Chapter IV

PERCEPTIONS OF THE SUCCESSIVE GOVERNMENTS TOWARDS THE OTHER REFUGEES AND UNHCR

Though other refugee groups including Bhutanese, Afghans, Burmese, have not been recognized by Government of India due to their density and nature of flow, their home governments agreements/treaties with Government of India, India’s obligations, compulsions and strategies, they are covered by the non-refoulement principle which is one of the most essential principles of the 1951 UN Convention on Refugees and Article 21 of the Indian Constitution. Though India has not signed formally 1951 UN convention of Refugees and so New Delhi Mission of UNHCR has only a limited role in India legally, activities and its involvement with human rights bodies including NHRC and the judiciary vis-a-vis the different refugee groups, show that it has had effectiveness and involvement in India comparable to that of a full-fledged mission.

Bhutanese Refugees: Background Status and Position

The state in Bhutan has been a monarchy and dominated by the Buddhist Drukpas. The Southern Bhutanese, mostly of Nepalese origin, who migrated from Nepal and India over the years not only lived under restrictions of movement and residence, but also were denied due share in the political and economic decision-making of the kingdom. This was mainly due to the fears of the dominant Drukpa community that demographic expansion of Nepalese would eventually lead to their marginalization within the Kingdom. The conditions of
the southern Bhutanese of Nepali origin, further deteriorated when rigorous policies of Bhutanisation, through the imposition of cultural and dress codes (Driglam-namza) as well as citizenship qualifications, were carried out in 1988. Repressive implementation of these policies precipitated violent reactions, conflict and generated refugees. Ethnic conflict in Southern Bhutan also carries political overtones, where the Nepalese besides demanding protection of their human rights also claim to be struggling for the establishment of democracy in Bhutan. More than 100,000 refugees left Bhutan to seek asylum outside as a result of this conflict. Approximately 30,000 Nepalese of Bhutan took refuge in India West Bengal and Assam.

Some 30,000 ethnic Nepalese refugees from Bhutan fled to India beginning in 1991. Under the terms of Indo-Bhutanese friendship treaty of 1950, India allowed Bhutanese to work and live freely in India. Therefore, the Indian Government did not assist the Bhutanese or require them to live in camps. Many of them tried to settle in Nepal but were sent away to India. After this there have been a number of marches by these stateless persons, erupting at times into sporadic violence. Most of the demonstrations are in the northern part of Bengal where the Indian corridor extends between Nepal and Bhutan. Thus India is again a recipient of huge number of people and the consequent social violence. Here it must be noted that the ethnic Nepali-Bhutanese are all Hindu and this was the basis of their initial expulsion from Buddhist Bhutan. The total number of Nepali Bhutanese expelled from Bhutan on the grounds of their being Hindu
and ethnically Nepali origin is 91,800. These people are scattered over India as it has no refugee camps for them. Many sources speak of growing numbers over the years starting from initial exodus in 1991.

**India’s Policy**

So far as the policy of Government of India towards Bhutanese refugees is concerned, the Bhutanese nationals cannot enjoy the same status and privileges as the Indians in Nepal or the Nepalis in India. The treaty of Peace and Friendship of 1950 concluded between India and Nepal has explicitly laid down in articles 6 and 7 about mutual benefits for the nationals of two countries. Since Nepal and Bhutan also have no such arrangements, their nationals have to fulfil the legal formalities for entering each other’s territories. Bhutan and India have such an arrangement under which the nationals of the two countries can use their borders. In Nepal, a controversy has been raised with regard to rules of entry and the obligation of India for regulating the movements of refugees, especially when they transit through Indian territory. It has been stated that the governments of Assam and West Bengal were “un-cooperative” towards the Bhutanese refugees despite the initial permission given to them. India’s cautious approach to the Bhutanese refugee crisis is apparently guided by the overall political demographic considerations in the North-East where – the “sons of the soil” movements have not excluded Nepali Settlers as targets. The “Greater Nepal bogey” whipped by Bhutan and the Gorkha National Liberation movement leader, Subhash Ghisingh, must have led to consider the future security scenarios of the entire Himalayan regions.
straddling between North-East and Western Indian hills of Kumaon and Garhwal. The bogey of Greater Nepal attracted great attention in India when the Bhutanese government succeeded in driving a wedge between the issue of refugee population and India thus preventing India from supporting the Bhutan People's Party (BPP). Both King Jigme Singye Wangchuk and the Foreign Minister Dawa Tshering accused the ruling Nepali Congress Party for "supporting the Nepali speakers in Bhutan in their campaign to form a separate Nepali State". Dawa Tshering told the Amnesty International team visiting Bhutan that the Southern Bhutanese were "supported by the groups and individuals in India and Nepal who support the concept of Greater Nepal which is based on the premise that the Himalayas are the natural home of the Nepalese, a myth which is not supported by historical fact." Nevertheless, the Greater Nepal bogey created by Bhutan and the GNLF worked as a successful tool for deterring Nepal as well the Nepali Indian Community's spontaneous and vociferous support for the Bhutanese refugee crisis.

The question was put to Pranab Mukherjee, External Affairs Minister of India in Nepal, "why are you stopping the refugees". He took the stand that the issue of the refugees from Bhutan was a bilateral matter between Nepal and Bhutan and India had no role in the matter, except that Indian territory had been used to cross over to

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2 Ibid, p. 164.
3 Ibid, p. 164.
Nepal, on 6 Feb 1996. The West Bengal Left Front Government is in a quandary in regard to the Bhutanese refugees of Nepalese origin who are making periodic efforts to cross over to Bhutan across Indian territory. Following a crackdown on pro-democracy movement in Bhutan, about 1,00,000 Bhutanese refugees of Nepalese origin had fled Bhutan and are now said to be settled in eight camps in Nepal. The Bhutan Govt. had however claimed that a majority of these refugees are not its citizens and unwilling to take them back. West Bengal Home Minister Mr. Buddhadev Bhattacharya said on June 8, 1996 (pointing long-march of these refugees to Bhutan's capital Thimpu in January 1996) "As a political Party, our sympathies lie with these refugees and the party has expressed its solidarity with them. But the State Government cannot allow them to use Indian territory to foment agitation against Bhutan or so over to Bhutan".

The problem with Government of West Bengal is that these 1,00,000 refugees have ethnic and cultural similarities with the Nepalese (Gurkahas) in North Bengal vis-à-vis Mr. Ghishing's GNLF and the Greater Nepal illusion.

Bhutanese refugees living in India numbering about 30,000 approached UN for protection to go back home to Bhutan, on Nov. 2, 1996 in New Delhi. The problem began in 1988 when as per the allegations of the refugee leaders, the Bhutanese Government started revoking their citizenship especially of Nepalese speaking people living in the southern parts of their country.

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4 The Pioneer, 7th February 1996.
5 Hindustan Times, 9th June 1996.
6 Hindustan Times, 3rd November 1996.
Burmese refugees in India: Background, Position and Status

Burma was granted Independence from British rule in 1948. Soon after this, Burma started a vigorous process of nationalizing its administration and public sector institutions, where a large number of persons of Indian origin, who had migrated to Burma under the British patronage, were employed. All these Indians were pushed out of their jobs and since most of them were not granted citizenship, they had to come to India as refugees. Burma again sent refugees to India after the dismissal of U.Nu’s democratic regime and the establishment of military rule by Gen. Ne Win in 1962.

India’s Policy Towards the Refugees in North East:

India does not recognize the influx of people from Myanmar as refugees. There are four categories of people from Myanmar who have sought refuge in India (i) Ethnic Chin-Burmese are the dominant group of Burmese in India estimated to be about 40,000 mostly Christians (ii) Ethnic Nagas fled Burma in 1992 following the army’s crackdown on insurgents in the upper Sagaing division. (iii) Arakanese refugees have been crossing over from Myanmar’s Arakan state since 1993. (iv) Burmese refugees in India recognized by UNHCR are 267 in number. The ethnic Chins, the majority of whom are Christians, had been special targets of the Burmanisation programme of Gen. Ne Win who toppled the civilian government of U.Nu in 1962. The military crackdown on pro-democracy activists in 1988 saw a fresh exodus of refugees from Chin State. The Indian Government responded to influx of student activists from Myanmar by opening up camps in Manipur.
and Mizoram. But in Manipur, 300 Burmese student activists there got little sympathy from local authorities. Clashed occurred and 160 Burmese students were repatriated and others were put in Imphal jail without trial. In Bogysis Vs Union of India case, the Guwahati High Court ordered the temporary release of a Burmese man from detention for two months so that he could apply for refugee status with the UNHCR. Many Burmese student activists who had sought refuge in North-Eastern states made their way to Delhi to get recognized by UNHCR, of whom 267 have been recognized by UNHCR. In Mizoram, Chin student activists were initially welcomed by the locals. The Mizo and Chin tribals belong to the same ethnic family. UNHCR was denied access to these camps. In an effort to assist these Aizwal students, Mizoram Chief Minister Lathanwala in 1990 sanctioned ration Cards to be issued to them. These cards served them as identity cards protecting them from police action. But by 1994, rations in the camp was slashed and the Chin-Burmese were forced to fend for themselves. As they started competing for local jobs, it fed the groundswell of hostility against the “foreigners” and in the process, the 40,000 Chins, many of whom had been living in Mizoram for decades, became the special focus of the “quit Mizoram” campaign. In September 1994, Lian UK, member elect of the Burmese Parliament alerted UNHCR and concerned NGOs about the forcible repatriation

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7 Tapan K. Bose and Rita Manchanda, States, Citizens and Refugees: The Uprooted peoples of South Asia (Kathmandu, 1997), p. 209.
of Burmese refugees to Myanmar. India was keen to revive diplomatic relations with SLORC.

The initial enthusiasm for the pro-democracy movement, which saw Aung San Suu Kyi awarded the Jawaharlal Nehru Award for International understanding in 1993, had by 1994 turned into an embarrassment. India was worried at the galloping spread of Chinese influence in Myanmar while it was pursuing a hands-off policy towards the junta. By 1995, the push back policy was resumed. India has moved to shed its democratic sympathies for the pro-democracy alliance of ethnic groups fighting against SLORC, to join hands with SLORC in stamping out insurgency in North-East area. What has fuelled the joint strategy, is the suspicion that the Chin National Front (CNF) and its armed wing the Chin National Army (CAN) were in League with NSCN, People’s Liberation Army (PLA) and ULFA, armed insurgent groups at war with the Indian state in North-East of India. In April 1995, Vice-Chairman of CNF Sang Hlun crossed over to Parva border village in Mizoram for a Scheduled meeting with BSF. According to Van Hmung a Chin-Burmese refugee, the CNF leader had come to clarify misunderstandings with BSF over allegations of collusion – with Indian armed insurgents. But before the meeting could take place, BSF arrested them\(^{10}\).

Soon after India and Myanmar launched a joint counter insurgency Operation code-named “Operation Golden Bird”. The

\(^{10}\) Ibid, p. 211.
1995-96 annual report of the Indian Home Ministry lauds the success achieved through intelligence sharing in intercepting insurgents on both sides of the border. Earlier at the Indo-Myanmar trade talks in February 1995 in Rikhwader in Burma, an understanding was reached that India would close down the refugee camps and aliens would be deported. In May 1995, a task force was setup under the Deputy Commissioner, Aizwal to work out a process for identifying and deporting “aliens”. The Champhai Camp was closed down on June 1, 1995. Concerned NGOs appealed to the Union Home Ministry to intervene. But the Home Ministry justified the closure as there were only four inmates left in the camp and they were suspected to have ‘dubious links”11. The Home Ministry claimed that Mizoram state authorities had informed them that “the Chins in Mizoram are not refugees who had taken shelter to avoid persecution by Myanmar authorities. They have migrated illegally in search of gainful employment”12. Taking refugee in the legally accepted definition of refugees, the Home Ministry asserted “a distinction needs to be maintained between political refugees and migrants”13. UNHCR too, appears to have accepted that the Chin-Burmese peoples in Mizoram were economic migrants and not a case of mass migration requiring their protection as they were in a refugee like situation. UNHCR has not been allowed access to the refugees and thus has not been able to determine for itself the status of these refugees. Fearing police action

11 Ibid, p. 213.
12 Ibid, p. 213.
13 Ibid, p. 213.
and deportation in Mizoram, several ethnic Chin and Burmese refugees came to Delhi in June 1995 to UNHCR for protection. UNHCR in New Delhi assured by Ministry of External Affairs that there would be no push back of the Chin-Burmese, chose to give the refugees a take it or leave it offer. They stay on in Delhi, without any assistance; though they are entitled to a one-time grant and travel allowance of Rs. 3,000 to return to Mizoram.

In July and August 1996, scores of Chin-Burmese in Aizwal were picked up by the state police. In Mizoram rallies were taken out demanding the immediate deportation of the Chins. The Home Minister of the Mizoram Government issued a “Quit Mizoram” call at one of the rallies. The provocation was the killing of an activist of the young Mizo Association, in a border village on July 12, 1996, allegedly by CNF. Quit-notices were served on 100 Chin-Burmese families in Aizwal. A state government Circular ordered refugees to leave by August 13, 1996. On the other hand, Mizoram Chief Minister Lalthanwala had hoped to garner Rs 5 million for the state by opening up border trade with Myanmar. In January and June 1996, former Soldiers – deserters from the Burmese LIG 268 and 269 reportedly traded their arms with CNF activists for safe passage to India. The Indian government had refused to grant them asylum but it was understood, they would not be pushed back. But at the insistence of SLORC, on August 5, 1996 ten ex-soldiers of the Myanmar army were
deported by the Indian authorities. Also in August 1995, 33 Burmese refugees were pushed back following the July 4, 1996 order of the Deputy Commissioner Chhimtuipui district, Saiha in Mizoram. The Chin-Burmese are an “unwanted people”. They have nowhere to go. Back home in Myanmar persecution as an ethnic minority at the hands of a government bent on stamping out their religious and cultural identity India may have its democratic sympathisers as the then Indian Foreign Minister I.K. Gujral said.

As many as 40,000 Chin Burmese refugees lived in India’s Northeastern State of Mizoram (estimates range from 20,000 to 40,000). The Chin, who are mostly Christian, are among the ethnic minorities who suffered discrimination under the successive Burmese regimes and more so under the present state Law and Order Restoration Council (SLORC) regime, considered one of the worst human right violators in the world. About 200 Chin have managed to ‘escape’ to Delhi and seek UNHCR’s help. Based on additional information procured by USA during 1996, these Chin people are considered refugees by USCR (United States). This is because India did not have any refugee determination process for which Chin could apply and because UNHCR was refused permission to access them. Some of the Chin have been in India since 1962, when ethnic Chin took up arms against then militant regime in Burma. Most, however entered India during SLORC’s crackdown on democracy movements in

1988. The Chin lived in India in relative peace for many years among local Mizo people, to whom they are closely related. Many were housed in two refugee camps, Champai and Saiha, which Indian authorities established for them. The situation altered dramatically due to anti-foreigner sentiment in Mizoram and other Northeastern states in 1994. In September 10,000 of the Chin refugees were ‘forcefully’ repatriated to Burma. According to Chin sources, most of the repatriated disappeared or put into labour camps in Burma. In 1995, India and Burma signed a trade agreement that led to closer relations. Following SLORC’s complaint that Chin (Chin National Front – CNF) were using the refugee camps as centres of insurgency, Government of India closed the two said camps in June 1995. The situation deteriorated when, on July 12, 1996, a Mizo leader was killed, allegedly by members of CNF. At about that time, the CNF had imposed a blockade of main roads between Burma and Mizoram, angering the Mizo businessmen. The Indian authorities were at loggerheads with CNF not only because of the threat they posed to its relation with SLORC but of their adding Naga insurgents in India. Mizoram authorities said that all Chin would be sent away by 13 August 1996, but the order was never implemented.

Policy Perceptions of the Central Governments Towards the Refugees:

The worst-hit by New Delhi’s policy of “doing business” with SLORC (1988) are the 40,000 Chin refugees in India. For New Delhi is now no longer prepared to stand in the way of anti-foreigner tide in
Mizoram against the Chin refugees. According to a deportation order of the Additional District Magistrate in Aizawal, 33 Burmese refugees were to be deported. In September 1994, Mizo politicians pushed back 300 Chin-Burmese refugees across the border. When 800 Burmese fled in 1990 after SLORC (1988) clamped down on the pro-democracy movement, the Indian Government set up refugee camps. By 1994 as diplomatic ties between India and Myanmar were revived the refugee camps came under pressure. The SLORC claimed that the camps were being used as hideouts by Chin National Front (CNF) an armed group fighting for democracy in Myanmar

Though Government of India have not recognized Burmese refugees and put them under her non-refoulement principle, she has a sort of humanitarian rehabilitation assistance policy towards them. Replying to a parliamentary question “whether Burmese refugees are rehabilitated”, Mohd. Maqbool Dar Minister of State for Home Affairs said in Parliament on 18th March 1997: “The Government of India presently implements only two schemes for the benefit of the Burma repatriates. These are grant of loans for house construction and for business/small trade. These schemes are being implemented through the state Governments and the loans are released to the state Governments for disbursement to the repatriates”.

A New York based rights groups, Human Rights Watch, claimed on 18/8/2000 in USA that “local sources” had informed that police in

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17 India, Lok Sabha, Debates, USQ No. 3661, 18th March 1997.
the North-Eastern Indian state of Mizoram were preparing to deport another groups of Chin (Christians). Last week authorities turned over more than 100 Chin to the Burmese Army and detained more than 1000 other pending deportation. The Indian authorities claimed the Chin are illegal immigrants. Any wholesale deportation to Burma without safeguards for protecting genuine refugees is unacceptable"\(^\text{18}\). Sidney Jones, Asia Director of Human Rights Watch suggested the Indian government give the office of UNHCR “immediate access to the detainees so that anyone with a valid fear of persecution could make a formal claim for refugee status"\(^\text{19}\). On August 10, 2000 a London based human rights organization Amnesty International issued an urgent action alert on the “forcible return of ethnic Chin Burmese to Burma from Mizoram”\(^\text{20}\), claimed by Mizzima News Group. Meanwhile in a letter to Chief Minister of Mizoram the joint action committee of Chin organization demanded that the government and people of Mizoram continue extending their “sympathetic and humanitarian help. We demand discontinuation of arrest and handing over of innocent Chin refugees to the hands of Burmese Junta and punishment to those committing crimes like trade in drugs.”\(^\text{21}\) Friends of Burma, an association supporting the cause of Chin refugees was concerned over their arrests and deportation to Myanmar by Mizoram Government. Recently it has complained to UNHCR on 29 August

\(^{18}\) Asian Age, 19\(^{th}\) August 2000.

\(^{19}\) Asian Age, 19\(^{th}\) August 2000.

\(^{20}\) Asian Age, 11\(^{th}\) August 2000.

\(^{21}\) Ibid.
2000 and apparently UNHCR sent notices to Mizoram Govt, Union Home and External Affairs Ministries. As per the complaint, though the Chins have been allowed to remain in Mizoram since the 1988 military coup, in Myanmar, by Govt. of India, 1300 of them have been arrested since July 2000. Around 183 have been sent back. This move deprived the arrested Chins the opportunity to seek formal acknowledgement as refugees. Since the UNHCR is not allowed to function in border areas, applicants have to reach its office in New Delhi. According to the complaint, this goes against the policy of the Indian Government, which granted staying facilities to pro-democracy activists and other persecuted people from Myanmar. India is also a signatory to the International Convention on Civil and Political Rights as also Universal Declaration on Human Rights. Article 3 of the latter forbids the return of a persecuted person to a country that poses the threat of torture to him. Also Article 51(c) of the Constitution enjoins India to respect international law and treaty obligations.

Afghan Refugees: Background

The Afghan refugees started coming to India following the Saur revolution of Afghanistan in 1978 and the far-reaching socio-economic changes introduced by the Taraki regime. Within a year and a half, the Taraki regime was overthrown by Hafizullah Amin in September 1979, who in turn was removed by the Soviet military intervention in

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Times of India, 30th August 2000.
December 1979. The flow of refugees became much too large following the Soviet intervention and the Afghan resistance to it.

**Policy Perceptions Towards the Refugees:**

The policy of Government of India towards Afghan refugees has been also benevolent and humanitarian. Replying to a Parliamentary question on 'steps taken by the Government to ensure Afghan's return to their home land', Mr. Rajesh Pilot, Minister of State for Home Affairs said in Parliament on 10th March, 1993: “Total number of refugees recognized by the office of UNHCR up to February 1993 are 17,555 and at the time of take-over by the new regime in Afghanistan i.e. up to June 1992 were 9,221. Government have taken up with the Government of Afghanistan the return of these people to Afghanistan. Substantive progress in this matter will depend on the overall security condition in Afghanistan stabilizing”23.

On 8th December 1994, Mr. Rajesh Pilot, Minister of State for Home Affairs said in Parliament over a question “whether all the refugees who came to India from Afghanistan have been deported to Afghanistan: “A large number of Afghans have come to India but they have not been recognized as refugees by the Government. In view of the political disturbed conditions in Afghanistan, Afghan refugees have not been deported to their country. However, UNHCR under which 22,689 Afghans registered as refugees, it is trying to find resettlement in third countries”24.

23 India, Rajya Sabha, Debates, USQ No. 1765, 10th March 1993.
24 India, Lok Sabha, Debates, USQ No. 250, 8/12/94.
According to Ravi Nair, Executive Director of SAHDC, "The Indian Government, in the main has dealt with the refugees on an ad hoc basis. This has led to the use of refugees as pawns in the regional geo-politics"\textsuperscript{25}. But according to Mr. Irene Z. Khan, Chief of Mission of UNHCR in New Delhi referring to Afghan refugees said on 23 Nov 1996 "If you look at the refugee problem here in India, it is not all that bad. The largest number of refugees is in Africa. But India, of course, does have a very large number of refugees. I would say that India has been very generous towards these people all these years. Under international laws, you are a special of a foreigner and not host country can force you back home into a dangerous situation"\textsuperscript{26}. Prof. Kalim Bahadur of JNU, New Delhi said, "The Indian Government does not have a clear refugee policy towards the Afghans. This is probably because the situation in Afghanistan itself is so fluid. The power brokers of today (Talibans) may become refugees tomorrow. Najibullah's family came here when he was in power, so they were the President's family. Even the possibility of the Talibans coming here as refugees is not ruled out"\textsuperscript{27}.

But so far internal security is concerned, there is a problem in India, as according to Maxwell Perreira, Additional commissioner of Police, Delhi: "We believe that even an iota of drug trafficking is bad. There used to be a time when these refugees were involved in violence

\textsuperscript{25} Hindustan Times, 24 November 1996.
\textsuperscript{26} Hindustan Times, 24 November 1996.
\textsuperscript{27} Ibid.
and drug trafficking or other stray incidents of stabbing and things like that. But there has not been so much involvement in lawlessness"28. As Prof Kalim Bahadur pointed out “the drug problem can prove a threat in the future even in India”29. Home Minister informed in Parliament on 7th July 1998 over a Parliamentary question, “Whether Government have investigated the involvement of Afghan refugees in drug trade”, that as per the information available about 20,000 Afghan nationals who had come to India with valid travel documents, are not recognized as refugees by Govt. of India. During the years 1995 to 1998, 20 Afghan nationals had been arrested for drug trafficking.30 According to Mohammad Noor and Mohammad Anwar (both Afghan refugees) who surrendered to Indian troops in North Kashmir on August 3, 1995, Pakistan was motivating the Afghan refugees to sneak into Kashmir to join *jehad* (holy war) against 7 lakh Indian troops deployed in Kashmir, as Kashmiri youth undergoing training in POK, were not willing to cross over to their homeland.

Foreigners Regional Registration Office (FRRO) deported 18 Afghan nationals since July 1998. A Home Ministry sources confirmed “None among the deported or those awaiting deportation are refugees registered with UNHCR. Intelligence sources said there were

28 Ibid.
29 Ibid.
30 India, Rajya Sabha, Debates, USQ No. 2334, 7 July 1998.
witnessing a trend of Inter-services Intelligence (ISS) agents infiltrating into the country in the garb of Afghan nationals"\textsuperscript{31}.

**Status and Role of UNHCR: Legal Background**

Discrimination between Refugees based on their country origin India has granted rights to Tibetan refugees, which have not been granted, to later refugee groups only in financial assistance. However, broadly all groups of refugees are treated uniformly according to the principles of non-refoulement, protection of life and security, law courts, religious freedoms etc. Differences in treatment, arise out of two factors. The first is ethnicity, as in the instance of Sri Lankan Tamils. The second, despite the Central Government sharing the financial burden, much also depends on the resources of the state in which the refugees are located. For example, Tripura where the Chakma refugees are living, is one of the poorest regions in the Country. But Refugees have, like aliens, free access to the courts to protect their life and liberty. As a secular State it accords to refugees complete freedom to practice their religion. In so far as the principle of non-refoulement is concerned, it does not discriminate between refugees on the basis of their country of origin. In a recent article Weiner has offered without directly addressing the issue, important insights into the question (Myron Weiner, 'Rejected peoples and Unwanted Migrations in South Asia', *EPW*, Vol. XXVIII, no. 34 August 21, 1993, pp 1737 – 1746). He identifies some of the peculiar features of the South Asian region including India, which need to be borne in

\textsuperscript{31} The Pioneer, 9\textsuperscript{th} August 1998.
mind in discussing the problem. First, none of the states in South Asia has the capacity to control population entry. Borders are porous, and governments lack the administrative, military or political capacity to enforce rules of entry (Weiner p. 1743). Second, cross-border population movements in South Asia are regarded as issues that affect internal security, political stability and international relations, not simply the structure and composition of the labour market or the provision of services to new comers. Third, there is the possibility of refugee flow changing the linguistic or religious composition of the receiving area within the country. Local anxieties are acute when there is a perceived threat of being culturally and/or economically swamped. For these reasons, India concluded that unwanted migrations, including refugees are a matter of bilateral not multilateral relations and that international agreements could constrict their freedom of action. Any social turmoil in one country is bound to affect the others in terms of refugees, displacement of life and property of the kith and kin, or other cultural affiliates. Other possible reasons why India has been reluctant to accede to the 1951 convention may be surmised. First, since India has been a willing host to refugees it sees no reason for becoming a party to the Convention, especially when it has allowed UNHCR to open a office in New Delhi. Second, because of its experience with what it regards as

33 Ibid.
the unhelpful role played by UNHCR during the Bangladesh Crisis of 1971\textsuperscript{35}, India has been wary of what may be described as the non-humanitarian or political role of UNHCR.

**Objective of the UNHCR:**

The UNHCR's objective in India is to create "Public awareness of refugee situations and issues in India and promote a legal framework for the protection of refugees". The creation of awareness and promotion of a legal framework as envisaged by UNHCR is important to create an institutional framework to protect the refugee rights. In India, in the absence of a formal legal structure the courts particularly Supreme Court and NHRC have played both proactive and constructive roles in safeguarding and protecting the rights of refugees. While it is possible to bring the government of India under the scrutiny of the quasi-judicial bodies like NHRC and the judiciary, there is no such mechanism to scrutinize the functions of UNHCR in New Delhi. "Official rules and procedures" have become an excuse to raise the "Veil of Secrecy". Initially UNHCR's involvement was rejected because the continued tensions with China meant that Indian government preferred not to have an official representative of UNHCR based in country.

**Background of UNHCR:**

In February 1969 a Branch office was officially opened in Delhi. In October 1969 India was for the first time designated an Observer to

attend the sessions of the Executive Committee of UNHCR. In 1970 the role of UNHCR assumed new importance as attempts were made to speed up and consolidate the permanent settlement of Tibetan refugees. All this led to 'a close working relationship between UNHCR and the government. In April 1971, with the flood of refugees from East Pakistan, India called upon the United Nations for assistance. The fact of the matter was that UNHCR was inextricably tied up with the military and political situation the ground. This led to the feeling in India that UNHCR was not confining itself to playing its non-political and humanitarian role but was transgressing traditional boundaries. Nevertheless, since 1981 when a significant number of refugees arrived from Afghanistan and Iran, Government of India has allowed a UNHCR presence in India. By the end of 1992 UNHCR was assisting 11,000 Afghan refugees in New Delhi area. The mandate of UNHCR in India is limited to refugees who don't come from neighbouring countries and with whom for diverse reasons, Indian Government does not wish to deal directly.\textsuperscript{36} UNHCR is only allowed a nominal presence. UNHCR mission in New Delhi is required to function under the banner of the UNDP. In 1992-93, India agreed to allow UNHCR to oversee the voluntary nature of the repatriation of Sri Lankan Tamil refugees, although denying it the same role in the case of Chakma refugees. When the repatriation of refugees commenced on 22 January 1992, there was an outburst of criticism that India was

\textsuperscript{36} Ibid, p. 390.
'pressurising' the refugees to leave, the repatriation was 'involuntary' and that since peace had not returned to Sri Lanka the refugees would not be 'safe' in the Island. The NGOs working among the refugees in India and human rights organizations like the Asia Watch alleged that the hapless refugees were being "forced" to leave and their signatures had been obtained in option forms, the contents of which they did not know. In July 1992, the Government of India announced that it would permit UNHCR presence in India and UNHCR could ensure that "those refugees who did not wish to return are not sent back". The decision to permit the UNHCR to operate in India and monitor the repatriation facilitated the safe return of Tamil refugees to Sri Lanka. Though the UNHCR officials were not permitted to visit the refugees camps, any refugee could contact the UNHCR if she/he wished to do so. According to UNHCR sources, they conducted interviews with roughly 70% of the refugees to verify the "voluntary nature" of their return and they were convinced that the refugees had not been subjected to any "overt coercion". Only 19 families, comprising 68 persons, complained that they had been repatriated "under duress" and they were permitted to return refugee camps following UNHCR intervention. The UNHCR presence in Tamil Nadu also facilitated "better coordination". The UNHCR has been operating in Sri Lanka since 1987 and the coordination between the two units, coupled with the cooperation of the bureaucracy on both sides, contributed to the smooth functioning and overall success of repatriation. According to the US Committee for Refugees, "there is
little question that the presence of the UNHCR facilities and Madhu in particular, had been re-assuring to displaced persons and provided them with a meaningfully safe alternative to the camps in Tamil Nadu". Fortunately their fears were unfounded, according to a Report published by the UNHCR "the overall picture with regard to security and protection of returnees was very encouraging". India became a member of Executive Committee was dictated by several factors. First is its more positive experience with UNHCR in recent years. Second, the fact that Pakistan has been a member of the Executive Committee since 1988 and could use the body to agitate against India's national interests. Finally, India is seeking to become a member of UN Security Council37.

**Present Role of UNHCR Towards the Refugees:**

Afghanistan nationals of Indian origin in thousands were knocking at the doors of UNHCR office in New Delhi in Oct 15, 1992 for being accorded 'refugee status' under the UN Charter. Whereas 8,700 Afghan nationals had already been recognised as "refugees" by the UNHCR, over 3000 were waiting to be accorded the refugee status". The bulk of the nationals registered with the UNHCR in New Delhi was from Afghanistan in a total of 9,500 till Sept 1992 end, there were others: 300 from Iran, 268 from Somalia and 200 others from 10 different countries that included Sudan, Palestine, Ethiopia, Burma and Angola. Appreciating the stand of the Indian Government in facilitating the stay of refugees she was accorded recognition by the

37 Ibid, p. 388.
UNHCR. Mr. Fazlul Karim stated that he did not have to face any problem and that “The Government has been very cooperative”. A large number of Hindu and Sikh Afghan refugee demonstrators led by President of Indian National Forum, Mr. Balbir Singh submitted a memorandum to the UNHCR demanding equal status with Muslim refugees from that country when it came to pension and other relief. The memorandum urged the High Commissioner to look at the “extremely sad plight” of Hindu and Sikh refugees from Afghanistan who had been forced to take shelter in India because of the repressive conditions back home\textsuperscript{38}.

On July 4, 1994, 27 year old Ajalal, an Afghan woman, burned herself to death at the UNHCR office in Delhi. The reason was unknown. While the UNHCR officials claimed that the lady took this extreme step after being driven to frustration by four Afghan men, members of the Afghan community have, however, a different story to tell. They contended that it was a different kind of desperation that drove her to take her life: the UNHCR had cancelled her subsistence allowance and living conditions had become unbearable for her. On May 17, 1995, Hamid, an Iranian refugee committed suicide by burning himself to death. Reportedly he was fed up with his hand-to-mouth existence and could not stand the struggle any more. Ajalal, was one among the 20,000 odd Afghan refugees in Delhi.

About 25 refugees who fled from the Saddam Hussain regime in Iraq were upset the way there were treated by Indian mission of

\textsuperscript{38} Indian Express, 14 November 1992.
UNHCR. They alleged that not only was it unresponsive to their needs but it also treated them with contempt, instead of sympathy. The UNHCR however was unfazed by this allegation. Mr. Brian Gorlick, the UNHCR's legal officer, said “we are not a cash cow. We cannot assure them middle class lives”\(^{39}\). Mr. Gorlick remarked that the UNHCR had turned down Ibrahim's application for refugee status because its Pakistan mission had earlier rejected him. “We have a rule that once rejected by an office, another mission cannot entertain him” he said. Ibrahim however maintained that the Pakistan Government under pressure from the Iraqi authorities had influenced the UNHCR. However Mr. Justice K. Sampath, a Judge of Madras High Court said in a Seminar on 30/11/98 in Madras that role of UNHCR in tackling the refugee situations had been unique. For example the UNHCR had done tremendous work in ensuring that children born to refugees and asylum seekers were promptly registered with authorities in the country where they were living\(^{40}\).

**The Refugees and India's Security:**

Victims of a threat to their own security, refugees in turn pose a security dilemma to the host country. As the most important refugee-receiving nation of South Asia, the problem of refugees affects India's domestic and regional security. The arrival of refugees in India has affected the dynamics of nation-building and perceptions of national and regional security. There required an assessment of the external

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\(^{40}\) The Hindu, 30\(^{th}\) November 1998.
dimension of the refugee problem vis-à-vis the impact it has on relations between the host country and the refugee-creating country. The last chapter proposes to examine security in all its diverse dimensions: political, economic and social as they affect India-Bangladesh relations, Sino-Indian relations, Bhutan-India relations, India-Sri Lanka relations, India-Burma relations, and also Afghans etc.

Primary source of refugees or illegal migrants into India in the years after partition in 1947 has been from the Eastern Wing of Pakistan now Bangladesh. The attitude of the government of India in the early days after partition was clearly enunciated by Jawaharlal Nehru who had said: "People, especially those who are in danger should for the present be allowed to come away anyhow, and the door should be kept open for them to travel from one part of Bengal to the other"41. The fear which prompted people to free erstwhile East Bengal/East Pakistan was well recognized by the political establishment. Pandit Nehru had said: "The Present position is that, so far as the Hindu population of East Bengal is concerned... the entire population is full of fear and apprehension about the future and given the opportunity, would like to come way"42. Among forced migrants, the position of Chakma tribals from CHT, permanent victims of insecurity, both as a small ethnic, linguistic, cultural


42 Ibid, p. 262.
minority in Bangladesh. Some of 45,000 Chakmas fled across the international border into India in 1963 pushed out by the pressures of a modernizing East Pakistan and the Kaptai Hydro-Electric project that inundated their homeland. They settled in Arunachal Pradesh, Tripura, Mizoram. It is a case study in the security dilemma of nations in the making, coping with the internal dynamics of identity-formation in pluralistic societies and the external problem of regional security. The varying facets of struggle were visible in Assam during the Bengal Kheda movement in the 1950s. This gathered momentum in the next decade only to transform itself into a militant ‘sons of the soil’ agitation which acquired legitimacy, culminating in the intense turbulence of the AASU between 1979 and 1985. Since then the Assam Valley has been rocked by successive waves of ethnic conflict, affecting internal security and destabilizing the political environment. The AASU was followed by the ULFA insurgency movement that splintered into the Bodo agitation. The Bodo agitation began in the early 1990s provoked by Assamese linguistic chauvinism and turned into a violent struggle in the Barak Valley. The Indian army was involved in two major operations namely: Operation Bajrang and Operation Rhino in 1990-91 to try and break the back of ULFA movement. In 1965, Chakma refugees were given titles to land in the tribal areas of Arunachal Pradesh/NEFA. The original Chakmas may be unrecognized by the Census, but their progeny have a right to

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43 Ibid, p. 106.
44 Ibid, p. 106.
citizenship have been born in India. The emergence of these Chakmas, Indians by birth but refugees by parentage, has upset the demographic, political and social balance in Arunachal Pradesh. The local population is threatened by an increasing sense of being marginalised in their homeland by a culturally and ethnically different group. In a bid to protect themselves from being ousted, the Chakmas have built links, according to reports, with militant organizations, causing the balance of forces to change and posing problems for internal security. It is a significant that the tribal Chief Minister of Tripura, Mr. Dasarath Deb has opposed the Government of India's move to lift the inner line regulation system, which imposes restrictions on free movement and settlement of people within the area of the state. Rejecting the proposal, Mr. Deb said in Agartala that "the socio-economic identity of the most backward tribal areas had already been seriously threatened as a result of unchecked influx from Bangladesh and the then East Pakistan". The presence of the Chakmas in Tripura has exacerbated the tensions between the Bengalis and the tribals, increasing the violence against the former in the state, spearheaded by organizations like the militant Tripura National Volunteers (TNV). There are fears of collusion between unhappy Chakmas and the TNV which has, according to reports from Indian Intelligence sources, contributed to the build up of arms with the militant TNV. So far repatriation is concerned, in 1994 first batch
of 11,000 Chakmas were repatriated to Bangladesh. But while it may be possible to repatriate the 50,000 Chakmas from Tripura, it would be impossible to repatriate about 80,000 Chakmas who live in Arunachal Pradesh and a few thousand more who have been absorbed into the polity in Meghalaya. Under the terms of the 1985 Assam Accord signed by AASU and the Congress government headed by former Prime Minister, Rajiv Gandhi, foreigners who had entered the state from Bangladesh were to be detected their names, scratched off the electoral rolls and they were to be sent back to country of their origin. In a peculiar arrangement, those who had come over from Bangladesh immediately before 1971 would be given a ten year guarantee period, to serve as probationary citizens, before their legitimacy would be recognized. The Assam Accord for the first time in India's independent history sought to create a sieve that would filter out the infiltrator/refugee/migrant from the citizens of the state. The Assam movement was a serious threat to India's internal security and the problem was contained through the device of an accord, conceding the principle that illegals had entered Indian soil, polluted the environment and therefore ought to be removed. The same yardstick, however, would not work in the hands of a political elite with a different ideological orientation. In the hands of the votaries of Hindutva, none of the Hindus in India, not even migrants/infiltrators are aliens but the religious minority of Muslims from Bangladesh most

certainly are. Unfortunately, the historical process of migration has not worked in Ways that can fit the theoretical propositions of the Hindutva votaries\textsuperscript{49}. As a convenient rallying point, the issue of religious identity is a recurring motif in the politics of India. Sudipto Kaviraj has pointed out that the secular model in the politics of nationalism constructed by the Congress, particularly “its Nehruvian stream”, “underestimates the alarming extent to which the power of Indian nationalism emerged from, or was a merely politically redescribed or redirected form of the power of violated religious sentiments” and which continues to manipulate sentiments in pursuit of power, by playing upon the theme of identity\textsuperscript{50}.

\textbf{Involvement of the Refugees with Secessionist Movements:}

The threat to internal security is not from recognized refugees like the Chakmas of South Tripura about whom the governments of India and Bangladesh have commitments for repatriation. The threat lies in the potential for destabilization and conflict that the very formulation of the problem of internal security poses linked to the issue of refugees. The tendency to pool together certain issues of domestic and bilateral in relations between India and Bangladesh refugees turns the question of migrants or self-exiled population into a sensitive and potentially explosive one. While outbursts by Chakma refugees leader Subhas Chakma that repatriation is being used as a

\textsuperscript{49} Times of India, 17 March 1992.

bargaining point in the negotiations between India and Bangladesh over transition rights, can be discounted.

Refugees are a product of conflict and insecurity situations, and their presence in a given country, in turn, contributes to or exacerbates conflict, tension and insecurity. The two worst cases where the refugees have contributed to insecurity of the host state in South Asia were that of East Pakistan in 1971 and Sri Lanka. The Bengali refugees from Pakistan in 1971 formed 'Mukti Bahini', fought against the Pakistani armed forces and facilitated the break-up of Pakistan which created the new and independent state of Bangladesh. Tamil refugees in India included various militant groups which reinforced their separatist struggle in Sri Lanka by exploiting their refugee status. These groups also appealed in Sri Lanka in May/June 1987, which forced the Sri Lankan security forces to halt their operations against the Tamil militant groups, and also consequently accept an agreement with India which many in Sri Lanka considered as an affront to their sovereignty and national self-respect. In both the cases of Sri Lanka and East Pakistan, the critical factor was of course, the support to and use of the refugees by the host state i.e., India. In case of Bangladesh its alleged connivance with the process of illegal migration of its nationals to India brought it considerable embarrassment with Indian responses like raising the barbed wire fence to stop such economic migration. Countries like India in South Asia have resisted the involvement of outside agencies in the upkeep of refugees, forcing it to bear that economic burden all by itself. The
variations among Afghans refugee groups in their wealth and ethnic and regional loyalties and among Tamil groups of caste, regional and religious identities were well known. Tensions and fights among the Afghan refugee leaders, like Hematyar, Dostum and Masood, among the Tamil refugee leaders like Prabhakaran, Uma maheswaran and Padmanabha may be recalled. Trafficking in drugs, arms and women has been found to be a common feature of the poorer sections of South Asian refugees including Burmese Rohi in India to meet their basic demands from the assistance and support available in the host country. Resourceful refugee groups get themselves involved in local politics for advancing their political and economic objectives. The changing alliances of the Tamil groups with the Tamil Nadu politicians not only intensified DMK and AIADMK political rivalry, but also contributed to its violent dimensions. Similarly, Nepali economic immigrants and political refugees, at least up to 1975 were involved in the political struggle of Sikkim. They were also trapped in the political rivalries among India's Nepali factional politics in North Bengal and Sikkim areas, adding to the debate and controversy on the relevance and abrogation of the Indo-Nepal Treaty of 1950 which permits and encourages migration across the India-Nepal border. Disturbances and instability in Assam in reaction to the 'alien' presence of Bangladeshis and Nepalese was a clear example in this regard. In the situations, where there is a similarity in the identities of the refugees and the host country population, the latter tend to imbibe the sense of discrimination and deprivation, express solidarity with the cause of
the refugee groups and in turn, their own sense of alienation from the
state is stimulated. The case of Sri Lankan refugees in Tamil Nadu
provides a typical example of this. The Tamils of Tamil Nadu have not
only exercised considerable pressure on the Indian policy towards Sri
Lanka on the question of ethnic conflict so as to make it supportive of
the Tamil cause, but have also revived and reinforced their own
identity and subnationalism. This has given rise to concern in India in
view of a history of Tamil separatism. Among the groups of Tamil
refugees, the LTTE turned so much against the Rajiv Gandhi regime in
India that they suspected to be behind his assassination (1991). There
are allegations that in this assassination, the LTTE had worked in
collaboration with the Punjab and Kashmir extremists. There have
also been reports of the LTTE's networking and collaboration,
including supply of arms, with other extremists and insurgent groups
in India like ULFA Peoples' War Group and NSCN National Socialist
Council of Nagaland. Regular irritations between Indian and Sri Lanka
resulting from the latter's naval action against Indian fishermen and
fishing boats, allegedly carrying arms and cargoes for the Tamil
Militants in the Palk Strait have been experienced. India has also used
force on its borders with Pakistan, Bangladesh, Sri Lanka and
Myanmar, in stopping the flow of refugees, illegal migrants and armed
militants. In the 1971 War between India and Pakistan, the question
of sending back nearly 10 million refugees weighed heavily on India,
but without the strategic consideration of demolishing Pakistan's two
nation theory, eroding Pakistan's military strength, asserting India's
pre-eminence and helping Bangladesh to emerge as an independent nation in the larger interest of peace and stability in the sub-continent, India would not have been driven to a full-scale war with Pakistan. Again, in the case of Sri Lankan refugees, India’s approach to repatriate them was dependent upon the resolution of the ethnic conflict in the Island, which could ensure justice to Tamils. It was to assert India’s strategic and political stakes in Sri Lanka’s peace, integrity, stability and non-alignment that India had to commit ‘relief-supplies’ intervention in Sri Lanka (May/June 1987), goad Sri Lanka to sign the Indo-Sri Lanka Agreement of July 1987, and send a peace-keeping-cum-peace enforcing force to fight the LTTE.

But these security implications grow in dimensions and complexity when a host state decides to use the refugees as instrument of its policy towards the home state, for political and strategic objective. Accordingly, the host state not only shares and support the cause of the refugees, but even provides arms training and diplomatic support to them as was done by India in cases of the East Pakistani and Sri Lankan refugees. Arms and training provided by India to the Tamil militants were not only used against the Indian Peace Keeping Force in Sri Lanka but also seemed to have fallen in the hands of Indian insurgent groups.

In its editorial, M.P. Chronicle (dated 22nd September 1999) analysed the infiltration and internal security in North East in a nutshell. Infiltration of Bangladeshi nationals into the North-eastern

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states has been causing social and political tension in the states, with
the local population taking cudgels against the problem even when
political parties do not have any clear-cut stand on the issue. The
movement against foreigners in Assam and other states is a clear
indication of the magnitude of the problem, which is threatening to
cause ethnic imbalance in the region. The infiltration, which started
with the liberation movement in what was East Pakistan, has been
going on steadily during the past several decades with different shades
of politicians have divergent views on solving the problem. The
infiltrators have, of late, become vote banks on account of which they
get protection from parties, which stand to benefit by minority voting
patterns. The ethnic similarities of the infiltrators have compounded
the issue with detection and deportation becoming sensitive issues.
The grinding poverty in Bangladesh has been driving its nationals to
this side of the border and once they enter the land become
unidentifiable from the locals. These infiltrators not only settle in the
border states, but melt away to distant states like Maharashtra. What
was once a humanitarian problem is gaining the status of
international conspiracy as the ISI (Inter-Services Intelligence) of
Pakistan is reported to be planning to champion the cause of Muslim
majority states in the North-east. Under the circumstances, the
concern shown by the Supreme Court about the illegal immigration of
Bangladeshis into N-E states is timely. The apex court has asked the
Central Government for an affidavit on the situation within eight
weeks. The Supreme Court also has expressed its concern on the
delay on the part of the state governments concerned in taking action on reports submitted by inquiry commissions. The court has emphasized the necessity for detection and deportation of foreigners from the North-eastern states which has been hampered by the illegal immigrant act which the Assam Government has recommended for repeal. The region has become a den of terrorists after the Kargil conflict when Pakistani agents have concentrated on this area to create divisive movements in order to destabilize the country. The militant groups in the region have become unwitting conspirators on account of the anti-government movement of these organizations. Some of the problems of the North-East are directly related to the presence of foreigners in the region which is already backward and insurgency is coming in the way of development. The Government should have a clear-cut policy on illegal immigration free from political interests. Unless immediate steps are taken for detection and deportation of foreigners, the area may become an ethnic cauldron with far reaching implications on account of the separatist movements. A system of work permits should be able to solve the human side of the problem.