CHAPTER-I
INTRODUCTION AND HISTORICAL BACKGROUND

Refugees, over population, environmental degradation, terrorism, world crime movements and organized crimes are worldwide problems that don’t stop at a nation’s borders.

(Warren Christopher)

1.1 Introduction

The United Nations High Commissioner for Refugees Antonio Guteress has very well stated that “….in the midst of migrants in search of a better life there are people in need of protection: refugees and asylum seekers, women and children victims of trafficking… When leaving is not an option but a necessity this is more than poverty.” Forcible migration is not a new phenomenon in history. The abominable slave trade which deprived Africa of its human resources but enriched the “Whites”; the migration of protestants from France to escape religious persecution; the massive deployment of indentured labour to fulfill the demands of expanding colonial economies, the world wars which triggered refugee movements and forced repatriation all are illustrations of man’s inhumanity to man. During the nineteenth and early twentieth centuries, the inter continental migrants from the old world to the new world involved some 50 million people, many of whom were “fleeing from persecution in Europe”. Between 1945 and 1970, nearly 100 million people were uprooted, “a period heightened by those displaced in Europe by the Second World War and its aftermath; the partition of India; the division of Germany; the Palestinian Diaspora; the flight of Cubans; the consequences of Indo-Pakistan war and the birth of Bangladesh”.

Asia is the largest refugee hosting continent with 41 percent of the total refugee population of the world. In particular, South Asia hosts the fourth largest concentration of refugees in the world constituting roughly about 12 percent of the total refugee population of the world. A large chunk of the South Asian population either lives as refugees in one or other neighbouring countries or as internally displaced in their own countries as a result of persecution, war, human conflict or

1 V.Suryanarayan and V.Sudarsen, Between Fear and Hope Sri lankan Refugees in Tamil Nadu, 5-6 (T.R. Publications Pvt. Ltd., Chennai, 2000).
forced relocation. Refugees in South Asia constitute from those within the region and outside. The principal refugees generating countries from within the region are Bhutan, Sri Lanka and Bangladesh. India is the major refugee hosting state from within the region apart from some refugee groups it continues to host from outside the region. Since 1947 population movements across boundaries in South Asia have consisted largely of rejected people or unwanted migrants.  

The dominant conception of refugee as a moving entity is founded upon the movement of people particularly from the seventeenth century at least until the end of Second World War. Indeed it is this historical record which according to Hathaway's account of the development of the refugee definitions, was drawn upon to define the refugee variously in 'juridical, social and individualistic terms. The term 'refugee' which was first employed in 1573, emerged through the process of identity formation. According to Atle Grahl Madsen, refugee movements have been recorded "as far back as the history of mankind." Peter Rose dates the emergence of the concept of asylum to the writings of Euripides, Sophocles and Virgil. The historical narrative continues in this vein from the age of religious persecution to the age of political oppression in the eighteenth century with most countries in Europe being forced to admit political dissidents fleeing from Austria, Russia, Prussia and France. From the early twentieth century to the present minority groups have been target of oppression. The refugee problem in the twentieth century could be attributed to the two world wars and regime changes in the two biggest countries Russia and China. But the number of refugees being generated now is the result of localized conflicts than a clearly discernible global phenomenon, nor can it be linked to a single cause except a generalization regarding human rights violations. The process of migration ranges from voluntary migration for economic reasons to that of involuntary migration due to political upheavals viz. civil strife, civil wars, military coups, dictatorial political tyranny or occupation by alien forces making the life of a person insecure, uncertain and rendering his very existence and tranquility

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precarious. Almost all the refugees groups in South East Asia including the Tibetan issue are products of communist hegemony over weaker nations.\(^5\)

From multiple points of view India has been a home to numerous refugee inundations, haven seekers and forced migrations historically and additionally after freedom. Any issue of human unreliability in South Asia produces this stream. Along these lines, whether it is furnished clash, normal catastrophe, persecution and segregation of ethnic minorities, financial pain, food or water insecurity, individuals move to more steady circumstances, crossing fringes, under various status; some of the time they come as refugees, asylum seekers and different times as forced migrants. There have been both major waves and minor stream ins of refugees. For instance, the partition, the Tibetan mass migration, the Bangladesh freedom, the Sri Lankan common war… all prompted significant outcast flood in India. The shakiness in Afghanistan, Myanmar, Maldives and somewhere else has prompted alternate sorts of displaced person developments. The refugee issue is a major domestic concern that merges with a foreign policy challenge. It needs sensitive handling and synergy between agencies capable to handle the issue.\(^6\)

Refugees have diverse status and every inflow has been taken care of in an alternate way by the Indian government. For instance, those dislodged by partition were common residents and were helped by the state re-settlement strategy. The Tibetans who began escaping from Chinese abuse after 1959 were the following rush of refugees. The administration arrangement for Tibetans has been to resettle them through an administration of residency grant controls and restrict them from political action. Tibetan outcasts, their administration and government – in a state of banishment are a wellspring of strain from the Chinese government. Notwithstanding India's mollifying Chinese fears, the Chinese decry the Dalai Lama and feel that India can possibly destabilize China. Relocation and evacuee development from Bangladesh has the most complex character and specificities according to time period. Amid the Bangladesh freedom war in 1971 a huge number of Bangladeshis came to India of which numerous returned yet numerous


additionally stayed back. India has additionally needed to adapt to vast quantities of Sri Lankan exiles primarily the ethnic Tamils who need to leave their homes at various phases of the common war. The Nepalese are in better circumstance on the grounds that there is no visa administration and they are seen basically as migrant labour who can openly drive between the two nations. New refugees to India are the Afghan Hindus and Sikhs that confronted harassment and are liable to naturalized on the premise of their ethnic inception. At that point there are the Rohingyas from Myanmar who have been constrained out and are to a great extent stateless and now looking for safe shelter in India and in Bangladesh.\(^7\)

India is one of the few developing countries which had been sheltering over 2.5 million refugees successfully during its post independence period. It must also be remembered that showing humanitarian considerations to refugees should not lead to any chaos in the country. Country's unity and integrity should not be affected in such activities. Keeping that in mind the government officials had been taking cautious efforts.\(^8\) The Indian government deals with the refugees at both the political and administrative level. The result is that they are treated under the law applicable to the aliens. In the case of refugees protection, the Constitution of India guarantees certain fundamental rights which are applicable to non-citizens namely, the Right to Equality (Article 14), the Right to Life and Personal Liberty (Article 21) and the Freedom to Practice and Propagate their own Religion (Article 25). Any violation of these rights can be remedied through recourse to the judiciary as the Indian Supreme Court has held that refugees or asylum seekers cannot be discriminated against because of their non citizen status.\(^9\)

While national governments are responsible for the protection of the basic human rights of their nationals, "refugees" find themselves without the protection of a national state. Refugees by definition are victims of human rights violations. It is the risk of human rights violations in their home country which couples the refugees to cross international borders and seek protection abroad. Consequently, safeguarding human rights in countries of origin is of critical importance not only to

\(^7\) Ibid.
\(^9\) Id. at. p.143.
the prevention of refugee problems but also for their solutions. If conditions have fundamentally changed in the country of origin promoting and monitoring the safety of their voluntary return allows refugees to re-establish themselves in their own community and to enjoy their basic human rights. Respect for human rights is also essential for the protection of refugees in countries where they are integrated locally or re-settled.\textsuperscript{10}

It was not until the period after the First World War, when the League of Nations came into existence, that the refugee issue came to be viewed as a worldwide issue that must be handled at the international level. And still, at the end of the day, the development of a global framework to react to and oversee displaced person issues was moderate and irregular. The League of Nations designated various High Commissioners and agents to manage particular refugee groups, for example, Russians, Armenians and Germans yet none of these formed into long standing courses of action. Correspondingly, after the Second World War, separate bodies were set up to manage European, Palestinian and Korean refugees. By 1950, the international community had still not set up a system of establishments, frameworks and laws to manage the refugee issue in a global way. The defining moment came in 1950-51 with the foundation of the workplace of the United Nations High Commissioner for Refugees (UNHCR) and the adoption of United Nations Convention Relating to the Status of Refugees. Together they gave, surprisingly, a formal structure for reacting to the necessities of refugees and measures for the protection of refugees under international law.\textsuperscript{11}

UNHCR's annual figures showed 1.1 million people fled across international borders in 2012, while 6.5 million were displaced within their homelands. The UN's refugee agency stated that war and other crisis drove one person from their home every 4.1 seconds in 2012, pushing the number of people forcibly displaced to a two decade high of 45.2 million. Antonio Guterres, the UN High Commissioner for Refugees stated that "So each time you blink, another person is forced to flee".

Guterres pointed out that 87 percent of the world's refugees were protected by developing countries.  

India's diversity, stability and relatively well established rule of law have made it a characteristic destination for individuals escaping oppression and precariousness in their own particular nations. Inside the South Asian region, India emerges as a special case of tolerant, democratic and secular government in an area of precarious and unstable states. India has truly confronted various floods over numerous centuries and the capacity of these individuals to incorporate into multi ethnic culture and contribute gently to neighbourhood societies and economies has fortified the impression of Indian being a nation customarily affable to refugees. India shares seven land borders and one sea border with countries in varied states of strife and war and over the years, has facilitated vast refugee populaces from neighbouring countries.

The partition of the subcontinent at the very dawn of the independence of India was a defining moment for the future direction and psyche of the new nation. The vicious communal violence and refugee crisis which ensued resulted in wide scale destruction of life and property and traumatised millions of people. It was a 'one-way exodus' as the refugees did not have the option of returning to the areas they were compelled to flee from; they required immediate protection as well as a permanent solution in India. It should also be noted that as refugees were arriving in India, the communal violence had led to a reverse movement of people from India to Pakistan thus adding to the complexity in handling the refugee situation in the subcontinent.

The refugees had to start a new life as part of the newly independent state of India and the government had to respond to an extraordinary situation at a time when it hardly had any resources and experience in dealing with humanitarian emergencies involving such large number of people. During partition, there was no international refugee regime—which was established only in 1951 the Refugee

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Convention and initially was only applicable in Europe. India did not sign the convention even after its geographical limitation was removed by 1967 Protocol to the convention. However, the spirit of the convention is to protect all refugees anywhere, irrespective of their country of origin or destination. The mass influx of refugees was one of the precipitating factors which led to the war between India and Pakistan at a time heightened political tensions in the region and cold war rivalry in the world from which India was non-aligned. This refugee situation is an example where humanitarian concerns were mixed with national security concerns. The massive influx was becoming a destabilising factor in India's demography and resources at a time of heightened tensions in the subcontinent. 15

1.2 Refugees in India: A Historical Overview

Tolerance of different religions had been an integral part of Indian tradition. India had been the home to all major religions in the world. It is worth mentioning that St. Thomas brought Christianity to India in Kerala long before Vatican was Christianized. Jews, fleeing from Roman persecution, found refuge in Cranganore in Kerala in 68 AD and from there moved to different parts of the country. There was a flourishing Jewish Community in Cochin, until the Jews after the Second World War, migrated to Israel. Tolerance and good will made India a haven for refugees from very early times. In the Indian tradition, a stranger who comes as guest is referred to as athithi and the host is expected to treat him as God next only to mother, father and preceptor. 16

In modern times, the movement of refugees and displaced persons has seriously affected India and other South Asian countries. Nearly 20 million people crossed the India-Pakistan borders before and after independence, 10 million East Pakistani refugees came to India before the liberation of Bangladesh; and 3.5 million Afghan refugees moved into Pakistan following the Soviet military intervention. 80,000 Tibetan refugees came to India after 1959 and are camped in different parts of the country. About 53,000 Chakmas have crossed over to Tripura, Arunachal Pradesh and other North Eastern states. India has also provided shelter to 19,000

15 Id. at. p.13.
Afghan refugees and few hundred ethnic Nepalese from Bhutan. A small number of Burmese students, fearing persecution from the military regime, have also been given asylum. If we add Sri Lankan Tamil refugees to this figure, the total number of refugees and displaced persons looked after by India after independence would be approximately 25 million which is more than the combined population of Sri Lanka, Singapore, Bhutan and Maldives.\(^\text{17}\)

1.2.1 Refugees from Pakistan

The story of refugees in independent India must begin with the partition of the country in 1947.\(^\text{18}\) When India gained its independence from Britain on 15 August, 1947 there followed a phase of armed conflict and enormous human suffering. With the creation of Pakistan an estimated five million Hindu and Sikh refugees arrived in India.\(^\text{19}\) In all, around 7.5 million Hindus and Sikhs and six million Muslims crossed newly created borders of India and Pakistan between 1947 and 1951. More than four fifths of this total crossed the frontier between India and West Pakistan in Punjab, where Radcliffe's line placed 27 percent of Punjab's muslim population under Indian administration and one third of its Hindu and Sikh population under the authority of Pakistan.

A Military Evacuation Organization was established by mutual agreement on September 3, 1947 to arrange for the organized transfer of refugees in Punjab. In September a huge fleet of 400,000 people moved from Lyallpur in West Punjab to India, taking eight days to pass through a given point; officials had an immense job arranging for rest stops, food and medical aid, as well as keeping the different convoys apart.\(^\text{20}\) Many millions of Hindus crossed India's eastern borders with Pakistan into the new State of West Bengal and into Assam and Tripura. In the two decades after partition, a lesser number of about a million and a half Muslims left West Bengal, Bihar, Assam and Tripura to go to East Bengal.\(^\text{21}\) The massive influx

\(^{17}\) Ibid.
of refugees from Pakistan after partition changed the very fabric of our country's population.22

Based on 1951 Census of displaced persons, 72,26,000 Muslims went to Pakistan from India while 72,49,000 Hindus and Sikhs moved to India from Pakistan immediately after partition. It was the biggest migration ever of the world to which these people bear a raw witness. These refugees saw all the raw horrors-massacres, rapes and plundering with their own eyes.23 Large or small, Muslims or Hindu-Sikh, all these convoys shared common emotions-misery and fear. For those individuals among them who had not been driven out by violence and had ample time to make preparations before they left their homes, the food problems presented no great difficulty; people who joined the convoys with their bullock carts were generally able to carry sufficient supplies with them to last them for, say, a month. But in many cases the refugees carried only their clothing and a few pounds of food. Moving at the slow pace of the bullocks, ten to twelve miles a day, they had to forage or starve. The hardships of the trek, common to most migrations, were compounded by disease and mass murder. From the beginning, cholera flourished in the filthy camps and accompanied the travellers on the road. Armed bands of Muslims, Sikhs and Hindu zealots preyed upon each other's convoys, and sometimes caravans were massacred in miniature wars between groups of refugees bound in opposite directions. The scope of this migration as well as its hardships, was almost beyond imagination.24

More than six million refugees who had come from West Pakistan and were in refugee camps had to find new homes and new occupations. Some were granted lands and houses left by Muslims in Punjab and other parts of North India. Others settled in new areas in Delhi and the northern states. Though most of the Hindus and Sikhs had came from West Punjab by the end of 1947, there were migrations into India from other parts of West Pakistan such as Sind, while Muslims went to Pakistan through Rajasthan. Resettling the refugees was thus a continuous

23 Ashok Kumar, “The Atrocities on Refugees were Unimaginable”, The Indian Express, Nov. 23, 2008.
Despite being in a nascent stage, India took necessary legislative and administrative measures to address the problem. The former included the promulgation of various acts of Parliament such as the Rehabilitation Finance Administration Act, 1948 and the Displaced Persons (Claims) Act, 1950. On the administrative side, a special ministry for refugees was created in the Central Government, with branches in the states. It was their responsibility to look into problem relating to transport, communication, livelihood and agricultural land.

West Pakistan Refugee committee asserted that till date even after so many years of partition between 30,000 to 35,000 families who came to India after 1947 and settled in Jammu are attempting to get statehood rights. These families are battling for voting rights too. In addition, their children don't get birth authentications and they are denied occupations also. The refugees asserted that their families are prevented benefits by securing centrally sponsored schemes and they are living in terrible situation. These individuals have constantly brought their voices up in a peaceful way however the strategy creators are resolute that they barely think about their issues. Sixty five years after partition, 3,00,000 refugees are mired in the limbo of that exodus. Three waves of modern day migrants have sought shelter in Jammu & Kashmir. The first arrived in August 1947 from what was then West Pakistan. In October 1947, when tribals, aided by Pakistan Army, attacked Kashmir, another wave of refugees came from what is now known as Pakistan occupied Kashmir (Pok). And after the 1965 and 1971 wars, villagers evacuated from the Chhamb region and made J&K their home. While those from Pok were granted full citizenship rights, those who arrived from the provinces of Pakistan were denied the same. Denied the right to citizenship, they are left struggle to survive.

The recent visit of Prime Minister Dr. Manmohan Singh in June 2013, to the state of Jammu and Kashmir neglected to convey any help to these displaced people. In 2008, Prime Minister Dr. Manmohan Singh amid his visit to the state had

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guaranteed the West Pakistani refugees of a special rehabilitation package including monetary help and a special recruitment drive for their children. The Prime Minister had additionally guaranteed to encourage them with bank credits without security deposit. Both the centre and the state governments are not interested in rehabilitation of these refugees that is the reason these premises are as yet awaiting implementation. More than 1.5 lakh West Pakistani refugees are living in the outskirt locale of Jammu, Samba and Kathua for as long as 65 years in tarnished camps and have been denied citizenship rights.29

In 2007, the Jammu and Kashmir Legislative Assembly rejected an important bill giving the West Pakistan Refugees the right to become citizens of the state. Besides Indian citizenship, a permanent resident certificate (PRC) is given for people whose ancestors have lived in the state for at least 10 years before May 14, 1945. Only those with PRC can buy property, get employment in the state, vote in the J&K Legislative Assembly and are entitled to others privileges. During the 1947 partition riots, a chunk of the population migrated from the present Sialkot district of Punjab province of Pakistan to Jammu and Kashmir. As the West Pakistan refugees had come from outside J&K, they were not given the PRC.30 Thus even today the refugees are struggling for their rights in India.

1.2.2 Refugees from East Pakistan (Bangladesh)

On 25 March 1969, Ayub Khan resigned and handed over the Government to General Yahya Khan who imposed martial law for the second time in Pakistan. On 13 February 1971, Yahya Khan announced that the National Assembly would meet in Dhakha on 3 March, 1971. On 1 March, 1971 the government postponed the session with no fresh dates announced. Mujibur Rehman, the leader of the Awami League declared the fundamental demand for provincial autonomy non-negotiable, pressed for withdrawal of martial law before convening the National Assembly and transfer of power to the elected representatives of the people forthwith, through a Presidential proclamation. On 25 March the president, who had gone to East Pakistan for negotiations, flew back to West Pakistan and ordered army action in

East Pakistan. The Pakistan Army started committing serious atrocities on the civilian population of East Pakistan. As a result of the atrocities committed by the Pakistan military forces, refugees started pouring into the bordering Indian States of West Bengal, Tripura, Assam and Meghalaya towards the end of March 1971. The Ministry of Home Affairs issued instruction to all border state governments to screen the refugees properly and register them under section 3 of the Foreigners Act, 1946.\(^\text{31}\)

The refugees were to be given residence permits for a period of three months initially. In a meeting with opposition leader in May, the Indian Prime Minister Indira Gandhi declared that 15 lakh people from Bangladesh had come to India to protect themselves from the atrocities of Pakistan forces. In the second week of May 1971 she visited the refugee camps at Bongaon, Petrapole and Itkhola in West Bengal and said: "It was a huge problem and India was finding it difficult to deal with. Though there were shortages of commodities, in the circumstances the Government had done good work. Many were still without shelter. Nothing much has come so far from other countries though assistance was expected from abroad. Evacuees would have to leave as soon as that would be possible. The international bodies might create conditions for the evacuees to go back to their homeland. The union government was considering proposals for dispersal of evacuees from the border areas. Arrangements for giving shelter to evacuees in other parts of the country were being considered."\(^\text{32}\)

The first refugees from East Pakistan were Bengali Muslims of diverse backgrounds. The Government of India was not disposed to accept the permanent settlement of Muslims from East Pakistan in India, no matter what their politics might be.\(^\text{33}\) The magnitude of the refugee crisis was impressed on Mrs. Gandhi during a two day visit to the states of Assam, Tripura and West Bengal in mid May prior to the opening of the budget session of the Parliament. The refugees in some districts of these states out numbered the local population. The Prime Minister's


\(^{32}\) Id.at. p. 212-213.

concern was reflected in her comments in the Lok Sabha shortly after it convened in the latter part of May. Mrs. Gandhi noted that more than 330 camps had been established to care for the nearly four million refugees who had arrived in India by that time and who were continuing to come at an estimated rate of 60,000 a day. By the end of May, 900,000 refugees had arrived in the small hill state of Tripura, according to a report to Parliament, placing an enormous burden on the state with an indigenous population of only 1.5 million.34

Mrs. Gandhi reported to Parliament that although foreign governments had expressed their sympathy and concern in response to India's request that they press Pakistan to come to terms with those elected in East Pakistan, none of them were prepared to take action to bring about what the Indian government had come to accept as necessary for a settlement that would enable the refugees to return their homes. She stated that: "Conditions must be created to stop any further influx of refugees and to ensure their early return under credible guarantees for their safety and well being. I say with all sense of responsibility that unless this happens, there can be no lasting stability or peace on this subcontinent. We have pleaded with other power to recognize this. If the world does not take heed, we shall be constrained to take all measures as may be necessary to ensure our own security and the preservation and development of the structure of our social and economic life".35

About the refugee influx, the Guardian wrote: "No nation or world community can realistically be expected to succor nine million refugees indefinitely. These refugees are not the result of some unimaginable natural phenomenon. They are the direct result of political military action".36 The influx of refugees which had been going on since partition gathered momentum after the emergence of Bangladesh. The fresh influx began from September 1974 onwards and many causes may be attributed to this. Even though the soil of Bangladesh is fertile, it has often been subjected to floods, cyclonic storms and devastation by the changing course of rivers. The issues of over populations and land hunger compelled the refugees to migrate to better and safer regions. Further the situation in Bangladesh aggravated

34 Id. at. p.152.
35 Id. at. p.153.
since July 1973 due to inadequacies in food and essential commodities which eventually created a famine like situation. This persuaded a small group of Bangladesh citizens to cross over to India. In short, natural calamity, poverty, lack of opportunities for earning a living and growing sense of insecurity and panic created by stories of harassment in other parts of Bangladesh were the major reasons for migration to India.\textsuperscript{37}

In East Pakistan and later Bangladesh successive governments developed a bizarre counter discourse, they simply denied that any of their citizens migrated to India at all. The Prime Minister of Bangladesh stated: "We do not accept that there is any Bangladeshi national living in India. So the question of deporting any Bangladeshi by the Indian government does not arise." By the early 21st century Bangladesh officials were still in denial but some had modified their position slightly; now they claimed that there were, in their opinion, no illegal Bangladeshis anywhere in India. The Bangladesh narrative of denial clearly had terrible effects on individual migrants and citizens rights by either Bangladesh or India, they were caught in the middle. This predicament was epitomized by the fate of hundreds of hopeless labour migrants who in 2003, literally found themselves marooned for weeks in no man's land between West Bengal and Bangladesh. Indian border guards sought to expel them but Bangladeshi border guards refused to let them in on the ground that they were 'Bengali-speaking Indian Muslims'. Bangladesh authorities did not try to stop labour migrants from crossing into India but they vehemently opposed their forced return. This position created great problems for Bangladesh as a modern territorial State.\textsuperscript{38}

The political and social developments in the subcontinent also provide enough footage to the continuing problems of refugee influx in India. One can notice that Bangladesh as an economy is becoming more and more dependent on the funding of the Arab countries. The politics of aid is bound to have an Islamic ideological connotation. The rise of Islamic fundamentalism and the Islamisation of Kashmir issue have provoked saffronisation of Indian society and polity in recent decades. The spread of Hindutva ideology, the rise of Sangh Parivar at the center-

\textsuperscript{37} Id. at p.185-186.
stage of Indian polity, the chain of events before and after the demolition of Babri Masjid in December 1992 had their repercussions in Bangladesh in terms of arousing communal passions. The Human Rights Journalists Forum of Bangladesh in a survey found that various kinds of attacks were carried out on the minority communities after the demolition of Babri Masjid on 6 December, 1992. A total of 45 affected areas were identified where attacks were carried out between 6th and 10th December. The survey found out that a large number of Hindus fled these areas for India or for other safer places in Bangladesh to save their lives and dignity.  

One can thus find a link between the growing Islamic control of Bangladesh and the rise of Hindutva ideology in India. Thus the local, national and international forces have been in action to communise Bangladesh rights from the Pakistan period which results into displacement of the members of the minority community from Bangladesh. The Hindus in Bangladesh have never lived as an organised community or as a cohesive ethnic group. The reasons for this could be found in the fact that the Hindus in Bangladesh are well spread out and with the early migration of the well off sections the village communities have disintegrated. In the absence of any semblance of unity of the Hindus have failed to defend their minimum human rights and opted for migrating to India. The rising demographic pressure and the increasing wretchedness of the Hindus also act as 'push factors' for their migration to India.  

For all concerned in India it is time to accept the fact that not less than five million Bangladeshi refugees are living in Indians as non citizens and the number is increasing every day and on the other side of the border twelve million potential refugees are waiting.

1.2.3 Chakma Refugees

The Chakmas are an indigenous tribal community in the Chittagong Hill Tracts (CHT) of Bangladesh. The CHT despite its 97% Buddhist population was handed over to Pakistan in 1947 against the will of the local people. The Chakmas are the largest of thirteen hill tribes that inhabit the area in the southern part of

40 Id.at. p.216.
41 Id. at. p.227.
Bangladesh bordering Myanmar and the Indian from the Muslim Bengalis. The issue of repatriation of Chakmas to Bangladesh has also soured Indo Bangladesh relations since 1981. The impact of Chakma refugees influx in Tripura, the North Eastern Region of India has been twofold. Firstly, the region has to live with the problem of intermittent influx of refugees who fled to India in search of security and secondly the disturbed atmosphere on the border has encouraged its own extremist elements more particularly Tripura National Volunteers to carry on their nefarious activities with impunity from their hide outs across the border. The refugees from CHT are the direct outcome of the recurring massacre and atrocities committed upon them. Since the CHT conflict started in 1975, the indigenous hill people of CHT crossed the international border and took refuge on Indian soil to escape the racial and genocidal atrocities of the hostile Bangladesh military regimes.

Chakmas from Chittagong Hill Tracts took refuge to India in two phases i.e. before and after the independence of Bangladesh. Before the independence of Bangladesh some 45,000 Chakmas fled across the international border into India in 1963 pushed out by pressure of a modernizing East Pakistan, victims of the Kaptai Hydro Electric Project that inundated their homeland. Over the last forty years, the first large group of officially recognized Chakma refugees have multiplied and grown. The Chakma refugees flew into India since the independence of Bangladesh. Under the British rule the Chittagong Hill Tracts was an excluded area where non tribals were restricted from settling in the districts and tribals were given limited self governance. In 1964 the Government of Pakistan ended this special status and allowed Bengalis of plains to settle down in CHT area. Even after the independence this was continued and government sponsored settlement increased. This developed

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acute insecurity and fear of loss of ethnic tribal identity in all respect among the CHT tribals that is broadly called as Chakmas.45

Since the creation of Bangladesh and even prior to that, the Chakma refugees have been seeking refuge in India from persecution at home. In the year 1964 thousands of Chakma families entered India fleeing the then East Pakistan.46 The refugees not only caused an additional financial burden on state and federal governments but also posed a potential threat to internal security as they engaged in smuggling and narcotics trafficking.47 Currently, approximately 80,000 Chakma refugees are residing in the state of Mizoram, 50,000 in Tripura and 100000 in Arunachal Pradesh. Despite the initial willingness of the India government to accept the Chakmas as statehood, many are still denied citizenship and rights and privileges they are entitled to. Chakma refugees crossed the Indian borders from Bangladesh are the victims of many unjust practices directly flowing from this stateless position. The nature and gravity of the problem faced by the Chakmas differs from state to state, ranging from the non availability of employment, trade licenses, education, security and basic health facilities. Hunger and poverty are a chronic and pervasive problem for the community and they have faced wholesale confiscation of ration cards and subsequent denial of assistance. In 1991, government agencies stopped providing Chakma farmers with improved seeds, fertilizers, pesticides, agricultural tools and implements at subsidized rates, which are necessary for economic development of this tribe. This continued bureaucratic denial of the right to apply for citizenship must be seen as indirect violation of the laws in India.48

In the last few years, group such as the All Arunachal Pradesh Student’s Union (AAPSU) have periodically organized economic blockades in areas inhabited by the Chakmas. Many villages have been attacked and some houses set on fire. The indigenous tribes are upset with the Supreme Court order in January 1996 that directs the state government to forward applications of the refugees for grant of

citizenship to the federal government. The AAPSU and other local groups argue they have no objection if the Chakmas and the Hajongs are granted citizenship so long as they are shifted elsewhere in India because they fear that in a sparsely populated state like Arunachal Pradesh with a population of less than half a million, the grant of citizenship to so many settlers would upset the power equation and make the Chakmas and Hajongs a decisive factor in the legislative politics of the state.\footnote{Paula Banerjee, Sabyasachi Basy Ray and Samir Kumar Das (eds.), \textit{Internal Displacement in South Asia}, 165 (Sage Publications, India Pvt. Ltd., New Delhi, 2005).}

The predicament is that notwithstanding being issued valid migration certificates at the time of their entry in India and repeated assurance from the Central Government to allow them Indian citizenship, the Chakmas have kept on staying stateless. In 2004 (following 40 years), the Election Commission included 1,497 of them in the voters list for the first time. Amid all these years, the Chakmas are confronting antagonistic vibe from the locals of Arunachal Pradesh.\footnote{Rajesh Kumar Aggarwal, “Nowhere People”, Spectrum, \textit{The Tribune}, October 10, 2010.} Despite their four and half decades stay in Arunachal Pradesh the Chakmas were not ready to secure legitimate status of an Indian citizenship. This place them in an impossible to miss circumstance as the very wellspring of their citizenship (East Pakistan) had since a long time ago stopped to exist and the new inheritor condition of Bangladesh had derecognized them and not even acknowledging them as its own people in its Constitution. Much to the Chakams burden, the region where they settled appreciates an exceptional status under the Indian federal arrangement. The state countered any Central Government's move for settlement of the Chakma refugees in Arunachal Pradesh as one-sided, discretionary, unlawful and unjustified. Thus, the Government of India can't orchestrate a perpetual settlement programme for the Chakams.\footnote{“Chakmas Journey: Somewhere to Nowhere”, \textit{Folks Magazine}, (June 13, 2010), \textit{available at:} http://www.folks.co.in/ (Visited on July 21, 2013 at 12.30am).}

On December 2, 1997, a land mark peace accord aimed at ending the decades old insurgency in the CHT in Bangladesh was signed by the Government of Bangladesh and the Hill Tracts Peoples’ Solidarity Association. The accord was
widely acclaimed by the international community as a major peace initiative.\textsuperscript{52} On January 9, 2012 trying to convey lasting answer for the vexed Chakma and Hajong outcast issue of Arunachal Pradesh, the first meeting of the joint High Power Committee (HPC) constituted by the Government of India under the Ministry of the Home Affairs was gathered under the chairmanship of Shambu Singh, Joint Secretary for North Eastern with agents from Government of Arunachal Pradesh, All Arunachal Pradesh Students Union (AAPSU), Chakma and Hajong people group. Convening the meeting Singh expressed that "Administration of India is especially worried about the assessments of indigenous individuals of the state, in this way is attempting to unravel the issue genially." AAPSU legitimate counselor T.T. Tara contended that "No outsiders can be allowed citizenship in Arunachal Pradesh under the built up law of area and procurements of Indian Constitution. Indeed, even Indian nationals need to get inner live permit to go into the state so there is no doubt of conceding citizenship to Chakmas and Hajongs."\textsuperscript{53}

The Chakma Hajong refugee issue could have a perpetual amicable arrangement with the All Arunachal Pradesh Students Union offering an olive branch to the refugees who made Arunachal their temporary home subsequent to being uprooted from Bangladesh. AAPSU requested that the refugee group distinguish the first transients of 1964-96, number of unlawful migrants, their settlement ranges, encroached areas and immediately end encroachment and refrain from creating law and order problems.\textsuperscript{54} The refugees have committed crimes including rapes, murder and extortion in different parts of the state, posing a threat to the lives of the indigenous people. But despite of this decades old refugee issue the government has failed to tackle the issues\textsuperscript{55} in an effective way.

\textbf{1.2.4 Sri Lankan Refugees in Tamil Nadu}

The stand of Tamil Nadu on the issue of Sri Lankan Tamils has been quite clear since the commencement of the ethnic conflict. The Tamils of Tamil Nadu

\textsuperscript{54} “End in sight for Arunachal Refugee Row”, The Times of India, January 11, 2012.
\textsuperscript{55} “AAPSU wants solution to refugee issue”, The Times of India, June 23, 2013.
have an emotional attachment to the Tamils in Sri Lanka and necessarily insisted on
the Government of India’s taking an active interest in Sri Lankan affairs. The Tamils
of both the countries speak the same language and have the same cultural tradition.
Emotional ties between them, therefore, lie in the logic of things. The refugee
problem involved both the state governments of Tamil Nadu and the Central
Government at New Delhi in the affairs of Sri Lanka. The initial atrocities of the
security forces and later on, the Indian Peace Keeping Force (IPKF) assaults since
1987 compelled the Tamils of the Northern and Eastern provinces to seek shelter in
Tamil Nadu as refugees. The Tamil Nadu Government received them with open
arms, with every sympathy shown to them and sought New Delhi’s cooperation in
solving the complicated refugee problem. 56

The Tamil refugees had begun landing on the shores of Tamil Nadu since the
riots of July 1983. Tamil Nadu has since then played the host to hundreds of
thousands of the Sri Lankan Tamils. By February-March 1985, 12,000 refugees
crossed to Tamil Nadu, losing the means of their livelihood and abandoning their
hearth and home in face of the region of unbridled terror, unleashed by the Sri
Lankan security forces. The refugees first reached Rameshwaram by boat where
from they moved on to Mandapam. By September 1985, for the second time in six
months, the coast of Rameshwaram witnessed the tragically familiar sight of
hundreds of families abandoning their homes in eastern and north western Sri Lanka
and crossing over to Tamil Nadu in boats to escape the reviewed atrocities of the Sri
Lankan security forces. The arrival of refugees continued even after the withdrawal
of IPKF had commenced. 57

On the night of 5 July, 1990, a record number of 38 boats carrying 2,337
Tamil refugees from Sri Lanka set sail from Talaiwannar for Rameshwaram. This
was the largest number of refugees arriving on a single day since the ethnic violence
erupted in July 1983. The renewed fighting between the Liberation Tigers of Tamil
Eelam (LTTE) and the security forces, begun on 11 June, was responsible for the
fresh exodus of the Tamils from the island. Most of the refugees spoke of the
atrocities committed by the Sinhalese soldiers on Tamil women and said that they

56 H.P. Chattopadhyaya, Ethnic Unrest in Modern Sri Lanka: An Account of Tamil Sinhalese Race
Relations, 169 (MD Publications Pvt. Ltd., New Delhi, 1994).
57 Id.at. p.170.
would never return to Sri Lanka until a separate Eealam was established. On 10 July, 1990, the Tamil Nadu Government sought an immediate release of two crore rupees from the centre for the Tamil refugees while the state government itself released one crore to meet the immediate requirements of the refugees. Meanwhile, the inflow of the Tamil refugees continued.\(^{58}\)

On 29 July 1987, India and Sri Lanka signed an agreement to establish peace and normalcy in Sri Lanka. Article 2.16 (D) of the accord stated that “The Government of India would expedite repatriation from Sri Lanka of Indians who are residents there concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu.” In an annexure to the agreement the Prime Minister of India also agreed to deport all Sri Lankan citizens who were engaging in terrorist activities or advocating separatism. The Sri Lankan government and UNHCR signed a memorandum of understanding on 31 August, 1987 by which UNHCR agreed to provide rehabilitation assistance to refugees and the displaced in Sri Lanka.\(^{59}\)

From the aftermath of the 1983 violence until the signing of the Indo-Sri Lanka Treaty in July 1987, the Indian Government tried to mediate between the Tamil secessionists and the Sri Lankan Government to work out a political settlement. By the end of 1987 there were 1, 50,000 Sri Lankan. Tamil refugees in the state of Tamil Nadu and the activities of some Sri Lankan Tamil militants and the underworld were contributing to increased internal disorder there.\(^{60}\) However, unlike the refugees from the east the Sri Lankans were called refugees rather than evacuees. They were registered and issued refugee certificates. In terms of education and health both registered and unregistered refugees enjoy the same rights and the nationals. Nevertheless, in absence of specific legislation their legal status remain ambiguous. The precarious nature of their status became clearer in the aftermath of Rajiv Gandhi’s assassination. NGO’s access to the camps, refugees’ freedom of movement and access to education and informal occupations were all curtailed.\(^{61}\)

\(^{58}\) Id. at. p. 172-173.


\(^{60}\) Ashok Bandarage, The Separatist Conflict in Sri Lanka; Terrorism, Ethnicity, Political Economy, 112 (Rutledge Publishers, USA, 2009).

\(^{61}\) Shibaji Pritam Basu (ed.), The Fleeing People of South Asia: Selection from Refugee Watch, 322 (Anthem Press, New Delhi, 2008).
On 6\textsuperscript{th} January 1992, the India and the Sri Lankan governments signed a bilateral agreement to begin refugee repatriation on 20\textsuperscript{th} January. Soon the programme was suspended when UN High Commissioner for Refugees raised doubts about their safety once they return. In July 1992, the Government of India signed an agreement with the UNHCR and allowed the agency a token presence in Madras. By April 1993 refugee camps were reduced from 237 to 132 in Tamil Nadu and one in Orissa. Representatives of UNHCR were allowed to be in the transit area and could speak to returning refugees. Before conflict was resumed in 1995 some 55,000 refugees were repatriated from India to Sri Lanka and again a majority of them were women. After Rajiv Gandhi’s assassination, politicians began to shun the refugees. As most of these were women they were initially considered harmless but with the number of female suicide bombers swelling, there was a marked change in Government of India’s attitude to women refugees.\textsuperscript{62}

Due to the breakdown of the 100 day cease fire between the LTTE and the Sri Lankan government, the third phase of the Eelam war started in Jaffana district in April 1995. It caused over 6,68,706 internally displaced persons in Sri Lanka as compared to 1,80,000 refugees outside the country by the end of 1999. Moreover, 22,418 refugees had also come to India by April 2003. The fourth wave of the Sri Lankan refugee influx to India began after the Fourth Eelam war started in July 2006. The LTTE blocked the MavilArulenicur which led the government to use force to open the channel with the air force bombing the LTTE camps on July 29, 2006. The civil war came to an end after the decimation of the LTTE in May 2009. By the end of the war over 20,000 people had died and 24,512 people fled to India as of December 2009.\textsuperscript{63} Although the Indian Government had no official refugee determination process, it in fact recognized the Tamil asylum seekers as refugees in various documents. In addition, the government also recognized that the Tamil could not be sent back until conditions in Sri Lanka improved. Hence, the Indian

\textsuperscript{62} Ibid.
Government regarded the Tamil asylum seekers as de facto refugees giving them temporary asylum and protection from forcible deportation to Sri Lanka.\(^{64}\)

There are claims and counter claims about the status of the Sri Lankan refugees living in Tamil Nadu. A United Nations funded NGO Rehabilitation Organisation for Eelam Refugees Rehabilitation (OfERR) which is working with the refugees claim that the Sri Lankan refugees enjoy all the human rights and are treated well in the state. The life of these refugees living in ordinary camps is much better off than the average poor Indians. The children living in ordinary camps are allowed to attend school and youth are attending colleges. The OfERR says it has launched several schemes to improve the condition of Sri Lankan refugees sheltering in Tamil Nadu. However, another NGO called, Partner in Action for Refugees paints a different picture about the living conditions of the Sri Lankan refugees in Tamil Nadu. It says that those refugees staying in special camps are leading a very dehumanized life. Medical assistance is virtually non existent and the food served to them is unpalatable. The children in the special camps are denied access to primary education. Many detainees languish in these camps long after the courts had exonerated them of their crime.\(^{65}\)

The plight of the refugees living outside the camps, particularly in the Nilgiri Hills, remains unnoticed. Some of them working in the coffee plantation farms have virtually became bonded labourers. The farm owners exploit them for being Sri Lankan refugees. Notwithstanding the contradictory claims, the fact remains that the Sri Lankan refugees are caught up in a game of conflicting politics between the Tamil Nadu and the Union Government. There is no effort being made to sort out their problems either on short or long term basis and therefore the problem is left in the lurch. As a long term measure, all the South Asian countries need to evolve a common strategy to deal with this problem, spilling time and again over the national boundaries. However, such strategy is subject to the evolution of regional cohesion which remains an elusive concept in South Asia.\(^{66}\)


\(^{66}\) Id.at. p.79.
The Sri Lankan Tamil poet, Selvam, poignantly expresses the feelings of many Sri Lankan Tamil refugees:

*I have lost the village home where;
The sparrows will build its nest;
The cadjan leaves will sing with the wind;
The Sun will enter the shoe flower;
We crossed the seas dreaming of wealth;
And a house with a beach in front;
And a garden along the red soil pathway;
Alas, we lost our identities in the wilderness of the refugee land.*

1.2.5 Tibetan Refugees in India

The Chinese takeover of Tibet and subsequent genocide led to a mass exodus of the ethnic Tibetans in 1950. The subsequent human rights violations by the People’s Liberation Army (PLA) drove the Tibetans to take refuge in India, Nepal and Bhutan. On 17 March 1959, Dalai Lama left his place and entered India along with 13,000 of his followers, to seek political asylum. The number of Tibetan refugees in India subsequently swelled to 80,000. Since India has not signed the two major legal instruments on refugees (the 1951 Convention and the 1967 Protocol), the Tibetan refugees come under the purview of the country’s normal laws. But the Tibetan refugees are granted asylum by the Government of India, and the principle of non-refoulement has been strictly adhered to.

India has allowed the Dalai Lama to establish a Central Tibetan Administration at Dharamsala, district headquarters of Kangra district of the Northern Indian state of Himachal Pradesh. In addition, the Indian Government provided land and housing in various states of the country for the Tibetans to establish farming settlements, monasteries and nunneries, the number of which today stands at more than hundred. There is no agreement of the actual number of Tibetan refugees in India, although it is believed that the number has gone well past one

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lakh. UNHCR says that India hosted over 11000 Tibetan refugees as of the end of 2001. The South Asia Human Rights Documentation Centre maintains that there are an estimated 121, 143 Tibetan refugees, mostly sheltered in Dharmsala of Himachal Pradesh, Ladakh of Jammu and Kashmir and in Mysore in Karnataka.70

The Central Tibetan Relief Committee (CTRC) earlier known as Central Relief Committee (CRC) started in 1959 by some prominent Indians to coordinate the relief assistance between the Government of India and the representatives of his holiness Dalai Lama for the rehabilitation of Tibetan refugees. The committee’s work included organizing medical programmes in the Tibetan settlements and camps. The grants in aid were given to CRC by the Government of India and it was entrusted with the responsibility of coordinating and distributing the relief assistance received from foreign agencies. It initiated the handicraft projects aiming at generating employment for the under privileged section of the community, the unsettled refugees and school dropouts. In this way, CTRC plays a very dominant role in rehabilitating exile all over South Asia. It works as heart and soul of the development programmers planned for the Tibetan refugees.71

Soon after the 1959, Chinese powers entirely diminished Tibetans opportunity of development, staunching the stream of Tibetans into Nepal and India. The Chinese border police in this way kept Tibetans from escaping to India to escape mistreatment amid accurately the period when Chinese powers executed the most boundless, orderly and extreme human rights manhandle against Tibetans, from the mid 1960s until the late 1970s, generally the years of the famously merciless social upheaval. Since moderately couple of Tibetans figured out how to circumvent amid this time, India's strategies toward undocumented Tibetans remained generally stable for two decades. But with the passing of administrator Mao Zedong, the end of the social upheaval and Deng Xiaoping's consequent ascent to control in 1979, a time of near liberalization in China started.72

71 Sibaji Pritam Basu (ed.), The Fleeing People of South Asia; Selections from Refugee Watch, 268 (Anthem Press, New Delhi, 2008).
For the first time, many Tibetans could acquire travel documents. Numerous left their country to join their families and brethren in India, where, despite the fact that they needed formal legitimate status, they could, by and by, appreciate much more prominent opportunity, security and human rights. In the decade somewhere around 1986 and 1996, for instance, around 25,000 new Tibetan Refugees touched base in India, for the most part by method for Nepal, expanding India's total ethnic Tibetan populace by around a quarter century. In 1994, the Indian Government and the Central Tibetan Administration (CTA) formalized this de facto policy of "voluntary repatriation." In January 1995, the CTA issued directions for the treatment of fresh introductions, which, in addition to other things, viably finished the capacity of new arrivals to get registration certificates (RC's). Young monks and nuns between the age of sixteen and twenty five were permitted to stay for six months. After that, they would be required to sit for passing certain examinations; if they fizzled they would be requested to return to Tibet. In 1996, for instance, of 2843 fresh debuts the CTA asked 1200 about half, to come back to Tibet. As the political relationship amongst India and China has improved in the recent years, India has accomplished more both to keep fresh debuts from entering India in any case and to point of confinement Tibetans freedom of speech and assembly. In 2003, the CTA and the Indian government started to issue Special Entry Permits (SEP's) to Tibetans trying to enter India by way of Nepal.

Originally, there were four categories of SEP’s refugees, students, pilgrimage and other. In approximately 2005, the designation refugee was dropped. There are now three different types of SEPs:

(i) A student permit issued for the period of study.
(ii) A pilgrimage permit issued typically for three months which cannot be extended beyond six months.
(iii) A permit designated “other” which is not limited to a fixed duration but is almost never granted. Before 2003, everyone entering from Nepal entered illegally. With the SEP, Tibetans are now assured safe transit from Nepal to India, although the new policy has meant that many new arrivals in Nepal must wait longer before entering India than previously.

73 Id.at. p.9-11.
Issuance of an SEP also provides an opportunity to obtain a registration certificate, but only when the SEP is granted in the education category and theoretically in the other category. The holder of SEP in the pilgrimage category is not eligible for an RC. Although the process of issuing SEP’s began in 2003, the Indian Government did not begin to issue RCs to new arrivals with SEPs until October 2008.74

India is not signatory to 1951 United Nations Convention Relating to the Status of Refugees or its 1967 Protocol nor has India enacted domestic legislation regarding the protection of refugees. Consequently, UNHCR, the U.N. agency responsible for refugees, may play only a limited role assisting Tibetans in India. Tibetans in India generally are unable to acquire citizenship. The law deems them foreigners subject to the Foreigner’s Act of 1946 and the Registration of Foreigners Act of 1939. Although in the early years India scrupulously respected the principle of non refoulement, some Tibetans reportedly have been forcibly repatriated to China in more recent years. Beginning in the 1990s, there have been credible reports of repatriation or threats of repatriation of unregistered Tibetans. Virtually all Tibetans attempting to enter India from Tibet as opposed to via India’s border with Nepal are repatriated without any judicial or quasi judicial process. Because the border between Tibet and India is military zone, India typically regards Tibetans entering directly from Tibet as military spies and deports them.75 Tibetans, like all foreigners in India are permitted to travel domestically so long as they have a valid RC and as long as they secure permission from Indian authorities and report back to the local police upon their return. Tibetans must carry their RCs whenever they travel in India. International travel requires an identity card issued by the Indian Government. Thus, both domestic and international travel is dependent on having an RC.76

Although Tibetans in India generally enjoy a peaceful coexistence with Indians, there have been out breaks of violence and anti-Tibetan sentiment.

75 Id. at p.542-543.
76 Id. at p.552.
Beginning in the early 1990’s, there were major conflicts in Northern India coinciding with the dramatic increase in the number of Tibetans coming to India. For example, in 1991, portions of a settlement in Chautilla were burnt down shortly before a visit by a United States Congressman. Among the most serious clashes occurred in April 1994 in Dharamsala where groups of Indians looted Tibetan owned stores and burned Tibetan government offices. In 1995, a campaign was waged within the state of Arunachal Pradesh to expel 12,000 Tibetans. Although this campaign was supported by a motion by the state government, the central government refused to support and was angered by the attempt to expel all Tibetans. Whatever conflicts have arisen over the years, there is little question that the exile Tibetan community feels enormous gratitude towards India.  

1.2.6 Refugees from Myanmar

Burma renamed Myanmar by the nations’ ruling military is bordered by China on the North, Thailand and Laos on the East and India and Bangladesh on the West. The outflow of Burmese refugees in contemporary times began when the military took power in 1962 and grew significantly during the late 1980s. Though the number of refugees from Burma (now Myanmar) is relatively fewer, their fate continues to attract attention because the countries of their origin have remained in the global focus. Till the Second World War, the population flow from India to Burma was largely one way traffic. The British conquest of Burma witnessed a steady migration of Indians into that country in search of jobs and business opportunities. The migration continued unabated until the out break of the Second World War, when thousands of Indian settlers fled from Burma.

After the military coup in 1988, thousands of Burmese students and youth left the country to continue their fight against the military dictatorship and for the restoration of democracy and human rights from the border areas. In the wake of the 1988 nation wide pro democracy movement, universities and colleges were closed to prevent the students from organizing anti government activities. Many students

77 Id. at p.564-565.
migrated to the cities of neighbouring countries to pursue further studies while their counter parts are waging war along the Thai Burma border and Indo Burma border areas.  

Due to the repressive measures, brutal torture, persecution and political turmoil few thousands of pro democratic activists including former Prime Minister of Burma Mr. U.Nu, his daughter Ms. Than Nu and his son-in-Law Mr. Aung Tyein took shelter and asked for political asylum in India. These people took shelter in state of Mizoram. The Government of India accepted all the people who left Burma in fear of persecution as refugees. Apart from this, about 40000 Chin refugees that fled to India mostly flocked to the neighbouring state of Mizoram. From these many went to New Delhi few years later and sought shelter and assistance from the UNHCR, New Delhi and also from the Government of India. In June 1996 UNHCR urged the Chin refugees to go back to Mizoram on the assurance of the Ministry of External affairs that the Chins would not be pushed back.

Every day life is battle for some Burmese refugees in New Delhi. Numerous live in the ghettos or share cramped accommodation with other refugees. Dissimilar to some other refugee groups, Burmese refugees are given residence permits to stay in India. Despite this advantage, joining the formal workforce remains a challenging task. Most refugees are from rustic ranges in Burma and don't have the same level of education as those from urban territories. Besides, they frequently do not communicate in English or Hindi, nor have what it takes to permit them to contend with Indian natives to secure occupations. Therefore the refugees look for work into the informal segment where they are frequently presented to misuse. Burmese women refugees seem to be targeted easy victims because of their perceived vulnerability, helplessness and inability to converse in local languages. Their distinct socio-cultural backgrounds and looks are also identified as reasons for why they are targeted. These cases while not reported by mainstream media are often highlighted in online reports. More disturbing is the perceived nonchalance on the part of

authorities to look into their cases and the sense of passivity which accompanies woman refugees’ fear of sexual assault. Apart from the frustration at the gender insensitive attitude displayed by authorities and agencies, refugee women also reveal a keen sense of being a racial, cultural other when they speak of their experiences. The primary struggle for most refugees in resettlement countries is the lack of cultural compatibility between that host society and the refugee community which determines the extent and success of integration.  

1.2.7 Afghan Refugees in India

There were mainly two times in the over the span of history when the Afghans felt the need to escape their country, once in 1979 amid Soviet intrusion of Afghanistan which followed infighting and poverty with the withdrawal of Soviet strengths from Afghanistan and the other amid the fall of Naji Bullah administration, which left upon the coming of Taliban onto the political setup, annihilating existences of common people sparing move. However the journey from Afghanistan and their stay in India has not been absolutely without agonies and problems.  

Inflow of Afghan refugees was started in 1979-80 that is just after the Soviet invasion in Afghanistan. Although approximately four million civilians fled to Iran and Pakistan during this period but few thousands of people mostly elite and upper middle class people have come to India 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 sought protection from the UNHCR, New Delhi. Although the Government of India did not adopt any specific policy towards these refugees, it allowed all Afghans to stay in India for the purpose of getting UNHCR’s protection and assistance. However, 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.

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Over the past twenty five years vast number of Afghan nationals have taken asylum in India and majority of them are Sikh and Hindu refugees. Many Afghan refugees who are presently hawkers or vendors in the city, held conspicuous positions in Afghanistan before they were compelled to leave their motherland. After the UNHCR lessened fiscal help of Afghan refugees in 1998, thousands were ruined and crashed into debt. The Indian government's inability to give help added to the burdens of the refugees who are amassed in parts of West Delhi and close Nizamuddin Basti, where considerable measure of Muslim refugees dwell. The situation of all Afghans in India remains precarious because India is not a signatory to the 1951 UN Convention Relating to the Status of Refugees nor of the 1967 Protocol. UNHCR, which was set up in India in 1981 has gone far in connecting with refugees. In any case, working in a nation which has no enactment for refugees has abridged its effect to better the lives of Afghanis who need assistance yet cannot seek it openly.

1.2.8 Bhutanese Refugees in India

Since the ethnic conflict between the ruling Drupkas of Bhutan and the ethnic Bhutanese of Nepali origin started in 1990, around 15,000 Bhutanese refugees of ethnic Nepali origin took shelter at Siliguri and Jalpaiguri of West Bengal and Kokhrajarh districts of Assam. If one is to go by categorization of over 86,000 Bhutanese refugees does not fall under any category. The Government of India does not recognize them as refugees and hence provide little assistance. However, under the 1949 Indo-Bhutan Friendship Treaty, they are allowed to stay in India and can engage themselves in employment activities and other facilities like education etc. Nepal and Bhutan continue with bilateral discussion as an attempt to find an amicable solution of the problems but no substantial findings has come out yet. However these people prayed for political asylum to the Government of India but they have not yet received any status. At the maximum they have allowed to stay in India but at the same time there is little hope that these Bhutanese immigrants as asylum seekers could return to their country of origin.

86 “Refugees in Delhi: Fewer Chances of Subsistence Jobs”, The Indian Express, October 18, 2008.
87 Dharitri Bhattacharjee, “Afghans in India yearn for Home”, The Times of India, Feb. 27, 2011.
Repatriation of the refugees seems unlikely in the current scheme of things. It is understood that any such measure would have to be the initiative of India. Since both Nepal and Bhutan are economically dependent upon India, so India wields enormous political power over these two smaller countries. Furthermore, according to a 1949 Treaty of Friendship between India and Bhutan, the Government of Bhutan agrees to be guided by the advice of the Government of India with regard to its external affairs. Without India's support, Nepal cannot exercise pressure on Bhutan to repatriate the refugees. A series of talks between the Prime Minister of Nepal and Bhutanese as well as Indian officials have failed to produce any significant development towards finding a solution to the refugee crisis. Meanwhile, thousands of men, women and children continue to live under tarpaulin roofs on thatched huts, on food and clothes from donor agencies with an uncertain and bleak future ahead of them. They are now in a desperate situation. They have lost hope of returning to their homes with dignity. While India is providing scholarship for admission to government institutions and universities for Bhutanese and Nepalese, the refugees come under neither category and higher education is being denied to them.

The refugees, Nepal Government and the international organizations like UNHCR are clear that India's role is critical in solving the refugee issue. The frustrated young jobless refugees with no avenues open are likely to pour into India and create social instability. India would not like the issue to get internationalized either. It is within India's competence to mediate and solve the issue once and for all.89

1.2.9 Iranian Refugees in India

Iranian refugees fled their country following the Islamic revolution in 1979 which led to the downfall of the Shah of Iran and the emergence of the Islamic fundamentalist government under the leadership of Ayatollah Khomeni. Prior to these developments, many Iranian students were studying in India in various educational institutions. Following the political upheaval, they could not return to

their country of origin and claimed refugee status. They had come to India on valid travel documents and subsequently became mandate refugees.\textsuperscript{90}

Iranian refugees would not get the support of their embassies in India and are deprive of having valid passports. They are even in danger of getting attacked and harassed by Iran embassy in India and that's why they are the most vulnerable stratum of refugees in India. Iranian refugees are the main victims of India's non accession to 1951 Convention and clear violation of Article 27 in regard of right to have identity verifications and Article 28 on having the right to travel and use of travel documents caused critical and deplorable problems for Iranian refugees and led to waste of good career opportunities for them in universal competitions.\textsuperscript{91}

Due to the lack of work permits and a valid identity card, Iranian refugees are banned from having any legal job in India, also the refugee agency is excused from giving financial assistance and employment. Because of international sanctions against Iran, the banks and financial institutions do not provide the money transfer facility for Iranians especially without having a valid passport and identity card. Moreover not possessing an identity card is equal to no work permit, no residence permits at the hotels, no bank account and losing lots of other civil rights.\textsuperscript{92} Small number of Sudanese, Somalian and Iraqi visitors have been arriving in India since the 1960’s for the purpose of education, travel, minor business dealings etc. When strife in their countries resulted in persecution, some of them already in India continued to stay and sought protection from the government, fearing persecution on their return. Refugees are still trickling in from these countries and they are considered to be mandate refugees in India by UNHCR.\textsuperscript{93}

1.3 Refugees, Migrants and Internally Displaced Persons

United Nations Convention Relating to the Status of Refugees defines refugee “As a person who owing to a well founded fear of being persecuted for


\textsuperscript{91}“Open Letter by Iranian Refugees in India to United Nations High Commissioner for Refugees”, \textit{available at}: http://www.ireport.cnn.com/ (Visited on August 9, 2013 at 12.10am).

\textsuperscript{92}“The Inappropriate Condition of Iranian Refugees of UNHCR”, \textit{available at}: http://www.iranrefugees.com/ (Visited on August 9, 2013 at 12.40am).

reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it."94 One of the important characteristics of “refugees” is involuntarily departure from the country of origin or nationality due to the challenging social circumstances over which they do not have any control. This is in contrast to migrants and aliens, who voluntarily leave their home countries. This vital factor puts refugees in a special position which is differentiated from migrants or aliens.95 Migrants and Internally Displaced Persons are other two groups of people who are generally confused with refugees. So it is necessary here that the distinction between refugees and these two groups is clearly understood so that none of them is intermingled with term refugee.

a) Refugees and Migrants

In reality as we know it where pay differentials are extending, where the populace is enlarging much quicker than the quantity of working class opportunities, where more thoughtful wars are being battled than at whatever other time in advanced history and where human rights infringement are still legion, it can scarcely be an amazement that a growing number of individuals are moving from one part of the globe to the next. Migration flows cannot, however, be plotted or predicted simple by enumerating the pressures which push people out of one country and pull them to another. Incongruities in riches, opportunity and security clearly shape the premise of any choice to relocate. The recent expansion of the global communications network- telephone connections, satellite dishes and video rental stores have as of now profoundly affected the awareness of the world's less prosperous social orders. Skylines have been expanded, desires raised and social contrasts decreased. The pictures passed on by such media might be generally false.

94 Article 1(2) of the UN Convention Relating to the Status of Refugees, 1951.
By and by, they pass on a strong message about the favorable circumstances experienced by individuals living in the developed states.\textsuperscript{96}

Migration is a relatively permanent moving away of a collectivity, called migrants, from one geographical location to another, preceded by decision making on the part of the migrants on the basis of a hierarchically ordered set of values or valued ends and resulting in the interactional systems of the migrants. A migrant is not necessarily a refugee. A migrant leaves his country because of his personal choice. A person who leaves his country of origin for the sake of improving his economic condition is not to be termed as a refugee because there is no element of persecution and any of the other conditions as mentioned in Article 1(2) of the 1951 Convention Relating to the Status of Refugees.\textsuperscript{97} Myron Weiner separates the concept of refugees and migrants by classifying the two categories of people who moved across international and domestic provincial boundaries in search of economic benefits or those who have moved as a result of economic and environmental factor. They are unwanted because they are rejected by the host community who feel politically and socially threatened. An economic migrant can return to his homeland whenever he desires and he would continue to receive the protection from the government of his native land. But in the case of the refugees they can not return until and unless the ambience of safety does not prevail in their country.\textsuperscript{98}

\textbf{b) Refugees and Internally Displaced Persons}

A refugee is defined in the 1951 Convention as a person who has to leave his country owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. The international regime for the protection of refugees seems a model of clarity in comparison with the approach to the protection of internally displaced persons (IDP’s). The essential difference between the refugee and the internally displaced person is in the eyes of the law is one of status. Or in the words of Bill Frelick: “To

\textsuperscript{98} Id.at.p.66.
be an IDP is not a legal status, to be a refugee is. Internally displaced person is a
descriptive term.”

During the past decade, the concept of IDP’s has become a familiar feature
of the humanitarian vocabulary. The UN High Commissioner for Refugees has
observed that “the scale and scope of this problem, the human suffering which
underlies it, as well as its impact on international peace and security, have rightly
made internally displacement an issue of great international concern.” Despite the
world's developing enthusiasm for the circumstance of internally displaced and other
war influenced populaces, a considerable lot of the helpful issues connected with
their situation stay to be determined. In spite of the fact that the idea of 'internally
displace individuals' is presently broadly utilized by philanthropic agencies and
policymakers, there remains an amazing absence of clarity about its exact
importance. The international community has not yet settled a formal and legitimate
meaning of the term keeping in mind various endeavors have been made to fill this
calculated crevice, many of the definitions offered have had a tendency to be too
broad or too narrow.

IDP’s are defined in the UN Guiding Principles on Internal Displacement as:
“The persons or group of persons who have been forced or obliged to flee or to leave
their homes or places of habitual residence, in particular as a result of or in order to
avoid the effects of armed conflict, situations of generalized violence, violations of
human rights or natural or human made disasters and who have not crossed
internationally recognized state border.” To mark even better distinction between
refugees and internally displaced persons we can turn to Professor Walter Kalin who
stated that IDP’s “need not and cannot be granted a special legal status because
refugees have lost the protection of their own country and therefore, are in need of
international protection not necessary for those who do not cross borders.”

The obligation regarding ensuring and helping IDP's lie with national powers
which is clearly risky on the off chance that where national powers have contributed

99 M.R.Alborzi, Evaluating the Effectiveness of International Refugee Law: The Protection of Iraqi
Refugees, 192 (Koninklikje Brill NV, The Netherlands, 2006).
100 UNHCR, The State of World’s Refugee: A Humanitarian Agenda, (Oxford University Press,
101 M.R.Alborzi, Evaluating the Effectiveness of International Refugee Law: The Protection of Iraqi
Refugees, 193 (Koninklikje Brill NV, The Netherlands, 2006).
to the displacement. In sum, in comparison with the refugees, IDP’s have a descriptive rather than a legal definition, have no binding international convention and have no dedicated UN agency charged with the protection and assistance.\textsuperscript{102}

Therefore it can be concluded that India has a long history of hosting refugees starting from the period after independence till date. India has from time to time continued to receive a large number of refugees from different countries, not necessarily from the neighbouring countries alone. The most significant thing which deserves to be taken note of is that there has not been a single occasion of any refugee originating from the Indian soil except the transboundary movement of the people during the partition of the country in 1947. It has invariably always been a receiving country and in the process, enlarging its multi-cultural and multi ethnic fabric.\textsuperscript{103}

1.4 Review of Literature

The basic step for every study is to access the available literature on the topic which the researcher has chosen for research, so that one can analyze the studies already done. It enables the researcher to pin point the research gap on the subject so that the legal researcher can fill that gap and the research becomes a fruitful piece of work for the future researchers.

Books

Jean Yves Carlier, Dirk Vanheules Klaus Hullmann and Carlos Pena Galliano (eds.) in their book *Who is a Refugee: A Comparative Case Law Study* (Kluwer Law International, The Hague, 1997) have made a comparative analysis of the notion of the refugees among various nations like Austria, Switzerland, Belgium, Canada, Denmark, Germany, France, Spain, Greece, Italy, Luxemburg etc. The first part of the book contains fifteen national reports. These reports present the case law applying the concept of refugees as defined in Article 1 of the Convention Relating to the Status of Refugees 1951. The second part of the book contains general reports which are a comparative synthesis of different national reports.


T.N. Giri, in his book *Refugee Problems in Asia and Africa: Role of UNHCR* (Manak Publications Pvt. Ltd., Delhi, 2003) has mentioned the UNHCR contribution with reference to the East Pakistani, the Afghan, the Somali, the Srilankan Tamil & Tibetan Refugees. The writer has also mentioned how all the host countries namely India, Pakistan, Iran, Ethiopia and Kenya have adopted a remarkably receptive approach in caring for refugees even though they are not party to UN Convention Relating to the Status of Refugees or 1967 Protocol.

V.T. Patil and P.R. Trivedi in their book *Refugee and Human Rights* (Author Press, Delhi, 2000) have attempted to look into to the problems of refugees from the perspective of human rights. The author is of the view that the problem of forced displacement i.e. the issue of refugees has assumed serious dimensions which involve pain, suffering and misery to millions of people around the world. And therefore there is a need at present of the concerted and coordinated efforts and action at international level in the form of humanitarian action and emergency relief like flood, clothing and shelter. But the author has pinpointed that it is a reality also that the promises or assurances given by governmental organizations to reduce human suffering turn out to be only half hearted measures with any realistic possibility to put them in a meaningful operational mode.

V. Suryanarayan and V.Sudarsen in their book *Between Fear and Hope: Sri Lankan Refugees in Tamil Nadu* (T.R.Publications Pvt.Ltd., Chennai, 2000) have reflected upon an important aspect of the refugee experience in India. It seeks to document the history of Sri Lankan refugees in South Indian state of Tamil Nadu. It provides an insight into the daily lives of refugees and reveal official attitude towards refugees. It provides a historical background on the socio ethnic character of Sri Lankan society, examines the causes of the displacement and calls for a political settlement to a conflict that has undermined the political, economic and social development of a nation.

Sanjay K.Roy’s (ed.) book *Refugees and Human Rights* (Rawat Publications, New Delhi, 2001) has taken care in presenting a comprehensive view of the refugee group. He has dealt with bringing to light the root and intensity of the problem and its implication for the host country. Despite wide diversity in approaches to the
various refugees groups, one common thing in all the papers is that the authors have called for a humane treatment of the refugees by the authorities concerned much along the philosophical line of the UNHCR. In the Post-World War II period refugee problem has emerged as one of the biggest problems before the international community. Faced with unfriendly state, both in the country of origin and of adoption, the refugees struggle to find the ways and means for a healthy living. Written in this context, the articles in this volume are historical, social and political narratives on the major refugee groups in the eastern and north-eastern states of India, like Bengali refugees, Tibetan refugees, Bhutanese refugees, Chakma refugees and Arakanese refugees. The author explores the genesis of each of these refugee groups and the areas of human rights violation in their treatment.

**Frances Nicholson and Patrick Twomey** (eds.) in the book *Refugees Rights and Realities: Evolving International Concepts and Regimes* (Cambridge University Press, UK, 1999) have assessed the rights of refugees and asylum seekers and the often contrasting reality of the state practice. The book contains the evolving refugee definition and some of its key conceptual elements. It is also concerned with asylum regimes in particular the role of key actors in the refugee discourse, the office of UNHCR, nation states and embryonic regional asylum regime of the European Union.

**James C. Hathaway's** book *The Rights of Refugees Under International Law*, (Cambridge University Press, UK, 2005) presents the first comprehensive analysis of the human rights of refugees as set by the UN Refugee Convention. In an era where States are increasingly challenging the logic of simply assimilating refugees to their own citizens, questions are now being raised about whether refugees should be allowed to enjoy freedom of movement, to work, to access public welfare programs, or to be reunited with family members. Doubts have been expressed about the propriety of exempting refugees from visa and other immigration rules, and whether there is a duty to admit refugees at all. Hathaway links the standards of the UN Refugee Convention to key norms of international human rights law, and applies his analysis to the world's most difficult protection challenges. This is a critical resource for advocates, judges, and policymakers.
James C. Hathaway in his book *Reconceiving International Refugee Law* (Martinus Nijhoff Publishers, The Netherlands, 1997) has stated how violence and other human rights abuses continue to force desperate people to migrate in search of protection. Yet because the political and economic reasons that induced an historical openness to the arrival of refugees have largely withered away, there is no longer a guarantee that any state will be prepared to receive these involuntary migrants. Governments of both North and South are withdrawing from the international legal duty to provide potentially indefinite protection to any and all refugees who arrive at their borders. The challenge is to reconceive refugee protection in a way that is reconcilable with the legitimate concerns of modern states, yet which does not sacrifice the critical right of at-risk people to seek asylum. The essays in "Reconceiving International Refugee Law" offer a response to the concerns of many states that refugee protection has become no more than a back door route to permanent immigration, and that its costs are not fairly apportioned among states. Drawing on the research of leading migration scholars from around the world, and vetted through dialogue with senior officials and non-governmental experts, this volume explores the potential for a shift to a robust and empowering system of temporary asylum, supported by a pragmatic system of guarantees to share both the costs and human responsibilities of refugee protection.

Ranabir Samaddar (ed.) in the book, *Refugee and the State: Practices of Asylum and Care in India 1947-2000* (SAGE Publications, New Delhi, 2003) has analysed India’s reasonably good record of providing protection and hospitality to refugees, while pointing out the contradictions in the relation between these positive aspects and the manner in which state power has been exercised in post-colonial India. In examining the varied encounters between the state and refugees, the contributors demonstrate that India’s story of providing care is simultaneously one of limiting care. It reveals the power of the state to decide whom to extend hospitality to and whom to deny it to. Thus, the issue of affording asylum becomes one of exercising power on the part of India’s political establishment. This volume is the first of its kind in that it binds in a single chronicle writings on refugees in India at different time periods and in different regions of the country. It is also unique in bringing
together contributors from a variety of disciplines: law, administrative sciences, history, politics and feminist studies.

**Guy S. Goodwin-Gill** in his book *The Refugee in International Law* (Clarendon Paperbacks Press, Newyork, 1996) has described the foundations and the framework of the International Refugee Law by concentrating on the three core issues i.e. the definition of refugees, asylum for refugees and protection of refugees. The book also includes the extensive additional annexes; coverage of new subjects, including internally displaced persons; so-called preventive protection; access to refugees; safety of refugees and relief personnel; the situation of refugee women and children; a detailed examination of the role of the UNHCR; an assessment of the protection possibilities (or lack of them) in the European Convention on Human Rights, and the current situation and possible future problems for Palestinians and emphasis on the decision-making process.

**Ivor C. Jackson** in the book *The Refugee Concept in Group Situations* (Martinus Nijhoff Publishers, The Netherlands, USA, 1999) has discussed in detail the historical perspective and development of the refugee law at international level. The book is divided into three parts. The first part contains the concept of refugee as applied in group situations prior to World War II in the practice of the League of Nations. Part II of the book starts with the adoption of the 1950 UNHCR statute and the 1951 UN Refugee Convention up to the period of 1975. The last part of the book tells the journey from 1975 to the introduction of more restrictive interpretations of the refugee notion as from 1985.

**Ragini Trakroo, Aparna Bhat and Samhita Nandi** in their book *Refugees and the Law* (Combat Law Publishers Pvt. Ltd., Mumbai) have mainly focused on the foundations and framework of international refugee law along with the international obligations on India for protecting the rights of refugees in the absence of its party to 1951 Convention for Refugees. An attempt has also been made by the authors to understand the gender dimension of the refugee problem. Refugee women may be particularly vulnerable to violations of protection rights. Moreover, their protection problems often involve sensitive issues such as sexual assault which they may reluctant to reveal. Along with women, children are increasingly becoming not only
accidental victims of refugee influxes but also deliberate targets. The section on refugee children in the book addresses this question in relation to their protection. The book also emphasized on the setting of standards for granting asylum, safeguarding their legitimate rights and ensuring the discharge of duties on their part.

**Articles**

**Jai S. Singh** in his article *Refugee Law and Policy in India: Efforts of Indian Courts* (ISIL Year Book of International Humanitarian Law, Vol.IX, 2009) has vividly described the responsibilities of international community in protecting the rights of refugees. The article highlights that in spite of the signature and ratification of the Convention Relating to the Status of Refugees, 1951 and its 1967 Protocol by the contracting states, South Asia as a region and India has refrained from adopting to these international instruments of refugee protection. A brief discussion has also been made regarding the basic principles of 1951 Convention and the 1967 Protocol along with some of the other international conventions significant for refugee protection and assistance globally and regionally. The author has suggested that it may be possible to re-orient the reform movement towards an alignment of refugee law with international human rights law. And at last an attempt has also been made to elaborate the approach of the Supreme Court of India regarding the protection and assistance to refugees in India.

**U.C.Jha** in her article *Refugees’ Right to Work: An Indian Perspective* (ISIL Year Book of International Humanitarian Law, Vol.III, 2003) has elaborately discussed as to why to give refugees right to work. The author states that granting a refugee right to work carries with it many benefits, both for the asylum seeker and the host country. Since giving a refugee access to the labour market can result in his/her eventual integration into the host society, the state should consider it as being in its own interest. The author has also discussed the refugees right to work in India in context of Pakistani, Tibetan and other refugees along with certain roadblocks and problems in granting this right to the refugees.

**V.Vijayakumar** in the article *Judicial Responses to Refugee Protection in India* (International Journal of Refugee Law, Vol.12, No.2, 2000) has discussed that India
has hosted number of refugees from Tibet, Sri Lanka, Burma, Afghanistan, Bhutan and also from other countries in Africa and West Asia. India who has not ratified the 1951 Convention of the Refugees and its 1967 Protocol, is a party to the 1966 Covenants i.e. ICCPR, ICESC, CAT, CEDAW and CRC which pose obligations on India to protect refugee rights. The author mentioned the Chakma case in which the Gauhati High Court attempted to balance between the states right to relocate the refugees as well as providing compensation and basic necessities to the refugees. Apart from these reported decisions, the article also highlights some unreported decisions through which the Supreme Court as well as the High Courts in India have taken appropriate measures in the protection of the refugees and their rights.

**Anil Shrivastav** in his article *Need For Domestic Refugee Law* (Halsbury’s Law, December, 2008) has briefly described the obligations on India in the absence of its party to 1951 Convention on the Status of Refugees. Alongwith it the article also mentions some case laws highlighting the role of Indian judiciary in protecting the rights of refugees. In the end of the article the author has emphasized the need of the domestic legislation. He stated while India has a human rights law regime, an effective National Human Rights Commission and an innovative, creative and activist judiciary yet India needs to harmonise and streamline into legislation its long tradition and experience in accommodating the inflow of refugees, its faith in the principles of non-refoulement and its commitment to uphold the principles of international human rights.

**Veerabhadram Vijayakumar** in his article *A Critical Analysis of Refugee Protection in South Asia* (Refuge, Vol.19,No.2, January, 2001) has firstly mentioned the reasons of the South Asian region for not acceding to the Refugee Convention,1951. Since there is no official document to indicate the reasons for not ratifying the Refugee Convention the writer has drawn the inferences from the past behavior and practices of the nations of the South Asian region. After this the writer has elaboratively discussed the nature of refugee movements in this region which includes refugee movements within South Asia and refugees from outside the South Asian Region. The article also highlights the procedure for determining the status of refugees in which the writer has mentioned four ways i.e Group Determination, Determination of Status by UNHCR, Determination by the State with UNHCR’s
Assistance and Determination of Refugee Status by UNHCR at the instance of Courts. At the end of the article the writer has mentioned the rights of refugees and role of UNHCR in protecting their rights.

N. Subramanya in his article *Refugees and Human Rights* (Journal of the Institute of Human Rights, Vol.VI, No.1, June, 2003) has described the refugee problem as a serious international issue with diverse and complex socio-political, economic and religious reasons contributing to it. The author has presented an overview of the various international instruments which have direct or indirect applicability for the refugees starting with the definition of refugees given in 1951 Convention, 1967 Protocol, 1969 OAU Convention Governing the Specific Aspects of Refugees Problems on Africa and the 1984 Cartagena Declaration on Refugees. Other notable conventions which have a relation with refugees are- European Convention on Human Rights,1950, ICCPR, ICESCR, American Convention on Human Rights,1978, African Convention on Human Rights,1981, CRC and CEDAW. The article also emphasized on the problem of refugees in India and the role of Indian judiciary in protecting their rights.

Sumbul Rizvi, in the article *International Dimensions of Refugee Law* (ISIL Yearbook of Intenational Humanitarian and Refugee Law, Vol.IV, 2004) has discussed briefly the origin of 1951 Convention and 1967 Protocol related to refugees and alongwith mentioned how the 1951 Convention is one of the first in a series of treaties which transcribed the ideals of the Universal Declaration of Human Rights into legally binding obligations. The author states that international human rights law constitutes the broad framework within which refugee law provisions should be seen. Human rights law complements and sometimes supplements existing refugee law and refugees enjoy two partially overlapping set of rights: those accorded to them as individuals and guaranteed under international human rights standards and specific rights relating to their status as refugees. At the end of the article the writer has discussed the definition of refugee given in 1951 convention and some other elements of the principles prevalent in refugee instruments.

with the historical notion of the refugee problem in the world. The modern concept of protection to refugees under humanitarian consideration dates back to 1920s when League of Nations in 1921 appointed a High Commissioner for Russian Refugees. It is also mentioned in the article that the 1951 United Nations Refugee Convention was the culmination of an important development in the definition of the international body providing basic minimum legal standards for the treatment of refugees. The author has also analysed the problems of refugees under the following four heads i.e. Refoulement, Crisis of identity, Asylum and protection of basic human rights and Repatriation and resettlement. The role of UNHCR in protection of refugees and the refugee policy adopted in India has also been discussed in the article. Indian judiciary has played a positive role in protecting the rights of the refugees although the Government of India is not having a clear cut policy to deal with the refugee problem and also it is not party to 1951 Convention on Refugees or its 1967 Protocol.

**Sumita Das Majumder** in her article *Refugee Management in India: Policy Introspection* (ISIL Yearbook of International Humanitarian and Refugee Law, Vol.V, 2005) has discussed how Tibetan, Sri Lankan, Afghan, Iranian, Burmese and Chakma refugees have come to India. What were the factors that forced them to leave their own homeland and to take shelter in India has been highlighted in the article. The attitude of the Indian Government in dealing with all these refugees has been discussed by the author. India has always a soft corner towards Tibetan and Sri Lankan refugees. Since generally the refugees influx in India is mostly from its neighbouring countries so the relations between these countries with India play a vital role towards the treatment of the refugees. The author has also highlighted that in India, the judiciary has played a very important role in protecting refugees rights. Courts orders have filled legislative gaps and in many case provided a humanitarian solution to the refugees problem. In India courts have allowed refugees and intervening NGOs to file cases before them. Indian courts have decided in a number of cases that the constitutional protection of life and liberty must be provided to refugees.

**Markandey Katju** in his article *India’s Perception of Refugee Law* (ISIL Yearbook of International Humanitarian and Refugee Law, Vol.I, 2001) has very well stated
that India is a country having a long historical tradition of welcoming refugees from all over the world. At present a peculiar situation is prevailing in India. While the executive branch of the Indian State does not recognize refugees or refugee law, the judicial wing of our state does recognize it to a certain extent. There are several decisions of the Supreme Court and High Courts in India where refugees have been given protection by evoking Article 21 of the Indian Constitution. The honourable justice has in his article has focused primarily on the fact the despite of India’s not being party to 1951 Convention on Refugees, the Indian judiciary is trying its best to protect the rights of the refugees.

B.C. Nirmal in the article Refugees and Human Rights (ISIL Yearbook of International Humanitarian and Refugee Law, Vol.I, 2001) has elucidated the basic human rights of the refugees which includes right to protection against refoulement, right to seek asylum, right to equality and non discrimination, right to life and personal security, right to return and right to remain. The author is of the view that refugees are also entitled to human rights and fundamental freedoms set forth in human rights treaties, covenants and declarations. Looked at from this perspective, the restrictive practices adopted by the countries vis-à-vis asylum seekers are legally unjustified, morally reprehensible and strategically counterproductive. The international community must therefore take initiatives to address the human rights concerns of refugees in a positive and constructive way and a victim oriented approach needs to be adopted.

J.N. Saxena in his article Proposal for a Refugee Legislation in India (Bulletin on IHL & Refugee Law, Vol.2 No.2[A], 1997) has dealt with the historical perspective of refugee influx in independent India. The author has also highlighted in brief regarding international framework of refugee protection i.e. provisions of 1951 Convention Relating to Status of Refugees, OAU Convention, Cartagena Declaration and AALCC. Further the article emphasized the need of national legislation in India and has also focused on the present legal framework in India under which refugees are dealt with. At the end of the article the role of judiciary vis-à-vis rights of refugees has also been discussed.
C.R. Abrar in his article *Legal Protection of Refugees in South Asia* (Forced Migration Review, Vol.10, April 2001) has thrown light on the reasons why India has not signed 1951 Convention Relating to Status of Refugees. The author is of the view that India must frame a law in order to protect the rights of refugees because even a regional convention could not solve the issue in effective way. A regional instrument will be confined only to the general issues which effects the region while a national legislation can be more comprehensive and could deal with the matter in an effective way. Further the writer has emphasized that the model law for refugees must be implemented as it provides a basic framework to deal with the refugee matter in a wholesome manner.

K.C. Saha in his article *Refugee Assistance and India’s Policy* (Bulletin on IHL & Refugee Law, Vol.4, No.1, 1999) has vividly explained that India has a rich experience of rehabilitating and assimilating persons from different countries. Be it refugees from Tibet, Bangladesh, Sri Lanka, Afghanistan or Bhutan India has always given shelter to those who have come to its territory seeking protection. The author has clearly mentioned that Indian Government does discrimination in matter of providing assistance to some class of refugees whereas others do not get similar treatment. It is on the basis of country of origin that some refugees get preferential assistance. Thus the author has suggested that attempts must be made to bring transparency and uniformity in refugee assistance policy.

Rajeev Dhavan in his article *India’s Refugee Law and Policy* (The Hindu, 2004) has urged that India needs to review its ambivalent refugee law policy, evolve a regional approach and enact rules or legislation to protect persecuted refugees. If India takes a lead in this regard that would send a message to other countries of SAARC region because despite of being a refugee prone area none of the South Asian country has enacted law in respect of refugees. The author has also emphasized the need of enforcing Model Law on Refugee because in the absence of law the government treats refugees under the category of foreigners because of which refugee jurisprudence cannot flourish well in India.

Smrithi Talwar in her article *Building a Regional Consensus on Asylum- The Indian Perspective* (Bulletin on IHL & Refugee Law, Vol.1, No.2, 1996) has
discussed about the legal framework for refugee protection in India. The article highlights the aspect of India being non signatory to 1951 Convention Relating to the Status of Refugees and also the limitations of Indian courts in enforcing rights of refugees in absence of any refugee specific legislation in India. The author has also raised the issue of discrimination made by Government of India among various groups of refugees which is a cause of great dissatisfaction among refugees in India.

Rasheed Talib in his article *Refugees and Human Rights* (Bulletin on IHL & Refugee Law, Vol.2, No.1, 1997) has vividly described the historical notion of refugees even present before the Second World War and how the events led to the establishment of the 1951 Convention which gives a definition of refugee. The author has also touched the issue of Internally Displaced Persons who becomes refugee within their own land but the 1951 Convention no where covers their case.

Nirmala Chandrahasan in her article *Changing Perspectives in Refugee Protection in South Asia* (Bulletin on IHL & Refugee Law, Vol.2, No.1, 1997) has rightly stated that India and Pakistan are the two prominent countries of South Asia which have received maximum refugee influx. But despite of this none of the South Asian states have acceded to the 1951 Convention and thus have no international obligations. The author has focused on this point that the main protection available to refugees is the principle of non refoulement which is the jus cogens of international law. Even the role of UNHCR in these countries is regulated by the respective governments since these states are not party to the refugee convention. Therefore the author has suggested that legal norms must be adopted by South Asian states in order to upheld human rights regime.

Arjun Nair has begun his article *National Refugee Law for India: Benefits and Roadblocks* (Institute of Peace and Conflict Studies, New Delhi, 2007) with an overview of refugees situation in India. Further the author has discussed the various factors that have blocked the way for formulating the law related to refugees in India. The article also highlights the benefits of formulating a refugee law in India. The author is of the view that law for refugees has become the need of hour because the administrative authorities in India make discrimination among various classes of refugees which is against the humanistic approach.
Narayan Sharma in his article *Refugee Situation in South Asia: Need of a Regional Mechanism* (Kathmandu Law Review, Vol.1, No.1, 2008) has given the causes of refugee flows in this region. The article has also discussed that there is absence of any specific mechanism to deal with refugees though the region faces the issue of refugees in quite a large number. The author has supported the views of B.N. Chimni that the present need is the development of a national legislation in all of these South Asian countries followed by a regional mechanism that can effectively deal with the issue of refugees.

Besides this the researcher has also gone through Report on Judicial Symposium on Refugee Protection which include articles of eminent persons of national and international level and also various reports of UNHCR, NHRC, ExCom and studies conducted by NGO’s and Implementing Partners of UNHCR related to issue of refugees. Due to paucity of space their details have not been mentioned here but they have been discussed at appropriate place in the present research work.

1.5 Research Gap

After reviewing the above literature the researcher is of the view that the above mentioned works have focused more on the historical perspective as to why and when refugees came in India. The present research shall exhaustively and comprehensively deal with international and regional initiatives taken for refugees. Though the above works have mentioned the fact that India is not a party to 1951 Convention but they have not elaboratively discussed about the international obligations on India in the matter of refugees in the absence of its signatory to 1951 Convention on Refugees. An indepth study of Model National Law for Refugees and Refugees and Asylum Seekers (Protection) Bill, 2006 is also lacking in above mentioned works. The above studies lack in the respect of not highlighting the works of Implementing Partners and NGO’s associated with UNHCR in respect of refugee’s rights. Furthermore, the challenges faced by refugees in India in the absence of any specific legislation have also not been dealt in an exhaustive manner. The researcher has tried to cover these gaps so as to make it a useful piece of research.
1.6 Significance of the Study

Human rights violation is one of the important reasons in creating refugees. A person becomes a refugee because of some forced circumstances on which he has no control. It is a harsh reality that India has hosted numerous refugees since the time of its independence when Indian economy was showing the signs of stagnation. Despite of itself being a under developed nation at that time with so many challenges and constraints ahead, India on humanitarian grounds has allowed refugees from different regions to take shelter here. The refugees issue does not only hold national importance but also at international level this issue has been acclaimed especially after two world wars. Refugee issue has gained contemporary relevance during recent decades. Tolerance on part of India has made it a haven for refugees. The long tradition of India of being a helpful, soft and peaceful nation, millions of refugees have crossed its borders and have settled here.

Though at international level there is a United Nations Convention Relating to the Status of Refugees (1951) and the 1967 Protocol but India has not signed any of these two. Being aware of this fact, it is the keen urge of the researcher to study in depth that what are the international obligations India has in the matter of protecting rights of the refugees when it has neither signed the Convention of 1951 nor the Protocol of 1967. The present research is likely to contribute in highlighting the obligations of India when it is not signatory to the sole convention related to refugees. An attempt has been made by the researcher to find the reasons behind India’s indifferent attitude towards the 1951 Convention Relating to the Status of Refugees. The study shall also explore the criteria used by the Indian Government while determining the status of refugees in India. Since there is no specific legislation in India that refers directly to refugees so the study will depict those legislative enactments under which the refugees are dealt with.

The Model National Law for Refugees is the only legislation drafted under the chairmanship of Justice P.N.Bhagwati. This law was under consideration of the Indian Government but the issue remained in back door and has not been turned into a reality. The study shall make an indepth study of the model law in comparison to the provisions of 1951 Convention and will explore whether it confirms international standards and in which aspects it is lacking. The study will suggest
certain changes that can be done in this law so that national law for refugees can become a reality. Also an overview of Refugees and Asylum Seekers (Protection) Bill, 2006 which is based on Model National Law shall be discussed in this research. The present study aims at examining the existing legal framework and to suggest appropriate measures to deal with the issue in more effective manner.

The study is significant as the emphasis shall be on the rights given by the Indian Government to the refugees despite of the fact that it is not party to the 1951 Convention and moreover when it has no particular law that governs the issue of refugees. The thrust of the study is also to foreground the role of Indian Judiciary in relation to protecting, safeguarding and promoting the rights of refugees. The researcher will make an in depth study of the various case laws to cognize the approach of judiciary towards the refugees issue. Further it shall also be analysed in the study as to why India has left the issue concerning refugee at the discretion of the executive and the judiciary to decide its fate. Alongwith it the study shall also be dealing with the role of United Nations High Commissioner for Refugees (UNHCR) in India in protecting the refugees’ rights. How much power and access has been given to UNHCR in India by the government shall also be explored in the study. With it the study will also focus on the role of implementing partners and various NGO’s who are working in collaboration with UNHCR in safeguarding the rights of refugees in India. The significance of the research lies in the fact that it has emphasized the need of a law in India that specifically and pertinently deal with refugees so that the basic rights of the refugees are well protected which would escalate India’s position at international level.

1.7 Objectives of the Study

The objectives of the present study exposit the following points for analysis:

a) To study the historical perception of refugees in India.

b) To study in depth the initiatives taken at international and regional level for the protection of refugees.

c) To analyse the international obligations on India for protecting the rights of refugees in absence of its signatory to 1951 Refugee Convention.

d) To focus on those legislative enactments in India that deal with the refugees and their rights as there is no particular law to tackle this issue.
e) To scrutinize the role of judiciary in India in protecting the rights of refugees.

f) To evaluate the working of UNHCR, its implementing partners and NGO’s working with it in India.

g) To study the challenges being faced by refugees in India.

1.8 Hypothesis

India is a host to many refugees who come here to seek protection as their human rights have been violated in their country. But due to the absence of specific legislation in India, the government uses adhoc based measures to handle the refugees’ issues which create inconsistency, arbitrariness and discrepancy for refugees of different nationalities. Although the Indian Judiciary has played a pro active role in protecting the rights of refugees but absence of ratification to the Refugee Convention (1951) and also of national legislation has tied their hands to some extent. Hence the need at present is of specific law based on international standards that pertinently deals with the refugees and their rights so that issue of refugees is not left solely on the discretion of the executive to decide their future.

1.9 Research Questions

1. What efforts have been made at international and regional level for the protection of refugees?

2. Why India is not a party to 1951 Convention of Refugees and its 1967 Protocol?

3. What international obligations does India have in context of refugees despite of the fact that it is not signatory to the Refugee Convention (1951)?

4. What attitude does Indian Judiciary hold in context of safeguarding refugee rights?

5. Is there any need for adoption of specific legal framework that outlines the status of refugees and their rights in India or not?

6. How UNHCR has helped the Indian Government to solve the refugee crisis?

7. What is the role played by implementing partners and various NGO’s working with UNHCR in protecting refugee rights?

8. What are the hardships and challenges being faced by refugees in India?
1.10 Research Methodology

The present work is mainly a doctrinal piece of research using analytical method and approach. Keeping in mind the nature of research topic the researcher has used both primary and secondary sources. The historical method has also been used for bringing out the history, development and legal aspect of the refugees in India as well as at international regime. It comprised of appreciation of various documents of international, regional and national level. Various reports of Governmental, Non Governmental Organizations and Commissions have been taken into consideration. Besides this various judicial decisions on the subject has been thoroughly and critically analysed. Information has also been gathered from books, journals, magazines, newspapers, periodicals, and websites etc. which become the subject matter of appraisal.

1.11 Chapterisation Plan

Chapter I- Introduction and Historical Background

The first chapter of the study shall deal with the introductory part alongwith covering the historical perspective of the respective topic. The chapter shall deal with the concepts of refugees, migrants and internally displaced persons. A detailed discussion shall be done in the chapter about various categories of refugees India is dealing with. Since independence India has faced the problem of refugees and till date it is accepting refugees from various parts of the world especially from South Asian states. There shall be a detailed version in the chapter regarding the reasons of people from various states entering India, taking shelter here as refugees. The chapter highlights that by accepting large number of refugees especially in the situation of mass influx of Tibetan and Sri Lankan refugees, India has proved that it has generous heart and on humanitarian considerations it has accepted refugees.

Chapter II- International Framework for the Protection of Refugees

The second chapter of the thesis shall deal with the international perspective of the refugee protection law. The focus shall be on the efforts and initiative taken at international level for safeguarding the rights of refugees who are forced to flee from their country. This chapter is all together important as it shall deal with the 1951 Convention Relating to Status of Refugees. A detailed discussion shall be done on
the various provisions of the 1951 Convention and its Protocol. Also the chapter shall deal with the international scenario during the times of the League of Nations and how refugees were dealt with. Various regional conventions and instruments regarding protecting the rights of refugees shall also be dealt in the chapter.

**Chapter III- India’s International Obligations and Laws towards Refugees**

This chapter of the present study shall discuss in detail the international obligations on India in the absence of its non signatory of 1951 Convention Relating to the Status of Refugees. The reasons of India for not acceding to the 1951 Convention shall also be discussed in the present chapter. Following this the chapter shall have discussion on the various Constitutional provisions that safeguard the rights of refugees in India. Alongwith it in the absence of having any specific refugee legislation it shall be discussed what other laws are applicable on refugees in India and how the refugees are dealt with. Not only this the chapter shall also have an indepth discussion on the Model National Law on Refugees for India.

**Chapter IV- Role of Judiciary in Protecting Refugee Rights**

This chapter becomes all together more important the reason being India has no refugee specific law and when there is no law for refugees in India then the role of judiciary comes into limelight. Indian judiciary has always promoted humanitarian jurisprudence and keeping into consideration the international conventions and treaties the courts have come forward to protect the rights of refugees in the garb of human rights principles. Various judgments of the Supreme Court of India and the High Courts shall be discussed and analyzed by the researcher in the present chapter. Also various reports of National Human Rights Commission shall be mentioned because NHRC has also work in the direction of protecting the rights of refugees and has always supported for the adoption of refugee law in India.

**Chapter V- UNHCR and Refugees in India: A Perusal**

The fifth chapter of the present research work deals with the role of UNHCR in India. UNHCR role is very important because firstly India does not have a refugee specific legislation and secondly it does not recognize all categories of refugees and thirdly it does not have a refugee status determination process. Therefore the structure of UNHCR shall be discussed in the present chapter and also about the
India’s membership of Executive Committee of UNHCR. The other part of the chapter shall focus on the role of various implementing partners of UNHCR and Non Governmental Organizations in India. Those refugees which are not recognized by the Indian Government have to depend on UNHCR and its various partners for their recognition and survival in India.

**Chapter VI- Challenges Faced by Refugees in India**

This chapter of the present work shall focus on the challenges faced by refugees in India. How their basic rights are violated and what are the ground realities of refugees shall be discussed in this chapter. Further there shall be discussion on the issue of refugees been discussed in the Rajya Sabha from time and also the bill introduced by Mr. Shashi Tharoor for protecting the interests of the refugees and also national security. The researcher shall take up the three case studies in the present chapter. The basis of picking up these case studies only is that these reports and studies are conducted by the implementing partners of UNHCR. The researcher shall discuss in detail and then have an indepth analysis of the same.

**Chapter VII- Conclusions and Suggestions**

The last chapter of the thesis shall conclude the whole of study alongwith mentioning of certain suggestions.