Chapter I

INTRODUCTION

Background and Status of Different Refugee Groups:

India has a long tradition of giving shelter to people on humanitarian grounds with its principles of *samabhau*, an approach of tolerance and understanding of the equality of all religions, creeds, races and nationalities. Historically India had been a safe heaven for refugees and displaced persons. The asylum provided to Parsees who came to Gujarat in the eighth century fleeing religious persecution is generally cited as an evidence of the Indian sense of justice and hospitality. After independence, Partition precipitated a massive exodus and influx of displaced persons — Hindus and Sikhs from Pakistan to India and Muslims to Pakistan. It is estimated that some 15 million persons traveled across the newly formed borders. As early as 1953 Pt Nehru informed Parliament that India would abide by international standards governing asylum and would adopt corresponding non-binding domestic policies. The right of asylum was affirmed on humanitarian grounds. Based on this policy, the Tibetans and Sri Lankan Tamils were granted asylum and refugee status. In 1971, though refugees from then East Pakistan were called “evacuees” they were, in effect, treated as refugees requiring temporary asylum. At present, according to the Home Ministry Report (1996) there are 2,72,013 refugees staying in India, but the World Refugee Survey
1997 (USCR 1998), estimates the figures to be in excess of 3,500,000. Replying to a question by Rajiv Pratap Reddy on foreign refugees in Lok Sabha on 16th July, 1996 Md. Maqbool Dar, Minister of state for Home Affairs, revealed that the number of foreign refugees staying in India and their country of origins were: Tibetans (98,000), Sri Lankan Tamils (87,729), Bangladeshi refugees of Chakmas and Hajongs (66,234), Burmeses (52). In addition to these, there were 18,932 Afghans, 255 Somalis and 808 refugees from other countries living in India under the mandate of United Nations High Commission for Refugees (UNHCR). According to World Refugee Survey 1997 (USCR 1998), India hosts refugees of 110,000 Tibetans, about 100,000 Sri Lankans (62,000 in Government run camps), 53,000 Chakmas, 40,000 ethnic Chin and 200 Pro-Democracy student activists from Burma, 30,000 ethnic Nepalese from Bhutan to whom India granted more or less the same rights as its citizens, 18,607 Afghans, 243 Somalis, 195 Iranians and 161 from other countries were currently living as refugees in the country largely under the supervision of UNHCR. Answering to a refugee-related question in Lok Sabha on 16.5.2000, Mr. Vidyasagar Rao, MOSHM said that as on 31.03.2000 there were about 100,000 Sri Lankan refugees accommodated in 129 Camps and other sites in Tamil Nadu, 1,08,414 Tibetan refugees, 15,255 Afghan refugees, Burmese 591, Somalis 178, 183 Iranians, 86 Sudanese and 71 others staying in India. On May 6, 1997 the Union

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1. India, Lok Sabha, Debates, USQ. No. 774, 16th July 1996.
Home Minister, Mr. Indrajit Gupta informed the Lok Sabha that there were ten million foreign nationals staying in India. He also said that those figures were based on the information gathered by the intelligence agencies.

**Definition of Refugee:**

The definition of Refugee is based on the 1951 UN convention, according to which a refugee is “any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside is unable, or owing to such fear, is unwilling to avail himself of the protection of that country...”

**Conceptual Framework:**

There are various types of migrations to India both in terms of causality as well as their impact on domestic policies. Seven categories of migrations may be considered. They are: (I) Hindu migrations caused by the Partition, (ii) Bangladeshi refugees as a result of the civil war in Pakistan, (iii) Sri Lankan Tamils, Burmese Indian and Bhutanese Nepali refugees due to inter-ethnic strife, (iv) Nepali, Bangladeshi and Pakistani settlers due to open, or virtually open, borders, (v) Developmental and environmental refugees from Bangladesh, (vi) Indian Tamil (Sri Lankan) repatriates as per-contractual obligations, and (vii) Tibetan and Afghan refugees as a

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4 India, Lok Sabha, Debates, USQ. No. 714, 6th May, 1997.
result of military intervention by extra-regional powers. S.D. Muni and Baral identified three broad categories of refugee-generating factors in South Asia in general and in India in particular. In the first place, the break down of colonial rule and the rationalization of some of the colonial legacies created refugee flows. The first category of migration comes under this. The second category of factors responsible for generating refugees is related to state and nation-building processes which precipitate not only political, ethnic and religious conflicts but also economic and environmental conditions that forced people to migrate within or outside their respective countries. To this belong the second, third, fourth, fifth and sixth types of migrations. The third category of refugee generating factors relate to the developments outside the region and the flow of extra-regional refugees. The Burmese refugees (other than Burmese Indians) belong to this category. India has been more of a refugee-receiving than a refugee-generating country due to its easily accessible borders, socio-cultural identities, economic opportunities and a secular democratic and generally soft state, in relation to almost all the neighbours. So far as the condition of refugees in India is concerned, it depends upon the extent of protection they receive from either the government of India or the UNHCR. Three primary categories of refugees can be identified: (i) Refugees who receive full protection as per standards set by the government of India such as the Sri Lankan Tamils, Chakmas and Tibetans. (ii) Refugees whose presence in Indian territory is acknowledged only by the UNHCR and they are protected under the
principle of non-refoulement by Govt. of India such as Afghan, Iranian, Somali, Sudanese and Burmese refugees (iii) Refugees who entered India and have been assimilated into different communities. Their presence is not acknowledged by either the Indian government or the UNHCR. It includes the refugees from Myanmar, ethnic Chin refugees from Chin States, Nagas and Rakhain refugees from Arakan State and ethnic Nepalese of Bhutanese nationality.

**Legal Framework:**

India does not have a consistent refugee policy. Its policy was first enunciated by the late Prime Minister, Jawaharlal Nehru in Parliament on March 30, 1959, during the exodus of the Tibetan refugees. Nehru asserted, "It is the sovereign right of the state to give asylum when it chooses but no individual can insist on obtaining such asylum. Individual cases have to be considered on merits, whenever occasion for this arises". The principle of non-refoulement was accepted by India during the meeting of Asian Countries when the Bangkok principles were laid down in 1966. The then External Affairs Minister, B. R. Bhagat told the Indian Parliament that the government had come up against certain difficulties as regards the implications of it according to the 1951 Convention.

According to World Refugees Survey 1997, (USCR) "Although India was not a signatory to the 1951 UN Refugee Convention or the

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1967 Protocol and continues to refuse UNHCR access to the refugees in most parts of the country, India joined the UNHCR’s Executive Committee in 1995. Local and International refugee advocates believe that India's continued refusal to accede to the Refugee Convention and its refusal to permit UNHCR access to the refugees were negative influences on India's South Asian neighbours, none of which has signed the Convention. The Indian authorities complained that the Convention imposed one-sided obligation by requiring host countries to permit refugees to enter and assist them, but not requiring countries of origin or international community to work towards the solutions. They further argue that India had in any case followed the spirit of the Convention by permitting refugees to enter8 (World Refugees Survey/1997 (Washington DC, USCR, 1998). But, none of the International documents ever refer to displacement of minority Hindus from Bangladesh to India or economic migrants (illegal) from Bangladesh to various adjoining states in India.

UNHCR Chief (New Delhi), Irene Khan, in his opening remarks in the seminar “Refugees in the SAARC Region: Building a Legal Framework”, organised by SAARC LAW and UNHCR on 2-3 May, 1997 in New Delhi, said: "... Refugee law is a relatively new branch of international law, and has evolved in the past fifty years largely from human rights and humanitarian law. One of the main objectives of the refugee law is to ensure that the basic human rights of refugees are

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protected, and they are not returned to a territory, where their life and liberty would be threatened. But the international refugee law is a balanced law – it is not only a law about protecting refugees, it is also a law about solving refugee problems: mainly through voluntary repatriation or naturalization. It defines the crucial roles and responsibilities of all the actors in the process. The country of asylum has the obligation to protect refugees. Similarly, the country of origin has the obligation to create conditions so that refugees can return home safely. The international community is required to support these efforts, financially and morally. And refugees themselves have a role to play in obeying the laws of the country of asylum and in contributing to an eventual solution. The basic instruments of refugee law are the 1951 Convention relating to the status of Refugees and its 1967 protocol. 132 states are parties to the Instruments, that is more than two-thirds of the United Nations membership, including all permanent members of the Security Council. But neither India nor any of the South Asian Countries have acceded to these international Instruments. Nor is there a regional Instrument on refugees in South Asia. The African States developed a regional Convention on refugees in 1969, while the Central American States adopted a non-binding regional Instrument called the Cartagena Declaration in 1984. But no such effort has been made in South Asia. Nor have any of the South Asian countries adopted any domestic laws on refugees or asylum....”

9 “Refugees in the SAARC Region: Building a Legal Framework”, A Seminar Report,
Bhagawati, former Chief Justice of India, said: "...India also has the problem of internally displaced Kashmiri Pandits. The total number of refugees in India from neighbouring countries is around 3,00,000. India has been a receiving state since centuries. Virtually no country in South Asia has been free from the problem of refugees. Yet, none of the countries in South Asia has any legal framework for dealing with the refugee situation. There is no legislation in any of the countries of South Asia, with the result that the problem of refugees is dealt with on purely on adhoc basis... The first question which requires to be considered while speaking of a legal framework for dealing with the problems of refugees is: what is the definition of a refugee? The entire dimension of the refugee problem has changed since the end of the cold war, both quantitatively and qualitatively. Following the Second World War, the refugee problem was not so much one of mass exodus of individual movements. And most of the refugees were Europeans who fled from their country of origin to escape what may be broadly described as "political persecution". It was in the context of this situation that the definition of the term refugee was framed in the 1951 Convention places emphasis on fear of persecution "for reasons of race, religion, nationality, membership of a particular social group or opinion." This definition, which was drawn up in the context of the post War years, does not correspond to many of today’s refugee situations. It is patently narrow and rigid. It provides essentially for the sub-category of individual asylum seekers rather than for the
larger category of refugees en masse. Yet groups of asylum seekers may come under it on the basis of an individual determination of their refugee status. It fails woefully to deal with a situation of movement of refugees in which masses of human beings are displaced from their homelands as has happened often in the post-colonial days. That is why the Organization of African Unity in the OAU Declaration, adopted on 10th September 1969 expanded the definition of the term ‘refugee’. The second question to which the participants will have to address themselves is that of non-refoulement. The concept of non-refoulement has been interpreted very narrowly by the United States. According to the theory evolved by it, the “no forcible return” doctrine does not apply to groups of asylum seekers if they are encountered before they actually arrive at a State’s territory. They can thus, be intercepted before they reach the shores of the country to which they are fleeing. This is too narrow a doctrine put forward by the United States, defending its action in imposing the naval blockade against the entry of Haitians and Cuban refugees. The issue may not be of very great relevance to the countries of South Asia, but it still needs to be considered...."\textsuperscript{10}. In his inaugural address in the Seminar, Justice J. S. Verma, Chief Justice of India, and later the chairman of the NHRC, said: “...There has been a general tendency in the judiciary in all these countries to do so. The premise on which it has been done is that the basic human rights are supposed to be implied in every civilized legal system. And therefore, unless there is an inconsistent provision in the

\textsuperscript{10} Ibid, pp. 19-22.
domestic laws, basic human rights have been read into the provisions of the constitution and other enacted laws. Therefore, it is the result of judicial creativity most often, that certain basic rights, even of the refugees, have been taken care of through the medium of the courts. In India particularly, you are more conversant with that. I should point that Article 14 - is the right to equality; Article 21 - right to life and liberty; and Article 25 - freedom to practice and propagate your own religion. Now these rights, the courts have held, are available not to citizens alone, but to non-citizens as well. And by that view, also to the refugees. Now, by expanding the meaning and content of these fundamental rights and, at times, by treating certain Directive Principles of State Policy as complimentary, the contents of these fundamental rights have been considerably enlarged. It is in this manner, for the problem created by the lack of any legal framework or domestic laws providing expressly for these situations, the courts have been able to grant relief. Particularly in cases where it was possible by stretching, if I may use that expression, the law to some extent, the case is brought within the scope of violation of any of these fundamental rights. Now this is only the result of creativity adopted by the courts. But this certainly can not be treated to be a very satisfactory solution, even though in some areas the law has become certain, in the sense that the meaning of articles 14,21,25 etc. have now assumed a definite meaning or, at least, a minimum content thereof is settled. But there are in other areas which are not governed by these rights, for example, cases where there is an order of
deportation. Now, in those cases also, the courts have stepped in. But most often they are ad hoc orders. And, an ad hoc order does not advance the law. It does not form a part of the law, and it certainly does not make the area clear. There have been two types of cases in particular. In the North-East Frontier states we know of the Chakma refugees, about whom mention was made by Dr. Heptulla and also Justice Bhagwati. The so-called 'quit' notices were issued by an activist students' organization. The very active National Human Rights Commission approached the Supreme Court under Article 32. And because of the wide meaning given to Article 21 by judicial interpretation, the court granted relief. But then, that was something which could happen because of the active role played by the National Human Rights Commission – the creativity which had commenced earlier having gone that far. But that certainly cannot be a permanent solution. That is only a temporary phase and this temporary phase must be replaced as early as possible with a definite law on the subject. And that law, as far as possible, has to be uniform in all the affected or concerned countries. Because that will also make the rights of the refugees and their obligations clear. We tend to talk always of their rights – but one aspect, projected very well by Dr. Heptulla, was that there are certain obligations, because of the problems refugee movement creates for receiving countries. If we remember what we have read as one of the axioms of jurisprudence – that every right has a corresponding obligation – I think there should be no difficulty in reconciling conflicting interests of the refugees and
those of the receiving country. The trend of the judiciary here – to enlarge the scope of these rights – is now almost a global phenomenon. Global, in the sense that in every jurisdiction where we have an independent judiciary performing similar exercise, the thought process has been the same... In other words, what has been found in our country the freedom of communication, the right to know, if Article 19(1)(a) (freedom of speech and expression) has been implied in Austria without a Bill of Rights from the constitutional scheme. Now, this indicates that everywhere there is a tendency in the judiciary to respect the basic human rights in whatever manner possible even in the absence of a Bill of Rights in their constitution...."11. In his statement, Dr. A. M. Singhvi, Additional Solicitor General of India and chairperson, SAARCLAW, in the Seminar on “India’s Policies and Laws with Reference to Refugees”, recommended that a National Refugee Welfare Fund, be set up. Without this, he felt that many of the minimum standards advocated in the seminar would remain only on paper. He noted that though India had not ratified the 1951 convention or its 1967 Protocol, it had in practice handled large numbers of refugees, and thus had remarkable practical management experience despite lacking a formal legal framework. However, the need for a legal framework was still necessary as it would eliminate administrative fiat and ensure clarity,

11 Ibid, pp. 15 – 17.
certainty and uniformity in procedures. The standards already being observed de facto would be rendered judicable as well, he felt\footnote{Ibid, p. 7.}.

\textit{Administrative Framework:}

Though India has traditionally been a good host, it does not have any refugee law. Influxes of refugees have been handled by administrative decisions. This administrative discretion is exercised within the framework of the Foreigner Act, 1946 (Section 3, 3A, 7, 14); the Registration of Foreigner Act, 1939 (Section 3, 6); the Passport (Entry of India) Act, 1920, the Passport Act, 1967; and the Extradition Act, 1962. India has not even accepted financial assistance from UNHCR. The legal authority to deal with issues of citizenship naturalization and foreigners rest with the Union Legislature. Although there are refugees originally from various countries who have come to India the Government officially have recognized three groups, of refugees: Tibetans, Chakmas, and Sri Lankan Tamils. Even with regard to these three groups a common administrative procedure is not followed. While the Tibetans and Sri Lankans have been issued refugee identity documents, no such documents are being issued to Chakmas in the camps in Tripura or else. In India, the absence of a refugee-specific legislation on the entry or treatment of refugees has meant inconsistent levels of assistance and facilities. Though the 20,850 refugees not recognized by the Government of India are assisted by UNHCR and provided international protection and
assistance under its mandate, India perceives that given the present political turmoil in neighbouring countries—particularly in Sri Lanka, Afghanistan and Myanmar—it is expected that the number of persons seeking refugee status in India will continue to increase. In fact, India accepted large groups of refugees who were fleeing not just for reasons relating to persecution, but also due to generalized violence (e.g. Sri Lankan Tamils). It means that India de facto accepts the definition of refugee as found in 1969 Organization of African Unity Convention, rather than the narrower definition provided in the 1951 UN Refugee Convention.

**Role of NHRC and Judiciary:**

This does not hold good for all groups of refugees. Certain refugees like Afghans, Iranians, Iraqis, Somalis, Sudanese and Myanmarese have not been recognized by the Indian Government and consequently UNHCR had to intervene through determining and granting refugee status under its mandate. This unequal treatment of refugees is perceived to be a fundamental problem. It negates the provision of legal rights and assistance, which would normally be granted by an asylum-granting country. Moreover, it is also not clear what legal status or right accrue to a person as a result of registration by the Government of India as a refugee, nor the relationship between refugee status granted by the government and corresponding national laws governing the entry and stay of foreigners. This problem has arisen as there is no uniform national law or policy relating to
refugees in India. However, in India the relevant legislation is the Protection of Human Rights Act 1993, (which established the National Human Rights Commission). The NHRC has authority to inquire suo motto or on petition by a victim or a person on his or her behalf into a complaint of violation of human rights. Till date, the NHRC has investigated a number of complaints involving refugees in India. The 1996 Indian Supreme Court case of NHRC, Vs State of Arunachal Pradesh and other, was hailed as a landmark judgement in the area of refugee protection in the context of India and underlines the usefulness of engaging a national human rights machinery for refugee protection. As concerns the application of international human rights standards in domestic law, the Chief Justice of India J.S. Verma noted in a speech at the SAARC Law and UNHCR Seminar on Refugees in the SAARC Region held in New Delhi on 2 May 1997 that: “in the absence of national laws satisfying the need (to protect refugees), the provisions of the (1951 Refugee convention and its Protocol can be relied on when there is no conflict with any provision in the municipal laws. This is a canon of construction, recognized by the courts in enforcing the obligations of the State for the protection of the basic human rights of individuals. It is more so when the country is a signatory to the International Convention, which implies its consent and obligation, even in the absence of expressly enacted municipal laws to that effect...”13 For a judicial application of this reasoning, the

Indian Supreme Court Judgement of Vishaka Vs State of Rajasthan, writ Petition (criminal) Nos. 666-70 of 1992 unreported judgement of 13 August 1997: "Certain 'rights' provisions of the Indian Constitution such as Article 14 (right to equality) and Article 21 (right to life and liberty) are available to non-Citizens, including refugees"\(^\text{14}\). Other examples available in this regard are UNHCR Vs State of Arunachal Pradesh and other (1996) and Khudiram Chakma Vs Union of India (1994). Even in the only case decided on the issue in India, the Madras High Court in P. Neduraman and Dr. S.Ramadoss Vs the Union of India and the State of Tamil Nadu (1992) emphasized the need to guarantee the voluntary character of repatriation. However, as Chief Justice of India J.S. Verma in the Seminar observed: "The attempt to fill the void by judicial creativity can only be a temporary phase. Legislation alone will provide permanent solution"\(^\text{15}\). Speaking in the Seminar "Refugees in the SAARC Region: Building a Legal Framework", organised by SAARCLAW and UNHCR (New Delhi), on 2 - 3 May 1997, UNHCR Chief in India, Irene Khan, said" ...Of course, the very fact that we could get him out of prison indicates the positive approach of the judiciary. The Indian Courts in particular, whether at the Supreme Court, High Court or lower judiciary, have taken a commendable humanitarian position. The Courts have interpreted article 21 of the Indian Constitution on the right to life and liberty as preventing the return of a refugee to a country where his life would be


\(^{15}\) Ibid, p. 14.
threatened. The judgement of the Supreme Court in NHRC Vs Arunachal Pradesh is well-known—and here I must add that the role of the NHRC on refugee issues has also been most courageous. But how far can the courts go to fill a legal vacuum? The larger question remains: there is no legislation on refugees to guide administrative policy and practice, and there is no clarity on who is a refugee nor what rights refugees enjoy...As Pandit Nehru once said, ‘The rule of law must strengthen the rule of life’...”16.

But, India has been rejecting the request to accede to the 1951 Refugee Convention on a lack of proper balance between the rights and obligations of receiving state. India complains that the Convention imposes one sided obligation by requiring host countries to permit refugees to enter and assist them but not requiring countries of origin or international community to work toward a solution. In any case India follows the spirit of the Convention by permitting refugees to enter. However India joined the Executive Committee of UNHCR (1995). India rightly holds that the 1951 Convention and its additional Protocol (1967) do not address adequately the situation prevalent in South Asia or for that matter in much of the developing world. The existing Convention is based on a legal regime of individual determination of refugee claims. India and its neighbours deal with negligible claims at an individual level or bilaterally such as Indo-Pakistan Agreement at the time of independence, or Nehru-Liaquat Pact of 1950, Indo-Bangladesh Agreement relating to Chakmas and

16 Ibid, pp. 31 – 32.
Hajongs and Indo-Sri Lankan Agreement (1986). Refugee flows into this area have been mass exoduses of people fleeing Civil War and internal conflict clearly there is a case for re-visiting the Convention. The Asian Age, 17 August 1997, quoted a statement issue by Indian Ministry of External Affairs that India's accession to the Convention against torture is part of India's determination to uphold the greatest of Human rights. In the refugee context, ratification of the Convention against torture is extremely important as Article 3(1) provides that "No State shall expel or return a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture".

It was reiterated as rightly Najma Heptullah, Rajaya Sabha Deputy Chairperson of Parliament of India, said in a two-day seminar on 'Refugees in SAARC Region: Building a Legal Framework', on May 2, 1997 held in New Delhi: "For a refugee-receiving country, the key issue is how to balance the rights of the refugees with the interests of its nationals. India defends its stand on not joining the international refugee protection regime by arguing that the latter would impose largely one-sided obligations on the refugee receiving states\textsuperscript{17} in areas such as housing, education etc.

\textit{India and UNHCR:}

Though India has been a very generous country in hosting refugee populations, the country like the rest of South Asia, has no

\textsuperscript{17} Ibid, p. 25.
domestic law on refugees, nor is it a party to the 1951 Convention on Refugees and its 1967 protocol. One of the thrust areas of UNHCR's advocacy efforts in India has therefore been to highlight the absence and the need for laws to protect the rights of refugees. In this endeavor, UNHCR has over the years been building in institutional relationships with the judicial community in India. UNHCR has held several seminars and workshops on refugee Law and International Law relating to refugees. One of the key partners in this effort has been SAARCLAW, together with whom UNHCR held a major seminar in 1997. UNHCR also collaborates with the NHRC of India to strengthen the protection of refugees, who are very often victims of human rights violations. At present there are approximately 20,800 refugees under the protection of UNHCR. Indian Government signed a Memorandum of Understanding (MOU) with the UNHCR while deporting the Sri Lankan Tamil Refugees in 1992. The main objective of the MOU was to check whether there were forcible repatriations by India. However, it should not be an excuse for the UNHCR to shirk its responsibilities to provide protection to the refugees. The fundamental issue is that in a situation where the government of India repatriates refugees under duress and the UNHCR makes living conditions untenable for the urban refugees it looks after in the name of "rationalization of the care and maintenance", a legal framework will have little meaning. It has come to the point where the UNHCR in New Delhi Office requires security protection fearing attacks from the refugees rather than UNHCR providing protection to the refugees.
However, under pressures from UNHCR through NHRC and the Judiciary, India is supposed to sign the 1951 UN Convention of Refugees, its 1967 protocol and also to legislate a national law of refugees. External Affairs Ministry revealed on December 1998 in New Delhi that in the face of growing complexities over the refugees, India was considering signing the 1951 convention of Refugees and also weighing the option of enactment of a national legislation on refugees that would improve upon the provision of the 1951 Convention. The then Law Minister Ram Jethmalani on 13th November 1999 reiterated that India's principle of "non-interference" in the affairs of another country was against the basic rights of refugees uprooted from their homes by "hostile regimes". In his introductory address to a judicial symposium on "Refugee Protection" organized for the first time in India by UNHCR and SCBA to discuss refugees problems in South Asia, stated that there was a need to evolve specific laws to deal with the problems of refugees. "Right to asylum" should be recognized by India. "Refugees, like other citizens, have rights. They have the right to asylum and it must be incorporated in the domestic laws by the country". Where national legislation does not exist, the Supreme Court is guided by international conventions and laws, and the apex court played an "exemplary role" in protecting the rights of refugees by interpreting various provisions of the constitution to protect the rights of not only citizens but of all.\textsuperscript{18} Inaugurating the Symposium, Justice K.T. Thomas of the Supreme Court said a comprehensive legislation

\textsuperscript{18} The Pioneer, 14 November, 1999.
for refugee protection is a legal necessity, as it is a problem which every civilized country should deal with in a humane manner\(^19\).

**Significance of 1980:**

This study will have a critical analysis of political parties and the different refugee groups in the systems of multi-cultural, multi-party, soft, democratic, poor-economic and regionally diversified Indian society. There were two waves of refugee flows into India. In the first wave, India received refugees and displaced persons from Pakistan (1947-1950), Tibet (1959), Burma (1948-1962), Sri Lanka (1964), Chakmas from East Pakistan (1963-1964), Bangladeshis (Bangladesh Liberation 1970-1971) on mutual agreement with the refugee generating countries on humanitarian grounds. There was a major shift in the perceptions of the governments and political parties in receiving and managing different refugee groups since 1980. Major political developments took place in Indian politics. For example, BJP, successor of Jan Sangh, came into existence in 1980 with its ethno-religious ideology. Since then the issue of refugee has been politicized in India. The pro-refugee policy and nationalistic perceptions of the Congress and the leftists have been challenged by the regional and communal political parties. The consequences of the Nehru-Liaquat Pact of 1950 saw about 4000 families settled in what was then known as NEFA in 1964 and the Indira-Mujibar Agreement in 1972 agreed to settle all refugees entering India prior to March 25, 1971. But the

Apang administration in Arunachal Pradesh raised the anti-refugee bogey in 1980, which led to the removal of numerous refugees from government services. The 1979 anti-refugees agitation by the All-Assam Students Union (AASU) demanding the detection and deportation of foreigners inhabiting in Assam, though primarily aimed at containing the increasing influx of immigrants from Sylhet district of Bangladesh, had its fall out also on the Chakma refugees settled in Arunachal Pradesh. The Parliament debated on reported influx of refugees from Bangladesh into the eastern part of the country since May 9, 1975 in general and on reported influx of tribal refugees (Chakmas and Hajongs) into Tripura from CHT of Bangladesh since July 1978 in particular. But the issue of tribal refugees or Chakmas came into forefront only when Bangladesh denied that any Chakma refugee from Bangladesh was staying in India, in 1980. However, subsequently in 1980 itself both India and Bangladesh started negotiating for the first time in Dhaka on the Chakmas issue. In September 1983, Chief Minister of Tripura urged the Central Government to take up with the Bangladesh Government the matter of continuous infiltration of the Chakma and other tribal communities from the CHT into Tripura. However, ultimately both India and Bangladesh agreed in Dhaka to repatriate tribal refugees of CHT from India to Bangladesh on 8th January 1987. During this period in 1983, when violence erupted in Sri Lanka, millions of Sri Lankan Tamils came to India and subsequently they were received by Chief Minister M.G. Ramachandran and it was endorsed by Prime Minister Indira
Gandhi. At the height of the conflict in 1985 about 250,000 or 12.5% of the estimated two million Sri Lankan Tamils left for India. Prime Minister Rajiv Gandhi organised negotiations between the Sri Lankan government and Tamil militant groups in July 1985 in Bhutan followed by the Indo-Sri Lankan Agreement of 29 July 1987 relating to the security including Tamil refugees in India. Similarly in 1959 Dalai Lama the religious and political leader of the Tibetans with thousands of his followers in India given asylum Pt. Nehru. Rajiv Gandhi assured the Chinese leaders during his state visit to China in December 1988 that the Dalai Lama and his associates would not be allowed to indulge in political activities against China. New Delhi assured Beijing, besides, that “Tibet is a part of China”. These were resented by the Tibetans for the first time. After the Soviet military intervention in Afghanistan in 1979, millions of Afghans fled to Pakistan and India as refugees. So far as Burmese refugees are concerned, since September 1988 when the State Law and Order Restoration Council (SLORC) came to power in Burma, approximately one million Burmese nationals fled to neighbouring states including India. Besides the above-mentioned refugees, other refugee groups also came to forefront after 1980 in India.

In August 2000, in an interview with Times of India, the DMK leader Murasoli Maran said that 30 crores of rupees was being spent on Tamil Sri Lankan refugees annually, but on the other hand local people were starving in poverty in Tamil Nadu. On June 23, 1997, the refugee rehabilitation minister of West Bengal, Mr. Prasanta Sur said
members of the refugee organization (of refugees from erstwhile East Pakistan) had even met the Prime Minister on April 6, 1997 with a Rs 1,726.50 crore proposal and were assured of immediate steps. But on April 26, 1997, the Centre backed out, asking the state government to use its resources to tackle the problem, Mr. Sur said. The Centre has been spending crores of rupees on Chakmas and Tibetans to rehabilitate them for years. On the other hand, officially 40% of India's population are still living under the poverty line.  

**Objective of the Study:**

India is a heaven for refugees in the world in general and particularly in South Asia, from Sri Lanka, Bangladesh, Pakistan, Bhutan, Myanmar, Tibetan, Iran, Iraq, Somalia, Sudan, Nepal and so on. Home Minister Mr. Indrajit Gupta in 1996 said in Parliament that of the 10 million foreign nationals and so-called refugees about 2.7 lakhs were residing in India. But India does not have uniform national policy on the refugees and also was not a signatory to international laws on refugees. This makes the refugees vulnerable to the whims of political parties and governments. For example leftists, socialists and congress soft towards all refugees whereas extreme right wing Hindu nationalist parties like BJP discriminate on the basis of religion, region, ethnicity and so on. And also, local or regional government parties with their local regional compulsions often violate the broad perceptions of national governments parties on refugees. Even though India has a good reputation as a refugee host country, the

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20 The Telegraph, 24 July 1997.
diversification of refugee treatment in the absence of uniform national
laws, economic constraints for refugee resettlement, India's foreign
policy with these countries and India's political views as a whole on
refugees, urge a thorough study of the political perceptions of the
refugee problem in India. There are numerous studies on different
aspects of refugee issues in the world in general and case studies in
particular on individual refugee groups such as Chakmas, Tibetans,
Sri Lankans, and so on in India, as is reflected in the survey of
literature analysed for purposes of this study. However, there is no
study which focuses on the integrated and constructive political views
on refugee problems as a whole in India. **Therefore the main
objectives are:** (i) To study the determinants of the political
perceptions such as Internal Security, Economy and Foreign Policy of
India vis-à-vis the refugees. (ii) To study perceptions of successive
governments at the Centre and in the states and political parties
(national and regional towards the different refugee groups in India.
(iii) To study the role of UNHCR vis-à-vis Government of India as well
as State Governments relating to different refugee groups in India.

**Methodology of the Study:**

To test the hypotheses, different categories of literature and
fieldwork are available: (i) Election manifestos and programmes of
political parties, literature on election campaigning process,
participation and movements of the refugees in political movements
launched political parties, election inducements like ration cards and
enlistment in voter lists, will be collected from political party offices,
parliament library and National archives. (ii) Official documents and reports, research reports and related material on refugees in India will be collected from Parliament library and the ministries relating to the refugees. (iii) Books on different issues of refugee problem in India will be collected from different libraries including JNU and parliament libraries and UNHCR office in New Delhi. (iv) Articles and Press clippings on the refugees in India will be collected from Parliament library, NGOs relating to the refugees, libraries including JNU and Teen Murtri and UNHCR office in New Delhi. (v) Interview with representatives of the national and regional level political parties, to draw their perceptions of refugees.