CLEAVAGES AND CONTRADICTIONS IN THE
REFUGEE REGIME IN INDIA

"Noble is your aim and sublime and glorious is your mission. Blessed are those who are awakened to their duty too those among whom they are born, glory to those who devote their time, talents and their all to the amelioration of slavery, glory to those who would reap their struggle for the liberation of the enslaved in spite of heavy odds, carping humiliation, storms and dangers till the downtrodden secure their human rights"

-Dr. B.R. Ambedkar-
CHAPTER-VI

CLEAVAGES AND CONTRADICTIONS IN THE REFUGEE REGIME IN INDIA

Regime is a mode or system of rule or government or a ruling or prevailing system or a government in power or more specific the period during which a particular government or ruling system is in power\(^1\). It is not easy for any one simply to conceptualize the refugee regime in India. For this the very simple reason is India's historical recognition of human value based on strong Buddhist principles. As we know India is the country of without proper refugee law and policy but even having all this the largest refugee population are concentrated and it is only due to the India's strong belief in humanity.

The refugees in any country is nothing but based on full cleavages and contradiction within their group, with the local of the area, recognition by international organization, civil societies as well center and states respectively. And this is what Chakmas of Arunachal Pradesh are facing today largely for their survival. Any society cannot move forward unless, if not have belief on humanity and brotherhood. The problem of Chakmas in Arunachal Pradesh is nothing but the lack of proper coordination between the two regimes one the Government of India and another Government of Arunachal Pradesh. As per my field work is concerned in the Chakmas settled areas of Arunachal Pradesh particularly three districts where Chakmas largely concentrated viz. Papumpare, Lohit and Changlang and I found the problem of Chakmas are completely a political problem. It is largely a political agenda of all the political parties in the state with the help of AAPSU. As per the history of Arunachal is concerned it said that the Arunachal Pradesh is the state of rising sun but today Arunachal Pradesh is not the state of rising sun rather the land of discrimination. This is not with the case of Chakmas but other Indians who are living in the state before independence. AAPSU and other student organizations with the

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help of State Government fully engaged in torturing, looting and all other anti-social activities in the region

So far Indian Human Rights Commission Report 2007 is concerned it has been reported that the ruling Indian National Congress, the State Government of Arunachal Pradesh continued to practice racial discrimination against the Chakmas. The State Government of Arunachal Pradesh and the Government of India have been blatantly violating the judgment of the Supreme Court of 9 January 1996 by not processing the citizenship applications of those Chakmas who had migrated to Arunachal Pradesh between 1964 and 1969. The State Government also dishonored the direction of the ECI to enroll all the eligible Chakmas into electoral rolls as per the Section 3(1) (a) of the Citizenship Act, 1955.

The basic facilities and amenities such as educational and healthcare facilities and the right to employment earlier withdrawn by the State Government have not been restored. As a result, the socio-economic conditions of the Chakmas remained highly pathetic. Many false cases have also been filed against the activists of the CCRCAP, which has been leading a democratic struggle for the citizenship rights of the Chakmas. As per the State Police records, a total of 2,262 crimes were committed during 2006. These included 60 murders, 34 attempt to murder, 75 kidnapping and abduction, 93 crimes against women including 37 rapes, 181 grievous hurt and nine under the Arms Act, among others. The very unfortunate to be made public is that all has been done by the Arunachalees who claim to be the highly educated and best among the entire northeast India.

Despite the establishment of the Arunachal Pradesh State Commission for Women in January 2005, the conditions of the women and children remained miserable in the State. The National Family Health Survey III (2005-2006) found that 38.8 per cent women in the State were victims of domestic violence, and 41 per

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3 Ibid.
5 See for detail information on the provisions of citizenship, Constitution of India.
7 NHRC Vs State of Arunachal Pradesh & Anr (720/1995) and the present plight of the Chakmas of Arunachal Pradesh, 16th December 2002, Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh.
8 37 percent women face domestic violence; Bihar tops list, The Hindu, 4 March 2007.
cent women were married off under the age of 18 years. In a significant judgment on 7 December 2006, a Sessions Judge in Kurung Kumey district ruled that minor girls could not be married off as per the existing customs of the tribals. Arunachal Pradesh remained the only State in the country with no prison. There were 18 convicts by the end of July 2006. They were kept in prison of Asom, thereby contributing to the problem of overcrowding. There was no separation of the judiciary from the executive. As on 30 June 2006, there were a total of 5,220 cases pending with the District and Subordinate Courts in the State.

On 9 January 1996, the Supreme Court of India in its historic judgment in the case of National Human Rights Commission Vs State of Arunachal Pradesh and Anr (Civil Writ Petition 720 of 1995) directed the State government of Arunachal Pradesh to process the citizenship applications of those who migrated between 1964 and 1969. But not a single application out of 4,677 applications submitted since 1997 had been processed by the end of 2006.

In 2004, 1,497 Chakmas who were born in India were enrolled in the State’s electoral rolls pursuant to the directions of the Election Commission of India (ECI). Yet, there had been no further progress to the process of enrolling other Chakmas who are citizens of India by birth under Section 3(1) (a) of the Citizenship Act, 1955 due to the apathy and racial discrimination being practiced by the State Government against the Chakmas.

On 23 March 2005, the ECI issued an order for conduct of intensive revision in Arunachal Pradesh. The ECI also issued detailed guidelines to be complied with by the electoral officers during the conduct of the revision exercise. As stated in India Human Rights Report 2006, in clear violations of the above guidelines, from day one of the revision process, the Electoral Registration Officers (ERO) and Assistant Electoral Registration Officers (AEROs) prescribed birth certificate as the only document for enrolment. Ignoring clause (e) the EROs and AEROs arbitrarily and illegally subjected all eligible Chakma voters who have been issued electoral

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10 The Telegraph, 13 December 2006.
11 Arunachal is the only state with no prison, The Asian Age, 3 August 2006.
12 See for detail Court News, July-September 2006, Supreme Court of India.
14 During my field visit it has been explored that many of the applicants have already died and this is nothing but contempt of the highest court of the country.
cards to undergo local verification irrespective of whether linkage as required under Guideline (d) (i) was established or not. The CCRCAP, an organization representing the Chakmas, complained to the ECI against gross and willful violations of the ECI Guidelines of 23 March 2005 by the EROs, AEROs and other concerned electoral officials of Arunachal Pradesh during the revision exercise. Taking cognizance of such gross violations of its guidelines, the ECI suspended publication of Draft Rolls in 46-Chowkham; 49-Bordumsa-Diyun and 50-Miao Assembly Constituencies inhabited by the Chakmas till the ECI decides on the issue. At the end of the year, the issue remained pending before the ECI. By the end of 2006, ECI failed to take a final decision. On 9 August 2006, the Gauhati High Court (Itanagar Permanent Bench) dismissed the three writ petitions [WP(C) No. 154 (AP) 2006], [WP(C) 155(AP) 2006] and [WP(C) 156(AP) 2006] challenging the order of the ECI of 2 January 2004 directing the concerned Electoral Registration Officers to include names of 1,497 Chakma voters in the electoral rolls.

In January 2005, Arunachal Pradesh State Commission for Women (APSCW) was formed. But there had been little improvement in the plight of women in the State. They were subjected to cruel and degrading treatment, most particularly sexual exploitation in the name customs and traditions. As per the state police records, 93 crime against women including 37 rapes were registered during 2006. The National Family Health Survey III (2005-2006) found that 38.8 percent women were victims of domestic violence in the State. Child marriage was common. According to the National Family Health Survey III (2005-2006), 41 per cent women were married off under the age of 18 in Arunachal Pradesh. The figure was 28 percent during its earlier survey of 1998-99. In a significant judgment delivered on 7 December 2006, a Sessions Judge in Kurung Kumey district ruled in favour of a Class XII girl, Yumbam Yaku who had moved the court asking to be freed from her marriage. Sessions Judge Repo Ronya ruled that the girl was not a party to the betrothal agreement as neither her consent was sought nor was she in a position to give consent at the time of her wedding. The court was also of the opinion that marriage could not be solemnized against the will of one of the concerned parties, citing the provisions of the Child Marriage Restraint Act, 1929. The petitioner,

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17 See for detail Court News, July-September 2006, Supreme Court of India.
Yumbam Yaku was married off as a child to Bengia Kami in return for a bride price in the form of mithuns\(^{19}\), cows and pigs, according to tribal practice\(^{20}\).

In Arunachal Pradesh, regulations prohibit nonlocals and non-residents from acquiring interests in land or land produce. Due to these regulations, the Arunachal Pradesh authorities felt that the decision to settle the Chakmas was wrong. Here, we find the conflict generating due to the possession of land. The Arunachal authorities felt that other states should also share the burden of settling these refugees. At present, these refugees are settled in Lohit, Changlang and Papumpare in Arunachal Pradesh. The present population of Chakmas in Arunachal Pradesh is approximately around 60,000. The growth in the last three decades has been phenomenal. Since their resettlement, the Chakmas have been illegally denied Indian citizenship and systematically deprived of other fundamental rights\(^{21}\).

Settlers claim that the Chakmas are occupying land so they had to be removed. Here we see that to remove them, they were tortured, forcibly evicted after burning their houses. This conflict was mainly over land. The AAPSU launched 'Refugee Go back' movement to evict Chakmas from Arunachal Pradesh. In 1980, the government of Arunachal Pradesh banned employment of Chakmas, seized their trade licenses in 1994. Thus, their employment options were reduced, which would force them to leave, locked in a vicious cycle of poverty. Basic social infrastructure like schools and hospitals were dismantled in areas inhabited by Chakmas\(^{22}\). The Government of Arunachal Pradesh kept on insisting that the Chakmas were foreigners and so, they were not entitled to fundamental rights and could be asked to quit the state at any time. In 1996, the Supreme Court observed that the Government of Arunachal Pradesh should protect the life and liberty of the refugees in the region. But till date, few steps have been taken to implement the directives of the Supreme Court. Moreover, the state government remained a silent spectator while the situation worsened for the refugees. The AAPSU began a 'detect and deport' foreigner's programme. The main motive behind all this, one can see, is the desire to acquire the land occupied by the Chakmas. In 1994, all official facilities for the Chakmas were withdrawn. Economic blockades were organized around Chakma refugee camps. Facing a hostile administration and hostile political parties, the Chakmas have

\[^{19}\text{Wild Buffalo; Mithun is the state animal of Arunachal Pradesh.}\]
\[^{20}\text{The Telegraph, 13 December 2006.}\]
\[^{21}\text{Boddhi Times, No.6, June 2009.}\]
\[^{22}\text{Ibid.}\]
survived over the years. They have faced institutionalized discrimination under different regime under the various Chief Ministers. They have become permanent victims of xenophobia.23

India Needs Refugee Policy and Laws

The present demand for the grant of citizenship and Scheduled Tribe status by the Chakmas clearly shows that they are not only unwilling to move out of the state, but also they are politically conscious and quite determined to stay permanently in the state. Unable to bear the atrocities and faced with displacement on account of the construction of the Kaptai Hydel Project about 30,000 Chakmas migrated to India in 196424. They were settled in Arunachal Pradesh after due consultation with the local leaders by the Central Government of India under a ‘Definite Plan of Rehabilitation’. The Government of India extended all possible kind of helps including financial aids, employment, trade, license, book grants etc for proper establishment of their shattered life. After the partition of India, the Government’s policy was to grant citizenship to those who originated from areas that were part of Undivided India. The rest of the migrants were accorded Indian citizenship. However the Chakmas were not granted Indian citizenship. In the wake of the anti-foreigner agitation in Assam, the State Government of Arunachal Pradesh undertook a series of repressive measures beginning in 1980. The State Government vide its letter no. POL-21/80 dated 29th September 1980 banned public employment for the Chakmas in the State.

In 1991, the CCRCAP was formed to demand for citizenship rights of the Chakmas of Arunachal Pradesh. Starting in 1992, the State Government of Arunachal Pradesh became more hostile and started inciting sectarian violence against the Chakmas. The AAPSU served a ‘Quit Arunachal Pradesh’ notice to the Chakmas to leave the State by 30 September 1994. As a result, a large number of Chakmas fled from Arunachal Pradesh and took refuge in the neighboring Indian State of Assam. However, the State Government of Assam issued shoot at sight orders against the fleeing Chakmas. The CCRCAP approached the NHRC about the

23 NHRC Vs State of Arunachal Pradesh & Anr (720/1995) and the present plight of the Chakmas of Arunachal Pradesh, 16 December 2002, Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh.
deadline set by the AAPSU and the threat to the lives and property of the Chakmas. The NHRC treated it as a formal complaint and asked the State Government and Central Government to report on the issue.

On 7 December 1994, the NHRC directed the State Government of Arunachal Pradesh and Central Government to provide information about the steps taken to protect the Chakmas. This was ignored till September 1995. In the meantime, the harassment, intimidation, arrests and detention continued and increased. The issue became critical following the meeting of all-party leaders and the AAPSU held at Naharlagan, Itanagar on 20 September 1995. Political leaders of Arunachal Pradesh led by former Chief Minister Mr. Gegong Apang passed a unanimous resolution to resign en masse from the national party membership if the Chakmas are not deported by 31 December 1995. The resolution also prohibited any social interactions between the local Arunachalees and the Chakmas. The CCRCAP approached the NHRC again on 12 and 28 October 1995 to seek protection of their lives and liberty in view of the deadline and support extended to the AAPSU by the State Government. As the State Government was inordinately delaying the transmission of information regarding the steps taken to protect the Chakmas, the NHRC, headed by Justice Ranganath Mishra, approached the Supreme Court to seek appropriate relief and filed a writ petition (720/1995). The Supreme Court in its interim order on 2 November 1995 directed the State Government to,

"ensure that the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law."

As the 31st December 1995 deadline approached, then the former Prime Minister Late. Shri P V Narasimha Rao formed a high-level committee headed by the Home Minister S B Chavan to look forward the issues in details. Despite the clear and unambiguous order of the Supreme Court, the State Government of Arunachal Pradesh has not taken any measure to implement the court's directions. Rather, the State Government has undertaken various measures to undermine and violate the Supreme Court judgment. The State Government has been making the conditions of the Chakmas untenable by denying them fundamental rights such as

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26 Ibid.
27 Ibid.
right to education and other basic facilities such as health care, employment facilities. Other measures included a complete halt to any development activities, refusal to provide trade licenses, refusal to deploy teachers in the schools located in the Chakma areas, withdrawal of all preprimary (Anganwadi) centres and finally forcible eviction by claiming the lands of the Chakmas as forest lands.28

After the Supreme Court judgment, the AAPSU and State Government of Arunachal Pradesh began inciting communal hatred. The State Government, however, became more tactful, calculated and deliberate in its anti-Chakma activities. With a view to repel any move to submit citizenship applications to the Deputy Commissioners, the State Government attempted to provoke communal passions by calling a state-wide bandh on Disseminated by Asian Indigenous & Tribal Peoples Network for public information on 22 January 1996. Mr. Gegong Apang, went to the extent of describing the Supreme Court judgment as the 'step-motherly attitude of the Centre and calling it biased judgment'29.

On 26 January1997 the AAPSU also called a state-wide bandh. On 4 May 1998, 27 Chakmas went to submit the citizenship applications to the DC of Changlang District. The citizenship applications were verified by the First Class Magistrate of Margarita, Assam. However, the DC of Changlang refused to accept the applications. Due to the pervasive fear and the hostile situation engineered by the State Government, the Chakmas were unable to submit applications to the Deputy Commissioners. It was after discussions with the officials of Union Home Ministry that the Chakmas started submitting citizenship applications to the DC through the Union Home Ministry in February 1997. Over the years, around 4000 citizenship applications have been submitted. However, the concerned DC's have been blocking the said applications by not verifying them and not forwarding them within a reasonable period of time in spite of an amendment in the Citizenship Rules, 1956. Under Rule 9 of the Citizenship Rules (Amended), 1998 the Deputy Commissioner/State Government is required to forward the citizenship application within a period of six months. The blocking of citizenship applications in this manner is a clear contempt of Supreme Court order in which the apex court clearly held that the DC are bound to forward the applications received by them, with or

28 Ibid.
without inquiry, as the case may be, to the Central Government for consideration. It has been learnt that the State Government has forwarded around 260 citizenship applications in January 2000 after due verification. However, until today the Union Home Ministry has not taken any decision on these applications despite the fact that all the applicants have provided documentary proof (such as identity cards issued by the State Government) that can stand judicial scrutiny to prove their migration in 1964 and continuous stay in Arunachal Pradesh. Justice delayed is justice denied. The refusal of the Central Government to grant citizenship to 260 applicants whose applications have been verified is further denial of justice.

Incidents of Human Rights Violation

On 28 January 1996, Pularam Chakma of Udaipur village under Diyun Circle of Changlang district, and Maratsa Chakma, of Vijoypur village under Bardumsa circle of Changlang district went for harvesting the mustard crop. They were working for Chandra Kri and Pyola Kri of Namgo village under Chowkham circle of Lohit district. Pularam Chakma and Maratsa Chakma were attacked by about 20 AAPSU activists and beaten up mercilessly at Medo Bazar of Lohit district in full public view. Pularam Chakma was beaten to death on the spot. Maratsa Chakma, who was left for dead, however later gained consciousness and was able to get assistance at a nearby Chakma house. On CCRCAP had approached the NHRC on the issue.

On 6 June 1998, Bimal Kanti Chakma was arrested by the Arunachal Pradesh Police because he is an assistant Gaon Bura (village headman) of Jyotipur village under Diyun circle of Changlang district and a CCRCAP leader. He has been providing help to several Chakmas of the M.pen area under the Miao circle of Changlang district, attempting to obtain bail for those who are detained.

The State Government of Arunachal Pradesh has adopted various policies to evict the Chakmas by issuing orders for eviction to show that its actions were being done legally without violating the Supreme Court judgment. On 8 December 1997, the State Government of Arunachal Pradesh issued eviction notices to 66 Chakma

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30 NHRC Vs State of Arunachal Pradesh & Anr (720/1995) and the present plight of the Chakmas of Arunachal Pradesh, 16 December 2002, Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh.
31 Ibid.
32 Ibid.
families in Kamakhypur and Raj Nagar areas under Changlang district. Earlier, on 11 November 1997, the Circle Officer (CO) of Diyun, D Riba served quit notices (memo No. Diyun/LR/EVC/97) to 109 families of Jyotsnapur village under Changlang district and directed them to proceed to their original settlement areas. D. Riba did not give any explanation for such eviction notice. In his notice, D. Riba simply stated,

"You are hereby directed to proceed to your original settlement Jyotipur village with family latest by 20 November 1997 without fail. Failing which legal action will be initiated against you."

The Chakmas have been living in Jyotsnapur village for the last two decades. They have settled in Jyotsnapur village after the Diyun River flooded their areas and destroyed their houses during monsoon. For about 40,000 Chakma population there is only one Government Secondary School at Diyun. In the absence of any middle school in the whole Diyun circle, this school has to accommodate all the Chakma students passing out every year from more than 10 primary schools operating in the Chakma areas. Around 1,400 (12 teachers) are enrolled in this school with virtually no infrastructural facilities.

Many of the Chakma villages in Changlang district are without even primary schools. The existing schools, which had 2-3 teachers each, are left behind with one or no teachers since 1994. The following villages do not have primary schools. The State Government of Arunachal Pradesh in a circular on 31 October 1991 (No FPSO-3/90-91) had ordered all the Chakmas to surrender their ration cards under the Public Distribution System (PDS) to the CO. Thousands of Chakmas were forced to surrender their ration cards to the State Government. Despite the Supreme Court judgment the State Government has not returned the ration cards. The Chakmas are very poor and rely to a large extent on the PDS. Ration card facilities are indispensable for the daily labourers. By denying the ration card facilities, the State Government of Arunachal Pradesh has condemned them to poverty. As stated above, the Chakmas are not even issued permission to sell their cash crops in neighboring Assam. They are not issued licenses for trade in the local markets. At the same time, hundreds of families were rendered landless due to soil erosion caused by the Dihang

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33 Ibid.
River and its tributaries. More than 90 percent of the Chakmas are below poverty line\textsuperscript{34}.

The victims filed a petition before the Guwahati High Court. The Guwahati High Court in its judgment (Civil Rule No 5255 of 1997) stated,

"Whenever trade is regulated by licence, the licence is entitled for renewal of the license as a rule and non-renewal of the licence is exception since granting or refusing of licence regarding trade or business is intrinsically connected with the livelihood of a person, a right rooted in the Indian Constitution. The licensing power is bristled with enormous ramifications immensely affecting the rights and liberties of citizens and livelihoods of citizens in particular and thus require a fair procedure"\textsuperscript{35}

In the light of the Supreme Court judgment in the National Human Rights Commission \textit{Vs the State of Arunachal Pradesh}, the Guwahati High Court directed the State Government of Arunachal Pradesh

"to consider the case of the petitioners for renewal of their licenses as per law. The Deputy Commissioner, Changlang, Arunachal Pradesh shall also ensure and to see that the original documents which were seized from the petitioners on 22 October 1997 by the Circle Officer, Circle Diyun along with the Officer-in-Charge, Diyun Police Station and Second Officer of the said police station are returned to the petitioners. In the meantime, the Respondents are directed to allow the Petitioners to run their business and shops"\textsuperscript{36}

While the State government has restored the trade licenses of the above victims, no fresh licenses have been issued since 1991. The State Government vide circular dated 29th September 1980 and circular dated 31\textsuperscript{st} October 1997 has banned employment in government service, agricultural field, contract work and business etc. for the Chakmas in the state, resulting in the Unemployment among a large number of educated youths. The ban on employment continues until today\textsuperscript{37}.

The entire Chakma area consisting of 30 villages, there is only one Primary Health Centre (PHC) at Diyun circle, whereas, in other local areas PHC has been provided in almost all villages. The PHC of Diyun hardly able to cater to the needs of Chakmas as it has only one doctor, five nurses and eight beds. The patients often remain unattended and therefore people prefer to give their own treatment gained by way of experience. Instances of malarial deaths and other simple and serious diseases otherwise not fatal are numerous. Though it is claimed that the Chakmas are

\textsuperscript{34} Ibid.
\textsuperscript{35} Ibid.
\textsuperscript{36} Ibid.
\textsuperscript{37} Ibid.
provided medical facilities, in effect they are still denied treatment. Nurses also charge money to give injections. Some Chakma villages such as Dharmapur, circle Miao, Bijoypur, circle Bordumsa and Deban area (eight villages) in Changlang district are located far away from the nearest PHC. As there are rivers, which are sometimes flooded, people remain cut off sometime for a month from rest of the places. Therefore, even simple fever often proves fatal in these places.  

On 23 August 1995, a petition was filed before the Rajya Sabha Committee. After extensive visits to several places where the views of the local people, the Chakmas, experts, the State Government and the Central Government were taken into account, the Committee in its 105th Report of 14 August 1997 recommended the speedy granting of Indian citizenship to the Chakmas of Arunachal Pradesh. It was also recommended that,

"All the old applications of Chakmas for citizenship which have been either rejected or withheld by Deputy Commissioners or the State Government continue to block the forwarding of such applications to Central Government, the Central Government may consider to incorporate necessary provision in the Rules (or the Act if so required) whereby it could directly receive, consider and decide the application for citizenship in the case of Chakmas of Arunachal Pradesh."

The Committee further recommended that the Chakmas be also considered for granting them the status of Scheduled Tribe at the time of granting the citizenship. Although, the Government of India has submitted Action Taken Report, practically none of the recommendations of the Rajya Sabha Committee on Petitions have been implemented until today.

After the Arunachal Pradesh government threatened that all members of State Assembly would resign en masse if the Chakmas were not expelled by 31 December 1995, a committee headed by the Prime Minister of India was established. A Sub-Committee under the chairmanship of the Union Home Minister was formed to find an amicable solution to the Chakma problem. The Home Ministry officials headed by Mr. P. D. Shenoy, Additional Secretary and MHA representing the said Sub-Committee visited the Chakma and Hajong inhabited areas on 6 and 7 March 1999. The Sub-Committee in January 2000 submitted the report to the Union Home Minister, who is currently the chairman, containing specific recommendations to

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38 Ibid.
resolve the Chakma problem. Unfortunately, no decision has been taken for implementation of the recommendations of the Home Ministry team\textsuperscript{40}.

In addition to the Chakmas who migrated in 1964, there are about 5,000 Chakmas who are born after the migration of their parents in 1964. They are Indian citizens by birth under Section 3(1) (a) of the Indian Citizenship Act, 1955 which states that,

"Except as provided in sub-section (2), every person born in India, (a) on or after the 26th day of January, 1950 but before the commencement of the Citizenship (Amendment) Act, 1986" is a citizen by birth.\textsuperscript{41}

The CCRCAP filed a complaint with the NHRC on 12 December 1997 against the denial of franchise rights to the Chakmas. The NHRC issued notice to the State Government of Arunachal Pradesh and the Union Government of India on the issue. In their replies to the NHRC, both the Central Government and the State Government of Arunachal Pradesh recognized that,

"as per the provisions of the Citizenship Act 1955, every person born in India on or after 26th January 1950 and before 1st July 1987 are citizens of India by birth and therefore eligible for electoral rolls."\textsuperscript{42}

However, when the Chakmas who were born after their parents’ migration and are citizens under Section 3(1)(a) of Indian Citizenship Act, 1955, went to the Assistant Electoral Registration Officer of Diyun under Changlang District of Arunachal Pradesh, the officer refused to accept their Form 6 Application for inclusion of name in electoral rolls. The CCRCAP approached the Ministry of Home Affairs (MHA). The MHA informed it that the Election Commission had been requested to include all the Indian citizens into the electoral rolls. But the Election Commission took no action. Since no action has been taken to ensure that the Chakmas are enrolled in the voters’ list, the PUCL and the CCRCAP filed a writ petition (CPR No. 886 of 2000) before the Delhi High Court. In its judgment on 28 September 2000, the Delhi High Court ordered the registration of all eligible voters. This order, too, was flouted on various pretexts. Till date, not a single Chakma has

\textsuperscript{40} Rajya Sabha, committee on petition, hundred and fifth, report, (presented on the 14th august 1997), Rajya Sabha secretariat, New Delhi, august 1997, New Delhi: (O. Rajagopal), 14 august 1997 chairman, Committee on petition.

\textsuperscript{41} D.D. Basu (2004), The Introduction to the Constitution of India, See the articles related to the Citizenship rights, Pp. 54-58.

\textsuperscript{42} Ibid.
been included in the electoral rolls. During the revision of electoral roll 2001 around 2000 Chakmas filed claim applications enclosed therewith their proof of age, residence etc. All the claim applications were, however, rejected for not specifying house enumeration number and due to lack of polling station in the Chakma areas. It may be stated that the allotment of house enumeration number and setting up of polling station are tasks of EC and the Chakma applicants cannot be punished for omission on the part of the officials of the EC. The repeated representations to the EC failed to elicit any positive result.

One of the concerns of the Central Government that unfortunately prevailed over the need to uphold the rule of law by processing citizenship applications has been the perceived opposition to the grant of citizenship to the Chakmas of Arunachal Pradesh by the local tribal communities. The CCRCAP has consistently stated that it was nothing but a creation of the then State Government of Arunachal Pradesh to deny the Chakmas the right to citizenship. The Chakmas since their migration enjoyed excellent relationship with the neighboring communities. Even the Central Team that visited in 1982 to study the problems of the Chakmas had submitted in its report that,

"No reports have been received regarding involvement of these refugees in anti-national activities. The presence of these refugees in the area has not resulted so in any major law and order problem though some isolated instances of friction between the locals and these refugees have come to our notice. The grant of citizenship would introduce an element of responsible social behavior in these refugees."

Therefore, the plea of the State Government that opposition by local tribal people against grant of citizenship to the Chakmas is unfounded. In fact, many leaders of the local Shingpo and Thangsa community leaders including ex-Members of Legislative Assembly have written to the former Union Home Minister, Mr. Lal Krishna Advani on various occasions supporting the grant to citizenship rights of the Chakmas of Arunachal Pradesh.

The root cause of the suffering of the Chakmas of Arunachal Pradesh ranging from denial of educational facilities including withdrawal of all pre-primary Anganwadi centers with a view to keep the Chakmas illiterate is the denial of

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43 NHRC Vs State of Arunachal Pradesh & Anr (720/1995) and the present plight of the Chakmas of Arunachal Pradesh 16th December 2002 Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh.

44 Ibid.
citizenship rights in clear contempt of the Supreme Court order. While the CCRCAP admits that the NHRC and the MHA have applied the necessary pressure, the State Government often gets away by providing false information. Unless the NHRC takes measures to monitor the implementation of the recommendations by assigning a Special Rapporteur for the task, the Chakmas may be continuously denied all other rights. In order to bring an end to untold sufferings and denial of fundamental rights to the Chakmas for the last four decades and to uphold the majesty of the rule of law and respect for the highest court of the country and the NHRC

Sadly, every time there is a problem, a violent tactic is the only one used. Violence never produces a stable political goal. Finally, everyone gets hungry, tired and uprooted, at which time peace negotiations are started. When relative peace comes, adequate reforms to deal with the problems are not put into place, and the cycle repeats itself. Court orders have filled legislative gaps and in many cases provided a humanitarian solution to the refugee's problem. In India courts have allowed refugees intervening NGOs to file case before them, further they have interpreted provisions of the Indian Constitution, exiting law, and in the absence of seekers. Given below is a summary of the type of protection that Indian courts have provided to refugees. Indian courts have decided in a number of cases that the Constitutional protection of life and liberty must be provided to refugees.

The Supreme Court of India and the National Human Rights Commission versus State of Arunachal Pradesh case restrained forcible expulsion of Chakma Refugees from the state. The Supreme Court in its interim order on November 2, 1995 directed the State Government to ensure that the Chakmas situated in the territory are not ousted by any coercive action, and should be treated in accordance with law. The Court directed the state government to ensure that the life and personal liberty of each and every Chakma residing within the state shall be protected. Any attempt to forcibly evict them out the state by organized groups shall be repelled by using Para-military or police force and if additional forces are required then the state

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45 In the cases of Luis de Readt (1991) 3 SCC 554 and Khudirim (nos. 1994 Supp. (1) SCC 615, the Supreme held that Article 21 of the Constitution of India, which protects the life, and liberty of Indian citizens are extended to all, including aliens.


48 Supreme Court Civil WP No. 720/95: 1996 (1) Supreme, 295.
should take the necessary steps. The court also decided that the Chakmas shall not be evicted from their home except in accordance to the law; the quit notices and ultimatums given by other groups should be dealt with in accordance with the law; application for their Citizenship be forwarded and processed expeditiously; the pending decision on these application shall not be evicted\textsuperscript{49}.

In a number of cases in India, courts have protected the rights of refugees where there was substantial ground to believe that their life would be in danger. There are cases where the courts have ordered the life of refugees who are in danger be safeguarded and have allowed them to be granted status by UNHCR. In Zothansangpui versus State of Manipur (C.R No.981 of 1989) The Gauhati Imphal Bench, Guahati High Court ruled that refugees have the rights not to be deported if their life was in danger\textsuperscript{50}.

The case of U.Myat Kyaw versus State of Manipur has contributed substantially to India’s refugee policy\textsuperscript{51}. It involved eight Burmese, aged 12 to 58 years, who were detain for illegal entry at Manipur central jail, Imphal. These persons had participated in the democratic movement, voluntarily to the Indian authorities and taken into custody. Cases were registered under section 14 of the Foreigners Act for illegal entry into India. They petitioned for their release to enable themselves to seek refugee status before the UNHCR in New Delhi. The Gauhati High Court, under Article 21 ruled that asylum seekers who enter India (even if illegally) should be permitted to approach the Office of the United Nation\textsuperscript{52}.

The Court has upheld a refugee’s right to leave the country, in Nuang Maung Mye Nyant versus Government of India and Shar Aung versus Government of India of 1998, the courts ruled that even those refugees against whom cases were pending for illegal entry should be provided exit permits to enable them to leave the country for third country resettlement\textsuperscript{53}. This included conformity with International Conventions and Treaties, although not enforceable, the government was obliged to respect them. But the power of the government to expel a foreigner is still absolute.


\textsuperscript{50} Ibid.

\textsuperscript{51} Supreme Court Civil Rule No. 516 of 1991.


\textsuperscript{53} B.S. Chimni (1999), From Resettlement to Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems, UNHCR.
Article 21 guarantees the right to life for non-citizens. International Covenants and Treaties which effectuate the fundamental rights can be enforced. The principal of non-refoulement is encompassed in articles so long as it is not prejudicial to national security.

For many years India has not applied its mind to the world of refugees, their problems and discontents. It is the time now that India recognizes the constitutional values in the shape of a national refugee policy. The refugee problem has assumed an unprecedented dimension in the international sphere. Some scholars have viewed the present century as the century of uprooted people. The total number of refugees is believed to be twenty million. Refugees policy is quite complex involving many countries and so many issues. The Constitution of Indian contains just a few provisions on the status of international law in India. Leading among them is Article 51 (c), which states that,

"the State (India) shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another."

As for the minimum standard of treatment of refugees, India has undertaken an obligation by ratifying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to accord an equal treatment to all non-citizens with its citizens wherever possible. India is presently a member of the Executive Committee of the UNHCR and it entails the responsibility to abide by international standards on the treatment of refugees.

As early as 1953 the then Prime Minister of India, Mr Jawaharlal Nehru informed Parliament that India would abide by international standards governing asylum by adopting similar, non-binding domestic policies. Since then, the Indian Government has consistently affirmed the right of the state to grant asylum on humanitarian grounds. Based on this policy, India has granted asylum and refugee status to Tibetans and Tamils from Sri Lanka. The 1971 refugees from Bangladesh were officially called evacuees, but were treated as refugees requiring temporary asylum. No other community or group has been officially recognized as refugees. India claims to observe the principles of non-refoulement and thus never to return or

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54 Ibid.
55 See Constitution of India for detail information on the article related to the protection of individuals.
expel any refugee whose life and liberty were under threat in his/her country of origin or residence. Refuting this claim, Indian human rights groups do point to specific cases of refoulement, where clear evidence and refugee testimony prove that forcible repatriation has taken place. A closer examination of India's refugee policy reveals a number of intricate problems.

The plight of refugees in India generally depends upon the extent of protection they receive from either the Indian Government or the UNHCR. Below is a brief definition of the three primary categories followed by a description of the living conditions faced by each refugee category like

a. Refugees who receive full protection according to standards set by the Government of India;

b. Refugees whose presence in Indian Territory is acknowledged only by UNHCR and are protected under the principle of non-refoulement;

c. Refugees who have entered India and have assimilated into their communities. Their presence is not acknowledged by either the Indian Government or UNHCR.

India plays host to more than 300,000 refugees from neighbouring countries, the country has a completely ad hoc system of refugee determination, deportation and protection. Within the refugee regime the move away from States and adherence to States are two sides of the same coin. First, the new refugee regime reflects the trend away from the State and strict notions of sovereignty. At the same time, however, the new regime exposes the staying power of the statist paradigm: The role of States has indeed been altered, but States retain their role as important and often essential actors. States still hold the key to asylum and to permanent, durable solutions and, it follows; States are most often essential actors in efforts to protect the human rights of the uprooted. India has a completely ad hoc system of refugee determination, deportation and selective protection. So, people fleeing persecution and ending up in India are left at the mercy of the government's ad hoc policies and the limited operations of the UNHCR. All this, despite a Supreme Court judgment (NHRC vs State of Arunachal Pradesh) that categorically states that all 'refugees'
within Indian territory are guaranteed the right to life and personal liberty enshrined under Article 21 of the Constitution\textsuperscript{57}.

The crisis of refugee protection in India in general and Arunachal Pradesh in particular is often a failure of the international as well as national regime. The processes by which regime norms and practices are shaped locally, rather than interstate bargaining or summit-level negotiation, fundamentally determine regime effectiveness, and, importantly, condition regime change over time. The adaptation of international norms and policies regarding refugees is determined by various factors, including the relative indeterminacy of international guidelines and policies; the degree of delegation to third actors, as well as their availability; the nature of the host-state and the character.

From an anthropological perspective on the fact that, by taking the category of refugees as both the primary focus and the boundary for its research, refugee Studies is underpinned by definitions that originate from policy. It contends that the definitions of categories of people like Internally Displaced Peoples, Migrants and Refugees arising from the refugee and humanitarian regime are not necessarily meaningful in the academic field from an analytical point of view. Empirical research has demonstrated that in practice it is not possible to apply these definitions to separate discrete classes of migrants. They are policy related labels, designed to meet the needs of policy rather than of scientific enquiry. Moreover, as products of a specific system, they bear assumptions which reflect the principles underlying the system itself. For these reasons refugee studies need to maintain analytical independence from the refugee regime. This would require inter-alia disentangling the analysis from policy categories and including policy as one of the objects of study\textsuperscript{58}.

These factors in turn shape the capacity of increasingly heterogeneous inter-organizational networks and decision-making procedures to define and institutionalize practices within particular refugee situations. The resulting local regime configurations literally shape the ground rules of the international regime by establishing the non-contractual basis of contract such as degrees of trust for


international or summit-level negotiations regarding refugee policies. In this sense a feedback loop exists between local configurations and the global regime that goes beyond images of learning to include both positive and negative features of socialization. Empirically the study draws on specific fieldwork in long-standing refugee situations in Arunachal Pradesh, using the methodological tools of both quantitative and qualitative network analysis\(^{59}\).

**Refugee Policy in India Motivated by Religion**

Afghan refugees mainly of communities like Hindus, Sikhs and Muslims fled to India and it is almost twenty years. India is home to 8,400 Afghan refugees of whom 7,560 are Hindu and Sikhs refugees. According to the United Nations High Commissioner for Refugees about 4,000 of the Hindu and Sikh refugees have shown interest in applying for Indian citizenship and as on date more than 510 are now Indian nationals\(^{60}\). Only Hindus and Sikhs applications have been granted and given citizenship but none of the Muslim who migrated at the same time has been entertained by the India’s refugee regime.

The AAPSU has filed a Public Interest Litigation (PIL) in Gauhati High Court terming the Election Commission’s guidelines to include the names of Chakma refugees in the electoral roll for the Lok Sabha elections as illegal. They also demanded re-election in the constituencies dominated by Chakmas. The PIL stated that the Election Commission has tried to include not only the names of those refugees who had entered India in 1964-65 and their descendants, but also those who have come thereafter to the state. The students’ union has also questioned the Dorjee Khandu-led state government’s silence over the matter and accused it of clandestinely trying to help the Chakmas\(^{61}\).

The apex students’ organisation of Arunachal Pradesh stated in the PIL that anyone who is found to have entered the state without valid inner line permit cannot be allowed to be a voter in any election. The people of Arunachal Pradesh have long been protesting against the attempt to include the names of Chakma refugees from Bangladesh who migrated to India in 1964-65 in the electoral rolls. The Chakmas, on their part, approached the Supreme Court, which directed that no action shall be

\(^{59}\) Ibid.

\(^{60}\) The Hindu, 20 June, 2009.

\(^{61}\) The Telegraph, June 11, 2009.
taken against the community and that both the Union and the State Governments shall ensure that the lives and property of Chakmas remain safe. The PIL challenged the legality and validity of various guidelines issued by the Election Commission in respect of the revision of electoral rolls in the state\(^{62}\). The organisation also stated that though the state governments in the past had taken a strong stand against inclusion of names of Chakmas in the electoral roll, it was surprising that the present government has done nothing. The attitude of the state government is causing a lot of resentment among the indigenous people of the state\(^{63}\).

Ideas of ‘the refugee’ in India, long integrated with concepts of the nation through the partition experience, have significantly contributed to India’s lack of formal refugee legislation. The present article argues that the resultant vague conceptual basis or ‘script’ for refugee treatment has allowed India to deal relatively successfully with refugee situations of great variation and huge scale in the past when refugees were largely integrated into an existing narrative of ‘minorities’, a vital component of India’s national identity and political landscape. However, recent pressures from within and from the international community to standardise refugee treatment and introduce a formal refugee law have combined with political events of recent years to disadvantage some refugee groups. This article seeks to understand the changes in refugee treatment in India today and focuses on Tibetans, who appear to suffer increasingly from association with a changing narrative that links refugees, penetration by outsiders, and threats to national security, arising partly as a result of the activities of refugee Tamils from Sri Lanka, and non-refugee incomers from Pakistan\(^{64}\).

**Contradiction on Refugee Laws in India**

India’s diversity, stability and relatively well established rule of law have made it a natural destination for people fleeing persecution and instability in their own countries. Within the South Asian region, India stands out as an exception of tolerant, democratic and secular government in a neighborhood of unstable and volatile states. India has historically faced numerous influxes over many millennia.


\(^{63}\) Ibid.

and the ability of these peoples to integrate into a multi-ethnic society and contribute peacefully to local cultures and economies has reinforced the perception of India being a country traditionally hospitable to refugees. India shares seven land borders and one sea border with countries in varied states of strife and war; and, over the years, has hosted large refugee populations from neighboring countries. There are no authoritative statistics on the number of people who have fled persecution or violence in their countries of origin to seek safety in India. However, because of India’s porous borders and accommodative policies, it was estimated that India hosted approximately 3,30,000 such people in 2004. According to the Convention Relating to the Status of Refugees, 1951, a refugee is a person who flees across an international border because of a well-founded fear of being persecuted in his country of origin on account of race, religion, nationality, membership of a particular social group, or political opinion. Therefore, refugees and asylum seekers are externally displaced people.

The refugee problem was acknowledged as having international dimensions and requiring global cooperation as far back as 1921-22 in the aftermath of the First World War, the break up of the Austro Hungarian empire and the Russian revolution. However, real movement to protect refugees began only with the 1948 Universal Declaration of Human Rights which proclaimed basic rights for all human beings irrespective of their nationality or citizenship. This declaration was an important first step since refugees face unique hardships and are particularly vulnerable in foreign countries. It is therefore incumbent upon the international community to protect their rights both in countries of origin and asylum.

None of the South Asian countries are party to the 1951 Convention Relating to the Status of Refugees which currently is ratified by 134 nations. This may reflect the unwillingness of South Asian governments to submit to international scrutiny. Though India is not a party to the Refugee Convention, the general principle prohibiting forced repatriation called non-refoulement has risen to the level of customary law, such that they bind even non-signatories.

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66 See website, http://www.legalserviceindia.com, article by Isha Bothra on refugees in India.
Since the matter (entry and regulation of aliens) falls under the Union List, the Central Government is empowered to deal with refugees. Traditionally, the Union Cabinet has made reactive decisions with each particular refugee influx, often taking action only when the particular refugee influx went beyond the control of the Border Security Force, and the matter became political. India thus lacks a cohesive national policy for handling refugee inflows. The lack of a national Indian policy limits the ability of the State governments and Border Security Force to deal with refugees instantly, resulting in mass rejections at the frontier while policy directions are awaited or non-recognition of refugees sneaking into Indian Territory.

Although India is not a party to the 1951 UN Convention on Refugees, asylum-seekers who are not offered direct protection by the Indian government can get refugee status from the UNHCR in a de facto system of refugee protection in India. But in the recent past, refugees under UNHCR protection have begun losing faith in a system plagued by insensitivity and inefficiency. India, along with all the other South Asian states, is not a party to the United Nations Convention Relating to the Status of Refugees 1951 (1951 Convention) and the Protocol Relating to the Status of Refugees 1967 (1967 Protocol). India maintains that the 1951 Convention is Euro-centric and cannot be effectively implemented in the South Asian region. India also believes that it has always been generous towards refugees, even without being party to the 1951 Convention. However, critics argue that India is hesitant to accept the financial responsibility that ensues from undertaking the obligations of the 1951 Convention. The World Refugee Survey 2007, which rates refugee protection in countries on four categories of rights -- physical protection, freedom from illegal detention, freedom of movement and the right to earn a livelihood -- has rated India ‘D’ in three categories, signifying ‘a level of treatment marginally above the rest’ and ‘C’ with regard to freedom from illegal detention, signifying that refugees have reasonable access to the Indian judiciary.

After the Second World War and the shared European experience of massive displacement, the Refugee Convention was adopted with restricted geographical and

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68 Under the Constitution of India, powers and functions are divided into Union List (Federal Government) and State List (Provincial Government or State Government).
70 See website, http://infochangeindia.org, article by Ipshita Sengupta on UNHCR's role in refugee protection in India.
temporal conditions to apply to post-War Europe. In 1967, in an effort to give the Convention universal application, a Protocol relating to the Status of Refugees [1967 Protocol] that removed the restrictions of the Convention was added. Together, these two key legal documents provide the basic framework for refugee protection across the world. As of February 2006, 146 countries were States Parties to either the Convention or its Protocol or both. However, India has repeatedly declined to join either the Refugee Convention or its 1967 Protocol. In addition, India has resisted demands for a national legislation to govern the protection of refugee.

The judicial basis of the international obligations to protect refugees, namely, non-refoulement including non-rejection at the frontier, non-return, non-expulsion or non-extradition and the minimum standard of treatment are traced in international conventions and customary law. The only treaty regime having near universal effect pertaining to refugees is the 1951 Refugee Convention and its 1967 Protocol on the Status of Refugees which is the magna carta of refugee law. Since India has not yet ratified or acceded to this regime its legal obligation to protect refugees is traced mainly in customary international law. An examination of this aspect raises the basic question of relation and effect of international law with the Indian municipal law.

The Constitution of Indian contains just a few provisions on the status of international law in India. Leading among them is Article 51 (c), which states that, 

"the State [India] shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another".

Leaving a little confusion, this provision differentiates between international law and treaty obligations. It is, however, interpreted and understood that 'international law' represents international customary law and 'treaty obligations' represent international conventional law. Otherwise the Article is lucid and directs India to foster respect for its international obligations arising under international law for its economic and social progress. Article 51 (c) is placed under the Directive Principles of State Policy in Part IV of the Indian Constitution, which means it is not an enforceable provision. Since the principle laid down in Article 51 is not enforceable and India has merely to endeavour to foster respect for international law, this Article would mean prima facie that international law is not incorporated into

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71 See website, http://www.legalserviceindia.com, article by Isha Bothra on refugees in India.
72 See for detail, Constitution of Indian Article 51C.
the Indian municipal law which is binding and enforceable. However, when Article 51(c) is read in the light of other Articles and judicial opinion and foreign policy statements, it suggests otherwise.

Refugee Categories
The plight of refugees in India generally depends upon the extent of protection they receive from either the Indian Government or the UNHCR. Below is a brief definition of the three primary categories followed by a description of the living conditions faced by each refugee category:

I. Refugees who receive full protection according to standards set by the Government of India;

II. Refugees whose presence in Indian Territory is acknowledged only by UNHCR and are protected under the principle of non-refoulement;

III. Refugees who have entered India and have assimilated into their communities. Their presence is not acknowledged by either the Indian Government or UNHCR.

Category (I) Refugees
The Tamils
Tamil refugees have fled to India in several waves. When the conflict in Sri Lanka between the Sinhalese majority community and the Tamil minority took a violent turn in 1983, the Tamils fled to India on their tiny boats from the northern peninsula of Sri Lanka. During the first wave, 134,053 Tamil refugees were reported to have come to India in between 1983 to 1987. Following the 1987 Accord with Sri Lanka and the Indian Government, which sought to create a power sharing agreement between the two warring communities, the Indian Government repatriated 25,885 Tamil refugees from 1987-1989. India had to stop the repatriation program in 1989 when its shores were flooded again with another refugee wave fleeing Sri Lankan violence.


Sri Lankan Tamil Refugees in Tamilnadu Camps, Voluntary Repatriation or Subtle Refoulement, South Asia Human Rights Documentation Centre, New Delhi, January 1996.

Ibid.

South Asian Human Rights Documentation Centre (1997), Refugee Protection in India, Report, October, New Delhi.
During this second phase of Tamil flight in search of a safe haven (1989-1991), 122,037 Tamil refugees reportedly reached India but 113,298 of them are held in 298 camps along the coastal Indian states of Tamil Nadu and Orissa. Once again, the Indian Government repatriated a large number of Tamil refugees with the cooperation of UNHCR. About 31,000 refugees have been returned to Sri Lanka in between 1992-1995. As a result of these repatriations, roughly half of the original 110,000 refugees remain in Tamil Nadu, India. There have been no new returns to Sri Lanka from Tamil Nadu since the breakdown of peace talks and resumption of hostilities between the LTTE in 1996.

Today, those remaining Tamils, suffer from poor living conditions in India. Camp conditions vary from district to district, depending on the sympathies of local officials. The camps closest to Madras are, for the most part, well-maintained, while in Pooluvapatti camp near Coimbatore, 4700 refugees use eight latrines. Accumulated waste, cramped quarters, lack of electricity and poor sanitation all contribute to the miserable state of the camps.

Additionally, the Indian Government restricts the movement of the Tamils in Tamil Nadu. Members of the police and notorious 'Q' branch of the state intelligence agency are stationed at the gates of many of the camps, including the camp in Coimbatore, Tamil Nadu and carefully monitor their activities. One government official claimed that the police protect the refugees, but the Tamils themselves believe that the guards are more concerned with controlling their movement. Camp authorities employ indirect measures to restrain the Tamils. Refugees in the Pooluvapatti, Tamil Nadu camp were told by the village administrative official that they could leave the camp to visit other areas if they wanted to, but that their daily allowances would be cut if they did. Obtaining permission to leave the camp often depends on the vagaries of the camp authorities. Moreover travel restrictions make visits to the offices of the UNHCR or the Sri Lankan Deputy High Commissioner (DHC) in Madras virtually impossible for refugees confined to outlying camps.

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78 Ibid.
79 Ibid.
80 Ibid.
81 The "Q" branch is the Special Branch of the Tamil Nadu Police. It is known for illegal arrests, unacknowledged detention, torture, harassment and intimidation of Tamil refugees. It is also used against political opponents and trade union activists.
82 Sri Lankan Tamil Refugees in Tamil Nadu Camps - Voluntary Repatriation or Subtle Refoulement, South Asia Human Rights Documentation Centre, New Delhi, January 1996.
In addition to the regular camps, the State Government has converted jails into so-called Special Camps to hold Tamils with suspected terrorist links. Since 1990, hundreds of refugees have been detained in these facilities. The South Asian Human Rights Documentation Centre (SAHRDC) and the NHRC of India have compiled numerous reports of non-militant refugees, particularly young Tamil males, being arrested and detained under the Foreigners Act. Many of these individuals have been languishing in detention facilities for more than three years and still do not know why they were arrested. When pressed, the government justifies these Special Camps as necessary measures to deal with alleged LTTE terrorists.

On the Sri Lanka repatriation, UNHCR states that, "Between 1992 and 1 January 1996, 54,059 persons returned from India and benefited from UNHCR's Special Program in Sri Lanka. Of this number, 7464 persons were staying in government centres as of 30 April 1996, while the remainder had returned to their home areas. A total of 10,013 persons returned in the first quarter of 1995. The UNHCR statistics on the voluntary repatriation of refugees from India are not supported by evidence. The UNHCR has allegedly connived with the Government of India in hastily repatriating the Sri Lankan Tamil refugees. Many of these refugees who could not reach their native places but live in the refugee camps back in Sri Lanka are fleeing back to India."

By October 1996, 2000 reached the Indian State of Tamilnadu to seek refuge again. As a part of its protection mandate, UNHCR is expected to share the information on the conflict situation in the country of origin but failed to do so for the last five years to the Tamil refugees. Rather, it was informing the refugees that "certain liberated zones" were available for the refugees to return to. Refugees shifted to the Pesalai camps in Sri Lanka from India in 1994 could not go to their places and languished in UNHCR transit camps till 1996 when conflict broke out. Many of them returned to India consequently.

83 South Asian Human Rights Documentation Centre (1997), Refugee Protection in India, Report, October, New Delhi.
84 Sri Lankan Tamil Refugees in India: Accords, People and the UNHCR, presented by the Jesuit Refugee Service, South Asia in a seminar on Refugees, migrants and displaced peoples in South Asia, organized by South Asia Forum for Human Rights in Katmandu, Nepal, October 1996.
85 Ibid.
These are some 56,000 Sri Lankan Tamil refugees accommodated in Indian camps and another 45,000 reportedly living outside the camps. A court order forced the government to halt the repatriation program and gave the UNHCR the right to interview the returnees\textsuperscript{86}. However, the UNHCR is not allowed access to the camps and cannot speak to the refugees until they have already consented to leave India. It is clear that the token presence of UNHCR in Madras only provides respectability to what is essentially a program of involuntary repatriation.

The fact that the Indian Government has not acceded to the international Refugee Convention has adverse effects upon the Tamil refugees. The Convention established basic rights such as food, water and shelter that the host country should provide its refugees. Since India is not a signatory, Tamil refugees are subject to the whims of the political party in power. The State Government in Tamilnadu, though originally sympathetic to the refugee’s cause, consistently failed to maintain the refugee camps in accordance with well-recognized international standards\textsuperscript{87}. Thus, the policies of India and the State of Tamilnadu directly contravene conventional human rights laws as well as customary international law regarding non-refoulement. The SAHRDC recommends that if the Indian Government is serious about maintaining the camps it should allow NGOs to resume their former duties. Furthermore, UNHCR, accustomed to treading lightly in India where it is not an officially recognized UN agency, should arm it with the international conventions to which it owes its creation and take a more pro-active role in the protection of the Sri Lankan Tamil refugees\textsuperscript{88}.

\textit{The Jumma}

The Jumma peoples from the Chittagong Hill Tracts of Bangladesh are another example of category I refugees. The Buddhist Jumma have been fleeing religious harassment from the Muslim Government of Bangladesh. In a country with scarce arable land, the Bangladesh Government has been trying to settle the fertile Chittagong Hill Tracts. Since 1978, the Indian Government has provided temporary

\textsuperscript{86} SAHRDC News, New Delhi, July-August 1995, Volume 1, Number 2.
\textsuperscript{88} Sri Lankan Tamil Refugees in Tamil Nadu Camps - Voluntary Repatriation or Subtle Refoulement, South Asia Human Rights Documentation Centre, New Delhi, January 1996.
shelter for these people in the neighbouring Indian states of Mizoram and Tripura\textsuperscript{89}. Following a series of massacres by Bangladesh security forces in 1986, nearly 70,000 Jumma refugees sought shelter in six camps established by the Indian Government in Tripura\textsuperscript{90}. Their presence in India has been a source of embarrassment for the Bangladesh Government.

As part of its effort to improve relations with Bangladesh in 1992, the Indian Government began to pressurize the Jumma to return to Chittagong Hill Tracts, thus seemingly shifting the status of these refugees from Category I to Category II. The approximation of geo-political and economic relationship caused the change of attitude towards the refugees. As part of its effort to improve relations with its Muslim neighbour, Bangladesh, the Indian Government began to pressure the Jumma to return to the Chittagong Hill Tracts. India has been encouraging “voluntary” repatriation by making living conditions in the Tripura camps untenable. The Government of India has denied food to the Jumma as a means of forcing them to return to their homeland. Ration supplies to the Jumma refugees sheltered in Tripura State have been suspended since mid 1992\textsuperscript{91}.

SAHRDC most recently received information about the discontinued supply of rice and salt from 21 November 1995 in a fresh attempt to force the refugees out\textsuperscript{92}. Food provisions are given in 10 days cycles but the quantity given normally suffices for only eight days. Often, even those meagre rations are delayed. A delay of two days means that indigent tribal refugee families must go hungry. Still, delays of over five days in the supply of rations are not uncommon. The Humanity Protection Forum, a Tripura based civil liberties organization reported one week later that hunger had engulfed the Jumma refugee camps and many refugees were facing starvation. Medical facilities and other basic amenities are non-existent\textsuperscript{93}.

The State Government of Tripura, in concert with the Central Government of India, also denies educational facilities to Jumma refugee students. This is an element of India’s non-violent pressure policy, designed to encourage refugees who want their children to be educated, to return to the Chittagong Hill Tracts as their

\textsuperscript{89} Ibid.
\textsuperscript{90} No Secure Refuge, South Asia Human Rights Documentation Centre, New Delhi, 14 February 1994.
\textsuperscript{91} The Hindustan Times, New Delhi, 28 November 1995.
\textsuperscript{92} Private communication, from the CHTs Jumma Refugees Welfare Association to the SAHRDC in November 1995.
\textsuperscript{93} Ibid.
own risk. The SAHRDC conducted a study on camp conditions in 1993 and 1994 which revealed that the Jumma refugees have been systematically denied access to education.\textsuperscript{94}

In 1994, about 5,000 Jumma refugees returned 'under duress' to the CHT after bilateral discussions between India and Bangladesh. Though the Government of Bangladesh promised to return them to their lands, many are still dislocated. Following the return of this first refugee group in February 1994, human rights groups in Dhaka, Bangladesh conducted a survey indicating that 37 percent of the 42 families interviewed had not reclaimed their original lands.\textsuperscript{95} One month later, the Jumma Refugee Welfare Association, after visiting the Chittagong Hill Tracts, reported that more than 103 families had still not received the land they originally left.\textsuperscript{96}

The Returnee Jumma Refugees' 16 Points Implementation Committee states that out of the 1027 families consisting of 5186 individual refugees, 25 returnee Jummas refugees who had earlier been employed in various Government jobs were not reinstated in their previous jobs, 134 returnee Jumma refugee families could not settle in their own lands due to the misappropriation of their lands by the security forces and Bengali illegal settlers and 79 families were not given back their lands as it was under forcible occupation of the illegal settlers from the plains. The Bangladesh Government also registered false cases against 23 returnee refugees.\textsuperscript{97} SAHRDC filed a complaint with the Indian National Human Rights Commission about the involuntary repatriation of the Jumma refugees in 1994. The NHRC asked the MHA, MEA and the Tripura Government to reply to SAHRDC's allegations of forced repatriation.\textsuperscript{98}

More than two years after filing the complaint, the NHRC sent an investigation team headed by A Chakraborty, Senior Superintendent of Police to the

\textsuperscript{94} Ibid.
\textsuperscript{96} Report on the visit of Jumma refugee team to the Chittagong Hill Tracts, Bangladesh on 14 & 15 March 1995", Takumbari, Tripura, India, 4 April 1995.
\textsuperscript{97} Memorandum of Returnee Jumma Refugees 16 Points Implementation Committee, Khagrachari, Bangladesh, 15 October 1996.
\textsuperscript{98} South Asian Human Rights Documentation Centre (1997), Refugee Protection in India, Report, October, New Delhi.
Jumma refugee camps from 24-28 May 1996 to investigate the allegations of the SAHRDC. The team reported about the shortage of water, inadequacy of accommodation and woefully inadequate medical facilities. The report also pointed out that the scale of rations was meagre and its supply was often suspended. During the visit, the team found that many of the tube wells were out of order and that the inmates of the camps were bringing water from far-off places. The camps were also unclean and bore signs of neglect. The report noted that refugee children were suffering from malnutrition, water-borne diseases and malaria, while there was no visible effort to improve their living conditions. The investigation team attributed the problems faced by the refugees, to the callousness and hostility of the officials towards the refugees, accumulated over the years, as they are not keen to go back.

Although the complaint of SAHRDC relating to the involuntary repatriation of the Jumma refugees in 1994 is still under the consideration of NHRC, the Government of India decided to repatriate 6,172 Jumma refugees without consulting the NHRC. The SAHRDC in a complaint on 7 March 1997 drew the attention of the NHRC about the undue duress being brought to bear upon the refugees. The NHRC failed to take any positive action to ensure voluntary repatriation exposing once again its ineffectiveness on human rights issues having geo-political dimensions.

**Category (II) Refugees**

In addition to the refugees under the care of the Government of India, there are about 20,800 Category II refugees comprised of Afghan, Iranian, Somali, Sudanese and Burmese refugees as of 1 January 1996. This includes 19,900 Afghan refugees, 200 Iranian refugees, 300 Somali refugees, 300 Burmese refugees and 100 Sudanese refugees. Their presence in India is acknowledged and protected under the principle of non-refoulement by the United Nations High Commissioner for Refugees. However, the condition of these refugees who receive protection and subsistence allowance from the UNHCR is no better than that of Category I refugees receiving protection from the Government of India.
There have been allegations that the UNHCR in Delhi has been arbitrary in its cancellation of refugee status and allowances for certain individuals. After receiving numerous complaints to this effect, SAHRDC conducted a study of the conditions of refugees protected by the UNHCR in Delhi. The report about the Status of Refugees under the Protection of the UNHCR in New Delhi, released on 1 May 1995, examined services offered by the UNHCR to refugees in Delhi; the relevance of services available; the accessibility of such services; the UNHCR’s services with regard to their attention to refugee rights and human rights and problems faced by refugees in Delhi.

SAHRDC found that UNHCR’s New Delhi office has become a fortress. The services offered by UNHCR were inadequate. The report stated that communication between the refugees and the UNHCR has reached an all time low. SAHRDC has conveyed its concerns over this deterioration of relations to UNHCR officials in New Delhi on more than one occasion. The refugees view the UNHCR officials with suspicion, and do not believe that they have refugee interests at heart. UNHCR officials claim that the global policies of its organization have led to a virtual freeze on the refugee subsistence allowance in India. This has exacerbated resentment and tension in the refugee community. SAHRDC feels that there is an urgent need for a more positive financial input from the UNHCR headquarters in Geneva.

SAHRDC made recommendations to improve the conditions of the refugees and the report was forwarded to both the New Delhi Office of UNHCR and its headquarters in Geneva. SAHRDC has not received any comments as yet. SAHRDC also has good reasons to believe that the situation has not improved. Meanwhile, in a callous attempt at reduction of the case load, UNHCR arbitrarily terminated the subsistence allowance of over 2000 refugees. Destitution has allegedly led to two suicides in the refugee community. SAHRDC also has specific cases of human rights abuses on the asylum seekers from arbitrariness in determination of refugee status and suspension of subsistence allowance to beating by UNHCR security guards of asylum seekers. Though the UNHCR is only as effective as the government permits, these actions indicate a general disregard for the plight of the refugees.

104 The Status of Refugees under the Protection of UNHCR in New Delhi, SAHRDC/0131/1/95 of 1 May 1995, New Delhi.
105 South Asian Human Rights Documentation Centre (1997), Refugee Protection in India, Report, October, New Delhi.
106 Ibid.
**Category (III) Refugees**

A large number of ethnic Chin and other tribal refugees have escaped repression from the Burmese military and entered the Indian state of Mizoram. The presence of Chin refugees from the Chin State of Burma, Nagas from Burma, Rakhain refugees from Arakan State in Burma, and ethnic Nepalese of Bhutanese nationality is not acknowledged by the Government of India. The largest among these refugee groups is the Chins, numbering about 40,000. While the Burmese Nagas have sought refuge in the Indian State of Nagaland, the Chins and Rakhains have sought refuge in Indian State of Mizoram\(^\text{107}\).

Though they have generally assimilated into Indian society, their living standards are still poor. They can be described as Category III refugees since neither the Indian Government nor UNHCR recognize their presence. Moreover, the Chin does not receive state assistance or international assistance because of their ambiguous status. They have been left unto themselves in a foreign land where they have no means for survival\(^\text{108}\).

The Mizoram State Government has forcibly repatriated many Chin refugees since 1994. While it was not reported in the press, a senior official of the Mizoram State Government confirmed to a SAHRDC representative that a large number of Chin refugees indeed had been forcibly returned to Burma by the State Government in 1994\(^\text{109}\). The practice of the Indian Government has been to deal with refugees in three main ways:

(a) Refugees in mass influx situations are received in camps and accorded temporary protection by the Indian Government including, sometimes, a certain measure of socio-economic protection.

(b) Asylum seekers from South Asian countries, or any other country with which the government has a sensitive relationship, apply to the government for political asylum which is usually granted without an extensive refugee status determination subject, of course, to political exigencies.

(c) Citizens of other countries apply to the Office of the UNHCR for individual refugee status determination in accordance with the terms of the UNHCR Statute and the Refugee Convention.

\(^{107}\) SAHRDC News, New Delhi, Jul-Aug 1995, Volume 1, Number 2.

\(^{108}\) Ibid.

\(^{109}\) This was stated by the Chief Secretary of Mizoram State Government in a hearing on the harassment of the Chakmas at the National Human Rights Commission on 8 November 1996.
The ambivalence of India's refugee policy is sharply brought out in relation to its treatment of the UNHCR. While no formal arrangement exists between the Indian government and the UNHCR, India continues to sit on the UNHCR's Executive Committee in Geneva. Furthermore, India has not signed or ratified the Refugee Convention. This creates a paradoxical and rather baffling situation regarding the UNHCR where India sits on its Executive Committee and allows the UNHCR to operate on its territory, but refuses to sign the legal instrument that brought the organization into existence\textsuperscript{110}.

Given the legal vacuum with regard to refugees, the process of addressing large-scale refugee inflows over the years has been \textit{ad hoc}, mainly through executive action. This process is far from appropriate and is often governed by ‘political instinct’ based on India’s diplomatic relations with the country of origin at the time\textsuperscript{111}.

The Foreigners Act 1946 is an outdated and draconian piece of legislation that defines a foreigner as any person who is not a citizen of India, and includes refugees. A similar provision was also introduced through an amendment to the Indian Citizenship Act in 2003 which fails to make any distinction between refugees and their special circumstances and other foreigners and illegal immigrants.

Under Section 3 (2) of the Act, the Indian government has wide discretionary powers to regulate the entry and movement of foreigners within India. The Foreigners Order 1948 also restricts the entry of foreigners into Indian Territory at given entry points without proper authorisation. Every foreigner should be in possession of a valid passport and visa at the time of entry into India, unless exempted. Most often, refugees are not in possession of these documents and thus are refused entry into India. Article 51 (c) of the Indian Constitution provides that,

\textit{“India shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another”} and Article 253 of the Constitution gives the Indian Parliament the “power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”\textsuperscript{112}

\textsuperscript{110} See website, http://www.legalserviceindia.com, article by Isha Bothra on refugees in India.
\textsuperscript{111} See website, at http://news.indlaw.com, Bhairav Acharya, the Law, Policy and Practice of Refugee Protection in India’ 2004.
\textsuperscript{112} P. Oberoi (2006), Exile and Belonging: Refugees and State Policy in South Asia, Oxford University Press, New Delhi, Pp. 77-103.
The Indian judiciary has also ruled in favour of harmonious construction of international and domestic law when it is consistent with fundamental rights (Visakha vs. State of Rajasthan, 1997 [6] [SCC] 241). The scope and ambit of Articles 14 and 21 of the Indian Constitution, through progressive judicial interpretation, extends to non-citizens including refugees. In the landmark judgment of the Chakma refugee case, the Supreme Court clearly held that the State was under a constitutional obligation to protect refugees (National Human Rights Commission vs. State of Arunachal Pradesh, AIR 1996 SC 1234)\(^\text{113}\). In Malvika Karlekar vs. Union of India (Criminal Writ Petition No 243 of 1988), the Supreme Court stayed the deportation of Burmese refugees in the Andaman and Nicobar Islands, as their applications for refugee status were pending with the UNHCR\(^\text{114}\).

A national model refugee law for granting statutory protection to refugees has long been considered in India but is yet to be implemented. The model law aims to harmonise norms and standards on refugee law, establish a procedure for granting refugee status and guarantee them their rights and fair treatment\(^\text{115}\).

In India, refugees are placed under three broad categories. Category I refugees receive full protection from the Indian government (for example, Tamil refugees from Sri Lanka); Category II refugees are those who are granted refugee status by the UNHCR and are protected under the principle of non-refoulement (for example, Burmese and Afghan refugees); and Category III refugees who are neither recognised by the Indian government nor the UNHCR but have entered India and assimilated into the local community (for example, Chin refugees from Burma living in the state of Mizoram)\(^\text{116}\).

In the absence of a concrete domestic refugee policy in India, the refugee certificate of the UNHCR is of utmost importance. However, refugees complain that the UNHCR refugee determination process is arbitrary, complicated and full of delays. SAHRDC reports that refugees and their representative NGOs do not understand the UNHCR's criteria for refugee status determination and often complain of unfair treatment during the interview process. Language barriers


between refugees and UNHCR authorities serve as a severe constraint in effective communication, despite the presence of Burmese interpreters. Those whose applications are rejected are not given reasons for the same and yet they have the right to appeal the decision before the same authorities, rendering the appeals process practically meaningless. Delays in the refugee determination process, with interviews being rescheduled, cancelled or interview letters not reaching on time further jeopardise the refugees' conditions.

Given the fact that even recognised refugees do not have the legal right to work in India and are not issued a valid work permit, these vocational training courses are futile as they do not lead to self-reliance, as unrealistically envisaged by the UNHCR. Even those refugees who do complete the vocational training courses on offer have no guarantee of employment or a regular source of income. Lack of legal protection over identity and employment subject them to workplace and pay-related discrimination. They can seek employment in the informal job market and their employers can hire and fire them without too much difficulty. According to noted human rights activist Ravi Nair, many recognised refugees cannot avail of this scheme as they are unable to provide the necessary documents such as a residential permit and address proof establishing their identity as refugees, to the UNHCR.

Most refugees living in India do not see 'local integration' as a viable solution to their problems. This is primarily attributable to their antagonistic relationship with the local community. As foreigners, they are often treated as outsiders by the local population and language barriers further deepen the divide between the two. Burmese refugees living in west Delhi face discrimination at the hands of their host community. Landlords evict refugee families on a regular basis on the pretext of late rent payments and other related problems. Given their poor financial position, refugees are forced to live in small, overcrowded apartments with no electricity, water, cooking or sanitation facilities. Although the YMCA conducts home visits to assess the real living conditions of refugees, the infrequent nature of these visits and insensitivity of staff conducting the visits hurt rather than help refugee interests. With respect to Afghan refugees, SAHRDC reported that

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inconsistent needs assessment surveys conducted by the YMCA, and lack of understanding of refugee problems, led to SA cut-offs\footnote{SAHRDC, 'Abandoned and Betrayed: Afghan Refugees Under UNCHR Protection in New Delhi', November 1999.}

The Socio-Legal Information Centre (SLIC) is authorised by the UNHCR to provide legal assistance to recognised refugees. Refugees are required to obtain a Residential Permit (RP) from the Foreigners Regional Registration Office (FRRO) of the MHA which has to be renewed on a bi-annual basis. Refugees are harassed by FRRO officials who refuse to issue or renew RPs or unnecessarily delay the process. Refugees also face the constant threat of illegal arrest, detention and deportation\footnote{B.S, Chimni (1994), The Legal Condition of Refugees in India, Journal of Refugee Studies, Vol. 7, No. 4, Pp. 394-398.}. According to the World Refugee Survey 2007, a number of Burmese nationals were deported from Mizoram and the UNHCR could not intervene due to lack of access. Some Bhutanese refugees were also deported to Nepal. Four refugees were detained in West Bengal on illegal immigration charges, of whom three were subsequently released. Similar cases of detention were also reported from New Delhi\footnote{See website, http://www.refugees.org, World Refugee Survey 2007, Country Report: India.}. Despite the high number of illegal arrests and detention of refugees, the SLIC has been of limited assistance. Despite its limitations, however, the UNHCR is often the last beacon of hope for many refugees who flee to India in search of a secure refuge. However, in the recent past, refugees under UNHCR protection have been losing faith in a system that is plagued by insensitivity and inefficiency. To redeem itself in the eyes of those it seeks to protect, the UNHCR must engage directly with refugee communities to better understand their problems rather than delegate all responsibility to its implementing partners. It must also strengthen the refugee status determination process and ensure effective monitoring and implementation of its health, education and legal services. At the same time, it must exert pressure on the Indian government to ratify the 1951 Convention and enact domestic legislation for refugee protection\footnote{See website, http://infochangeindia.org, article by Ipshita Sengupta on UNHCR's role in refugee protection in India.}.

In the absence of a specialized statutory framework, India relies on the Foreigners Act, 1946 to govern the entry, stay and exit of foreigners in India. However, the Foreigners Act is an archaic legislation that was enacted by a colonial government in response to the needs of the Second World War\footnote{ Indian government to ratify the 1951 Convention and enact domestic legislation for refugee protection.}.
Act defines as, thus covering all refugees within its ambit as well. Without a specialized governance regime for country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. The unrestricted power of the executive to remove foreigners was first confirmed by the Supreme Court in 1955. However, foreigners are entitled to some degree of constitutional protection while in India. These include the protection of the equality clause (Article 14) and the life, liberty and due process provisions (Article 21) of the Indian Constitution. While Article 14 guarantees equality before the law and the equal treatment of the law, classifications of persons into separate and distinct classes based on intelligible differentia with a nexus to the object of the classification are allowed. Article 21 protects any person from the deprivation of his life or personal liberty except according to procedure established by law. From a rather staid interpretation of this provision, the Supreme Court has radically reinterpreted Article 21 to include a substantive due process of law to be followed for any state action impinging on life and personal liberty. Foreigners enjoy the protection of Article 21 in two ways:

a. They are equally entitled to the right against deprivation of life or bodily integrity and dignity.

b. To a certain extent, the right against executive action sans procedural due process accrues to them.

India has received and accommodated mass influx refugees from Tibet and Sri Lanka in special camps with varying facilities for health, education and employment. Asylum seekers who enter India individually after a mass influx has taken place are granted asylum after a preliminary screening mechanism. This process continues in the case of Tibetans and Sri Lankans who enter India in small numbers and must fulfill certain criteria before they are registered by the Indian Government. In 2003, the UNHCR handled, inter alia, 10,283 refugees from Afghanistan and 940 refugees from Myanmar. The UNHCR also handles refugees

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122 The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains. The untrammeled right of the executive to remove foreigners from India has been upheld by the Supreme Court in a number of subsequent decisions.

from Iran, Somalia, Sudan and other countries. Indian courts, while generally strictly interpreting the stringent legislation on foreigners by refusing to interfere with the powers of the executive, have, on occasion, evolved a wider and more humane approach to protect the rights of refugees in India.

In 1996, the Supreme Court in National Human Rights Commission Versus State of Arunachal Pradesh intervened with a liberal interpretation of the law to suggest that refugees are a class apart from foreigners deserving of the protection of Article 21 of the Constitution. The need for a stable and secure guarantee of refugee protection in India led to the establishment of an Eminent Persons Group (EPG), chaired by former Chief Justice P. N. Bhagwati, to suggest a model law for refugee protection. However, the process of drafting appropriate refugee protection legislation began earlier at the Third South Asian Informal Regional Consultation on Refugee Migratory Movements, where a five-member working group was constituted to draft a model refugee protection law for the South Asian region. The India-specific model law was born out of this regional consultative process to provide statutory protection to refugees in the diverse South Asian region. Despite technical or specific misgivings about the model law, there has been unanimity about its necessity and widespread acceptance of its use as a framework for future protection.

With this conclusion one hopes to examine the question as to whether international refugee law is in conflict in any way with Indian legislations or, in the absence of such legislations, with Indian attitude and policy on refugees. India never had a clear policy as to whom to grant refugee status. When the question of adoption of a Convention and establishment of an agency for the international

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124 See, the UNHCR Statistical Yearbook India, 2003, UNHCR Geneva.

125 Indian Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so, 1996, 1 SSC, 742, we are a country governed by the Rule of Law.


127 The first draft of this proposed law was presented at the 1997 SAARC LAW Seminar in New Delhi, modified and then adopted by the Fourth Annual Meeting of the Regional Consultation at Dhaka in 1997.

128 See website, http://www.legalserviceindia.com, article by Isha Bothra on refugees in India.

protection of refugees came for discussion in the Third Committee of the UN General Assembly, in 1949, the Indian delegation expressed its views on these issues. India would have voted for the establishment of a High Commissioner's Office if it had been convinced that there was a great need to set up an elaborate international organization whose sole responsibility would be to give refugees legal protection. It was believed that at a time when its own refugees were dying of starvation, India felt obliged to vote against all the resolutions submitted, and hoped that its stand would not be misinterpreted. After the Convention was adopted India did not ratify or accede, and the reasons for not doing so are never disclosed except that it was stated in the Parliament by the former External Affairs Minister, B R Bhagat that since the government had come up with certain basic difficulties, the implications, if India ratifies these Conventions, were under study. In other words, India's initial stand on the treaty regime of the refugee law was declared to be a subject of review. Refuting this claim, Indian human rights groups do point to specific cases of refoulement, where clear evidence and refugee testimony prove that forcible repatriation has taken place. A closer examination of India's refugee policy reveals a number of intricate problems.

India no doubt reasonably have a good record of providing protection and hospitality to refugees, while pointing out the contradictions in the relation between these positive aspects and the manner in which state power has been exercised in post-colonial India. In examining the varied encounters between the state and refugees, the contributors demonstrate that India's story of providing care is simultaneously one of limiting care. It reveals the power of the state to decide whom to extend hospitality to and whom to deny it to. Thus, the issue of affording asylum becomes one of exercising power on the part of India's political establishment. Providing protection and humanitarian assistance to those seeking refuge, argue the contributors, should not be a question of dispensing kindness. What is required in place of a regime of charity is a regime of rights and policy.

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130 Summary Records of the third Committee meeting 259 (10 November 1949), GAOR, Sixth Session, p. 8143; and Mrs. Kripalani, Ibid., mtg 263 (15 November 1949), p.8144.
131 India, Lok Sabha Debates, vol. XVII, 7 May 1986, col.32.
132 Ibid.