CHAPTER - I
INTRODUCTION

Background:

A state normally guarantee the basic human rights and physical security to its citizens. But when civilians become refugees this safety net disappears. Without some sort of legal status in their asylum country, they would be exceptionally vulnerable to exploitation and other forms of ill treatment, as well as imprisonment or deportation. A refugee has the right to seek asylum. However, international protection involves more than just physical safety: refugees should receive at least the same basic rights and help as any other foreigner who is legal resident, including freedom of thought, freedom of movement and freedom of torture and degrading treatment. They should also get benefit from the host country’s fundamental economic and social rights. The refugees have fled either from political and religious persecution or racial or social discrimination or wars and territorial conquest or economic deprivation. So they need protection and protecting refugees are the major responsibility of State. While so much has been written and talked about refugees, it will be appropriate to discuss the meaning of Refugees just according to the 1951 Convention”. A refugee as a person who:

“Owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, owing to such fear, is unwilling to return to it.”

Refugee protection is the first and foremost duty of a government to look into the needs of vulnerable and threatened individual on a
humanitarian ground. The 1951 Convention relating to the status of refugees and its 1967 protocol are landmark in the setting of standards for the treatment of these refugees. Together, they incorporated either directly or as an inevitable interpretation, the foundation concepts of the refugee protection regime which are as relevant in the contemporary context as they were in 1951. Refugee protection, embraces the safeguarding of a range of rights particularly vulnerable in refugee situation the right to life, liberty and security of the person, the right to be free from torture and other cruel or degrading treatment, the right not to be discriminated against, and the right of access to the basic necessary for survival (food, shelter, medical assistance) as well as at the later point, for self-reliance (means to engage in a livelihood and to receive education, as well as health care).

While the international community has generally responded swiftly and generously to refugee crisis over the past half century, in recent years, some worrying trends have begun to emerge. Countries that once generously opened their doors to refugees have been tempted to shut those doors for fear of assuming open-ended responsibilities, of abetting uncontrolled migration and people-smuggling, or of jeopardizing national security. Refugee have been refused admission to safety or have been expelled from asylum countries. Those who have reached a potential country of asylum have sometimes been turned away or sent back without being able to apply for asylum. Refugees have been the targets of violent attacks and intimidation, largely they were perceived as “different” from the communities in which they are temporarily settled so their protection is under threat.

These fundamental concepts remain intrinsically sound as the frame work for refugee protection 60 years after the adoption of the 1951 convention. This being said, the protection principles, along with the regime of asylum State responsibilities, can not effectively be viewed
in isolation of the broader framework in which they will be applied. The changing nature of armed conflict and patterns of displacement, the more and more unfavorable cost/benefit equation of asylum, when seen from the State perspective, and serious apprehension about. “Uncontrolled” migration in this era of globalization, are all part of the environment in which refugee protection has to be realized.

India has a long tradition of giving shelter to people on humanitarian grounds with its principles of Sambhav, an approach of tolerance and understanding of the equality of all religious, creeds, races and nationalities. Historically India had been a safe heaven for refugees and displaced persons. The asylum provided to Parsees who came to Gujrat in the eight 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 travelled 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 Tamil 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, the number of refugees and asylum seekers in India stands at approximately 435,900 according to the world refugee survey 2007 conducted by the United States Committee for Refugees and Immigrants (USCRI)¹, and supported by the latest figures from the United Nations High Commissioner for Refugees (UNHCR). According

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to these sources, new asylum seekers for 2007 numbered about 17,900 in contrast to the mere 600 recorded departures from the country. India mostly plays host to refugees from its neighbouring countries who are either forced to leave their countries of origin due to internal or external conflict, political persecution or human rights infringements. India has offered refugee status to asylum seekers from countries like:

1. **China**: Refugees and asylum seekers from Tibet number around 110,000.

2. **Nepal**: Excluding migrants’ workers, the population stands at 1000,000 refugees. However this number is not usually considered because of the Indo- Nepal friendship treaty.

3. **Sri Lanka**: Total strength of conflict-included refugee of Tamil origin stands at 99,600.

4. **Myanmar**: Currently 50,000 refugees and asylum seekers.

5. **Bangladesh**: The mass exodus following the 1971 war has come down to 35,000 following repatriation of refugees.

6. **Afghanistan**: 30,400 refugees and asylum seekers comprised mainly of Hindus and Sikhs.

7. **Bhutan**: The ethnic Nepalese population settled in India amounts to 10,000 refugees and asylum seekers.

**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 Partitions, (II) Bangladeshi refugees as a result of civil war in

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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 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 breakdown of colonial legacies created refugee flow. 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, sixth type or migrations. The third category of refugee generating factors relate to the developments outside the region and 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 secular democratic and generally soft state, in relation to almost all the neighbours. So far as the conditions of refugees in India is concerned, it depends upon the extent to protection they receive from either the government of India or UNHCR.

Three primary categories of refugees can be identified: (I) Refugee 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 Government 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 governments 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.

**Objective of the study:**

The study has the following six aims.

- To study the origin of the refugee problem at the international level and its spreading nature.
- To study the International and Regional Conventions, Declaration, Covenants and statutes.
- To trace the origin of refugee problem in India and its spreading nature.
- To explore refugee policy of the Indian Government, Constitutional laws and other rules, regulations and programmes for refugees.
- To study role of the Government of India in the protection of refugees.
- To assess role of the UNHCR and the protection of refugees in India.

**Research Methodology :**

The research methods employed in this study are descriptive and analytical in nature. It involves scrutiny of a mix both the primary and secondary source materials. The primary sources comprise original texts UN documents, reports of UNHCR, UN Security Council, General Assembly etc. The secondary source includes reputed government
publications, scholarly material including books and articles in reputed journals/periodicals, newspaper and internet sources.

**Chapter Scheme:**

The main body of arguments in the Thesis are presented in nine chapters.

The First chapter is introduction. This chapter will be introductory part. It will provide an overall view of the purpose, context and scope of study.

The Second chapter grapples with the socio-political and economic causes that explain the refugee phenomenon and legal/normative framework governing refugees’ problem. The chapter also traces the major landmarks in the historical evolution of the international co-operative effort to organize beginning of the twentieth century up to the establishment of UNHCR.

The third chapter discusses the conceptual and definable aspect and the status of refugees on the basis of Regional and International Conventions, Declarations, Covenants, and Statutes. This study contains 1951 Conventions and 1967 protocol. Besides this, discussion and an analysis on the International expansion of refugee concepts on the basis of the Regional Organizations like a OAU, OAS, Cartagena Declaration 1984and the Council of Europe.

The fourth chapter attempts to study the phenomenon of arrival of people from all over the region either as refugees, temporary workers, unauthorized migrants and permanent settlers and then relate it to the politics of the country. The essential thrust here would be to see the question from a humane angle and argue that the limitation of regional disparities in the national context together with regional co-operation in the south Asian context can alone address it, holistically.

The fifth chapter attempts to study the refugee policy of the Government of India, constitutional laws and other rule, regulations and
programmes for refugees. To make the analysis effective a survey has also been made of the steps taken by Border Control Authorities, Custom Authorities, Police, FRRO and role of the Judiciary for the protection of refugees.

The sixth chapter explore the problems of Categories I refugees (Tibetans, Chakmas, Sri Lankan Tamils) receive full protection from the Indian Government and analyze role of the Government of India in the protection of refugees. This chapter examines these refugee groups, according to the nature and importance of the refugee groups as well as security implications, obligations and compulsions of Government of India.

The seventh chapter examines the conceptual institutional developments associated with the historical process up to the establishment of the office of UNHCR, the present chapter is devoted to a full-length discussion of the objectives, role, responsibilities, resources and the organizational structure of the UNHCR.

The eighth chapter explore the problems of Category II refugees in India, in light of the office of the UNHCR’s discharge of its protection, function, through an analysis of the UNHCR’s refugee status determination process and refugee’s assistance/support programmes and services provided to recognized refugees.

The ninth and final chapter offers some concluding remarks to the study as a whole and particularly necessity of the protection of the refugees. This chapter will be about the problem faced by the refugees in India due to lack of legislation as well as the impact of the absence of a special law on protection and rights of refugees which is resulted in the denial of basic protection to the large number of refugees. Mainly this chapter will focus on how India deals with the refugee at both political and administrative level. The role of the Government as well as the UNHCR, NHCR, Judicial approach in India for the protection of
refugees and solutions will also be discussed.

Review of Literature:

The refugee protection is one of the global problem, affecting not only millions of marginalized people directly but also the policies and practices of virtually every government in the world. UNHCR believes that it is necessary to broaden the base of state support for these refugee instruments, ensuring that the protection provided to refugees is more universal in scope and the burdens and responsibilities of governments are equitably distributed and consistently applied. So many scholars have already done their research on protection of refugee on different parts of world like Africa, America and Europe etc. However there is scarcity of literature related to the protection of refugees in South Asia and especially in India.

Jastram and Achiron (n.d.) give the general principles of international refugee law and how they are implemented. They mentioned that at the start of the 21st century, protecting refugees‘ means maintaining solidarity with the world’s most threatened people. Their handbook is the outcome of co-operation between the Inter-Parliamentary Union, the World Organization of Parliaments and UNHCR, and was developed by UNHCR experts with close input from experienced parliamentarians and senior officials of both the UNHCR and the IPU.

Chimni (2000) introduced all aspects of international refugee law. Different chapters examine: the definition of a refugee; the law of asylum; the role of the United Nations High Commission for Refugees; humanitarian assistance; gender issues and refugee children; laws governing state responsibility; internally displaced people; and the range
of available solutions. With numerous case study examples, including a postscript on Kosovo, this book is the definitive source on laws, practices and issues in refugee matters.

Patil and Trivedi (2000) look into the problems of refugees from the perspective of human rights. Forced displacement or as it is called the refugee problems have assumed serious proportions involving pain, suffering and misery to millions of people around the world. The massive human tragedy is the result of war, pestilence, famine, and other manmade and natural calamities. All this calls for concerted and coordinated action at the international level in the form of humanitarian action and emergency relief like food, clothing and shelter. But it is also a fact that promises or assurances of governmental organizations to reduce human suffering turn out to be only half-hearted measures without any realistic possibility to put them in a meaningful operational mode.

Kelley (2007) looks at the major refugee protection challenges that confront at the beginning of the 21st century on both sides of the development. It also addresses why many of these problems have developed and examines some of the emerging opportunities, which, if realized in good faith, could provide more robust protection for refugees, while responding to the security, sovereignty and economic concerns of States.

Guy S. Goodwin-Gill (2008) looks back to the 1920s, and tries to trace out the politics of refugee protection as it evolved in the practice of States and international organizations in a period of growing ideological differences. The question addressed is whether the politics of protection at any particular moment are humanitarian or whether they serve
primarily other purposes, in which the refugee is merely instrumental. It is unrealistic to imagine that the problem of refugees can ever be entirely non-political. What the history of the 1920–55 periods confirms is the continued vitality of self-interest as a motivating factor in the responses of States to refugee flows. The international refugee regime that emerged in the late 1940s and early 1950s defined refugees through the politics of denunciation in a persecution-oriented definition that continues to limit and confuse, not only at the international operations level, but also in national asylum procedures. In this context, the article concludes that the art for UNHCR is not to allow solutions or assistance to have priority over protection. If it cannot provide protection, it will be judged a failure and accountable, and not merely excused because it tried hard in difficult political circumstances.

Field (2010) describes the refugee regime’s present inability to cope with refugee flows, proposing as a partial solution an international, rather than a territorial, paradigm of duty. She first argues that the refugee regime already in place supports such an international paradigm and then proposes principles for defining the scope of the international duty. Finally, she discusses strategic reasons for states to assume international responsibility even absent legal compulsion. She explains the international refugee regime contains a gap between the rights it promises and the responsibility it assigns to make those rights reality. This is particularly problematic because many receiving states are unwilling or unable to protect refugees and manage refugee flows within their territory. Under a territorial paradigm of state duty, this leaves enormous problems for which no state bears responsibility.

Oberoи (2006) discussed about the Indian subcontinent is the site of
significant population flows for centuries, and the region witnessed some of the largest and most complex movements of refugees in contemporary history. This study traces the history of refugee policy-making and its motivations on the Indian subcontinent since 1947, examining subcontinent since 1947, examining in detail the six major instances of forced displacement of the territory of states in the region. She also examines the changing nature of the relationship between South Asian states and the United Nations High Commissioner for refugees. The volume explores why the states of South Asia construct a particular understanding of a refugee and how they communicate this understanding in their policy behavior, also analyzed the impact of refugee presence on bilateral relations. Oberoi argues that refugee’s policy in South Asia is often tempered by the exigencies of nation building, development issues, and political unrest, which may at times even explain South Asia’s minimal devotion to the norms of the international refugee regime.

Muni and Baral (1996) have recognized various factors exacerbating the Refugee movements in South Asia. There are no easy solutions at present nor indeed any possibility of a regional approach to solving the crisis. In fact, the SAARC does not allow for discussion of bilateral issues, so there is little hope for solving inter-state problems through that channel. Unlike India, which is primarily a receiver of refugees, Bangladesh is both a refugee generator and host. While India has time and again expressed its unhappiness with the influx of Bangladeshis in search of food security, New Delhi cannot escape partial responsibility for this development. For, in the first place, it used the refugee crisis to actively control and finally concludes the liberation struggle in Bangladesh, in the process redefining its equation with
Pakistan and emerging as the regional power. Meanwhile, impoverished Bangladesh grapples with the problem of refugees from Burma, mainly the Muslim Rohingya. Bangladesh cannot hope for an early solution, writes University of Dhaka scholar Imtiaz Ahmed.

Kantikar (2000) concerned with the refugee issues in a limited context of South Asian region. It examines the problems of South Asian refugees within the frame work of international responsibility, solidarity and humanity. He describes about the dimensions of refugee problem became so enlarged and complex during the interwar period that attempts were made through the setting up of international organizations to deal with the millions of refugees generated by the First World War and the breakup of multinational empires. The lack of an adequate legal regime to ensure the rights of refugees, who as aliens are often among the most vulnerable members of society, is an ongoing problem.

Vijyakumar (2001) explains the reasons for not ratifying the Refugee Convention of 1951 or the Protocol of 1967. The probable reasons for not ratifying the Refugee Convention or the Protocol, the lack of any regional approach or national legislation to address the problem, the contribution made by the international community to the crises in this region, nature of protection, the extent of rights available to the refugees and a brief comparison between the Northern and Southern perspectives have also been explained. This article concludes by emphasizing that through a comparative analysis of both the Northern and Southern perspectives relating to the protection of refugees, each can benefit from the experiences of the other, improve and build a scheme to care for the millions of refugees as well as others of concern in the new millennium.
Bose (2000) presents a case for the creation of a legal framework by the states of South Asia for the protection and rehabilitation of refugees and migrants. He explains the reality of South Asia is that millions of these "illegal aliens" are present in most countries of the region. Their illegal status has made them vulnerable to the manipulation and machinations of unscrupulous and corrupt elements in our societies. Opportunistic sections of certain political parties in the region have tried to use these "illegal" people as captive "vote banks" by trying to "regularise" their stay. These developments present a threat to the social and political stability of our region. It also seriously undermines the fundamental principles of democracy, transparency, rule of law and respect for human rights. The absence of a legal framework not only harms refugees and asylum seekers, it also adversely affects the society of the host country.

Arbar (2010) concludes that the adoption of national legislations would be an effective first step. It calls for state accession to those other international instruments with implications for refugee protection in the region and urges South Asian countries to engage with Western states in dismantling the non-entrée regime which is undermining the basic principles of international refugee protection.

Shrama (n.d.) mentioned for the necessity regional cooperation to solve the refugee problem in South Asian region. He explains that Large section of the people in South Asia have very poor socioeconomic standard. Yet South Asia hosts a big chunk of refugee populations of the world. Most often human lead reasons like religious persecution, cultural discrimination, human rights violation, social discrimination, minority complex of the majority communities and so forth have resulted into
generation of refugees in the region.

Tarkroo (n.d.) describes the complexities of refugee protection in India. The building blocks for refugee law and the need for a national legislation are elaborated and emphasized. While the book mainly focuses on the foundations and frameworks of international refugee law, it analyses in some detail the domestic legal framework available to bring this special group within its ambit. Special emphasis is placed on issues relating to extremely vulnerable groups like children and women. The attention of the legal community is also drawn towards the compelling need for a national legislation on refugees. Setting standards for granting asylum and protection requirements would go a long way in bridging the gap between administrative attitudes and ad hoc policy decisions. The aim is to facilitate the efforts of those engaged in advocacy for the rights of refugees and issues relating to their protection.

Dhavan (2004) describes that Refugee Law and policy issues are part of an unfinished public agenda. There is also a need for a change in the law. The model law has not been sufficiently considered by the Union Government. For the last five years, the NHRC has been requesting the Government to provide refugee protection. India needs to review its ambivalent refugee law policy, evolve a regional approach and enact rules or legislation to protect persecuted refugees. This is one step towards supporting a humanitarian law for those who need it. As a refugee-prone area, South Asia requires India to take the lead to devise a regional policy consistent with the region's needs and the capacity to absorb refugees under conditions of global equity.

Nair (2007) discussed about the Refugees in India from various countries and their overall conditions. The obstacles in the formation of
law and its benefits are discussed. This paper intends to ascertain whether a uniform national law would be beneficial to the interests of the three main parties involved with refugee policy in India, namely the Government of India, the UNHCR and the refugee communities themselves.

Saxena (2007) attempt to examine the provisions of the draft law, insofar as it conforms to the international standards. The paper also evaluates the competence of the draft law to answer security considerations after 9/11. The paper suggests suitable amendments that may make the enactment of national law a reality, so that the void in the international regime of refugee protection can be filled effectively and fast.

Bhattacharjee (2008) clearly establishes that Indian law and practice provides a distorted and incomplete protection to refugees. Indian law even fails to recognize refugees as a distinct category of persons and treats them at par with all other foreigners. So India should go for the law for the protection. The absence of a national law on the status of refugees has also meant that refugees are dependent on the benevolence of the state rather than on a rights regime to reconstruct their lives with dignity.

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