freedoms and civil and political rights for the people.\(^{54}\) The birth and formation of the Indian National Congress in 1885, which was in the Vanguard of freedom struggle, took the lead in this matter. Further it was in 1895, that the first explicit demand for fundamental rights appeared in the constitution of India Bill, described as the Home Rule Bill by the Annie Besant. A glimpse of human rights in the form of fundamental rights and directive principles may be found in the bill itself.\(^{55}\)

The Bill envisaged for Indians a constitution guaranteeing to everyone of her citizen freedom of expression\(^{56}\) inviolability of one’s house,\(^{57}\) right to equality before law,\(^{58}\) right to property,\(^{59}\) right of personal liberty\(^{60}\) and right to free education\(^{61}\) etc. The demands contained in the constitution of India Bill, 1895 were not fulfilled by the British Government.

A series of Congress resolutions were adopted between 1917 and 1919 repeated the demand for civil rights and equality of status with English men. The major development to attain basic rights was the drafting of Mrs. Annie Besant’s Common Wealth of India Bill of 1925, bill for the first time contained an Article relating to the grant of Fundamental Rights.\(^{62}\) The demand for a declaration of fundamental rights in constitutional document was emphasised again and again by several Indian leaders at the ‘Round Table Conferences’

\(^{56}\) See Article 16 of the Constitution of India Bill, 1895.
\(^{57}\) *Id.*, Article 17.
\(^{58}\) *Id.*, Article 20 – 21.
\(^{59}\) *Id.*, Article 23.
\(^{60}\) *Id.*, Article 19.
\(^{61}\) *Id.*, Article 25.
\(^{62}\) *Supra* n. 55, at p. 64; also see S.C. Khare, *Human Rights and United nations*, 1977, p. 194.
and were also brought to the notice of the Joint Parliamentary Committee, but this committee did not view with favour the demand for a constitutional guarantee of fundamental rights to British subjects in India. The Government of India Act, 1935, therefore, did not contain any chapter on Fundamental Rights.  

The next stage of the development of fundamental rights in India was ‘Sapru Committee Report’ published at the end of 1945. This report stressed on the need for written code of Fundamental Rights and constitutional assembly raised a forceful demand for the inclusion of human rights in the constitution. The British Cabinet Mission in 1946 recognized the need for a written guarantee of fundamental rights of the constitution of India and transfer power to the Indians. By the Independence Act, 1947 passed by the British Parliament, two separate dominions-Dominions of India and Dominion of Pakistan were established with effect from the 15th August 1947. On the 26th January 1950 India became a Sovereign Democratic Republic.

India has been quite in the line of respecting and enforcing the concepts which stand for human rights. The framer of the constitution of India incorporated a number of rights which are now well known as ‘Human rights’ in the Constitution itself. Within the country, the part III of the constitution of India, 1950, has given all people including non-citizens found on Indian territories the ‘freedom of religion’, ‘personal liberty’ and ‘the right to equality’, ‘citizens have been additionally given six ‘rights to
freedoms'.\(^{69}\) Every person has the right to approach the High Courts and the Supreme Court of country under writ jurisdiction for enforcement of fundamental and human rights. Government has also constituted a statutory body National Human Rights Commission (N.H.R.C) which acts like a watch dog for any complaints of Human Rights Violation. The protection of Human Rights Act, 1993,\(^{70}\) created a total atmosphere of human rights in society and it raised the respect for human rights throughout nation.

**India's International Commitments to Protect Human Rights**

A number of conventions have been concluded under the auspices of the United Nations and other international organisations to protect the human rights of vulnerable groups and to prevent the commission of inhuman acts.

The diverse socio-cultural matrix of developing countries does not permit them to approach the promotion and protection of human rights in a thorough and unified way. It is indeed commendable that India being a developing country has became a party to a number of human rights conventions which are as follows:

(1) **International Convention on the Elimination of All Forms of Discrimination** (1966) was ratified by India on December 3, 1968.

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69. Article 19 of the Constitution of India, 1950, Guarantees to every citizen of India the Following six basic, fundamental freedoms-
   a. Freedom of Speech and expression;
   b. Freedom to assembly and without arms;
   c. Freedom to from associations or Unions;
   d. Freedom to reside and settle in any part of the territory of India;
   e. Freedom to practice any profession or to carry on any occupation, trade or business.

70. The National Human Rights Commission was initially constituted Under the Human Rights Ordinance of 28 September 1993. This ordinance was subsequently converted into Act, known as the Protection of Human Rights Act, 1993.

(3) Convention on the prevention and punishment of the crimes of Genocide (1951) was ratified on August 27, 1959.


(5) Convention on the Elimination of All Forms of Discrimination against Women (1979) was ratified on July 9, 1993 and the Convention on the Political rights of Women (1952) was ratified on November 2, 1961.

(6) Protocol of 1953 amending the International Slave Convention (1926) was ratified on March 12, 1954 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Intuitions and Practices Similar to Slaves was ratified on June 23 1960.

(7) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prohibition of others (1972) was ratified on January 9, 1953.

India by becoming a party of these conventions has shown to the world community that it has faith in the promotion and protection of human rights. The ratification of these conventions also signifies that it intends to be in the forefront of the world wide human rights movement.\textsuperscript{71}

\textsuperscript{71} Supra n. 4 at p. 808.
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Historical Development of Refugee’s Problem

There is no greater sorrow on earth than the loss of one’s native land/home. The word refugee is evocative, even powerful. There are refugees fleeing hunger, run for their lives or for their freedom from their own governments, from natural disaster or from man’s inhumanity to man. Today, there are millions of such people, from a variety of national backgrounds, on all populated continents. Although the refugee problem is as old as human history, it was only at the end of World War I that international community came to confront it with full force. The refugee problem has assumed disturbing proportions because of the increase in the number of refugee throughout the world in the twentieth century, the so called century of the “homeless man” or “uprooted” and today it has become a matter of acute international concern. The flow of refugees and asylum seekers remain continue as long as there is continuing political instability in different regions in the world wide.

Historically, South Asia has witnessed substantial inter-regional movement and dislocation of regional group fleeing ethnic or religious persecution and political instability. The south Asian region hosts the largest number of refugees on the globe. One in every forty citizens in the world is a refugee or an internally displaced person (IDP) or economic migrants. The empirical experience of the region shows countries can be both refugee generating and refugee hosting Bangladesh, India, Pakistan, and Nepal are

74. Supra n. 72.
countries that receive refugees, while Bhutan, Sri Lanka and China have generated refugees.\textsuperscript{75}

Fortunately, however there have been throughout history humanitarian initiative to alleviate the plight of refugees and displaced person. Accurate statistics for the tide of refugees is difficult to establish. No agreed figure exists.\textsuperscript{76}

It would be impossible to provide a comprehensive historical overview. Even then the historical background of the refugee problem in different part of the world can give us some idea about the different reasons behind their migration to other places and to seek refugee abroad.

**Refugees Prior to World Wars**

The concept of sanctuary, in the meaning that a person who fled into a holy place could not be harmed without inviting divine retribution was understood by the ancient Greeks and ancient Egyptians. However, the right to seek asylum in a church or other holy place, was first codified in law by king Ethelbert of Kent in about 600 A.D.\textsuperscript{77} similar laws were implemented throughout Europe in the middle ages. Another reference to refugees can be found in an oath made around 3,500 years ago. A Hittite king agreed a treaty with the ruler of another country which included the declaration: "concerning a refugee, I affirm an oath to the following: when a refugee comes from your land into mine, he will not be returned to you. To return a refugee from the land of Hittites is not right". \textsuperscript{78}

\textsuperscript{75} Ibid.
\textsuperscript{78} Supra n.2 at 343.
Historically, most refugees and displacements have been caused by racial or religious or political conflicts, which developed into threats to life and liberty, precipitating the flight of refugees. In medieval times, and especially since the reformation, religious refugees have constituted an important factor in social and economic history. So throughout history the cause of mass expulsion has been varied.

In the age of religious turmoil from the fifteenth to eighteenth centuries, expulsions were motivated by a striving for regions homogeneity. Thus, it was in 1492 when kingdom of Spain expelled tens of thousands of Jews, who refused to be baptized. Spanish Muslims who similarly would not convert to Christianity were expelled in 1502, but many of these ‘Moriscos’ underwent merely a perform conversion while continuing to speak Arabic and to practice their religion in private. As many as 1, 50,000 were ultimately expelled to North Africa in 1609-10. Further religious intolerance in France led to the forced migration of many Protestants; the religious pacification of France was marked by the edict of Nantes, proclaimed in 1598 by the new French king Henry IV. But when the Louis XIV revoked the edict in 1685, some 4,00,000 protestant fled from France, many of them immigrating to America, while others sought refuge in Prussia.

79. These Jews were received by Muslim countries, Italian City States and Eventually Netherlands; as quoted in Dezayas, Alfred – Maurice, “A Historical Survey of Twentieth Century Expulsion” (ed) Bramwell Anna C., Refugee the Age of Total War, 1988, p. 16.
80. Alfred – Maurice Dezayuas, “A Historical Survey of Twentieth Century Expulsions” (ed) Bramawell Anna C., Refugee in the Age of Total War, 1988, p. 16
81. Ibid.
82. Ibid.
83. The Protestant Fradric William, Elector of Brandenburg and Duke of East Prussia gave invitation to these refugees to settle down there.
Again, it was in 1731 when Prussia welcomed more than 20,000 Salzburg Protestants expelled by the Catholic Archbishop Leopold Von Firmian, who exercised the expulsion right founded on the old rule cujus regio, ejus religio,\textsuperscript{64} established at the peace of Augsburg and reaffirmed at the peace of Westphalia (1648). Meanwhile in the 1755, the governor of Nova Scotia, Charles Lowrence, decided to remove the 15,000 French-Acadian farmers from their hundred years' home on Nova-Scotia, because he considered them to be less than loyal subjects of the king of England.\textsuperscript{85}

Although there have been numerous waves of refugee throughout history, there was no refugee problem until the emergence of fixed and closed state frontiers in the late nineteenth century. Prior to the emergence of the welfare state, most refugees had to rely upon the charity given by the church, municipalities or princes. Refugees were lucky if they received such support and usually perished if they did not. Although conditions varied widely, one can venture the generalization that pre-modern statesmen tended to view population as an asset, rather than a liability. Broadly speaking, rulers tended to favors the controlled movement of people into their jurisdiction, expecting thereby to add to the producers of wealth, the community of tax payers, and those who could be made to serve in local armies. As a result, those expelled from one place could often find refuge in another.\textsuperscript{86}

\textsuperscript{64} Rule "Cujus regio, ejus religio - means - he who own the lands determines the religion" This rule was established at the peace of Augsburg of 1555 as quoted in Dezayas, Alfred Maurice, "A Historical Survey of Twentieth Century Expulsions", (ed.) Bramwell Anna C., \textit{Refugee in the Age of Total War}, 1988, p. 16.

\textsuperscript{85} Supra n. 80.

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These uprooting of population occurred in a period of history when the rights of man were hardly recognized, either in international or in national law and such uprooting still occur in our times.

Refugees during World War I & II

After a period of relative subsidence during nineteenth century, the refugee problem emerged again on a vast scale in the twentieth century with the rise of communism and fascism and the occurrence of two Wars of world-wide scope.87 The conflict and political instability during world wars led to massive amounts of forced migration. That is why, twentieth century will be known as the century of the Homeless Man’ but it will also be marked as the period in which a number of successful attempts were made to define the situation of the homeless man: to define the right of asylum, and to make conventions and covenants guaranteeing refugee status and the right of asylum.88

In the first half of twentieth century, the refugee problem was localized within Europe. The political reshaping of Europe in the first part of the twentieth century gave birth to many refugee movements. The unruly political state in Balkans and Asia minor forced out about a million Greeks, Bulgars, Serbs, Armenians and Turks from their respective homelands to get settled else where.89 Conventions were adopted for exchanging people between

Greece and Turkey and between Greece and Bulgaria. According to a survey report published by Oxford university press a total of 1.3 million Greeks were transferred to Turkey, Russia and Bulgaria to Greece, during the period of 1913-25, about 22,000 Bulgars moved into the truncated territories of Bulgaria. Fall of Russia in 1917 led the flight of 30,000 anti-Turk Assyrians to Caucasus, Greece, Iraq and Syria. On the collapse of Ottoman Empire, 3, 20,000 Armenians fled from Asia Minor and scattered in the Middle East, the Balkans and other European countries. Another 1.5 million Russian nationals got displaced because of the October revolution and subsequent events.

From 1918 onward a large number of minorities of Bulgarian or quasi-Bulgarian race fled from their homes in the Dobruja, in Macedonia, and in eastern and western Thrace. It was calculated that they were approximately 500,000 in number. In addition; about 75,000 Bulgars voluntarily immigrated to Bulgaria from Greece under the terms of the Greco-Bulgarian Exchange of Populations Treaty. Further in 1919, approximately 50,000 Turks fled from eastern Thrace and Smyrns when these territories were occupied by Greek forces, but returned to their home in 1922. In addition approximately 350, 00 to 400,000 Turks were moved from Greece (most of them from Macedonia, Crete, and western Thrace) to Asia Minor under the term of

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90. The Convention of Lausanne, 30 January 1923, Stipulated Compulsory exchange of population between Greece and Turkey and the Convention of Neuilly, 27th November, 1919 provided for a voluntary exchange of population between Greece and Bulgaria.
91. Supra n. 89 at 202.
92. Supra n. 89 at 202.
93. Supra n. 82 at 68.
the exchange of populations treaty made at Lausanne, Switz., in 1923.\textsuperscript{94}

This compulsory population exchange was not seen by the international community as a brutal uprooting of hundreds of thousands of person from their homelands, instead it was hailed by many as a legal measure intended to bring peace on the basis of an international treaty. Thus state interests were given priority over human rights. \textsuperscript{95}

On the outbreak of Second World War situation got worse. It has been estimated that 30 million people were uprooted and forced to move within Europe. In May 1945 there were perhaps 40.5 million uprooted people in Europe.\textsuperscript{96} During 1937 and 1939 more than 2,00,000 Spanish refugees fled for safety to France, North Africa and other places in the wake of Spanish Civil War.\textsuperscript{97} More than a million Jews left Germany for Western Europe or went across the seas and about 70,000 Italians left their homes and most of them proceeded to North Africa.\textsuperscript{98} Another major event of exodus was the division of Korea into the Soviet Zone (North) and the U.S. Zone (South). About 4 million repatriates and refugees from Japan and North Korea increased the population of South Korea by five percent.\textsuperscript{99}

\textsuperscript{94} The Convention of Lausanne and the Protocol were signed on 30 January, 1923, between Turkey and Greek nationals. Under this treaty a compulsory exchange of Turkish nationals of the Greek orthodox religion established in Turkish territory and of Greek Nationals of the Moslem Religion established in ‘Greek Territory, quoted in M. Afzal Wani", A Refugee Crisis and the Universal Human Rights Instruments: An overview of Fifty Years Development", \textit{Journal of the Indian Law Institute}, Vol. 41, No. 2, (1999), 201..
\textsuperscript{95} \textit{Supra} n. 89 at 201.
\textsuperscript{96} \textit{Supra} n. 2 at 345.
\textsuperscript{97} New Encyclopedia Britannica, Micropedia, Vol. 9, 1997, p. 998.
\textsuperscript{98} \textit{Supra} n.89 at 202.
In 1939 the German invasion of Poland made movement of refugees far larger in volume. Fewer than 100,000 refugees from Poland escaped into the Baltic countries and Southward into Rumania, Hungary and Bulgaria. More than 11, 75,000 Jews became subject to German control in the area of former Poland. Further advancement of German armies into the Low countries of Western Europe in the 1940 uprooted civilian populations on a large scale and about 3,000,000 Dutch, Belgian and French people in flight to Southern France in advance of the German armies was joined by about 140,000 refugees from central Europe who had found temporary respite in the Netherlands, Belgium and France. In 1941 the advance of German armies into the U.S.S.R Uprooted population on such a large scale that it was the greatest migration of a decade in which the history of uprooted populations had exceeded in stark tragedy all previous record of modern history. No authentic figures were available, but conservative estimates placed the number driven at between 1, 00, 00,000 and 20,000,000. More than 2,000,000 inhabitants of the invaded soviet areas survived the hardships and cruelties of the labor camps in which they were confined during the War in Eastern Europe.

At the end of the World War II, there were more than 5 million "displaced persons" from the Soviet Union in the Western Europe. About 3 million had been forced laborers in Germany and occupied territories. About 5.7 million soviet prisoners of war captured by German, 3.5 million had died while in German captivity by the end of the war. Large

100. Supra n. 87 at 70.
101. Ibid.
102. Ibid.
103. Supra n. 77.
areas of Europe lay in ruins. There occurred a huge expansion in the number of refuges and displaced persons after World War I and II. Governments were challenged as never before to find places of settlement for the people uprooted from the areas in which they had resided for generations. Refugee problem has remained a subject of constant concern even after the end of World Wars.

**Post World Wars and Contemporary Refugee Crisis**

In the first half of the twentieth century, the refugee problem was localized within Europe and the numbers were modest. Over the past nearly five decades the world has faced a series of refugee crisis rather different from those, which followed in the wake of the Second World War. They have differed in scale involving millions of persons and they have generally affected many Asian, African, Middle East and central American countries which even at the best of times find it difficult to cope with the problems of their own.

**Refugee Movement in Middle East**

As a result of the 1948 Arab-Israeli conflict number of Palestines lost both their home and livelihood. The final estimate of refugee number was 711,000 according to the United Nations conciliation commission. The United Nations made effort to solve the problem of the 1,000,000 Arab refugees who had fled from their homes during conflict.

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104. *Supra* n. 87 at 69.
106. Following the 1948 proclamation of the State of Israel, the first Arab – Israeli War began. Many Palestinians already become refugees. The great majority have remained refugees for generations as they were not permitted to return to their homes or to settle in the Arab countries where they lived. The refugee situation and the presence of numerous refugee camps continues to be a point of contention of Arab – Israeli Conflict, as cited in Wikipedia, the free encyclopedia, http://www.en.wikipedia.org. visited on 15.11.2007.
107. *Supra* n. 77.
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in Palestine. They were housed and fed in camps in Lebanon, Syria, Iraq, Jordan and Gaza strip. The great majority have remained refugees for generations as they were not permitted to return to their home or to settle in the Arab countries where they lived. The refugee situation and the presence of numerous refugee camps continue to be a point of contention in the Arab-Israeli conflict. ¹⁰⁸

As of December 2005, the world refugee survey of the U.S. committee for refugee and immigrants estimates the total number of Palestinian refugees to be 2,966,100.¹⁰⁹

In 1945, there were about 800,000 Jews living communities throughout the Arab world, a number of which had fallen to perhaps 16,000 by 1991 due to emigration to Israel as well as Europe and the America.¹¹⁰ Today in all the Arab countries except Morocco, the Jewish population has all but disappeared.

The Algerian war of independence (1954-1962) uprooted more than 2 million Algerians, who were forced to relocate in French camps or to flee to Morocco, Tunisia, and into the Algerian hinterland.¹¹¹ Further the Iran-Iraq War from 1980 to 1988, the 1990 Iraqi invasion of Kuwait, the first Gulf War and subsequent conflicts all generated hundreds of thousands if not millions of refugees. Iran also provide asylum for 1,400,000 Iraqi refugees who had been uprooted as a result of the Persian Gulf War (1990-91). At least one million Iraqi Kurds were displaced during the Al-Anafal

¹⁰⁸. Supra n. 87 at 71, also see Supra n. 77.
¹⁰⁹. Supra n. 77.
¹¹⁰. After the creation of the state of Israel and the 1948 Arab-Israeli war that ensured, conditions for Jews in the Arab world deteriorated, and the situation worsened following the 1967 six-day war. With a few years of the six day war, most Jews had left the Arab world, with the majority (about 600,000) finding refuge in Israel as cited in Wikipedia, the free encyclopedia, http://www.en.wikipedia.org, visited on 15.11.2007
¹¹¹. Supra n. 77.
campaign (1986-1989). As of 2007 more Iraqi have lost their homes and become refugees than the population of any other country, over, 4,200,000 people, more than 16 percent of the Iraqi population, have become uprooted. These 2.2 million have fled Iraq and flooded other countries and nearly 100,000 Iraqis fleeing to Syria and Jordan each month.

Refugee Movement in Europe

Major refugee’s movements in Europe were during the World Wars. Further the Hungarian revolution in 1956, resulted 1, 80,000 Hungarian refugees fled into Austria and 19,000 to Yugoslavia. More than 1, 75,000 of the Hungarian refugees in Austria and all of those in Yugoslavia had been resettled in other countries by June 1957. Further the steady flow of refugees from East Germany to West Germany began before 1952, reached a peak of 340,000 in 1953. It continued at an annual rate of more than 200,000 to account for more than 2, 60,000 by August 1961, when Berlin wall, erected in 1961 to stop it in the face of a growing migration of East Germans to West Germany Via Hungary and mass demonstrations during the summer of 1989, finally, with the two plus four treaty a year later on 12 September 1990, German reunified on 3 October 1990, which somewhat reduced the tensions of people of Germany.

112. Ibid.
113. Ibid.
114. Supra n. 87 at 71.
115. The Berlin Wall, Build in 1961 to Stop East Germans from escaping the West Germany. Became symbol of the Cold War. However, tensions between East and West Germany somewhat reduced in the early 1970s by Chancellor Wily Brandt’s Ostpolitik, which included de facto acceptance of Germany’s territorial losses in World War II as cited in http://en.wikipedia.org/wiki/germany visited on 29.06.2008.
Beginning in 1991, political upheavals in the Balkans such as the breakup of Yugoslavia displaced about 2,700,000 people by mid 1992, which 700,000 of them sought asylum in Europe. Today there are still thousands of refugees and internally displaced persons in the Balkan region who cannot return to their homes. Most of them are Serbs who can not return to Kosovo and who still live in refugee camps in Serbia today. Over 200,000 Serbs and other non-Albanian minorities fled or were expelled from Kosovo after the Kosovo War in 1999.117

Refugee Movement in the America

More than one million Salvadorans were displaced during the Salvadorans Civil War from 1975 to 1982. About half went to the United States and settled there. There was also a large exodus of Guatemalans during the 1980s, trying to escape from the civil war and genocide there as well. These people went to Southern Mexico and the United States.118

The Cuban Revolution in 1959 resulted more than 2,00,000 Cuban refugees to seek asylum in the United States.119 From 1991 through 1994, following the military coup d’état against President Jean-Bertrand Aristide, thousands of Haitians fled violence and repression by boat. Although most were repatriated to Haiti by the U.S. Government, others entered the United States as refugees.120

117. Supra n. 77.
118. Ibid.
119. In 1960 the United States received many refugees from Cuba, where Fidel Castro had overthrown the Bastista regime. The Victory of the forces led by Fidel Castro in the Cuban Revolution led to a large exodus of Cubans between 1959 and 1980 as cited in Encyclopedia, Britannica, Vo., 19, 1966, p. 72.
120. Supra n.77.
Refugees Movement in Africa

Since 1950s large concentration of refugees have been located in Africa.\(^{121}\) In Africa during the 1960s the process of decolonization not only led to independent African states but opened the gate of complex socio-economic, cultural, religious, tribal and political problems which in turn, had the effect of generating refugee problem.\(^{122}\) The number of refugees in Africa increased from 8,600,000 in 1960 to 6,775,000 by 1992. (Encyclopedia Britannica, 2004, http://www.britannica.com) by the end of 2004, that number had dropped to 2,748,400 refugees, according to the United Nations high commissioner for refugees\(^{123}\) (www.unhcr.ch/cgi-bin).

Many refugees in Africa cross into neighboring countries to find haven; often, African countries are simultaneously countries of origin for refugees and countries of asylum for other refugees. The largest numbers of refugees are from Sudan and are located mainly Chad, Uganda, Ethiopia, and Kenya.\(^{124}\) Countries in Africa from where 5,000 or more refugee originated as of the end of 2004 are listed below:

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121. Since 1950's many nations in Africa have suffered civil wars and ethnic strife, thus generating a massive number of refugees of different nationalities and ethnic groups as cited in http://www.en.wikipedia.org/wiki/refugees visited on 15.11.2007
123. Supra n.77.
124. Ibid.
<table>
<thead>
<tr>
<th>Country originated Refugees</th>
<th>No. of Refugees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>228,838</td>
</tr>
<tr>
<td>Burundi</td>
<td>485,764</td>
</tr>
<tr>
<td>Cameroon</td>
<td>7,629</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>31,069</td>
</tr>
<tr>
<td>Eritrea</td>
<td>131,119</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>63,105</td>
</tr>
<tr>
<td>Ghana</td>
<td>14,767</td>
</tr>
<tr>
<td>Liberia</td>
<td>335,467</td>
</tr>
<tr>
<td>Senegal</td>
<td>8,332</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>41,801</td>
</tr>
<tr>
<td>Somalia</td>
<td>389,272</td>
</tr>
<tr>
<td>Sudan</td>
<td>930,612</td>
</tr>
<tr>
<td>Chad</td>
<td>52,663</td>
</tr>
<tr>
<td>Cote d’ Ivoire</td>
<td>23,655</td>
</tr>
<tr>
<td>Democratic Republic of Congo</td>
<td>462,203</td>
</tr>
<tr>
<td>Nigeria</td>
<td>23,888</td>
</tr>
<tr>
<td>Republic of the Congo</td>
<td>28,152</td>
</tr>
<tr>
<td>Rwanda</td>
<td>63,808</td>
</tr>
<tr>
<td>Togo</td>
<td>10,819</td>
</tr>
<tr>
<td>Uganda</td>
<td>31,963</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>9,568</td>
</tr>
</tbody>
</table>

Above table listed:

-Countries in Africa from where 5000 or more refugees originated as of the end of 2004.

**Source:** UNHCR, 2004 Global Refugee Trends (http://www.unhcr.ch/cgi-bin.)
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Refugee Movements in Asia

As regard Asian experience due to deep rooted ethnic rivalries and other political reasons, many major incidents of population uprooting have taken place. Recent refugee history is marked by Afghan crisis where from since 1979 through the early 1990s, there was a massive movement of refugees to Pakistan, Iran and India creating the world’s largest refugee population of about 6.3 million and making Afghanistan the greatest refugee producing country.\(^\text{125}\)

The number of refugees fluctuated with the waves of the war, with thousands more fleeing after the Taliban takeover of 1996. The U.S. invasion of Afghanistan in 2001 caused additional displacement. Since late April 2007, the Iranian government has forcible deported back to Afghanistan nearly 100,000 registered and unregistered Afghans living and working in Iran. Pakistan announced that all 2,400,000 Afghan refugees, most living in camps must return home by 2009.\(^\text{126}\)

The partition of the Indian subcontinent into India and Pakistan in 1947 resulted in the largest human movement in history: an exchange of 18,000,000 Hindus and Sikhs (from Bangladesh-65% and Pakistan-35%) for Muslims (from India).\(^\text{127}\) Some more uprooting took place in 1965 and more than 80, 00,000-1, 00, 00,000 persons were also temporarily made refugees by the creation of Bangladesh in 1971.\(^\text{128}\)

Another major event of exodus was the division of Korea; this uprooted more than 5,500,000 civilians, most of

\(^{125}\) Ibid.  
\(^{126}\) Ibid.  
\(^{127}\) Ibid, also see Supra n. 89 at 202.  
\(^{128}\) Ibid
whom took refuge in South Korea. About 4 million repatriates and refugees from Japan and North Korea increased the population of South Korea by 25 percent. On the division of Vietnam in 1954 more than 900,000 refugees from North Vietnam were resettled in South Vietnam after the Asian conference in Geneva in 1954. Large number of Vietnamese refugees came into existence after 1975, when South Vietnam fell to communist forces; at least one million people have fled from Vietnam, Laos and Kampuchea, with the largest number of leaving Vietnam.

After the end of the Second World War, in 1949, when the People's Republic of China was established, more than 20,000,000 Chinese fled to Taiwan and to the British Colony of Hongkong. The civil war and ethnic cleansing in Sri Lanka (1983 to the present) has generated millions of internally displaced as well as refugees. Over 300,000 people have fled to India, Europe (mostly France, Denmark, the United Kingdom, and Germany) and Canada. Since 1991, due to civil war in Tajikistan (1992-1997) around 1.2 million people were refugees inside and outside of the country many crossing over the Wakhan corridor and establishing themselves in neighboring Pakistan.

The Chinese takeover of Tibet in 1951 resulted in the flight of more than 100,000 between 1959 to 1961. These refugees took asylum in India and Nepal. Refugees are still coming from Tibet and are yet to be accommodated. Bangladesh, within the last two decades, has received over a

129. Supra n. 97.
130. Supra n. 89 at 202.
131. Supra n. 87 at 72
132. Supra n. 77.
133. Supra n. 87 at 71
134. Supra n. 77
135. Ibid.
136. Ibid, also see, Supra n.97 also see, Supra n. 89 at 203.
quarter million refugees from Myanmar; and Nepal is hosting some 90,000 refugees from Bhutan.\textsuperscript{137}

The steady decline in refugee numbers witnessed since 2002 was reversed in 2006, when numbers started going up again. By the end of 2006, there were an estimated 9.9 million refugees. One year later, the global figure of refugees stood at 11.4 million, including 1.7 million people considered by UNHCR to be in a refugee like situation. As the end of 2007, roughly one third of all refugees were residing in countries in the Asia and Pacific region, with 80% of them being Afghans.\textsuperscript{138}

**Historical Development of Refugees Problem in India**

India has a deep rooted culture of generosity to strangers, including refugees which provide a very positive climate for receiving and hosting refugees. India is the land that sheltered probably the largest number of refugees through different centuries. This country has been noted in its historic culture for receiving people in distress, coming here to seek some kind of protection, some shelter. It is Contra-Indian ancient culture to say: "we will not give you asylum", according to Justice V.R. Krishna Ayer.\textsuperscript{139} As our ancient culture and heritage has been ‘Atithi Devo Bhawa’ meaning “Guests are Gods”, so we welcome all those who come to our house or country. The moral and Philosophical basis of refugee regime was present in ancient Indian thought as well, although it did not graduate itself in any meaningful way.


\textsuperscript{138} This figures does not include 4.6 million Palestinian refugees who fall under the responsibility of UNRWA

\textsuperscript{139} Mizzima: Does India Treat Refugees Well? New Group, 22\textsuperscript{nd} March 1999, \url{http://www.burmalibrary.org.burma/archives/1999} visited on 06.11.2007.
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Earlier Refugees Movements in India

Throughout our 5000 years old known history we have always welcomed refugees with open arms and given them a place of honor and dignity in our society.\textsuperscript{140} Parsis clans of ancient Persia\textsuperscript{141} Settled in India\textsuperscript{142} in second century before Christ on persecution by Greek ruler of Persia (247 BC to 224 AD) and again during eighth to tenth centuries when persecuted by Muslims in Iran.\textsuperscript{143} Since then they have lived with honor and dignity in our society, The Jews\textsuperscript{144} came to India 2000 years ago because they were persecuted by the Romans, and for these many years Jews have lived in India with honor and dignity and have never faced persecution in India, Armenian living in India for centuries, Syrian Christians who came in India in the fourth century A.D. because they were persecuted in Syria, and ever since then they have lived with honor and dignity in our country.\textsuperscript{145} So the history of India has witnessed a large scale migration of people from other countries and continents. As Prof. M.P. Singh Observed:\textsuperscript{146}

"From the time immemorial, people from different parts of the world have been coming to India in various categories

\begin{itemize}
\item \textsuperscript{141} Followers of Iranian Prophet Zoroaster and Fire Worship
\item \textsuperscript{142} They settled on Sea coast areas between Bombay and Karachi, Ruler of Gujrat King Jadav Rana, in India around Fifth Century granted permission to Parsis to settle in his kingdom, gradually these got themselves assimilated with local people and local customs – cited in U.N. Gupta, \textit{The Human Rights – Convention and Indian Law}, 2004, p. 237.
\item \textsuperscript{143} U.N. Gupta, \textit{The Human Rights – Conventions and Indian Law}, 2004, p. 237.
\item \textsuperscript{144} Judaism was the forerunner of the religions originating in Palestine. Its followers worshipped their own God and believed in one God only. They did not accept the polytheistic Greco – Roman religions and suffered social segregation since these refused to worship emperors as Gods. This was taken to be sign of disloyalty by Roman Emperors – As cited in U. N. Gupta, \textit{The Human Rights – Convention and Indian Law}, 2004, p. 237.
\item \textsuperscript{145} Supra n. 140.
\end{itemize}
such as travelers, settlers, refugees, etc. and have made this land their home with or without separate identity."

India is a country which has accepted various cultures and traditions, with the compassion, as the basis of its civilization. The notion of "Compassion" or 'Karuna' must not be forgotten as ultimately all of us have also seek refuge on the Mother earth. Let us live and let live, as all are the members of common Fraternity

Contemporary Refugee Movements in India

The traumatic birth of Modern India resulted in large scale population movements, the like of which had never before been witnessed in this part of the world. More than 10 million refugees came to India after the division of this country and Millions left the country to go to the new established state of Pakistan. This, however, was not the end of the story, refugees continued to flood this land. Since 1947, some about 35-40 million people have moved across the border in the Indian Sub-continent. Besides the Sri Lankan, Jammu and the Tibetan refugees, the United Nations High commissioner for Refugees (UNHCR) providing protection to 22,000 refugees consisting of the Afghans, Iranians, Somalis, Burmese, Sudanese refugees reside in Delhi.

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147 The Partition of the Indian subcontinent into India and Pakistan in 1947 resulted in the largest human movement in history: an exchange of 18,000,000 Hindus and Sikhs (from Bangladesh - 65% and Pakistan- 35%) for Muslims (from India)- as cited in Refugee - Wikipedia, the free encyclopedia, http://www.en.wikipedia.org. visited on 15.11.2007


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(a) Jumma Refugees from Chittagong Hill Tracts, Bangladesh/Chakma Refugees from Bangladesh in India

Over, 55,000 Jumma refugees \(^{150}\) from the Chittagong Hill \(^{151}\) Tracts of Bangladesh fled to the Tripura state of India after a massacre by the Bangladeshi security forces and illegal plainsmen settlers in 1986. \(^{152}\) Further in 1989 and 1992 more Jumma refugees (Chakmas and Hajongs) fled to India after reoccurrence of more Massacres. \(^{153}\)

The government of India initiated a repatriation process in 1994, an estimated 1, 846 individual Jumma refugees were made to agree to return in the first phase of repatriation in February 1994. A second batch of 3,323 individual Jumma refugees was again repatriated in July 1994. But they were (returnee Jumma refugees) not given land and were now in a situation of refugees in their own land. \(^{154}\)

(b) Sri Lankan Tamil Refugees in India

Sri Lankan Tamils \(^{155}\) constitute about 12.6 percent of the total population (18.4 million) of Sri Lanka as against

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150. The indigenous people of the Chittagong Hill Tracts (CHT) are the only significant group of people of Bangladesh who are ethnically different from the majority community. Their number in the context of 110 million people of Bangladesh, is relatively small indeed; less than 8,00,000 as cited in Satish Kanitkar, *Refugees Problem in south Asia*, 2000, p. 30.

151. This is the hill area of the south eastern Bangladesh and is known as Chittagong Hill Tracts, subdivided into three administrative districts. It forms part of a mountain range which stretches north for some 1800 km from Western Myanmar to the points where it meets the eastern Himalayas in China. Apart from the narrow strip (roughly 280 by 60 km) as part of Bangladesh, this mountain range is almost equally divided between India and Burma, as cited in Satish Kanitkar, *Refugees Problem in South Asia*, 2000, p. 30.


153. Supra n. 149.

154. Ibid.

155. Ever since Sri Lanka independence got on February 4, 1948, there have been ethnic conflicts between the Sinhalese and Tamils. Sinhalese are in majority of the population where as the Sri Lankan Tamils are in minority and they mostly live in northern and eastern provinces as cited in T.N. Giri, *Refugee Problem in Asia and Africa: Role of UNHCR*, 2003, p. 179.
74% Sinhalese. The "Riots"\textsuperscript{156} of 1983 in Sri Lanka not only created a huge refugee problem but also there was a massive internal Migration as about 70,000 Tamils moved to the Tamil populated areas in the northeast and during this period around 1,34,053 Sri Lankan Tamil arrived in India as refugees. Most of them sought refugee in the state of Tamil Nadu in South India. This exodus of refugees continued till July 29, 1987.\textsuperscript{157}

By mid-1986 about 250,000 refugees were getting assistance out of that, 125,000 were in India and about 75,000 in Europe, North America and Australia. The exodus of refugees before the period of 1983 riots was slow and steady. But after the 1983 riots the increase was in the order of 10,000 annually. Almost 12 percent of Tamil population crossed the border during the post-1983 period.\textsuperscript{158}

By mid-1985 about 75,000 Tamil refugee stayed outside independently while about 23,000 lived in Government aided refugee camps with in Tamil Nadu.\textsuperscript{159} Currently the Indian Government reports that there is about 1,60,000 Sri Lankan Tamil refugees in India of which about 76,000 live in refugee camps in Tamil Nadu and about 30,000 live outside these camps in cities and towns across Tamil Nadu. Other non-governmental sources believe that there are actually closer to one hundred of thousand refugees outside the camps.\textsuperscript{160}

\begin{flushright}
156. In 1983 a conflict between these two ethnic groups (Sinhalese and Tamils) begun and as a result, the Tamil minority suffered a lot. In the after math, large scale killings by the extremist force like the LITE was retaliated by the armed forces killing and displacing thousands as cited in T.N. Giri, \textit{Refugee problems in Asia and Africa: Role of UNCHR}, 2003, p. 179.
159. \textit{Id.} at. 182.
160. \textit{Supra n.149}.
\end{flushright}
Half of the Sri Lankan refugees in India were sent back following the conclusion of the Indo-Sri Lankan agreement in July 1987 and subsequently through the good offices of the UNHCR. As a result, on 31 August, 1989, about 25,585 camp and non-camp refugees returned to Sri Lanka without government assistance or continued to stay in Tamil Nadu. Further in January 1992, a bilateral agreement was signed between the Government of India and Sri Lanka regarding repatriation of refugees. Following the implementation of the agreement, the refugees started returning in January, 1992. By the end of May, 1992 around 23,000 refugees had returned to Sri Lanka. But there have been no new return of refugees to Sri Lanka from India since the Breakdown of peace talks and resumption of hostilities between the Sri Lankan Military and the Liberation Tiger of Tamil Eelam (LTTE) in 1996. The arrival of the Sri Lankan refugees is continue till date on the South Shore of India.

(c) Tibetan Refugees in India

There are an estimated 121,143, Tibetan refugees, mostly Sheltered in Dharamshala of Himachal Pradesh, Ladakh of Jammu and Kashmir and Mysore in Karnataka. More than 25,000 Tibetan refugees have arrived since His

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161. Supra n.148 at p. 102, also see, T.N. Giri, Refugee Problems in Asia and Africa: Role of the UNHCR, 2003, p. 182.
162. Supra n. 157 at 183.
Holiness Dalai Lama came across the border\(^\text{164}\) with more than 85,000 followers in 1959.\(^\text{165}\)

The Tibetan struggle for autonomy and the Chinese action to suppress that struggle have continued since then and so also the flow of refugees. The intensity of this flow has varied, depending upon the intensity of conflict in Tibet, which was most serious in 1959, when the Dalai Lama, the religious and political leader of the Tibetans, with thousands of his followers came to India for asylum.\(^\text{166}\) Subsequently, Tibetan refugees have come to South Asia during the Second half of the sixties when the Cultural Revolution in China caused extensive disturbance. Since 1988-89, Tibet’s struggle for autonomy has picked up momentum again, generating more refugees.\(^\text{167}\)

No doubt, the question of Tibetan refugees in South Asia will increasingly come under sharp focus as the issue of Tibetan autonomy gains momentum in view of renewed International Support. At the end of 1993, there were nearly 1,33,000 Tibetan refugees in South Asia, dispersed between India (1,22000 approximately) and Nepal (11,000).\(^\text{168}\)

The Tibetan refugees initially came to India. Since the escape of the Karmapa Lama into India in 2000, the government has restricted movement and grown stinger

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\(^{164}\) In 1949 with the invasion of the People’s Liberation Army of China Tibet has been become part of China since 1950’s. People migrated from Tibet to India and Nepal. Today’s continued occupation of Tibet by China with the help of troops, represent an ongoing violation of international Law and the right of Tibetan people. In 1959, Tens of Thousands crossed the Himalayan passes into Nepal, many of them on their way to India, where their political and spiritual leader, the Dalai Lama, had found asylum as cited in the T.N. Giri, *Refugee Problems in Asia and Africa: Role of the UNHCR*, 2003, p. 197.

\(^{165}\) Supra n. 149.


\(^{167}\) Ibid.

\(^{168}\) Id., at 108 – 109.
about new arrival.\textsuperscript{169} Even then the sometime individual or
group of Tibetan refugees continues to trickle into escape
from the China's oppression in occupied Tibet.

(d) Afghan Refugees in India

The Afghan refugees started coming into South Asia
following the Saur Revolution\textsuperscript{170} of Afghanistan and further
by the Soviet military intervention in December 1979. The
war led to an exodus of refugees created a huge refugee
problem for the countries in the neighborhood, particularly
in Pakistan, Iran and India.\textsuperscript{171} By the end of December, 1981,
a total of 3,507 refugees were registered in India, out of
these 2,685 were Afghans.\textsuperscript{172} By the end of May 1993 the
Afghan refugees' population increased to some 25,000 due to
a large influx of Hindu and Sikh Afghans, the majority of
whom have arrived in India since July 1992 owing to events
in Afghanistan. The monthly rate of influx was about 2,000
until the beginning of 1993. Afghanistan became the world's
leading refugee producing country.\textsuperscript{173}

Presently there are more than 20,000 Afghan refugees
in India. Most of them live in and around Delhi. Delhi is
home to some 17,000 Afghan refugees.\textsuperscript{174} India has no laws
on asylum and the Afghans were not officially recognized as
refugees. There presence was tolerated, however, as
"Foreigners temporarily residing in India". Most of them had
valid travel documents or tourist visas and stayed in India

\textsuperscript{169} Asia Times online, \url{http://www.atimes.com} visited on 07.12.2007.
\textsuperscript{170} The political instability in the country was overthrown with the active participant of armed
forces of the country. This change of political power came to be known as Saur Revolution.
The Saur Revolution in Afghanistan resulted in widespread destruction, death and large
population movements as cited in T.N. Giri, "Refugee problems in Asia and Africa: Role of the
UNHCR, 2003, p. 111.
\textsuperscript{171} Supra n.157 at p. 127, also see Satish Kanitkar, Refugees Problems in south Asia, pp. 109-110.
\textsuperscript{172} Ibid.
\textsuperscript{174} Supra n. 171.
temporarily on their way to the countries of asylum in the Western World. And those, who could not go to any other country stayed back in India and their presence in India is acknowledged and protected under the “Principle of non-refoulement” by the United Nations High Commissioner for Refugees (UNHCR).175

(e) Iranian Refugees in India

Iranian refugees fled their country following the Islamic Revolution in 1979176 about 2000 of Iranian refugees are at present getting all the necessary assistance from the UNHCR office in Delhi.177 Their presence in India is acknowledged and protected under the “Principle of non-refoulement” by the United Nations High Commissioner for Refugees.

(f) Bhutanese Refugees in India

Since the ethnic conflict between the ruling Drukpas of Bhutan and the ethnic Bhutanese of Nepali origin started in 1990,178 More than, an estimate 85,000 have gone to eastern Nepal, where they are kept in camps supported by the United Nations High Commissioners for Refugees (UNHCR). Approximately, 25000 to 30,000 Nepalese of Bhutan have taken refuge in India, in Shiliguri and Jalpaiguri districts of West Bengal and Kokrajhar district of Assam.179

The Government of India does not recognize them as refugees and hence, provide no assistance. However, under the 1949, Indo-Bhutan Friendship Treaty they are allowed to stay in India and can engage themselves in employment

175. Supra n. 163.
177. Supra n. 1 at 181.
178. Supra n. 149.
179. Supra n. 148 at 104.
activities and other facilities. Bhutanese refugees in India do not figure in India. While they have been allowed to stay in India, there is no way these “Lotshamps” could return to their country of origin.\textsuperscript{180}

(g) Burmese Refugees in India

In 1988 number of Burmese refugees reached in India following large scale political turmoil\textsuperscript{181} in the country. A widespread civil unrest erupted in Burma in March 1988, which compelled people to sought asylum in neighboring countries. A large number of ethnic chin and other tribal refugees have escaped repression from the Burma military\textsuperscript{182} and entered the Indian state of Mizoram. The presence of Chin refugees from the state of Burma, Nagas from Burma, Rakhins refugees from Arakan state in Burma are not acknowledged by the Government of India.\textsuperscript{183} The large number among these refugee groups is the chin, numbering about 40,000. While the Burmese Naga sought refugee in the Indian State of Nagaland, the Chins and Rakhains have sought refugee in state of Mizoram.\textsuperscript{184} Though they have generally assimilated into Indian Society, but neither the Indian Government nor UNHCR recognize their presence.

\textsuperscript{180} Supra n. 149.
\textsuperscript{181} Mass demonstration demanded an end to the one party rule of General Newin of Bruma Socialist programme Party. In July 1988 Genral Newin resigned. The power was transferred from military to civilian, Dr. Maung Maung. But the demonstrators continue pro-democracy movement, which swayed the entire country, the army led by the chief – of – staff, General Saw – Maung, took direct control in September 18, 1988, and thousands of people fled Burma for the fear of military reprisal; as cited in Manik Chakarborty, \textit{Human Rights and Refugees – Problems, Law and Practices}, 2001, p. 181.
\textsuperscript{182} A few hundred refugees belonging to ethnic nagas have soughts shelter in Manipur and Mozoram in 1991 after the Burmese Military started a crack down on the Naga and other insurgents on the side of Burma as cited in Country Report on the Refugee Situation in India (From the SAHRDC Source Centre) \url{http://www.hrdc.net/sahrdc} visited on 24.11.2007
\textsuperscript{183} Supra n. 163.
\textsuperscript{184} Ibid.
(h) Other Refugees in India

Besides the refugees mentioned above, India has always been host to refugees coming from many corners of the world including the Vietnamese, Ethiopian, Somalian, Indo-Chinese, Sudanese and many others who are very few in numbers,\textsuperscript{185} most of them had valid travel documents or tourist visas and stayed in India temporarily on their way to the Countries of asylum in Western World and those, who could not go to any other country stayed back in India and sought protection from the representative of the United Nations High Commissioner for Refugees\textsuperscript{186} (UNHCR)

As mentioned above, India presently homes a huge population of refugees. In spite of large scale movements of refugee’s population as well as their continued presence in India, if one analyse the Indian approach to refugees and their problems, it has been a very positive one in spite of the domestic constraints in terms of societal imbalances and economic resources. As India has not acceded to the 1951, convention relating to the status of refugees or the 1967 Protocol, in spite of the positive work it has discharged so far, and in fact continue to do so. In this regard, the pre-constitutional laws like The Foreigner’s Act, 1939 and the Registration of Foreigners Act, 1946, The Passport (Entry into India Act, 1920 are being still relied upon heavily by the government of India in the treatment of refugees.\textsuperscript{187}

It becomes very much apparent and evident from the above discussion that India has all along been generous in its efforts to provide protection to refugees. This is the land

\begin{itemize}
  \item \textsuperscript{185} Supra n. 166 at 69.
  \item \textsuperscript{186} Supra n. 157 at 127.
  \item \textsuperscript{187} V. Vijay Kumar, “The Need for a national Legislation on Refugees” in Round Table Workshop on Refugees in the SAARC Region: National Legislation on Refugees, 30, April, 1998, New Delhi. p. 30.
\end{itemize}
that sheltered probably the largest number of refugees in South-Asia. India has the proud history of having accommodated batches of refugees and cradled all of them without any discrimination. As we believe in the age old concept of ‘Vasudeva Kutumbkam’ or universal brotherhood, thus India is by and large a refugee receiving nation.

Factors Responsible for Creating Refugees

From historical times, the definition of a refugee has not changed; what has been varying from one situation to another are the factors which cause refugee situations. Today a quick sweep across the map of world reveals both how widespread is forced displacement and how varied are the causes, numbers and circumstances of the people affected. These causes may be combined with one another and be responsible in varying degrees for particular refugee flows. The international community is becoming increasingly concerned with the causes behind the mass exodus of persons-refugees.

People flee their countries for a variety of reasons and usually as a result of a combination of factors rather than a singly one. Wars and insurrection, the breakdown of law and order, oppression, persecution and the denial of opportunities. Some people may not have been singled out for repression, however they feel that their country cannot provide an adequate future and wish to try their chance elsewhere. Others, especially those who represent ethnic or religious minorities, may deliberately force out. Since 1945 decolonization and nation building, poverty environmental crises and human rights violation produced further massive

refugee flows in the third world. Whatever the reason of flight, the flow of refugees across international border poses an almost insuperable challenge to states as well as organizations to respond to and to uphold human dignity.\textsuperscript{190}

Following factors have been identified as being responsible for creating refugee problem:

1. Anti-colonial Wars and Self-determination Movements

In the first place, the breakdown of colonial rule and the rationalization of some of the colonial legacies created refugee flows. The largest of such flows, was between India and Pakistan, resulting the partition of British India which gave birth to the new state of Pakistan on the basis of religion. No precise estimate of the exact number of people involved in these flows is available, but the flow from both the directions put together, would not have less than 20 Million.\textsuperscript{191}

Decolonization generated another flow of refugees when Myanmar and Sri Lanka were granted independence from British rule in 1948. Soon after this, Myanmar started vigorous process of nationalizing its administration and pushed out all Indians who had migrated there under British patronage. They had to come to India as refugees. As estimated 1, 50,000 of such refugees returned to South India where they had their roots.\textsuperscript{192} Sri Lanka had a population of the person of Indian origin, Government of Sri Lanka under


\textsuperscript{191} Supra n. 166 at 95.

\textsuperscript{192} Id., at 96.
the citizenship Act in 1948 and 1949, deprived these people of their voting rights. As a result new category of stateless Indians emerged in Sri- Lanka; these people took asylum in India.

Further a majority of third world countries have only gained independence in the 1950s and 1960s. But most of the World’s refugees in the early 1970s were created by the wars of national liberation against the Portuguese in Angola, Guinea-Bissau and Mozambique. During that period more than 4, 00,000 Angolan refugees moved to Zaire, other moved to Zambia and Botswana. Similarly Zimbabwe’s freedom movement created hundreds of thousands of refugees. This war of independence rival parties and by 1978 about 1.2 million refugees that fled to neighboring countries as in the case of Angola, was followed by Civil war between neighboring countries. Likewise, in Ethiopia, the struggle for independence in 1962 created thousands of refugees. In addition, a colonial legacy in the third world was the arbitrary creation of state boundaries. After achieving political independence in many countries, communal conflicts and territorial disputes took place and resulted to mass exodus. Thus emergence of several

193. Ibid
196. Mozambique is the old Portuguese East Africa became independent on June 25, 1975, after 470 years of Portuguese colonial rule; Manorama Year Book, 2003, p. 320.
197. Supra n. 157 at 13.
198. Zimbabwe achieved independence on April 18, 1980, after a bitter struggle against the white minority government in power, quoted in Manorama Year Book, 2003, p. 365.
200. The last emperor of Ethiopia Haile Sellasie I was deposed by armed forces which took over the government in 1974; Manorama Year Book, 2003, p. 290.
201. Supra n. 157 at 13 – 14.
independent countries from the shackles of colonial rule remains the main cause of refugees flow.

(ii) International Conflicts

The second category of factors responsible for generating refugee flows is related to state and national building processes which precipitated not only political, ethnic and religious conflicts but created economic and environmental conditions that forced people to migrate within or outside their respective countries. Hence the wars between two states or two groups of states generate refugee flow. Sometimes this flow has resulted in long absences, sometimes only in shorter displacements, there are many reasons for this flow:

(a) The government authorities, to prevent injury to civilians, may force them to change their place. Sometimes civilians act on their own initiative in order to avoid immediate danger such a desire may be stronger in border areas than elsewhere. Thus, an outpouring of people from the border areas occurred in Europe at the beginning of Second World War.202

(b) Whenever the border areas of two countries have overlapped with the national of each other any dispute between these two countries203 could lead to massive refugee flows.204

(c) Invasions also created refugee flows into neighbouring countries. The Soviet Union’s invasion205 of Afghanistan

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203. For example the War between Somalia and Ethiopia over Ogden which started in 1977 has generated several hundred thousands of refugees, mostly ethnic Somalis who had to flee that country. The refugees from Ethiopia moved to Somalia and Djibouti, Similarly, many Germans were forced to leave Soviet Union. As cited in T. N. Giri, Refugees problems in Asia and Africa: Role of the UNHCR, 2003, p. 14.
204. Supra n.157 at 14.
205. Soviet troops, which had occupied the country in 1979 faced resistance from Afghan tribes man "Mujhindeen" (holy warriors). Soviet troops were withdrawn in 1989; Manoroma Year Book 2003, p. 258.
caused millions of Afghans to migrate into neighbouring Pakistan and Iran, India. Similarly Vietnam's invasion of Kampuchea in 1978 created tens of thousands of Kampuchean refugees who fled to Thailand.\(^{206}\)

(d) When two countries involved in an armed conflict, some population groups who want to escape from a particular political system or its personal consequences may try to go over to the side of an enemy state, especially when the latter seems to have victory in its grasp. The large scale population movements took place in Korea after the defeat of Japan and the subsequent occupation of the north by Soviet troops.\(^ {207}\)

(e) Lastly, post-war agreements between two countries also generate refugee flows.

(iii) **Revolutions, Coups and Regime Changes**

Revolution involve relatively bid exodus of people to neighbouring countries. As a result of the Hungarian revolution in October 1956, approximately, 1, 80,000 Hungarian refugees fled into Austria and 19,000 into Yugoslavia, more than 1,75,000 of the Hungarian refugees in Austria and all of those in Yugoslavia has been resettled in other countries by 1957.\(^{208}\) Following the Sour revolution of Afghanistan in 1978, the Afghan refugee problem started in South-Asia, within a year and a half-Between 1978 and December 1979, an estimated 1,93,000 refugees had come to Pakistan to seek asylum.\(^{209}\)

There could by another reasons like new regime may like to resist reforms or they could have ambitious plans. All

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206. *Supra* n.204.
207. *Ibid*.
208. *Supra* n. 87 at 71.
209. *Supra* n.166 at 105.
these compel forced migration of refugees that may depend on the aim of new regime, its repressiveness or violence. Further frequency of coups is also an important cause for refugees. Many African and Asian Countries and some of Latin American countries have suffered from continuous political instability in their forty-five years of independence and each change in the regime has started new waves of refugees.\footnote{210} This was the case of Cuba\footnote{211} where since the victory of Fidel Castro in 1959 more than one million people have left the country and have settled in United States of America.

However, coup’s d-etal involve relatively small part of society where one elite exchange for other. This results in exodus of senior political figures and military officers. Who were part of the replaced regime, but they normally constitute a small part of total emigration.\footnote{212} So the number of people has fled to other countries to seek asylum in case of revolution, coups or with the change of government.

(iv) Ethnic and Tribal Conflicts

Ethnicity and tribal identity have led to many wars throughout the World and have created refugees problem for recently after two world wars, there was move toward ethnic homogenization in Europe. Emergence of Israel for Jews, after World War Second was the result of this move which led to Palestine refugee problem that brought Arab into direct conflict with United States of America and Europe.\footnote{213} The recent disintegration of Yugoslavia\footnote{214} and erstwhile

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210. Supra n.157 at 15.
211. In 1959, Dr. Fidel Castro overthrew General Batista, the Dictatorial President and took over, resulted millions of People’s flight from country; Manorma Year Book, 2003, p. 284.
212. When a group of Military officers took over the government of Suriname in 1982, displaced politicians simply went abroad; Manorma Year Book, 2003, p. 347.
213. Supra n. 157 at 16.
214. Yugoslavia consisted of six republics (Serbia, Croatia, Slovenia, Montenegro, Bosnia – Herzegovina and Macedonia and the two autonomous
Soviet Union is purely on ethnic lines, which has resulted in thousands of death and displacement of persons.²¹⁵

Further the formation of most independent states in Africa was accompanied by ethnic wars and expulsion of minorities. This was the case of Rwanda²¹⁶ which was founded in 1961 and was accompanied by the flight of 1,40,000 Tutsi. In Burundi, the attempts by the Hutu government to take over the Tutsi resulted in the massacre of perhaps 1,00,000 Burundians and the flight of tens of thousands of Hutu into Rwanda, Tanzania and Zaire during 1960s and 1970s. Neighbouring countries are receiving large numbers of refugees even today.²¹⁷

The ethnic conflict which took place in Sudan²¹⁸ at the end of the 1960s and the beginning of 1970s, created more than 2,00,000 Sudanese refugees dispersed in Uganda, Zaire, the Central African Republic and Ethiopia.

In Sri Lanka, inter-communal violence which began in 1983 between the Tamils minorities and Sinhalese majority resulted in the migration of Tamils from Sri Lanka. India is one of the major recipients of 'Tamil Refugees'.

For similar reasons, fighting is still going on within Afghanistan, Iraq, etc. Even in Europe, the struggle for

²¹⁵ Supra n. 213.
²¹⁶ The Republic of Rwanda became independent on July 1, 1962. Rwanda presents a dismal scene of ethnic fighting. For centuries, the Tutsi dominated the Hutus (90% of the population). A civil war of 1959 put an end to Tutsi power. Many Tutsi went into exile. Manorama Year Book, 2003, p. 336.
²¹⁷ Supra n. 157 at 17.
²¹⁸ In Sudan - The 12 Northern provinces are predominantly Arab – Muslims, and the 3 Southern provinces are populated largely by Christians and animists, ethnic violence led major refugee’s dispersion from country. Manorama Year Book, 2003 p. 347.
ethnic purity goes on. Thus ethnic and tribal conflicts are also important cause for refugees' emergence.  

(v) Partition of States

Partition of States on grounds of religion, ethnicity, language, culture etc., involves movement of population in huge number, which resulted in large scale war, violence and death and movement of people from one area to other occurred, hence this type of partition has given rise to large number of refugees.

In 1947 the partition of India (British India) in two states on the lines of religion resulted to large exchanges of population. Muslims from all over the country moved towards Pakistan and they become refugees there similarly India also received large number of refugee Hindus from Pakistan after partition. It was approximately 10 million people migrate from one state to other after partition.  

According to the UN Resolution of 1947, Palestine had to be divided into a Jewish State and a Palestinian state, and it created 7,50,000 Palestine refugees. Further in 1954 the decision to divide Vietnam into separate sectors; this resulted in the movement of one million refugees from North Vietnam to South Vietnam. Another case of state partition was Pakistan/Bangladesh division. Which brought about 10 million Bengali refugees who fled to India, most were repatriated in the early 1970s when the war

219. Supra n. 217.
220. Id., at 18.
221. The Palestinian Arab exodus began in December 1947, within days of the UN General Assembly passing the partition Resolution of Palestine, T.N. Giri, Refugee Problems in Asia and Africa: The Role of the UNHCR, 2003, p. 18.
222. Vietnam war was fought mainly in South Vietnam from 1954 between United States backed government forced and Viet Cong. Guerrillas supported by North Vietnam and Soviet armaments, some 9,00,000 refugees, at least 60% of them Roman Catholics, Moved from areas of northern Vietnam to the South of the country; Manorma Year Book, 2003 p. 362.
223. East Pakistan became an independent entity named Bangladesh on 16 December, 1971; Manorma Year Book 2003, p. 266.
ended. Thus partition resulted in the movement of people from one state to other one.

(vi) Violation of the Human Rights

There is a nexus between violation of human rights and exodus of refugees. Human Rights are often violated in time of Social upheaval, war and revolution and by repressive government that seek to silence opposition. So the large scale violation of human rights is another main factor responsible for the exodus of refugees which continues to take place all over the world.

In different forms the violation of human rights occurs in all parts of the world that is slavery is outlawed throughout the world, yet it still exists in some places. News reports tell of pro-democracy protesters being arrested in China, prisoners being tortured in Iraq and "ethnic cleansing—an effort to drive out or kill an entire ethnic group being carried out in Bosnia. Even in democratic countries like United States, where human rights are valued there are cases of police brutality and other abuses.224 All of these and many others violation of human rights are a source of concern worldwide and responsible for the exodus of refugees in large scale. Most rampant form of violation today is the prevalence of terror. Arbitrary assets and detention, torture, harassment, large scale massacres, summary executions and disappearances, often directed against political opponent or members of certain social, ethnic, religious or social groups, are common. The danger created by such practices leaves the affected citizens with no alternative but to flee or stay away their home countries.225

(vii) Economic situations

The incapacity to deal with the challenge of economic developments has been a part of the distorted evocation. This incapacity has generated economic and environmental migration in the different region of world. The flow of economic migrants has been stimulated as a result of modernization and development. Bangladesh is identified as one of the largest and continuous source of economic migrants, going mostly to India; further the poor economic conditions of Sri Lanka made thousands of people to migrate to India. So to some extent economic conditions are also responsible for the refugees flow.

(viii) Expulsion of minority groups and population transfer

This category comprises political refugees forced to move by government actions. Expulsion of 40,000 Hindustanis and Pakistanis who were forced to leave Uganda, Kenya and Tanzania in early eighties, most of these were accepted by Great Britain. Further in the early months of 1983, the Nigerian authorities carried out a mass expulsion of foreign workers, who entered the country during the period of the oil boom. Most of them were Ghanaians, again in 1983 millions of Tamils moved to India because they were deprived from some fundamental rights in Sri Lanka, reason behind was, they were in minority in Sri Lanka.

Historical Background of Tibetan Refugees

India shelters one of the largest refugee populations in the world. Tibetans are the largest refugee group in South Asia and majority of them live in India. It is a well known fact that the problem of Tibetan refugees is a living problem.

226. Supra n.166 at 102.
227. Supra n.157 at 19
228. Ibid.
and it is bound to remain so for many years to come. Before drawing a conclusion about the treatment meted out to Tibetans in India one must first look at the historical background of Tibetan refugees.

**Tibet- The Land**

If we look at a map of Asia, we find that India is shut off on the North by the Himalayan mountain ranges beyond which lies immense and little known territory called Tibet, which is dry and barren, but affording pasture age for the flocks of the fiercely independent Mongolian Tribes, who dwell there. Tibet is a land in South-central Asia. It is called the *Roof of World* because its snow covered mountains and winds wept plateau are the highest in the world. Tibet was known to mankind not for its wealth and weaponry but for the heights of its spiritual glory and depth of its philosophical thought.

**The geographical Setting of Tibet**

Tibet geographically is a high plateau in the centre of Asia. The plateau of Tibet lies on an average 12,000 ft above the sea level. It is inhabited by people in between 4000 ft to 17000 ft above the sea level. Tibet lies roughly between the 28th and 36th parallels of North latitude and 79th and 99th of east longitude and has common frontiers with both China and India. The altitude of Tibet varies from as low as 2,000 ft. of Dihang to as high as 29,000 ft. of Mt. Everest. Because of the uneven topography of the land, the climate varies from one place to the other. Temperature of Lhasa (12,000ft), the capital of Tibet, ranges from 80°F in the

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230. Supra n.157 at 197.


summer to below 5°F in the winter. Around the altitude of 17,000 ft from above the sea level, the maximum temperature is from 45°F to 65°F and the minimum temperature is down to 27°F.233

There is less precipitation in Tibet. It is recorded as 18 inches in the Lhasa area and 6 to 8 inches in the area around 17,000 ft.234

The Tibetan highlands (historical Tibet) cover an area of about 900,000 square miles, roughly one-fourth of the total area of the United States. But its area in 1950 was about 500,000 square miles.235 It marches with “China proper” (i.e. the 18 province) for some 1,400 miles along the borders of Yunnan, Szechun, and Kansu provinces and for some 1,300 miles more with Sinkiang. With India and the states of Bhutan, Sikkim, Nepal and Kashmir it has some 2,000 miles of common borders.236

Religion

Religion had been keynote of Tibetan culture. The majority of Tibetans professes Mahayana Buddhism and is followers of Lamaism. Before the advent of Buddhism the religion prevailing in Tibet was Bon-po237 which had abundant traces of Indian and Chinese influences.238 Buddhism went to Tibet directly from India. Bon, the traditional religion of Tibet, began to lose its hold with the

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233. Supra n. 23 also see H.E. Richardson, Tibet and its History, 1962, p. 8.
234. Ibid.
235. Political Tibet includes a smaller territorial area of about 500,000 square miles, roughly the size of taxes, New Mexico and Utah Combined. The boundaries of Political Tibet are Much reduced on both the North and East as cited in Helmet Hottman, Tibet - A Hand Book, 1975 p. 1.
237. Bon - Po, a folk religion of Tibet, after fighting a desperate battle with Buddhism for many years, began to decline in the 12 and 13 centuries, as cited in Rajesh Kharat, Tibetan Refugee in India, 2003, p. 42.
rise of Buddhism mainly from the seventh century. Tibet is best known for its Buddhism. In Tibet, there are four sects, all somewhat different in their methods and political persuasions but not in their reverence for and allegiance to the basic Buddhist doctrines. Different sects i.e. Nyingma-pa, Ka-gyupa, Sa-kyapa and Ge-lug-pa contributed in propagating Buddhism at different interval of time. All enjoyed varying periods of pre-dominance in Tibet, but it was the Gelugpa, or yellow hat sect, that maintains absolute political power from the eighteenth century until 1959. The best known aspects of Tibetan religion were the number and size of the monasteries throughout the country, the system of reincarnating Lamas, which has been operative since the twelfth century and of which the Dalai Lama is the chief exemplar. Almost every family in Tibet contributed at least one member to the religious order with the result that the population of the monasteries was proportionately very large.

Culture

The culture of Tibet is a glowing example of how the stream of Indian consciousness crossed the Himalayan frontiers and flowed into far-off lands, transforming their body, mind and soul into an eternity of love, peace and compassion through a community of ideals and institutions. Thus in the field of culture, India’s influence was more pronounced. The first great Tibetan king son-Tsan-Gom-po in the early seventh century sent a great statesman to India to study and work out an alphabet for the Tibetan

239. Ibid.
240. Supra n.231 at 8, also see 238 at 14 – 15.
languages. Tibetan alphabet, are based on the Brahmi character. Moreover, Tibetan art is to a large extent a continuation of the medieval Buddhist art of Bihar and Orissa. Paintings and sculptures are almost totally influenced by Indian traditions. 243

In addition to this, the Tibetan recites and chants his mantra or prayer which starts from om, i.e. Om Mani padme Hum, "the Jewel in the Lotus," signifying the Indian influence on Tibetan culture. As Buddhism migrated to Tibet from India, India may be called the spiritual home of Tibetans. 244 Tibet's religion, philosophy, art, poetry all shows a deep Indian influence.

Political System

Politically, Tibetans were ruled by an unusual form of feudal theocracy 245 that was both centralized and decentralized. Moreover, the structure of the Tibetan government before the communist domination has never been very satisfactorily described. A somewhat extended outline of it is, therefore, attempted here. 246

Prior to 1949, Political System of Tibet

Prior to 1949, there were two separate fields of authority converged in the hands of the Dalai Lama: the head of both the spiritual and temporal power in Tibet. He exercised his authority in a democratic way. He used to consult the higher authorities on all vital issues. 247

The system of government was dualistic in character as there were two prime ministers- one representing the

243. Supra n. 238 at 15.
244. Ibid.
245. Theocracy – means a religious kingdom.
246. Supra n. 241 at 18, also see Supra n. 231 at 10.
247. Supra n. 231 at 10
community of monks and the other representing the laymen of the society. While the monks prime minister was in charge of spiritual matters the other prime minister dealt with administrative issues.\textsuperscript{248}

A council (cabinet) was set up to the administration of Tibet. It was the chief executive body entrusted with the responsibility of advising the Dalai Lama on matters of national importance. Among the four members of the council, there were three lay officers and one monk. They were called \textit{Kalons (ministers)}.\textsuperscript{249}

The administrative body under the council was divided into several departments including political, military, financial, judicial, and foreign and education. Each of these departments (other than financial) was headed by one lay official and a monk. In the financial department, there were four lay officials.\textsuperscript{250}

Religious issues were attended by the Lord Chamberlain (Chikyap Khenpo). In addition, the Lord Chamberlain was in charge of the Private Treasury of the Dalai Lama and the forest department.\textsuperscript{251}

The National Assembly discussed issues of national importance. Any decision made by the assembly was almost final and it was forwarded to the office of the Dalai Lama for final consideration through the office of the prime minister.\textsuperscript{252}

The parallelism between the religious and civil administrations and a rather complicated arrangement of

\begin{itemize}
\item \textsuperscript{248} Ibid.
\item \textsuperscript{249} Ibid.
\item \textsuperscript{250} Ibid.
\item \textsuperscript{251} Ibid.
\item \textsuperscript{252} Ibid.
\end{itemize}
checks and balances may be made clearer by the diagram. After the death of a Dalai Lama and until the accession to power of his successor the government was in the hands of a Regent who was in recent times invariably a Lama, chosen by the National Assembly.\footnote{Supra n. 241 at 20.}

\begin{center}
\textbf{The Tibetan Government}
\textit{Gradation and Channels of Responsibility}
\end{center}

\begin{itemize}
\item Dalai Lama
  \begin{itemize}
  \item (REGENT-GYE-TSAP)
  \item Monastic
    \begin{itemize}
    \item (TSE-KHOR; TSE-TRUNG)
    \end{itemize}
  \end{itemize}
\item Civil
  \begin{itemize}
  \item (TRUNG-KHOR)
  \end{itemize}
\item LORD CHAMBER LAIN
  \begin{itemize}
  \item (CHI-KYAP KHEMPO)
  \end{itemize}
\item CHIEF MINISTER(S)
  \begin{itemize}
  \item LON-CHEN; SI-LON
  \end{itemize}
\item COUNCIL KASHANG (MONK)
\end{itemize}

\begin{itemize}
\item MONASTIC TREASURERS
  \begin{itemize}
  \item (TSE-CHA)
  \end{itemize}
\item MONK COUNCIL
  \begin{itemize}
  \item (YIG-TSANG)
  \end{itemize}
\item National Assembly
  \begin{itemize}
  \item (TSONG-DU)
  \end{itemize}
\item TSI-PONS
  \begin{itemize}
  \item (CHI-GYE-LE-KHUNG)
  \end{itemize}
\item Foreign Bureau
  \begin{itemize}
  \item (MAG-CHI LE-KHUNG)
  \end{itemize}
\item Military Office
  \begin{itemize}
  \item (LA-CHA)
  \end{itemize}
\item Treasurers Etc.
  \begin{itemize}
  \item (DZONG-PON)
  \end{itemize}
\item District Officers
  \begin{itemize}
  \item (DZONG-PON)
  \end{itemize}
\end{itemize}

\section*{Between 1949-1959 Political Situation of Tibet}

At the time of its invasions by the People's Liberation Army of China in 1949, Tibet was an independent country. Thus, Tibet has been a part of China since the 1950s. By the end of 1950, the Chinese attacked Tibet and within year they achieved what they called "liberation of Tibet": Tibet lost its independence.\footnote{Ajay B. Agarwal, India, Tibet and China – The Role Nehru Played, 2003, p. 1.} Today's continue occupation of Tibet by China with the help of troops, represents an ongoing violation of international law and rights of the Tibetan people.\footnote{Supra n.157 at 197.}

When the Tibetan felt threatened from the new political development in China, the Dalai Lama sent envoys to India,
Nepal, United Kingdom and the United States for help, none of these countries came forward to help Tibet in the critical phase of its history.

On May 23, 1951, Tibetans were forced to sign a 17-point agreement with China. In accordance with the agreement, Tibet lost its identity as a nation state, where by the Chinese government took control of Tibet's external affairs while pledging itself to respect the region's autonomy, religious beliefs and customs.

After the signing of the 17 point agreement, the People’s Liberation Army, in the subsequent years expanded its activities to the all parts of Tibet, for maintaining control over this land. Committees made up of both Tibetans and Chinese were established as local governments in various parts of the country. Further in 1956, the preparatory committee for the Tibetan Autonomous Region was formed with the Dalai Lama as chairman and a Chinese general and the Panchen Lama as two of vice-chairman. This committee was founded to establish Tibet as an autonomous (self-governing) region. Simultaneously, China began tightening its control over Tibet. The Chinese government took control of the radio stations, newspapers, bank and shops that sold food. Chinese people took over a majority of such jobs as local government Administrators and the teachers.

256. Nepal Was Bound by Nepal – Tibet treaty of 1856 to assist Tibet in the event of an attack from any foreign country. Similarly India was also bound by Indo – Tibetan Treaty of 1914 to provided diplomatic support to Tibet when it had troubled with China, as cited in J.P. Mitter, Betrayal of Tibet, 1964, p. 181 – 185.

257. Supra n. 231 at 11.

258. The agreement promised no immediate change in the political system of Tibet and guaranteed freedom of religious belief. The agreement provided that Tibetan people should unite and drive out “Imperialist and aggressive Force” from Tibet. The standard of living of the people of Tibet was to be raised gradually. Apart from promising help to Tibet for all the above mentioned programmes, China also took up the responsibility for external affairs to Tibet. Dr. Srisha Patel, Tibetan Refugees in Orissa – An Anthropogenic Study, 1980, p. 2.

259. Supra n.157 at 197.
Announcement was made to settle 40,000 families of Chinese farmers in Tibet. Tibetans faced discrimination by Chinese soldiers and settlers.\textsuperscript{260}

The situation turned from bad to worse when the Tibetan people rebelled after China’s promises of religious and personal freedom proved false. The revolt was brutally crushed, and the Dalai Lama and a large number of Tibetans were rather forced to flee from Tibet and sought refuge in India. More than 80,000 Tibetans were killed in the immediate aftermath, and observers estimate 1.2 million Tibetans have died at the hands of Chinese soldiers or as a result of imprisonment or starvation in the last 45 years. Since 1959, along with Dalai Lama a large number of Tibetans fled from Tibet\textsuperscript{261} and they were settled in India and also other countries of the South Asia.\textsuperscript{262}

\textbf{Causes of Migration of Tibetan Refugees in Exile}

In the analysis of the causes of the forced migration, it clearly emerges that one of the principal causes may be traced to the differentiated Chinese policies towards the Tibetan people in the 1950s. Following reasons were given by the refugees for their plight.\textsuperscript{263}

(1) The first reason and most general was the feeling of acute anxiety about the future of their religion and culture under the communist regime. They were afraid

\begin{footnotesize}
\begin{enumerate}
\item[260.] \textit{Id.}, at 198 also see \textit{Supra n.231} at 11 – 12.
\item[261.] On 17\textsuperscript{th} March 1959, His Holiness Dalai Lama along with his 13,000 followers escaped from Lhasa and Sought Political asylum in India.
\item[262.] M.G. chitkara, \textit{Human Rights” Commitment and Betrayal}, 1996, p. 97 – 98, also see \textit{supra n. 157} at 198.
\item[263.] T.C. Palakshappa during his research on Tibetans in Mundgod region, a subdivision in Karnataka State in South India, conducted an interview to determine their motives for having left Tibet, questioned Tibetan families. His respondent gave some reasons for their flight to India.
\end{enumerate}
\end{footnotesize}
that they would not be allowed to practice Buddhism and maintain their way of life.

(2) The second and more specific reason was that many Tibetans had heard about the atrocities committed by the Chinese in Lhasa, (capital of Tibet) those Tibetans who did not adopt the Chinese communism were abused and beaten in public.

(3) The third reason was that Chinese authorities were obstructing endogamous marriages among the Tibetans, who were forced to take a bride or a groom from the Chinese. This measure was aimed at destroying their race of which the Tibetans are so proud.

(4) A fourth reason was the news that their leader the Dalai Lama, had escaped to India.

(5) A fifth reason was that those who had more sheep or cows without the knowledge of the Chinese were caught by the Chinese and made to leave the place overnight. In order to escape indignities and humiliation in front of their own village people, they fled to India.

(6) A sixth reason was the incessant political meetings, insecurity over the future, and the educating of children to watch and report the behavior of their parents.

Thus the occupation of Tibet by the Chinese had created a sense of insecurity and this insecurity in their daily life was at the bottom of the Tibetan migration.264

Further the Secretary of Home Ministry of Tibetan Government in Exile stated that there are four types of

264. T.C. Palakshapa, Tibetans in India: A Case Study of Mundgod Tibetans, (1976) p. 16 – 17 also see, Supra n. 238 at 63. also see, supra n. 157 at 198 – 199.
refugees who come regularly and seek asylum in India. Those are: 265

1. Who fled from Tibet due to Chinese Government’s torture and atrocity.

2. Monks and Nuns to take religious education about Buddhism in India as this is prevented in China.

3. The pilgrimage population which comes here just to get the blessings from the Dalai Lama and intends to return after that.

4. The youngsters who comes to India for the purpose of good moral education as they do not get the opportunity in Tibet.

Immigration of Tibetan Refugees in India

The flow of Tibetan refugees into South Asia has been the result of communist China’s military action in Tibet, during the Chinese actions to suppress that struggle has continued since then and so also the flow of refugees. The intensity of this flow has varied, depending upon the intensity of conflict in Tibet. 266 This was most serious in 1959, when the Dalai Lama, the religious and political leader of the Tibetans, with thousands of his followers came to India for Asylum.

Asylum in India

Tibetan refugees began to enter India in 1959, after communist China’s invasion and annexation of Tibet. Two phases of displacement have been noted. The first was the displacement in 1959, and the second was the exodus in the early eighties. The first batch of Tibetans crossed over to

265. Supra n. 238 at 63.
266. Supra n.166 at 104.
India on March 31, 1959, when 85,000 Tibetans followed their spiritual and temporal leader, the Dalai Lama.\textsuperscript{267} The second exodus started in the early eighties during the period when Tibet open to trade and tourism. Between 1986 and 1996, 25,000 Tibetans arrived in India. About 44 percent of them were monks and nuns. In 1999, another 2,200 Tibetans arrived. The Indian government allowed entering 2,200 to enter the country, but the majority has not been granted legal residence.\textsuperscript{268}

Influx of a large number of Tibetan refugees created problem for India. However, the government and people of India accepted the new challenges and adopted generous attitude towards them on humanitarian grounds.

\textbf{Role of Indian Government and Preferential Treatment}

Once the refugees were in asylum in India they were in need of some immediate relief to live. The Indian government provides relief to the thousands of Tibetans who were crossing the border. The Government of India established two transit camps. One at Misamari in Assam and the other one at the Buxa in west Bengal.\textsuperscript{269} Three hundred huts were constructed and food, clothing and medical assistance were provided. Although, the government of India was trying to avoid an accumulation of large numbers of refugees in the camps, and made frequent dispersal’s of refugees to the other areas, the population of Misamari reached over 7,000.

\textsuperscript{267} On 17\textsuperscript{th} March 1959, His Holiness Dalai Lama along with his 13,000 followers escaped from Lhasa and Sought Political asylum in India. On 31\textsuperscript{st} March 1959, he arrived at Chuthangmo, an Indian check - post, in the border and from there he has reached Tezpur (Assam) as cited in Rajesh Kharat, \textit{Tibetan Refugees in India}, 2003, p. 46.


\textsuperscript{269} The Camp at Baxa was a former British detention camp of Political prisoners and was now used exclusively for the Tibetan clergy. At one time there were as many as 1,500 monks there, despite the situation at Buxa was bad. The camp at Missamari was little better, as cited in Rajesh Kharat, \textit{Tibetan Refugees in India}, 2003, p. 53.
Between May and June 1959, the camps handled a total of 15,000 Tibetan refugees.\footnote{Supra n. 157 at 200.}

In the camps they were given free rations, clothing and cooking utensils plus medical facilities. The government of India was assisted in this effort by voluntary agencies in India. The Central Relief Committee of India (CRCI) worked in close co-operation with the Ministry of External Affairs and provided assistance. The American Emergency Committee for Tibetan Refugees (AECTR), which was formed in the United States in 1959, provided assistance in both cash and kind.\footnote{Ibid.} In 1960, the refugees were dispersed to the Himalayan Colder regions where most of them were absorbed temporarily. The CRCI and many other Voluntary agencies established a handicraft training and production centre which trained about 500 Tibetan youths in various trades.\footnote{Ibid.}

India refrained from officially seeking help from the International community. It sought help from only voluntary agencies who had offered their assistance. It did not seek help of the United Nations High Commission for Refugees. In order to make them self-sufficient during their period of exile, The Government of India sponsored three approaches. The first was resettlement in agriculture, horticulture or animal husbandry. The second alternative was establishment of centres for training refugees in the production and sale of Tibetan handicrafts and finally the creation of small industries to be run by Tibetans.\footnote{Id. at 200 – 201.}
Regional Distribution of Tibetan Refugees in India

Tibetans are probably the only refugee community who do not live in refugee camps but in settlements. Tibetans in India live in 37 different settlements and 70 scattered communities. If one look at large picture of Tibetan settlement in both north and South India, where the majority of 1, 21,000 or more Tibetan refugees live in exile, both the government of India and the Indian people as a whole have shown enormous generosity and hospitality toward the Tibetan refugees.274

The settlements are official Tibetan communities established on land granted by the government of India in Himachal Pradesh, Ladakh, Arunachal Pradesh, Karnataka, Uttar Pradesh, Madhya Pradesh, South Sikkim, West Bengal, Maharashtra and Orissa of the settlements, close to half are based on agriculture, while one-third are agro-industrial and a fifth are handicraft base. The scattered communities consist of smaller group of Tibetans outside of the official settlements who were not willing or not able, due to limited resources, to be accommodated in the settlements.275

Population of Tibetan Refugees Community

<table>
<thead>
<tr>
<th>Region</th>
<th>No.</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOUTH INDIA</td>
<td></td>
<td>32635</td>
</tr>
<tr>
<td>Settlements</td>
<td>5</td>
<td>32572</td>
</tr>
<tr>
<td>Scattered communities</td>
<td>2</td>
<td>63</td>
</tr>
<tr>
<td>CENTRAL INDIA</td>
<td></td>
<td>8436</td>
</tr>
<tr>
<td>Settlements</td>
<td>3</td>
<td>6015</td>
</tr>
<tr>
<td>Scattered communities</td>
<td>3</td>
<td>2421</td>
</tr>
<tr>
<td>UTTAR PRADESH</td>
<td></td>
<td>14289</td>
</tr>
<tr>
<td>Settlements</td>
<td>6</td>
<td>3581</td>
</tr>
<tr>
<td>Scattered communities</td>
<td>7</td>
<td>10708</td>
</tr>
<tr>
<td>HIMACHAL PRADESH</td>
<td></td>
<td>20307</td>
</tr>
<tr>
<td>Settlements</td>
<td>13</td>
<td>6387</td>
</tr>
<tr>
<td>Scattered communities</td>
<td>14</td>
<td>13920</td>
</tr>
<tr>
<td>NORTH EAST INDIA</td>
<td></td>
<td>8622</td>
</tr>
<tr>
<td>Settlements</td>
<td>3</td>
<td>5022</td>
</tr>
<tr>
<td>Scattered communities</td>
<td>8</td>
<td>3600</td>
</tr>
<tr>
<td>WEST BENGAL AND SIKKIM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Settlements</td>
<td>4</td>
<td>1750</td>
</tr>
<tr>
<td>Scattered communities</td>
<td>36</td>
<td>11089</td>
</tr>
<tr>
<td>LADAKH</td>
<td></td>
<td>7558</td>
</tr>
<tr>
<td>Settlements</td>
<td>3</td>
<td>7558</td>
</tr>
</tbody>
</table>

Source: *(The government of Tibetan exile)*[^276]

New Tibetan Refugees in India

After more than five decades of Chinese occupation of Tibet. The influx of Tibetan refugees coming into exile still continues[^277]. An average of 2000 to 2500 Tibetans come to

[^277]: New refugees who come to India can be separated into two groups: those who came with a Chinese permit and those who escaped and came without Chinese permit as cited in "Exiled
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exile in India every year. More than 44 percent of them are teenagers and young adults (age 14-25), thirty three percent adult (26-59), more than 17 percent young children (0-13) and only 5 percent are over the age of sixty.278

According to the Government of Tibet in exile, the most recent Tibetan arrivals in India include political prisoners and prisoners of conscience, monks and nuns escaping religious persecution, pilgrims hoping to meet the Dalai Lama, people seeking to visit children in search of an education in Tibetan culture and languages which is not available in Tibet.279 Some of these Tibetan register with the reception centre and some of them don’t. They usually join the scattered camps anywhere in India depending upon to whom they know in the area. The Home Ministry genuinely scrutinizes the fresh arrival to find out who the refugees are and then admit them to the Tibetan Reception Center. For fresh arrivals, the Central Tibetan Administration has four sub- programmes:280

1. Reception- facilities development programme
2. Treatment of torture victim programme
3. School programme for new refugees
4. Monastic Support programme

Third Generation of Tibetan Refugees in Exile


279. Ibid.

Many of the first and second generation's Tibetan refugees including the Dalai Lama himself, consistently severe Tibet as mother earth and homeland inspired by the Buddhism teaching. But the third generation of Tibetan refugees, born and raised in India or Nepal, hardly share the older generations concern of maintaining the Tibetan identify. They can hardly see a specific vision for their future as Tibetan exiles. Many tend to lose patience with the non-violent struggle; thus they simply express their nationalistic and patriotic feeling, consisting primary of strong hatred for the Chinese communist Government.281

They have hardly nourished their emotional and religious attachment to their lost homeland and its traditional culture of Tibetan Buddhism as did the first and second generations. At the same, consumer culture attracts them. These grandchildren of exiles tend to assimilate, losing their unique culture identify as Tibetans in daily life.282

Tibetan Refugees Settlement- Dharmshala, Himachal Pradesh

The movement of Tibetans to India was en masse along with their spiritual leader, the Dalai Lama. At first the incoming Tibetans were accommodated in transit camps set upon the border. Later Tibetans refugees have been rehabilitated in settlement camps. In the process of dispersal of the Tibetans to several places in India, Dharamshala, in district Kangra, Himachal Pradesh, in North India, was one of the places selected for the purpose and is one of the largest settlement of Tibetan refugees in North India and is the residence of His Holiness the Dalai

282. Ibid.
Lama. The Tibetan government in exile has been there for almost five decades.283

Dharamshala-The Little Lhasa in India

Earlier History

The Kangra valley is rich in unexplored archaeological sites of great importance to understanding Indian Buddhism; in 635 A.D. the Chinese monk pilgrim, Hsuan Tsang recorded fifty monasteries with around 2,000 monks in this fertile region. But a century later, Buddhism and all its sites were eliminated from the valley during an upsurge of Brahminical revivalism.284

Dharamshala’s earliest history is obscured by time and the successive invasions that swept through all North India. But it is known that the original tribes identified with Kangra’s hill tracts were Dasas, a warrior people, later assimilated by Aryans.285

In 1849 the British posted a regiment in Dharamshala, but the place was not to remain a military cantonment for long. By 1855, it was a small but flourishing hill station and the administrative headquarters of Kangra district, which had been annexed by the British in 1848. The two main areas at the time were Mcleod Ganj, and Forsyth Ganj.286

In 1905 a severe earthquake changed the face of Dharamshala once. Many buildings collapsed and the whole settlement, one ravaged, was never re-occupied. Mcleod Gunj then quickly became a sleepy, undistinguished village until. His holiness the Dalai Lama, fleeing persecution in his

283. Supra n. 238 at 74.
285. Ibid.
286. Mcleod Gunj, named after Lieutenant governor of Punjab, David Mcleod, and Forsyth Gunj, named after a divisional commissioner, see http://www.tibet.com visited on 08.10.2007.
homeland, made it home in exile and moved the central government in exile, from mussoorie to Dharamshala in 1960. Today more than 8,000 Tibetan refugees consider Dharamshala their second home.  

**Present Facts**

Dharamshala is situated in the northern Indian state of Himachal Pradesh. It lies on a spur of the Dhuladhar range, the Pir Panjal region of the outer Himalayas; and commands majestic view of the mighty Dhauladhar range above, and the Kangra valley below. Dharamshala is divided into three parts lower, middle and upper Dharamshala. Market area of Dharamshala i.e. Kotwali Bazar and surroundings is called middle Dharamshala and areas further down the valley (at the average height of 1,250 meters) are called lower Dharamshala while McLeod Ganj (at the height of nearly 1,800 meters) and surrounding areas are known as upper Dharamshala, is where the main Tibetan community lives. It is small town perched high upon the spur of a mountain range in the Himalayas. Both the Tibetan and the Indian communities are living there.

In the beginning, from the 1960's to the mid 1980's, there were 2,000-3000 Tibetans living in Dharamshala. But now there are more than 8,500 Tibetans living here. This covers the whole of Dharamshala and Kangra district. The Mcleod Ganj alone there are now about 5,000 Tibetans. It is no wonder that Dharamshala the largest settlement of Tibetans and headquarters of the Dalai Lama is known has “The little Lhasa”.  

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287. Ibid.  
288. Ibid.  
289. Supra n. 274 also see Supra n.284  
290. Ibid.
Today, streams of Tibetan refugees from all over the world flock to Mcleod Gunj to receive blessings and teachings from his Holiness the Dalai Lama. The high altitude and cool weather contribute physically to this recreation of the original Tibetan environment. Dharamshala pulsates with the sights and sounds of old Tibet. Though certainly more modern, life is basically Tibetan in Character.291

Settlement Location

9 km up from Kotwali bazaar is the famous town Mcleod ganj often called "the little Lhasa." This is the residence of His Holiness the Dalai Lama and the seat of the Tibetan government in exile. The altitude at Mcleod ganj is approximately 1750 ft. above sea level and the temperature ranges between 0° - 38° Celsius with an average rainfall of 290 cm. The Tibetan refugees in Dharamshala are scattered around the hills of Dharamshala and as per their location they were divided into five decisions.292

Settler's Livelihood

Tibetans in Dharamshala doesn't have any land on the lease from Indian Government like other settlements in India for agriculture. So, the main source of livelihood of the Tibetan in Dharamshala are they own shops, handicraft work, trading manufacturing, jobs (CTA), seasonal petty business, small restaurants etc.293

Facilities in the Settlement294

School: one day school up to III (Yongling Creche-Mcleod ganj)

291. Supra n. 284.
293. Ibid.
294. Ibid.
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One day school from III to Vth standard (TCV day school- Mcleod ganj)

One day school up to class II (Gangchen Kyishong)

One Senior Secondary school (Lower TCV School)

One Senior Secondary school (Upper TCA School)

**Health Facilities:** One modern allopathic hospital

One Tibetan medical and Astro. institute

**Monasteries:** There are 15 monasteries at Dharamshala:

1. Namgyal  
2. Neychung  
3. Kirty  
4. Tsechok Tashi  
5. Reglam  
6. Gadong  
7. Tashiling Choeling  
8. Dolmaling  
9. Shugseb  
10. Tsang dor-mar  
11. Thardoeling  
12. Chemi  
13. Rig in

**Old People Home**

There is one old people's home under the direct care of department of home. There are 150 elders and 13 staffs at this home.
Administrative set up

Tibetan welfare office: at Mcleod ganj is serving as the liaison between the Tibetan in Dharammshala and the Department of home, central Tibetan administration. It is the principal office to look after welfare and overall control of running of affairs of the Tibetan in Dharmashala. The welfare office is the representative of the Department of home, CTA. Daily task for the representative range from adjudicating disputes to communicating with group leaders and outside authorities, and generally watching over the running of all aspects of the settlement.295

Local Assembles

Like every other genuine democratic system the Tibetan in Dharamshala elect their own representative for better understanding of the problems with them. These elected members act as an intermediary with relevant authorities, pass on information, settle disputes and collect money. They can bring up the problems of the Tibetan people and raise the question on the working of the Tibetan welfare officer. These members are elected on the basis of their strength of personality and once ability to stand before the interest of their people.296

Tibetan Government-in-Exile

His Holiness established a central Tibetan administration (CTA) which for all practical purposes functions as the Tibetan government in exile. Although not formally recognized as such by the world or in particular by the host government, the Tibetan both inside and outside occupied Tibet regards the CTA as the sole legitimate
Government of Tibet under the leadership of his holiness the Dalai Lama.297

**Sum Up**

In the light of all this, it is clear that each year, hundreds of thousands of people in different corners of the world are forced to leave their homes and lead the life of refugee. Human rights violations are a major factor in causing the flight of these people as well as an obstacle to their safe and voluntary return home. There have been refugees and asylum seekers for as long as there have been violations of human rights.

So respect for human rights is essential for the protection of refugees in the countries of asylum. Because refugees are human beings, they have the right to be received in dignity and with full respect for their basic human rights until and unless it is safe for them to go home.

Coming to Indian scene one may see that India is one of the few countries in the world which has experienced refugee situation as a gigantic scale during last five decades. It has given humanitarian assistance and protection to millions of refugees who came from its neighboring countries. Since the early 1950s, India has hosted a large community of Tibetans refugees as well as the Tibetan government-in-exile. India has quietly shown its support for Tibetan's human rights.

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