CHAPTER-VII

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The story of refugees in Independent India must begin with the partition of the country in 1947. This is for two reasons. First, the human dimension of partition, which saw the displacement of millions of people, has not received sufficient attention from historians who have confined themselves to an analysis of its causes. Second, in the ordinary consciousness, the story of partition refugees has come to be separated from that of refugee flows to free India. While the two stories have different trajectories and endings, the two experiences are united by the enormous sufferings they recount. Recalling and reliving the traumatic passage of partition refugees helps empathise with the problems of refugee populations present in India today who, unlike the partition refugees, have lost not only their homes but have also been uprooted from their nationhood and culture. In Reading 1.A, Schechtman offers a glimpse into the tragic exodus from East to West Panjab which was conducted principally on foot and which he describes as 'the greatest single refugee trek in world history'. Reading 1.B however tells a more detailed story of how successive waves of refugees from East Bengal coped with their life situation in the city of Calcutta and the state of West Bengal. Chatterjee challenges therein what she terms the 'official discourse' 'which perceives refugees as objects of assistance and as such a "problem" group'.

Newly independent India not only provided prompt relief to partition refugees but also successfully rehabilitated them. A large number of laws were passed to deal with the problem of refugees and evacuee property.
The rich experience that India acquired in the sphere of relief and rehabilitation of refugees are serves to be recalled for at least two reasons. First, it can be drawn upon, in so far as it is relevant, to frame current refugee policies. Second, India's experience in handling the problem of evacuee property could be of much practical use in similar situations prevailing in the world such as in former Yugoslavia in the latter context, Reading I.E narrates a small episode from the story of the payment of compensation to refugees for property left behind.

**Post-independence Refugees: Legal Framework**

India is not a party to the 1951 Convention or the 1967 Protocol. Neither has it passed any domestic legislation on the subject of refugees. The fate of the individual refugee is essentially determined by the protections available under the Constitution of India. Reading II.A briefly describes the status of refugees in the Indian legal system. It also offers a critique immediate causes of mass refugee exodus would be widely supported in the international community.

**Refugees from Tibet**

In Reading III.A, Chimni reviews India's record with respect to Tibetan refugees and the rights extended to them. In comparison with other refugee groups in the country Tibetan refugees have received far better treatment. Readers may query as to what accounts for this differential treatment? Can it be explained by the fact that in the se of the Tibetan refugees the possibility of repatriation was non-existent from the very beginning? But them how does one explain the relatively better treatment of the Sri Lankan Tamil refugees when compared to the Chakma refugees from Bangladesh? Can in this case the differential treatment be accounted for by the existence or absence of ethnic ties? Do the resources of the state
in which the refugees are located make a difference? Tripura where the
camps of the now repatriated Chakma refugees were located is among the
poorest regions in the country. Was that a reason for the refugees receiving,
as we shall see presently, less than humane treatment? Should then the
central government have the responsibility for looking after the welfare of
refugees? More generally, is there a need to formulate and pursue a uniform
policy towards different refugee groups? If so, what should be the core
elements of this policy?

Refugees from Bangladesh

Reading IVA. describes the two major refugee flows from
Bangladesh: the 10 million refugees who sought refuge in India in 1971 and
the Chakma refugees who later fled persecution in the Chittagong Hill Tracts
and who repatriated in 1998.

While India’s response to the mass influx in 1971 is a matter-of pride,
the treatment of Chakma refugees left much to be desired: food, medical
and education facilities in the camps were inadequate. The sorry state of
affairs was confirmed by the National Human Rights commission (NHRC) in
May 1996 when it sent an investigation team to Tripura to report on the
conditions in the camps. The report which it submitted noted:

the shortage of water, inadequacy of accommodation and woefully
inadequate medical facilities in the camps. The report also pointed
out that the scale of ration 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 undean and
bore signs of neglect. The report noted that refugee children suffered
from malnutrition, water-borne diseases and malaria, while there was
no visible effort to improve their living conditions. It also outlined various other problems faced by the refugees.

The last batch of Chakma refugees returned to Bangladesh at the end of February, 1998. Reading. IV.B deals briefly with the peace accord signed on 2 December 1997 between the Government of Bangladesh and the Hill Tracts People's Solidarity Association leading to the repatriation Chakma refugees.

The Chakmas, as Reading IVA points out, had sought refuge in India even prior to the creation of Bangladesh the Supreme Court of India in National Human Right Commission v. State of Arunachal Pradesh and Anr (1996) which was concerned with the threat to life and liberty to the approximately 65,000 Chakma refugees settled in Arunachal Pradesh since 1965. Several features, of the case invite attention. First, it is significant that it was the NHRC, established in 1993, which brought the matter before the Supreme Court through a public interest petition, asserting its right to take up the cause of aliens and refugees present, in the country. Second, the Union of India opposed the action of the state government of Arunachal Pradesh showing that it was aware of its responsibilities towards aliens and refugees. Third, in deciding that it was the duty of the state of Arunachal Pradesh to protect the life and liberty of the Chakma refugees the Supreme Court did not, give any weight to the argument that the settlement of such large numbers of them would disturb 'its ethnic balance and destroy its culture and identity'. Fourth, it clarified that the earlier decision of the Court in the Khudirain Chakma case did not foreclose the consideration of the grant of citizenship to the Chakmas. Finally, the Supreme Court affirmed, endorsing earlier decisions, that 'the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise.'
Sri Lankan Tamil Refugees

In Reading V.A Chandrahasan-a Sri Lankan Tamil refugee herself-notes how despite not being a party to the 1951 Convention or the 1967 Protocol, or having an official refugee determination process, India has in practice complied with the principle of non-refoulement. In Reading V.B, Asha Hans critically reviews the different phases of the repatriation of Sri Lankan Tamil refugees. Her focus is on the question of voluntariness. In this regard the attention of reader is drawn to the conflicting conclusions which have often been reached with respect to the same phase of repatriation. For examples, with respect to refugees repatriated in the period 1992-93 Hans retches mixed conclusions, while a report by Asia Watch at this time states that the repatriations were forced. On the other hand, a USCR report lends support to the view that refugees returned voluntarily, a conclusion endorsed by the UNHCR. To what factors can we trace the different evaluations of the voluntariness of the 1992-93 repatriations? Can it be attributed to the lack of understanding of the process and/or of particular conditions prevailing in this part of the world? Or can the different evaluations be traced to the separate concerns of those undertaking it? For example, in Reading V.B, Hans notes the significance of the UNHCR certification of voluntariness to the return of refugees from Europe and North America. Could this concern have compelled Asia Watch to conclude that the return was involuntary in nature?

India, 1951 Convention and the UNHCR

Reading VIA briefly considers some of the reasons which have prevented India from ratifying the 1951 Convention or the 1967 Protocol. In its light readers may address the following questions: are the reasons advanced for non-ratification valid? In what ways will the legal situation
change if India were to become a party to the Convention? Will India be able to protect its national interests if it ratifies the Convention? Would it have to alter its relationship with the UNHCR if it did so? Is there a need to become a party to the Convention if India passes a domestic legislation? Finally, is the fact that the 1951 Convention is being dismantled in the West a good enough reason for India and other countries in South Asia to not become parties to it.

The doctrine of constructive linkage and argued that the most significant reason why states in the South Asian region should refuse to accede to the 1951 Convention is the fact that it is being dismantled by the very states which adopted it. In other words:

any talk of accession should also be linked to the withdrawal of measures which constitute the non-entire and temporary protection regimes. That is to say, the countries of the region should collectively argue that they would consider acceding to the Convention only if the Western world was willing to withdraw those measures which violate the principle of burden sharing and instead practice burden shifting.

In response to the-doctrine of constructive linkage critics contend that there is no reason why states in the region should not fulfill their moral obligations towards refugees just because the West is not doing so. But if the core objective is to offer assistance and protection to refugees can it not be effectively realized through the passage of domestic legislations even as pressure is brought on Western states to fulfill their obligations? Or is the worry that domestic legislations will be more restrictive than the 1951 Convention? In this respect researcher may consider the following. First, as the US Supreme Court decision in Sale v. Haitian Centers shows, the 1951 Convention can also be very restrictively interpreted. Thus, the mere
ratification of the 1951 Convention does not ensure that asylum-seekers will not be kept out. Second, Article 42 of the 1951 Convention permits reservations with respect to the rights of refugees. Third, in its recent decision in Apparel Expo Promotion Council v. A.K. Chopra the Supreme Court of India observed:

This Court has in numerous cases emphasised that while discussing constitutional requirements, courts and counsel must never forget the core principle embodied in the International Conventions and Instruments and so far as possible give effect to the principles contained in those international instruments. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law.

The ruling opens up the possibility that the courts in India can refer to the 1951 Convention in interpreting the domestic legislation. Indeed, in Vishaka and others v. State of Rajasthan and others (1997 6 SCC 241) the Supreme Court went further and relied upon an 'official commitment' made by the Government of India at the Fourth World Conference on women in Beijing. The Court observed that 'reliance can be placed on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.' Thus, an official statement made in the Executive Committee of the UNHCR that India intended to Incorporate the basic provisions of the 1951 Convention into the domestic law would enable the Supreme Court to consult the Convention. In the circumstances, should India and the countries in South Asia ratify the 1951 Convention?
Refugee Protection in India

South Asian refugees who have fled to India face serious problems in their daily lives. From forcible repatriation to starvation, refugees find themselves on the edge, clawing for mere survival. India has provided shelter to these refugees for centuries for both geopolitical and socioeconomic reasons. Political upheaval occurring in unstable countries bordering India often created political upheavals, forcing citizens to seek refuge elsewhere. Additionally, ethnic and religious persecution forced minorities to join similar peoples in India's multi-ethnic and multilingual society. Better opportunities to start afresh and improved living conditions also contributed to India's appeal.

However, little, if any, information is available to the international community or to the Indian people about the plight of these refugees once they reach India. This research aims to inform the world about the condition of South Asian refugees in India and draw the Indian Government's attention to the need for legislation to protect refugees and asylum seekers. Moreover, this research will examine the role of inter-governmental organizations such as the United Nations High Commissioner for Refugees (UNHCR) and domestic NGOs such as the South Asia Human Rights Documentation Centre (SAHRDC) in New Delhi.

Applicable Laws

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.

A myriad of specialized and regional human rights instruments have sprung from the foundation of the International Bill of Human Rights. The non-derogable rights enshrined in the Covenants such as Article 6 of the International Covenant on Civil and Political Rights (ICCPR) are also applicable to the refugees. The principle of non-refoulement was applied where there was fear of torture or violation of right to life of the refugees. Nonetheless, the foremost authority on refugee law is the 1951 Convention relating to the Status of Refugees, known simply as the Refugee Convention, which codified a very precise definition of "refugee" found in the 1951 Refugee Convention. According to Article 1 of this Convention, a refugee is someone who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality."

More contemporary instruments have advanced beyond this limited and legalistic definition by acknowledging civil disturbances and human rights abuses as valid claims for refugee status.

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.
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.

India’s Refugee Policy

The juridical 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 endeavor 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 endeavor to foster respect for international law, this Article would mean prima facie that international law is not incorporated into 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.

Before India became independent, the Indian courts under British rule administered the English Common law. They accepted the basic principles governing the relationship between international law and municipal law under the common law doctrine. Under the English common law doctrine, rules of international law in general were not accepted as part of municipal law. If, however, there was no conflict between these rules and the rules of municipal law, international law was accepted in municipal law without any incorporation. Indeed, the doctrine of common law is specific about certain international treaties affecting private rights of individuals. To implement such treaties, the doctrine requires modification of statutory law and the adoption of the enabling legislation in the form of an Act of Parliament.
These English common law principles are still applicable to India even after its independence, by virtue of Article 372 of the Constitution, which says that:

"all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority."\textsuperscript{5}

This common law practice has been followed by the Indian executive, legislature and judiciary even after the independence of India. For instance, until the specific legislations were adopted India observed the international customary rules regarding immunity from domestic jurisdiction and law of the sea particularly with regard to the high seas, maritime belt, and innocent passage.

Confirming the common law principle relating to the specific incorporation of certain treaties, Article 253 provides that:

"Parliament has 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."

This Article implies that whenever there is a necessity to incorporate international obligations undertaken at international level or under international instruments into municipal law, the Parliament is empowered to do so. This is also acknowledged by the Indian judiciary as early as 1951. While delivering the judgement in the Birma v. The State of Rajasthan, the Rajasthan High Court, quoting the English common law principle, observed
that certain treaties such as those affecting private right must be legislated by Parliament to become enforceable.\textsuperscript{6}

The judicial opinion is that rules of international law and municipal law should be construed harmoniously, and only when there is an inevitable conflict between these two laws the municipal law should prevail over international law.

Against this backdrop when one examines the binding force of international refugee law on India and its relations with Indian municipal law, one can conclude that as long as international refugee law does not come in conflict with Indian legislations or policies on the protection of refugees, international refugee law is a part the municipal law.

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 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.\textsuperscript{7} Mr. Mujeeb, a member of the delegation, told the Third Committee that instead of establishing a new organization for the protection of refugees, the International Organization for Refugees should be maintained and then the Third Committee should address itself to the drafting of the Convention on the legal protection of refugees. Again in the same Committee another member of the Indian delegation, Mrs Kripalani said that the Indian Government did not want to
shrink from any of its international responsibilities, and it wished to take part in any humanitarian work undertaken by the UN.

She further said that in spite of its difficulties, 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, Mr. 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 treat regime of the refugee law was declared to be a subject of review.

On the question of admission and non-refoulement, however, the Indian attitude is rather bleak. Ever though India accepted the principle of non-refoulement as including non-rejection at the frontier under the "Bangkok Principles 1966", it did not observe that principle in its practice. Ignoring the fact that refugees leave their homes suddenly due to threats to their life and liberty, and by the nature of their flight they are unable to get the necessary travel documents from their home States, India deals with the question of admission of refugees and their stay until they are officially accorded refugee status, under legislations which deal with foreigners who voluntarily leave their homes in normal circumstances.

The chief legislation for the regulation of foreigners is the Foreigners Act, 1946 which deals with the matters of entry of foreigners in India, their
presence therein and their departure therefrom”. Paragraph 3(1) of the Foreigners Order, 1948\textsuperscript{10} lays down the power to grant or refuse permission to a foreigner to enter India, in the following terms: “No foreigner shall enter India-

(a) otherwise than at such port or other place of entry on the borders of India as a Registration Office having Jurisdiction at that port or place may appoint in this behalf; either for foreigners generally or any specified class or description of foreigners, or

(b) without leave of the civil authorities having jurisdiction at such port or place.\textsuperscript{11} This provision lays down a general obligation that no foreigner should enter India without the authorization of the authority having jurisdiction over such entry points. It is mainly intended to deal with illegal entrants and infiltrators. In case of persons who do not fulfill certain conditions of entry, the sub-para 2 of the Para 3 of the Order authorizes the civil authority to refuse the leave to enter India. The main condition is that unless exempted, every foreigner should be in possession of a valid passport or visa to enter India”.

As observed earlier, if refugees contravene any of these provisions they are liable to prosecution and thereby to the deportation proceedings. The practice shows that when the courts were approached by many Afghans, Iranians and Burmese against whom the Government of India initiated deportation proceedings under Sections 3 and 14 of the Foreigners Act, 1946 for their illegal entry into India, courts responded positively by accepting their plea that if they were returned they would face threats to their life and liberty and India had a long tradition of extending protection to many refugees. In fitness of things, the courts have initially stayed the deportation proceedings\textsuperscript{12}. 

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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 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.

Refugee Categories

The plight of refugees in India generally depends upon the extent of protection they receive from either the Indian Government or the United Nations High Commissioner for Refugees (UNHCR). Below is 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 are reported to have come to India between 1983-1987. 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.

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 Tamilnadu 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 between 1992-1995. As a result of these repatriations, roughly half of the original 110,000 refugees remain in Tamilnadu, India. There have been no new returns to Sri Lanka from Tamilnadu since the breakdown of peace talks and resumption of hostilities between the Liberation Tigers of Tamil Eelam (LTTE) in 1996.

Though the refugees were originally welcomed to Tamilnadu, the assassination of Mr. Rajiv Gandhi, May 1991 by a suspected member and suicide bomber of the Liberation Tigers of Tamil Eelam turned public sentiment and government authorities against the Tamil refugees. Soon after Rajiv Gandhi's death, India began a program of "voluntary" repatriation, under which more than 23,000 refugees were repatriated without international supervision. It is now apparent that most of those refugees were coerced in various overt and covert ways to leave the refugee camps in Tamilnadu.

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 health of the refugees has deteriorated significantly since NGOs were banned from entering the camps. Previously, NGOs had been allowed to provide primary health care and supplement meager monthly stipends and food rations such as rice, sugar and kerosene provided by the Government of Tamilnadu. Now, without supplements from
NGOs, most refugees must spend what little money that they have on expensive open market food because payment of the stipend rarely coincides with the arrival of subsidized rations. Also, camp officials are known to use the stipends and rations as bargaining chips, telling the refugees that they will only receive their stipends if they agree to leave the country.\footnote{23}

Additionally, the Indian Government restricts the movement of the Tamils in Tamilnadu. Members of the police and notorious "Q" branch\footnote{24} of the state intelligence agency are stationed at the gates of many of the camps, including the camp in Coimbatore, Tamilnadu 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.\footnote{25} Camp authorities employ indirect measures to restrain the Tamils. Refugees in the Poolvapatti, Tamilnadu 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.\footnote{26} 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 in Madras virtually impossible for refugees confined to outlying camps.

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 SAHRDC and the National Human Rights Commission 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 Liberation Tigers of Tamil Eelam 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 it’s 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 languished in UNHCR transit camps till 1996 when conflict broke out. Many of them returned to India.

These are some 56,000 Sri Lankan Tamil refugees accommodated in Indian camps and another further 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. 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 Mādras only provides respectability to what is essentially a program of involuntary repatriation.

Following up on rumors of forced repatriation and deplorable conditions in the Tamil refugee camps in Tamilnadu, a SAHRDC researcher visited the camps in July 1996 and published a report which details the systematic violations of Tamil refugee rights and the implicit involvement of the Government of India. The Indian Government appears determined to allow conditions to deteriorate to the point where refugees would rather return to the violence of Sri Lanka than stay in the camps.

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 camp in accordance with well-recognized international standards. 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 itself with the international conventions to which it owes its creation and take a more proactive role in the protection of the Sri Lankan Tamil refugees.31
Category I Refugees - The Jumma

The Jumma peoples from the Chittagong Hill Tracts of Bangladesh are another example of category 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 shelter for these people in the neighboring Indian states of Mizoram and Tripura. 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{32} 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{33} 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{34} Food provisions are given in 10 days cycles but the quantity
given normally suffices for only eight days. Often, even those meager rations are delayed. A delay of two days means that indigent tribal refugee families must go hungry. Still, delays of over 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.

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 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.

In 1994, about 5,000 Jumma refugees returned “under duress” to the Chittagong Hill Tracts after bilateral discussions between India and Bangladesh and the responses of SAHRDC to the averments of the Ministry of External Affairs and Ministry of Home Affairs of the Government of India and Tripura State Government submitted to the National Human Rights Commission (NHRC). The NHRC has been inquiring into the alleged forcible repatriation on a complaint filed by SAHRD (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. 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.⁴⁰ 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 when 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.⁴¹

SAHRDC filed a complaint with the Indian National Human Rights Commission about the involuntary repatriation of the Jumma refugees in 1994. The National Human Rights Commission asked the Ministry of Home Affairs, the Ministry of External Affairs and the Tripura Government to reply to SAHRDC’s allegations of forced repatriation. SAHRDC challenged the statements of the Ministry of Foreign Affairs and the Tripura Government with factual information substantiating its allegations.

More than two years after filing the complaint, the National Human Rights Commission sent a investigation team headed by Mr A Chakraborty, Senior Superintendent of Police to the 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 meager and its supply was often suspended. During the visit, the team found that many of the tube wells were out of order and that inmates of the camps were bringing water from far-off places. The camps were also unclean and signs of neglect. The report noted that refugee
children were suffering from malnutrition, water-born diseases and malaria, while there was no visible effort to improve their living conditions.\textsuperscript{42} 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".\textsuperscript{43}

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.\textsuperscript{44}

\textbf{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, 30 (Burmese refugees and 100 Sudanese refugees.\textsuperscript{45} 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 refugees 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.⁴⁶

The report "The Status of Refugees under the Protection of the UNHCR in New Delhi", released on 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 regards to their attention to refugee rights and human rights and problems faced by refugees in Delhi.

SAHRDC's study investigated the services offered to refugees by the UNHCR in New Delhi including emergency aid, health care facilities, subsistence allowance, lump-sum amount or payment as a means to voluntarily surrender the subsistence allowance that accompanied refugee status, accommodation, employment, vocational training, education, legal aid, counselling, travel document resettlement, internal monitoring mechanism of the UNHCR and accessibility to the UNHCR itself in the light of the UNHCR's standard guidelines and in particular its guidelines on the vulnerable groups, women and children.

SAHRDC found that UNHCR's New Delhi office has become a fortress. The services offered by UNHCR were inadequate. The report stated "Communication between 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. SAHRD 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. 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 lead 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.

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 refugees 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. 47
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 recognized their presence. Moreover, the Chin do 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.

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 confided to a SAHRDC representative that a large number of Chin refugees indeed had been forcibly returned to Burma by the State Government in 1994.48

Role of NGOs

The domestic NGOs and UNHCR are complimentary to each other. In a situation where Government of India denies access to UNHCR and other foreign humanitarian agencies, domestic NGOs play the most crucial role to provide "protection" to the refugees.

The Oslo Declaration on Partnership-in-Action (PARinAC) between the NGOs and the UNHCR provides the basis for cooperation. However, reports of the Medicine Sans Frontier, Holland and Human Rights Watch Asia detail the involuntary repatriation of Rohingya refugees, the report of the Human Rights Watch Asia on the involuntary repatriation of the Sri Lankan Tamil refugees, the report of the South Asia Human Rights Documentation Centre on the treatment of the urban refugees the UNHCR looks after, makes it evident that UNHCR's role in South Asia has been far from satisfactory. And UNHCR has failed to respond to many of these concerns.49
The UNHCR report to the Forty Seventh Session of its Executive Committee is oblivious to the plight of the refugees looked after by the Government of India. The UNHCR objective in India is to create “public awareness of refugee situations and issues in India and promote a legal framework for the protection of refugees”\textsuperscript{50} Consequently, UNHCR’s present implementing partners neither have an track record of working with the refugees nor anything to do with “protection” of refugees. Refugees do face numerous difficulties from denial of food to the restriction on the freedom of movement. The creation of awareness and promotion of a legal framework as envisaged by the UNHCR is important to create an institutional framework to protect the refugee rights. However, it should not be an excuse for the UNHCR to shirk its responsibilities to provide “protection” to the refugees. Neither can the denial of access by the Government of India be an excuse when the Government of India allows the UNHCR to work with its various partners. The fundamental issue is when the Government of India gradually repatriates all the refugees under duress as reflected in this article and UNHCR makes living conditions untenable for the urban refugees it looks after in the name of “rationalization of the care and maintenance”, a legal framework will have little meaning. The UNHCR has failed to response to these concerns and attempts to follow up and put the PAR in AC process into practice have failed due to the non-cooperation of the UNHCR to protect and promote the rights of the refugees.\textsuperscript{51}

Little, if any, information is available to the international community or to the Indian people about the plight of refugees in India. This research aims to keep the world informed about refugees in India; it is also intended to draw the Indian Government’s attention to the need for legislation to protect refugee and asylum seekers.

The plight of the refugees irrespective of whether they are looked after either by the UNHCR or the Government of India is abominable to say
the least. The condition of the refugees who are not recognized either by TJNHCR or the Government of India is the worst.

The lack of legal mechanisms and policies on refugees is one of the fundamental flaws of refugee protection in India. But the courts in India have awarded excellent judgements to abide by international principles on refugee protection including non-refoulement.

However, the cardinal problem arises when both the UNHCR and the Government of India violate their own standards and principles. While it is possible to bring the Government of India under the scrutiny of the quasi-judicial bodies like the National Human Rights Commission and judiciary, then is no such mechanism to scrutinize the United Nations High Commissioner for Refugees in New Delhi. “Official rules and procedures” have become an excuse to raise the “veil of secrecy” and to resort to arbitrariness at the expense of the refugees. It has come to the point where UNHCR’s New Delhi Office requires security protection” fearing attacks from the refugees rather than UNHCR providing protection to the refugees.

The ratification of 1951 Convention Relating to the Status of Refugees is a statement of intent unless it is enforceable in domestic courts. Since the Government of India is not even considering the ratification of the 1951 Refugee Convention, its enforcement in domestic legislation or development of a refugee legal regime is a far cry. A consistent legal framework is vital to the prevention of political ad-hocism, which often translates into forcible repatriation for refugees. The issue is not only development of domestic legislation but how to ensure that both the UNHCR and the Government of India strictly abide by their own standards and principles. For the refugees, the latter remains the immediate concern and the UNHCR has manifestly failed to address the issue of protection.
REFERENCES

1. Originally a backward-looking instrument, this Convention was adopted in order to address the unresolved refugee crisis that emerged from the Second World War. As such, it applied only to persons who became refugees as a result of events occurring prior to the Refugee convention’s adoption. This temporal limitation was removed by the Protocol Relating to the Status of Refugees of 31 January 1967, whose Preamble recognized that “new refugee situations have arisen since the convention was adopted.” The pre-Convention definition did not take into account the reasons for the refugee’s departure from his/her home nation. Gradually, however, states became concerned, culminating in the definition of “refugee”.


3. Under the Constitution of India, powers and functions are divided into Union List (Federal Government) and State List (Provincial Government or State Government).


6. A.I.R (1951) Raj, p.127. The judgement was not delivered in relation to Article 253 but is reliever in its context as it was delivered after the entry into force of the Constitution of India.

7. 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.

8. Ibid.


10. The Foreigners Order, 1948 is made by the Central Government in the exercise of the powers conferred by section 3 of the Foreigners Act, 1946.

11. Para 3(2) (a) of the Foreigners Order, 1948, read with Rule 3 of the Passport (Entry into India) Rules, 1950.


13. According to Article 51 of the non-binding Directive Principles of State Policy, India endeavors to "(a) promote international peace and security; (b) maintain just and honorable relations between nations; (c) foster respect for international law and treaty obligations; and (d) encourage settlement of international disputes by arbitration."

14. Non-refoulement is an important principle to international refugee law, which acts as a complete prohibition against the forcible return of people to a place where they will be subject to grave human rights violations or where their life or personal security will be seriously
endangered. The principle of non-refoulement applies equally to refugees at the border of a state and to those already admitted, and it remains in force until the adverse conditions which prompted people to flee in the first place are alleviated.


16. Ibid.

17. Ibid.

18. Ibid.

19. Ibid.

20. Ibid.

21. Ibid.

22. Ibid.

23. Ibid.

24. The "Q" branch is the Special Branch of the Tamilnadu 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.


26. Ibid.
27. Ibid.


30. SAHRDC News, New Delhi, July-August 1995, Volume 1, Number 2.


34. Private communication from the CHTs Jumma Refugees Welfare Association to the SAHRDC i November 1995.


38. For details please see “No Secure Refugee”, 14 February 1996 by South Asia Human Rights Documentation Centre (SAHRDC), New Delhi.


41. Memorandum of Returnee Jumma Refugees 16 Points Implementation Committee, Khagrachari Bangladesh, 15 October 1996.


43. Letter of the National Human Rights Commission on 13 August 1996.

44. Complaint of the South Asia Human Rights Documentation Centre on 7 March 1997.


47. SAHRDC News, New Delhi, Jul-Aug 1995, Volume 1, Number 2.

48. 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.


51. This is based on evidence in SAHRDC files while dealing with UNHCR’s New Delhi Office on numerous asylum cases. For example, the case of Abbas Joneidi in 1995 - 1996.