CONCLUSION
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The refugee problem continues to challenge the international community multi-dimensionally and globally and has become the most complicated issue before the world community today. The refugee situation has also become a classic example of the interdependence of the international community. It fully demonstrates now the problem of one country can have immediate consequences for other countries.

It has rightly been predicted, that the future wars would not be by invansion but by migration, Martin Van Cleveld in his book 'future' said that by end of the century in a sizeable portion of the globe, the law and order situation would deteriorate and most nations would have to cope up with what he described as "anarchy within states" and he has warned that we could only cope in future if we all adopted states manlike and humanitarian policies in the present. We have witnessed a series of horrifying ethic cleansing in the former state of Yugoslavia humanitarian problem in Chechenya\(^1\) and currently in Afghanistan.

The international community has now recognized that human right violations are a major cause of mass exoduses. The causes of exodus have also multiplied and now include natural or ecological disasters and extreme poverty. As a result, many of today's refugees do not fit the definition contained in the convention relating to the status of refugees. This refers to victims of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and today's refugee flows are caused by a complex interaction of political economic and social forces shaped by both indigenous conditions and external pressures.

As per the international law the refugee are those who have fled their country of origin mainly on the grounds of well founded fear of "persecutions"

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of the reasons of race, religion, or those who, since they no longer enjoy the protection of their government, are compelled to flee to escape the violence of armed conflict or widespread violations of Human Rights.

Disregard for the minimum rights of refugees and internally displaced persons is another dimension of the relationship between the violation of human rights and refugees.

While efforts continue to remedy the problem at its source, attention is turning to the difficulties that asylum seekers encounter after they leave their country of origin. These issues are giving rise to concern. The first is the disturbing tendency to close doors asylum seekers. Some governments faced with influx of asylum seekers, economic migrants and illegal aliens have introduced restrictive measures that hinder access to their territories. These measures include complicated or burdensome visa requirements for nationals of some countries and fines imposed on airlines that carry undocumented aliens.

The second relates to violations of the minimum rights of asylum seekers during the process of applying for asylum and also after refugee status has been granted. Intolerance, racism, xenophobia, aggression national and ethnic tensions and conflicts are on the rise in many places and affect many groups in particular asylum seekers and refugees.

In some cases the minimum standards of treatment of asylum seekers are not respected. Inadequate determination procedures and refoulement at airports and borders cause enormous problems for some asylum seekers. At times refoulement takes inhumane forms such as the forcible return of asylum-seekers to the countries of origin where their lives, liberties and security may be threatened. Boats of asylum seekers have been pushed back to sea to die of hunger or make an easy prey for pirates and sharks when they have attempted to land on certain shores. Other examples of all treatment include physical assaults, the detention of asylum-seekers for extended periods and without legitimate reasons and harsh interrogation procedures. A government may also
fail to provide adequate protection to refugees and asylum seekers thereby exposing them to physical danger from racist and xenophobic aggression.

The problem of asylum seekers do not end when they finally cross borders and go through the first phase to seeking asylum which as mentioned above, often involves periods of detention and interrogation while their application for asylum is being processed, and even after their refugee status has been determined. They may be confronted by numbers restrictions and obstacles.²

In some instances refugees are confined to camps and refused access to courts and legal aid. Moreover, refugees may find themselves unable to obtain employment, own business or purchase land. In fact, in many cases where refugees are not forcibly returned they may feel compelled to have owing to the degrading conditions of life to which they are subjected in host countries.

In some places refugees are regularly subjected to attacks and abuse. Many have died in military or armed attacks on refugee camps and settlements. Young males and minors are frequently recruited into armed or guerilla bands and forced to fight in civil wars. Attacks on refugees camps have been condemned by the United Nations General Assembly in numerous resolutions. The commission on Human Rights has also been concerned with specific cases, such as attacks on Palestinian refugees in Lebanese camps and attacks on the Thai-Cambodian border. Refugee women and children are a particularly vulnerable group. The convention on the rights of the child (1989) makes a specific provision for giving "appropriate protection and humanitarian assistance (Art. 22) to the refugee child, women make up a large protection of the world's refugee population. They are very frequently subjected to physical and sexual abuse in countries of refugee.

There has been a marked increase in violent attacks against refugees and asylum seekers in recent years. Today, refugees or some countries, where such

phenomena have reached large proportions live with the constant fear of physical assaults and threats to their lives and security.

Refugees, as a particularly vulnerable group of foreigners, after become the primary targets of racist hatred. Political debates in some countries have tended to blur all the issues that relate to foreigners. Asylum-seekers refugees economic migrants, immigrants and seasonal workers are after lumped together as foreigners.

The consequences have been threefold. First, the principles of protection and non-refoulment of refugees have been repeatedly violated. Secondly, the number of violent incidents perpetrated against refugees has increased. Thirdly, the refugee issue has come to be seen has come to be seen in political, rather than humanitarian terms and the lines between immigration policy and refugee policy have started to blur.

The last issue is the persistence of Human Rights violations in countries of origin and the need to address those violations before refugees can be voluntarily repatriated. The final link between human rights and refugee problems lies in the issue of durable solutions.

It is ironical, that countries which are industrially and economically far ahead of India, and which are partitioning suitable ways of exclusions of refugees through stricter visa controls, all types of borders restrictions sanctions against carriers, interdiction at high seas, declaring seas within the countries as international territory to avoid obligation, and advocating the concept of safe third country are finding fault with India for not ratifying the refugee convention. These countries spend time and resources disproportionately on refugee status determination and refuse to share the burden equitably with less affluent refugee receiving countries. When the convention demands that all countries, however refugee rights, irrespective of socio-economic conditions of receiving states, and prescribe monitoring procedures evolved by developed countries. The countries in the south, raise legitimate and justifiable fears and difficulties for which steps have been
taken, but a durable or permanent solution has not been provided in the international refugee law regime as important as developing domestic or regional regimes.\textsuperscript{3}

It is abundantly clear that unless way can be found to counteract the withholding of or the outright abolition of violations of human rights, unless there is more equitable sharing of the world's resources more restraint and tolerance. The granting to everyone, regardless of race, religion, membership of a particular social group or political opinion, the right to belong, or alternatively the right to move in an orderly fashion to seek work, decent living conditions and freedom from strife- the world will continue to have to live with the problem of mass exodus or migratory movements. The problem if left unchecked, will increasingly pose a threat to peace and stability around the globe.

Altogether migratory movements migratory flows of asylum seekers, is to ensure that there is no human rights violation in the countries of origin. So also it is essential, that human rights of asylum seekers and refugees must be protected in the host countries. Globally it should be the responsibility of, not only the host country, but also the international community, because human misery and suffering have no geographical limitations and there must be international burden sharing.

Sometimes refugee management become a threat to the host country as they have to constantly strike a balance in economic, national security and humanitarian interests, as the hospitable accommodation and assimilation of the Tibetans in India are much in contrasts to the hostile tolerance. These situations are said to have set in when refugees are seen as a political threat or security risk.

National security includes three dimensions, in which it includes how these refugees are a threat to the host country. First dimension is strategic

\textsuperscript{3} Prof. (Dr.) N.R.Madhava Menon, Pro -Active role of Indian judiciary, in times of Refugee crisis, Report on Judicial symposium on Refugee protection; 13-14 November, 1999, New Delhi, p. 126.
dimension i.e. threat. When refugees are armed and when Government loses control over the refugees. Second, structural dimension includes threat to the host country by increasing demands on and the conflict over scar resources and last dimension is regime dimension, which includes threat when refugees enter the domestic political process and create pressures on the government of the host country.

All the countries who receive migrants and refugees do not only have security concern. The refugee sending country can be at risk as well, when the host country uses immigrants as an instrument of threat against the country of origin, when the host country arms the refugees to invade the home country and a mere granting of asylum can be sufficient to create an antagonistic relationship between refugee host and refugee sending countries. But the host country impose restrictions only when the country's security is found endangered or law and order problems arise.

At present situations are going to change, because of externally sponsored terrorism, increased illegal trafficking in cross border narcotics trade and tendencies of ethnic groups to integrate and permanently settle within the country. This situation could turn out to be a serious political risk under various circumstances that have direct bearing on the foreign policy consideration of the host country it is in this context that bi-lateral and multi bilateral arrangements are being evolved to settle the problem peacefully.

There are three traditional durable solutions to the refugee problem: resettlement in third countries, local integration and voluntary repatriation. 

Resettlement:

It is a special need of refugees as refugees are the persons whose life, liberty, health or fundamental human rights are in jeopardy in the country: where he or she first sought asylum.

People eligible for resettlement includes those who are essentially protection cases-refugees. Threatened with refoulement to their country of origin and people in physical danger in their first country of asylum.

Resettlement is also used for vulnerable groups; such as torture and rape victims the disabled, injured or traumatized people in need of specialized treatment unavailable in their first country of asylum, and for long satyrs for whom no other solution is available and It is often the only way to reunite refugee families who through no fault of their own find themselves divided by borders or sometimes by entire continents. At first right, history and terminology appear to have been conspiring to kill off resettlement, which has long been referred to as the 'least', preferred solution and the last resort.5

It is highly complex, organized process that involves identifying those in urgent need and finding a suitable country prepared to accept them people eligible for resettlement include who are essentially protection cases-refugees threatened with refoulement to their country of origin and people in danger in their first country.

The question of refugees and displaced persons appeared as item 17 on the Agenda of the first session of the General Assembly. The third committee of the General Assembly dealt with the broad contours of the problem; it had discussed the two dimensions of the issue firstly, whether the refugee problem was a concern of the international community, and secondly, whether repatriation to the refugee's country of origin was a desirable solution. The issues were how to equitably and speedily settle the refugee problem. During the discussion, the industrialized countries advocated resettlement as the principal solution, while the Soviets stressed on repatriation. It seems that the IRO was convinced of the inherent superiority of repatriation, as a solution, provided freedom of choice was permitted. IRO became the first international

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5. Report Colville, Resettlement still vital after 11 these year's refugees No. 94, December 1993, pp. 4-8.
organization devoted to the mass reestablishment of refugees as its primary responsibly.

Throughout the 1980s, the annual number resettlement cases averaged over 1 lakh. By 1992, however, the number had fallen to a low of 37,000 or 0.2 percent of the total number of refugees in the world. Accepting people for resettlement is a mark of true generosity on the part of the Governments. No country is legally obliged to accept resettlement cases only 10 states do so on a regular basis.6

There are variety of reasons why many states are reluctant to offer resettlement places. One reason for this is that resettlement is very expensive, involving, arranging international transport, helping refugees to integrate in the resettlement country at times paying far costly medical care and counselling etc. Secondly, the refugees themselves may face immense problems adapting to a radically different cultural far from home. Also, resettlement is labour intensive and requires highly trained staff. Security considerations growing unemployment, preservation of unilateral boundaries etc.8 are other reasons.

By the late 1980's resettlement designed as an important solution and protection tool for individual refugees meeting certain very specific criteria-had itself become the chief factor in a mass migration movement.

**Local Integration**

The United Nations High Commissioner for refugees defines integration as "the process by which the refugee is assimilated into the social and economic life of a new national community." Thus integration means that the migrants maintain their own identity become part of the host society to the

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7. Report Colville, Resettlement: still after all these years, refugees " No. 94 December, 1993, pp.4-8.
extent that host population and refugees can live together in an acceptable way.

Integration in the country is one of the three possible durable solutions to refugee problems it may thus be regarded as the goal of the settlement process if it is achieved, the refugee problem can be considered solved.

Many countries of asylum are unwilling to settle refugees close to border areas if their presence is likely to raise diplomatic or security problems or provoke popular resentment and domestic conflict. Few countries are willing to offer citizenship to refugees, although this would greatly facilitate their long-term integration into host countries. Only if the refugees are able to participate in host economy by their skills adjustable in new situations, psychologically, sociologically without conflict to host countries people and national government.

**Voluntary Repatriation**

The conclusions drawn from experience of 50 years in managing refugee problem has shown that voluntary repatriation is the best possible solution of the refugee problem. Exile is neither a durable nor a truly humanitarian solution for refugees. Exile as a form of compelled separation from homeland is only a temporary respite. Repatriation however, is feasible and humanitarian only when it is carried out on voluntary basis and when it takes into account respect for the human rights of refugees.

Although the UNHCR state mentioned voluntary repatriation as one of the durable solutions, but UNHCR refused consistently to accept the human rights of return as the starting point for a consideration of voluntary repatriation and its documentation on protection persistently reflected its assumption that external settlement not return was a normal solution. The terminology employed revealed the exile bias, for example, exile was always asylum and homeland was always the country of origin.

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9 Article 8 (C), Chapter 2, functions of High Commissioner. Status of the office of the UNHCR
Social scientists have identified three basic phases that constitute the refugee experience: flight, resettlement, and repatriation.

The literature of the 1970s focused on the initial phase of the refugee experience: causality and patterns of flight. During the 1980s, the focus shifted to the process of refugee resettlement and integration in countries of asylum. The 1990s have drawn attention to the need for substantive work on repatriation with the start of the 21st century. Repatriation has once again come into focus in the wake of mass exodus of Afghan refugees due to American bombing.

The process of repatriation can be divided into as many as seven different stages on a time-space continuum: decision making, preparation, departure, travel, arrival, dispersal, and integration. The focus is on the decision making portion of the continuum. There are three key variables, the differential in the economic opportunities offered by the return economy and the attributes of the refugee population. These three components interact to provide an expected value of repatriation.

Some times repatriation becomes more difficult than expected, as it is not always that there has been an instance where not all refugees are willing to return; home government has been less than welcoming, where a host government has been too forceful in encouraging return, where there has been limited assistance to returnees creating difficulties in reintegration; and there have been cases where after long period in exile returnees have encountered many and complex problems in re-establishing themselves in their traditional areas and societies.

Repatriation also has its two kinds: spontaneous and organized repatriation. In organized repatriation, when refugees return home lender the terms of a plan that is worked out well in advance and has the support of both the home and the asylum government and as well as other national and international organization.


Such plans generally include Amnesties for political offences, assurances for safe passage, for returning refugees, material help to help them re-establish themselves and provisions for international presence of some kind to monitor their safety.

Spontaneous repatriation takes places without any of the features of advanced planning which characterize organized repatriation. The decision makers in this instance are refugees themselves. It is contended that a majority of the refugees who return to their home countries, repatriate spontaneously. There is little legal guidance for the UNHCR in such cases other than the statement in executive committee conclusion. No.40, that action taken to promote organized voluntary repatriation should not create obstacles to the spontaneous return of refugees.

The issue of voluntary repatriation has been dealt with UNHCR\(^{12}\) and OAU convention governing the specific aspects of refugee problems in Africa 1969.\(^{13}\)

There have been many and varied developments too amongst the international community which assumes responsibility for refugees, such as an emergency section, within the United Nations High Commissioner for Refugees Head Office in Geneva; innumerable books, well-published international meetings, the setting up of a policy and planning unit reports and articles ranging from a serious historical review, to journalistic assessments of what was done, by whom and how well. In addition to the millions of words that have been written and the equally large number of dollars which have been raised and spent, there have been very thoughtful attempts to address some of the long-standing and major problems in dealing effectively with refugee populations, which include the setting up of briefing and training courses for refugee workers and careful evaluation of the efficacy of programmes set up either in refugee camps or by voluntary agencies involved in resettlement. At

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12. UNHCR Executive Committee conclusion No.18, 1980 & No.40 (1985)
this stage, it is difficult to see which of these initiatives will remains as permanent contributions and which will quickly die away only to be resuscitated at enormous expense come the next refugee crisis.

It is of course, to be hoped that the really valuable work that has been done in the last year or so will be maintained at a level sufficient to keep the international 'practitioner community' informed as to both potential refugee crises, as well as the best possible ways of dealing with them once they have occurred.

One of the effects of the world conscience about refugees having been examined so publicly and for so long, is perhaps that host countries are ever more reluctant to be seen to be violating the principles, particularly of non-voluntary repatriation, which are embodied in the United Nations Conventions. It is, of course equally true that many countries have been quick to notice the benefit of obtaining United Nations funds, essentially for development programmes, but often dressed up in the guise of refugee programmes. There is for example, some very serious question as to the actual numbers of Eritrean and Ethiopian refugees in Sudan the figure claimed of upwards of half a million has not been possible to verify and, indeed, observers on the ground are at the moment suggesting that the numbers of relatively recently arrived refugees amount to no more than 200,000.

This kind of manipulation of figures for both economic and political reasons undoubtedly puts the Office of the UNHCR in a difficult and embarrassing position, since they- by virtue of their overtly non-political status are unable, except through private and diplomatic persuasion, to announce their own estimation of figures, and once official figures produced by the host country itself have been published, then the level of funding must necessarily match the inflation. This problem and others similar to it, whereby there is a discrepancy between facts and official statistics, is one which must be continually addressed and, in the end, solved. To do otherwise is to discredit the whole field of international assistance and in the long run it will, of course,
be the individual refugee who suffers through this lack of international credibility.

There have, too, been some changes in refugee legislation, particularly in the main recipient countries. The new act accomplishes three primary objectives, which are to broaden the concept of refugees such that it is now compatible with that embodied in the United Nations Protocol relating to the status of refugees; the setting up of permanent and systematic procedures for the admission of refugees who are of special humanitarian concern to the United States: and thirdly it provides comprehensive and uniform guidelines for effective resettlement.

It is to be hoped that such innovation as have occurred in the last year will be refined and tested, to the ultimate benefit of both refugees and the peoples of those countries which act as hosts.

The Indian situation

India, is one of the few countries in Asia which has provided humanitarian assistance, and offering protection to all kind of migrants, from across the country's long open terrain and rambling borders, as Pakistan, China, Tibet, Bhutan, Nepal, Bangladesh and Burma.

Since its dependence in 1947 from the ancient period, India is a land of moral philosophers, Indian philosophy is a universal philosophy of love compassion and brotherhood. All the resources of human rights are found in the moral ideas of society.

In early period there was a code of conduct towards respect of Humanity. In Arthhadeva, it has mentioned that - "all have equal rights in Article of food and water- the yoke of the chariot of life is placed equally on the shoulder of all. All should live together with harmony supporting, one another like the spoke of a wheel of the chariot connecting its rim and hubs.

The culture has been an extension of hospitality to aliens i.e. Athiti Devo Bhawa i.e. guest are gods; the following analysis highlights on the
humanitarian assistance for refugees irrespective or whether they are genuine refugees or illegal immigrants.

As India has neither signed nor ratified the 1951 convention on refugees nor signed the 1967 protocol India has also no national law for refugees or asylum seekers. It is fulfilled its international obligation by providing all kind of protection to refugees who entered into its territory. Due to lack of a refugee specific statute, the judicial system is constrained to enforce upon refugee, Indian Supreme Courts has held that refugees or asylum seekers can not be sent back to their country or origin where their life and liberty may be at risk. This Supreme Court judgement and several other judicial orders passed by Indian courts provide some legal security to refugees laws which are applicable to foreigners in general. Are protecting refugees in India.

The Indian history, size and complexity necessitated a broad approach or solution would therefore have to be comprehensive and to address all aspects of the issue, from the causes of mass exodus to the elaborating of responses necessary to cover the range of refugee situations from emergencies to repatriation.

In a speech to the 48th session of the UNHCR executive committee, then Indian permanent representative to UN Ms. Arundhati Ghose, explained India's reluctance to accede to the 1951 refugee convention. The 1951 convention was adopted in the specific context of conditions in Europe during the period immediately after the second World War. International refugee law was in a state of flux and many of the provisions of the convention particularly those which provide for individualized status determination and social security had little relevance to the circumstances of developing countries, today, who are mainly confronted with mass and mixed inflows moreover the signing of the convention is unlikely to improve in any practical manner. The actual protection which has always been enjoyed and continues to be enjoyed by refugees in India. The time has rather come for fundamental reformulation of refugee law to take in to account present day realities. It has to
be recognized that refugees and mass movements are first and foremost developing country problem and the biggest "donors" are in reality the developing countries who put up at risk their fragile, environment, economy and society to provide refuge to millions.\(^{14}\)

It has acceded to the major international humanitarian and human rights instruments, is also a member of the governing body of UNHCR, is given a very limited mandate which looks after the cases of hardly 9.3 percent of the total refugees in India. The overwhelming other part is directly dealt by the states and the union government. In the absence of a formal legal structure, the Courts particularly Supreme Court and the National Human Rights Commission (NHRC) have played both proactive and constructive roles in safeguarding and protecting the rights of refugees. Singhvi also remarks that the Courts in India have been the strongest and most efficacious institution among the five inter-locking concentric circles (viz., the Courts, the Constitution of India, the National Human Rights Commission, International Instruments and International Mechanisms) also regarded as the bedrock rings of strength in providing appropriate refugee protection.\(^{15}\)

In India the refugees are treated like other aliens under the Foreigners Acts and Passport Act and are subject to domestic laws governing the entry and stay of foreigners. In most of the cases the refugee problems are handled on the basis of administrative policies, which we have explained in previous chapters. However, the Indian Supreme Courts has held that refugee a asylum seekers cannot be sent back to their country of origin where their life and liberty may be at risk.

The examination of the Indian practice shows that India's position is similar to that of the countries which encountered political constraints in protecting refugees. Whenever it decided to grant asylum, the countries of

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15. A. M. Singhvi, Keynote address delivered in the national seminar on India as a refugee host country, management, practice and policy options, organised by South Asia Studies Division, Jawaharlal Nehru University, New Delhi, 14-15 November, 2000.
origin considered its decision as political or politically motivated decision. So, India's acceptance of the refugees from its neighboring States invited fierce criticism from the respective countries with the ultimate consequence of an unfortunate deterioration of bilateral relations. Though India has not ratified the 1951 U.N. Convention or its Protocol of 1967, India is under an obligation to abide by the norms of the customary international law in relating to refugees. Indeed, it is quite evident from the discussion, made in the preceding chapters, that Government of India allowed the various refugee communities to stay in India time and again and extended all kinds of humanitarian assistance as per the norms of international law. It aims at solving such problems by bilateral negotiations and agreements, and by measures calculated to improve the situation of the refugees.

India continues to host a large refugee population from different countries of the region it has remained particularly hospitable to 1,10,000 Tibetan refugees, although some refugee have allowed to approach the UNHCR mission in New Delhi for protection and humanitarian assistance. The Govt. of India does not allow the representative of the UNHCR and other organization like ICRC to visit refugee camps in the country.

The Tibetan refugees who have lived in India since the late 1950s are often overlooked. This is largely due to the fact that they have survived with relatively little international assistance. Large numbers of Tibetan refugees first arrived in India in March 1959 after the Chinese suppression of an uprising and the flight of the Dalai Lama, the spiritual and political leader of the Tibetan people. Most of the tens of thousands of Tibetans who have fled Chinese rule since that time have escaped on foot on a perilous weeks-long journey across the Himalayas. Although the Chinese side of the border was sealed in 1960, Tibetans have continued to flee since then. Most arrive via Nepal, where there is a reception centre in the capital Kathmandu. More than 40 years after the exodus from Tibet began, the refugee community in India now numbers around 100,000.
When the refugees first began arriving in India, they were accommodated in transit camps at Missamari in Assam, and Buxa in West Bengal. An unofficial 'central relief committee' supervised their affairs. It received some assistance from abroad but international organizations, including UNHCR, were not involved at this stage. The 1962 Sino-Indian border war marked a turning point. It was then that it was recognized that the Tibetans would not soon be returning to their homeland.

It was also at this time that the Indian authorities first requested international help for the refugees. UNHCR began providing assistance to the Tibetans in India from 1964, even though it did not formally establish a presence in the Indian capital New Delhi, until 1969. Official international assistance remained limited, however, since the 1960s, most international assistance for Tibetan refugees has been channeled through the Tibet Bureau of Dalai Lama. Both governments and international organizations have been wary of providing assistance to the Tibetans, aware that such action would be viewed by the Chinese authorities as interference in their domestic affairs.16

Since 1962, assistance programmes for the refugees have included the establishment of agricultural settlements and vocational training schemes. State governments in India have allocated refugee families an average of three Acres of land each and have assisted them in constructing houses. They have also given Tibetan communities assistance in establishing water supplies, civic amenities, handicraft centres and schools. There are currently some 85 Tibetan schools across India catering for some 25,000 students.

The Indian authorities have also provided ration card, identity papers, residence permits and travel documents for registered Tibetan refugees, who are officially viewed as having come to India on pilgrimage. Although they are considered as foreigners under the 1946 Foreigners Act, they have been accorded the basic rights of most citizens but are not allowed to contest or vote in Indian elections. Those who migrated to India before March 1959 and who

have been ordinarily resident in India since then are considered for Indian citizenship on an individual basis. Those married to Indian nationals may apply for Indian citizenship.

The Indian government has consciously promoted a policy which enables the Tibetan community to maintain its distinct identity and cultural values together with a political and administrative system of its own. From the start separate settlements were identified and established in geographically suitable areas so as to provide them with economic, social and religious autonomy. A separate Tibetan government-in-exile has been established in Dharamsala, Himachal Pradesh.

In a relatively short period of time, Tibetan refugees settled in communities in Indian states such as Himachal Pradesh, Sikkim, Uttar Pradesh, Orissa, Arunachal Pradesh, Karnataka, Madhya Pradesh, West Bengal and Maharashtra. In certain areas, such as Darjeeling, Sikkim and Arunachal Pradesh, where cultural practices were not dissimilar to those in Tibet, the Tibetans adjusted quickly. In other places, such as Karnataka and Himachal Pradesh, there was occasionally local resistance to the Tibetans' visible presence and economic success.

In some parts like Sikkim, Darjeeling and Arunachal Pradesh the Tibetans found more or less similar cultural practices making their assimilation process more smooth and fast. In many other places like Karnataka and Himachal Pradesh the local population have tremendously benefited in terms of job opportunities, health and education from the Tibetan agricultural occupation, cottage industries and other infrastructure generated therein. There are however, growing instances of local resistance particularly in the Himalayan regions to "economic dominance", "visible presence" of Tibetans and some scholars have even raised issues related to "national security", "religious chauvinism" and "conflict with host population". However, this phenomenon of "compassion fatigue" though noticeable vis-à-vis other
successful and prosperous communities settled in different parts of India, is certainly in the increase.\textsuperscript{17}

Though the Chinese side of the border was sealed by 1960, Tibetans continue to trickle mostly through Nepal. They are hardworking people and Tibetan women are more enterprising and business like in their attitude. They are good traders and entrepreneurs. Their intrinsic quality of physical mobility make them cut across the entire India with an attractive package of seasonal goods and services. This shows concrete results in terms of self supporting livelihood strategies and adaptive experience in alien lands. The way they have been able to reconstruct their lives have made them a "model refugee community"\textsuperscript{18}.

Although India has been yielding and flexible toward the Tibetans, refugee leaders worry that a constant increase in the Tibetan refugee population could eventually strain relations with their hosts. Many Tibetans in India have achieved economic self-sufficiency, but some, including elderly persons, women-headed families, and recent arrivals are struggling. Also the substantial improvement in India's relations with China has impacted on its attitude to the Tibetan refugee community in India.

Though refugees in general are not allowed to be involved in politics, the government of India has tacitly tolerated the Tibetan refugees' campaign for the freedom of their country from Chinese domination. The Indian government recognises Tibet as a part of China. Officially the Tibetan refugees are not allowed to engage in political activities against China from inside India. Nonetheless, the Dalai Lama has been permitted to run a de facto Tibetan government in exile from Dharamsala. This government is also not recognised by the government of India.\textsuperscript{19}

\textsuperscript{17} Statement by Prakash Shah, permanent representative of India to the United Nations at the open debate in the Security Council on "Protection for Humanitarian Assistance to refugees and others in conflict situations" New York, May 21, 1997.
\textsuperscript{18} Mahendra P. Lama, "Causes, circumstances and consequences of forced migration in Tibet "to be published in chapter three of the State of the World's Refugees, UNHCR Geneva 2000.
\textsuperscript{19} Tapan K. Bose, Protection of Refugees in South Asia, need for legal framedwork. SAFHR paper series 6, p.23.
Many Tibetans initially experienced problems in moving from what was a strongly traditional and almost closed society to the culturally diverse one of democratic India. In general, however, they have successfully maintained their cultural and religious practices. One author has written that the ability of the Tibetan refugees 'to build and fund in foreign lands numerous monasteries of a remarkably high architectural standard and their success in developing viable monastic communities similar to those of Tibet is one of the miracles of the twentieth century'.

Despite these positive achievements, the majority of the Tibetan refugees in India still want to return to Tibet. While the conditions under which many of these refugees live are relatively good, the unresolved nature of the refugee problem is illustrated by the fact that each year Tibetan refugees not only in India, but also in Nepal and Bhutan, continue to seek asylum in Western countries. More than four decades after the initial flight of this group of refugees, permanent solutions for them still appear to be a long way off.

The second generation of Tibetan refugees in India, who remained absolutely insulated from the harsh realities in Tibet, has actually been brought up in a system laden with democratic values and political pluralism. They have now become agents of change within the socio-cultural systems of Tibetans in India and would largely determine the Tibetan refugees perspective on their return to homeland. They remain very attached to Tibet and are capable of changing the entire discourse on Tibetans by injecting very critical issues like democracy, human rights and environmentalism on a transnational trajectory. The changing occupational pattern, declining interest in monastic life, demands of restructuring the religious order and increasing resistance against polyandry and polygamy among the Tibetan refugees in India do indicate the emerging complexities to be addressed by their political leadership.

For India the major concern has been the economic burden. "At present neither the duty to receive refugees nor the real costs associated with their arrival are fairly apportioned across the world. Distributions of state
responsibility towards refugees is based on accidents of geography and the relative ability of states to control their borders. Any assistance received from other countries or UNHCR is seen as a matter of charity and the entire system survives tenuously on vague promises of cooperation accompanied by undependable funding. A large number of developing countries engaged in a desperate struggle to provide their own citizens with the basic necessities of life find themselves today crippled and highly frustrated by the enormous burden that mass exoduses impose on them. It may be pointed out that the 1951 Convention.... Neither anticipates nor provides answers to the problems of frontline receiving States confronted with such mass exoduses.  

Though refugees in general are not allowed to be involved in politics, the Government of India has tacitly tolerated the Tibetan refugee's campaign for the freedom of their country from Chinese domination. The Indian Government recognises Tibet as a part of China. Officially the Tibetan refugees are not allowed to engage in political activities against China from outside India. Morethess, the Dalai Lama has been permitted to run a defacto Tibetan Government in exile from Dharamsala. This Government is also not recognised by the Government of India, while the United Nations could not resolve the political status of Tibet, the humanitarian situation had been acknowledge and deplored and the flight of the refugees highlighted by virtue of long discussion held within the United Nations and outside, while the General Assembly at most condemned communist Chinese actions, any idea of direct intervention remained frozen. Yet unlike the political problem the autonomous flow of refugees could not be solved.

It is indeed an important point to note that India Government should now seriously consider to establish a permanent mechanism and procedure for handling the refugee issue in India based on a solid legal framework. Without a law, it is difficult to identify who a refugee is, and provide the humanitarian

treatment that he/she is entitled to. Though the stand taken by the Indian Judiciary is laudable and encouraging, but, due to lack of a refugee specific statute, the judicial system is constrained to enforce upon refugees, laws which are applicable to foreigners in general, thereby consciously or sub-consciously ignoring the unique predicament peculiar to refugees. Thus, a legal framework would help to bring a certain degree of consistency and transparency. Besides, India Government should consider afresh of becoming a party to the 1951 Refugee Convention by ratifying and adopting it.

The Task Ahead:

Many scholars, legal experts and humanitarian organisations have now started focusing on enabling national laws. The most noteworthy initiative has been the "Consultation" established by the UNHCR in 1994. This Consultation comprising of eminent jurists, lawyers, scholars, human rights activists have had four rounds of meetings so far and has found the idea of a regional framework premature and suggested the a speedy designing of a national legislation on refugees. Organisation like Indian Centre for Humanitarian Laws and Research (ICHLR) has contributed to the drafting of a Model National Law on Refugees.21

Main issues that figure in the Model National Law included: the scope of the refugee definition; the principle of non-refoulment; composing and investing authority in a decision-making body to determine refugee status; exclusion of persons who are undeserving of refugee protection; the rights and duties of refugees; states in situations of mass influx and special protection concerns for refugee women and children.

In India the draft national laws have already been prepared by a group of eminent jurists and lawyers. If enacted in very near future, this is likely to serve two major purposes. Firstly, the distinction between the refugees and other

types of migrants (including economic) will be clearly made for all time to come. In the absence of national legislation or refugee management, the refugee issue gets diluted with much larger issues of regular and traditional cross border migration that India has witnessed both because of varieties of long and unmanned border and a strong perception of India as a relatively developed and democratic-pluralistic country. And secondly, the much needed uniform policy towards all the refugees regardless of their origin, causes of displacement, cross-border ethnic and political ties will be at place. This will to a large extent, mitigate both inter and intra-refugee population discrimination witnessed in the past.

Given the sensitivity and resistance of India to adopting the 1951 Convention a regional legal framework based on regional specificity has also been put forward as an alternative arrangement. At the regional level, the SAARC can play an instrumental role in formulating a regional convention on refugee management. Taking the lesson from other regional arrangements like that of organisation of African Unity (1969) and Cartigana Declaration (1984), some kind of debate has been initiated in south Asia also towards a comprehensive regional convention. This could incorporate the aspirations of the regional member countries in a more forthright and non-discriminatory manner. This can in fact, be realised through the SAARC forum using the SAARC LAW as the pressure group. The SAARCLAW is an Association for persons of the legal communities of the SAARC countries, established in 1991 and is the first body (SAARC Chambers of Commerce and Industry -SCCI, 1992 was the second one) to be recognised by SAARC as a regional apex body.

The success brought about by the consistent pressure of the SCCI on the SAARC member countries in introducing SAARC Preferential Trading Arrangement (SAPTA) and South Asian Free Trade Area (SAFTA) by 2001 can be cited as a major breakthrough in the thinking process in South Asia. Only a couple of years, back it was beyond the thinking of the member countries of SAARC to have trade regime of this nature. Therefore, the offices
of the SAARCLAW stand to be most effective instrument in trying to evolve a
regional convention on the refugees. This has three distinct immediate
advantages. Firstly, this will pave the way for the member states in designing
their own national laws. Secondly, it will also facilitate the process of ratifying
the 1951 UN Convention and 1967 Protocol by the South Asian nations and
help in easing the burden of accommodating large numbers of refugees. This
will also generate a regular exchange of information and expertise to deal with
refugee problems. And thirdly, regional approach may persuade the other
nations in the UNHCR to make the definition more comprehensive.

However, all these Conventions on Terrorism, Drugs and Food Reserve
have remained in paper and have never been effectively implemented. In fact,
their esoteric and marginal utility have gone to show the futility of reaching
another regional convention such as on refugee management and practices. The
apprehension that in the absence of even critical minimum political will this
regional Convention even if evolved and ratified by the SAARC countries
makes no significant difference to the impending case for a better refugee
management.22

The dramatic transformation of international politics following the end
of the Cold War and the emergence of new refugee problems have seriously
strained the existing international regime relating to the protection and
treatment of refugees. Like any legal system which has to adapt to the changing
realities, international law relating to refugees, or refugee law, in short, also
finds itself at the cross-roads today. The new realities demand a new approach,
the establishment of new principles and the search for fresh solutions.23

Social Scientists concerned with refugee law, i.e. with principles and
norms which govern the world of refugees need to perform a two-fold task:
critical and practical. The critical movement must be concerned with evaluating

23. Dr. Shamsul Bari, "International Response to the contemporary Refugee Problem", paper
presentation in seminar at Calcutta on the contemporary Refugee Problem: Existing and emerging
Norms of International Law, 30th July, 1994, p. 3.
the conceptual and theoretical foundations of refugees law and the practical with recommending solutions which are acceptable to a world responsible for the production and plight of refugees. International solutions must be found to alleviate the misery of the millions of displaced refugees in the world today. If the world does not act with urgency to deal fairly with the crisis, the sheer magnitude of number involved can make any future solution impossible.

The human and political cost of the contemporary phenomenon of exile is high. Many millions of homeless people are undergoing traumatic ordeals and not only the stability and peace of regions are being affected, but also the stability and peace of the entire international community. The refugee issue now far surpasses a simple issue of charity: in every sense, it is a major international political issue. In the present situation, it is imperative that international law and co-operation be developed in a broad and balanced way so as to meet the basic issues of freedom, justice and peace which are directly raised by the refugee problem.

However, it is important to note that humanitarian and political initiatives have very different starting points: international political negotiations proceed from the interests and priorities of states; humanitarian actions proceed from the needs of individual human beings. The overlap between the two is considerable, and so, therefore, is the scope and need for co-operation between humanitarian and political organizations. Although the core of the traditional response to refugee problems is humanitarian, it is clear that action to deal with such problems must extend into broader realms if it is to be successful. Both humanitarian assistance and political efforts to resolve the underlying cause of displacement are absolutely crucial to the welfare and security of today's refugees.

Strategies to solve refugee problems must take into account all the various factors that compel people to leave their homes. Protecting people

against forced displacement requires a comprehensive and integrated response that deals with such problems in their entirety. It is likely to begin by tackling the immediate humanitarian needs of the people affected, including the need for asylum, at least on a temporary basis. It must also make provision for protection and assistance during reintegration, and link these with broader development and reconciliation plans.

Viewing the whole problem the recommendations for dealing with the dilemma of refugees fall broadly into three major categories: those improvements suggested in the wording of the Conventions in order to make them more relevant to the changing patterns of refugees in today's world; the changes sought, sometimes radical, in the national procedures for determining refugee status and granting asylum; recommendations for improving the resettlement provisions for refugees once in their host countries.

However, a comprehensive approach should be carried out, both in theory and practice. The activities of various institutions and organizations concerned with migration and human rights, as well as with refugee problems, ought to be coordinated. Both international and state actions, and long-term and short-term, political, economic and legal means should likewise be taken into account. In situations of mass exodus, it is necessary to consider the elements of political and legal responsibility of every relevant party, including the state of origin, the receiving state and third states. The challenge for the 1990s is to rework institutional mandates to use human rights not to define, but to comprehend protection, assistance and developmental needs of people at risk. Human rights can be used as a standard for information gathering and to promote community stability and mediation of conflict in order to prevent refugee crises before they occur.