CHAPTER-I

INTRODUCTION
CHAPTER-I

INTRODUCTION

Refugees are persons deprived of the protection of the country of their nationality or, where they have no nationality, of the protection of the country of their former habitual residence. The gist of the situation is, fear of persecution for the reasons of race, religion, nationality, membership of a particular social group or political opinion. The absence of "protection by the government of the State of nationality creates legal difficulties; refugees are aliens everywhere" but like aliens they do not possess necessary documents which are required from aliens for the enjoyment of certain rights. "Their very position, the frequent uncertainty of their nationality status and even of their domicile, are bound to create additional legal problems. Serious disabilities, unintentional discrimination by the normal operators of law, are frequently the consequence." Not only this, the social and psychological factors also add to this situation. As a consequence, the "refugees are often destitute, they live in a difficult material and psychological conditions, they are open to that suspicion which is often the fate of the poor, the unprotected, the homeless, the man without paper." International discrimination against refugees is not infrequent.

The definition of the term "refugee" has been set out in Article 1 of the Convention Relating to the Status of Refugee, of July 28, 1951. According to Article 1-A (1) of the Convention to the Status of Refugee (1951 Convention) the term "refugee" applies to any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938,
the Protocol of 14 September of 1939 or the Constitution of the International Refugee Organization.

The persons who are covered under the Arrangements, of 12 May, 1926, and 30 June 1928 or under the Conventions of 28 October, 1933 and 10 February 1938, the Protocol of 14 September of 1939 or the Constitution of the International Refugee Organisation are as follows:

(I) The Arrangement of 12 May 1926: This Arrangement includes persons of following two categories:

Category 1 - Russian pre-war or Nansen refugees, defined as "Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the USSR and who has not acquired another nationality."

Category 2 - Armenian pre-war or Nansen refugees defined as "Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality."

(II) The Arrangement of 30 June 1928: This Arrangement includes two further categories of refugees:

Category 3 - Assyrian or Assyro-Chaldean and assimilated refugees, defined as, "Any person of Assyrian or Assyro-Chaldean origin, and also by assimilation any person of Syrian or Kurdish origin, who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality."
Category 4 - Turkish Refugees, defined as "Any person of Turkish origin, previously a subject of the Ottoman Empire, who under the terms of the Protocol of Lausanne of 24 July 1923, does not enjoy or no longer enjoys / the protection of the Turkish Republic and who has not acquired another nationality."

(III) The Convention of 28 October 1933: This Convention adds fifth category of refugees:

Category 5 - Spanish refugees defined as "Persons possessing or having possessed Spanish nationality, not possessing any other nationality and with regard to whom it has been established that, in law or in fact, they do not enjoy the protection of the Spanish Government."

(IV) The Convention of 10 February, 1938: This Convention covers the cases of refugees coming from Germany:

Category 6 - Refugees coming from Germany, i.e. "(a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government.

(b) Stateless persons not covered by previous Conventions or Agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government. However, "persons who leave Germany for reasons of purely personal convenience are not included in this definition."

The Protocol of 14 September, 1939: This Protocol covers the cases of Austrian refugees who were victim of Nazi persecution.
Category 7 - Austrian refugees, i.e., "(a) Persons having possessed Austrian nationality, not possessing any nationality other than German nationality, who are proved not to enjoy, in law or in fact, the protection of German Government." (b) "Stateless persons not covered by any previous Convention or Arrangement and having left the territory which formerly constituted Austria after being established therein, who are proved not to enjoy, is law or in fact, the protection of the German Government." However, "persons who leave the territories which formerly constituted Austria for reasons of purely personal convenience are not included in this definition."

(VI) The Constitution of the" International Refugee Organisation10: This covers the cases of refugees of Second World War and post Second World War persons. It includes following persons:

Category 8 - All those persons who have been considered as refugees under the Constitution of International Refugees Organisation.

Category 9 - Victims of Nazi or Fascist regimes, whether enjoying international status as refugees or not.

Category 10 - Saar refugees, i.e. "all persons who, 'having previously had the status of inhabitants of the Saar haye left-the territory on the occasion of the plebiscite and are not in possession of national passports."

Category 11 - Refugees from Sudetenland11, i.e., the 'refugees who having possessed Czecho-Slovak nationality and not now possessing any nationality other than German, have been obliged to leave the territory which was formerly, part of the Czecho-Slovak State that is, the territory known as the Sudetenland where they were settled and which is now incorporated in Germany," provided they "do not enjoy the protection of either the German or" the Czecho-Slovak Government."
Besides, there are several other categories of persons who are recognized as refugees, for instance, persons who, having resided in Germany or Austria, "were victims' of Nazi persecution and were detained in, or were obliged to flee from and were, subsequently returned to, one of those countries as "a result of enemy action of war circumstances, and have not yet been firmly resettled therein." Similarly the "term refugee also applies to unaccompanied children who are war orphans or whose parents have disappeared, and who are outside their countries of origin. Such children, 16 years of age or under, shall be given all possible priority assistance including, normally, assistance in repatriation in the case of those whose nationality can be determined."

However, Article 37 - of the Convention Relating to the Status of Refugees provides that, this Convention replaces, as between parties to it the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Convention of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946. Consequently, the persons belonging to the above categories are now treated as refugees under the present Convention and are, therefore, entitled to all the benefits, protection and assistance that may be accorded to them under the present Convention. It may therefore, be submitted that the status of refugees may be accorded to any person who fulfils the conditions of paragraph 2 of Article 1-A of this Convention. Paragraph 2 of Article 1-A sets out the following definition of refugee:

"As a result of events occurring before 1 January 1951" and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to
avail himself of the protection of that country; or who, not having a nationality and being outside the 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."

"In the case of a person who has more than one nationality, the term "the country of his nationality shall mean each of the countries of which he is a national and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national."

A Protocol Relating to the Status of Refugees has been added to the Convention Relating to the Status of Refugee, on 31 January 1967. This Protocol extends the protection of the 1951 Convention to the persons who has become refugees as a result of events that took place after 1 January 1951. Thus, the Convention has become applicable to the new categories of persons rendered as refugees as a result of events that took place after 1 January 1951.¹⁵ Thus, the position that emerges hereafter is that the status of refugee may be accorded to persons who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it."
A person, in order to be recognised as refugee should fulfill following conditions:

(a) He must be outside the country of his nationality or if he does not possess the nationality of any country, he must be outside the country of his former habitual residence;

(b) He must be outside of the country of his nationality or of his habitual residence owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and

(c) He is unable or owing to such fear, is unwilling to avail himself of the protection of the country of his nationality or of the country of his former habitual residence.

Persons Not Entitled To The Benefit Of 1951 Convention - There are following four categories of persons who are not entitled to the protection under the Convention Relating to the Status of Refugee, 1951.

(a) "Persons who cease to be refugee"¹⁶: Following persons cease to receive benefit under the Convention, if:

(i) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(ii) He has voluntarily re-acquired the nationality which was previously lost by him; or

(iii) He has acquired a new nationality, and enjoy the protection of the country of his new nationality; or
(iv) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(v) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to avail himself of the protection of the country of his nationality. However, if there is compelling reasons arising out of previous, persecution, he can refuse to avail himself of the protection of the Country of nationality; or

(vi) He is able to return to the country of his former habitual residence after the circumstance in connection with which he has been recognised as a refugee have ceased to exist. However, if there is compelling reasons arising out of previous prosecution, he can refuse to return to the country of his former habitual residence.

(b) Persons receiving protection from organs of United Nations: Persons who are receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees shall be entitled to the benefits under the Convention Relating to the Status of Refugee. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled, these persons shall ipso facto be entitled to the benefits of this Convention.

(c) Persons having rights and obligations similar to the nationals: A person, who is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, shall not be entitled to the benefit under this Convention.
(d) **Persons guilty of serious crimes**: No person shall be entitled to the benefit under this Convention\(^9\), if:

(i) he has committed a crime against peace, a war crime, or a crime against humanity;

(ii) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(iii) he has been guilty of acts contrary to the purposes and principles of the United Nations.

**Origin and Development of Refugee Law** - The attention of international community has been focused on the need and protection of refugees since 1921, when the Council of the League of Nations decided to appoint a High Commissioner for Russian refugees. This decision was taken on 27 June 1921, and on 20 August 1921 in pursuance of that decision, a High Commissioner was appointed to co-ordinate the action taken in various countries on the question of refugees. The mandate of the High Commissioner had included the following tasks –

(i) To define the legal status of the refugees:

(ii) To organize their repatriation or their allocation to the various countries which might be able to receive them, and to find means of work for them;

(iii) To undertake relief work amongst them, with the aid of philanthropic societies.\(^{20}\)
The mandate of the High Commissioner was extended to cover Armenian refugees in 1924 and to the Assyrian, Assyro-Chaldean and Turkish Refugees in 1928.

Apart from the appointment of the High Commissioner for Refugees, international instruments were also concluded providing for the definition of the legal status of the refugees, the creation of international agencies for the protection of refugees and for other relief measures. Most noteworthy were the Convention of 28 October, 1933, Relating to the Status of Refugees and the Convention of February 10 1938, Regarding the Status of Refugees from Germany. Thus efforts were made by international community even before the Second World War to define the legal status of the refugees through multilateral treaties. Since, the main aim of these treaties was only to define the legal status of the refugees and that these treaties were ratified by few States that too with reservations the result was that law relating to refugee could not make progress beyond the so-called rudimentary stage.

At the end of the Second World War, the United Nations has been established which, since its way inception, has focused its attention on the problems of refugees, displaced persons, stateless persons and returnees. A number of measures were adopted to protect the human rights of these persons and to provide durable, solutions for their problems. The General Assembly of the United Nations has established UN Relief and Works Agency for Palestine Refugee in the Near East (UNRWA) in 1949 with a mandate to provide relief, education, training, health and other service to Arab refugees from Palestine. Again in the same year, the General Assembly established the Office of the United Nations High Commissioner for Refugees (UNHCR) with the mandate to provide protection to the refugees falling under the competence of the Office.
On 28 July 1951 the Convention Relating to the Status of Refugees, was adopted by the United Nations Conference of Plenipotentiaries held in Geneva. On 31 January 1967 a Protocol Relating to the Status of Refugees was adopted by the General Assembly, which came into force on 4 October 1967. The Convention regulates the legal status of refugees and laid emphasis on the recognition of a uniform legal status for the existing group of "United Nations protected persons". The Contracting States, under Article 35 of the Convention has undertaken to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nation may succeed it in the exercise of its functions and shall in particular at facilitate its duty of supervising the application of the provisions of this Convention. Thus a link has been established between the UN High Commissioner for Refugees and the Convention relating the Status of Refugees.

Rights, Responsibilities and Protection of refugees:

General Provisions - Every refugee is under a duty to conform to the laws and regulations of the country to which he finds himself. Further, he should also conform to the measures adopted by the country of his refugee for the maintenance of public order. At the same time, the State Parties to the Convention Relating to the Status of Refugees are under an obligation

(i) to apply the provisions of this Convention, to refugees without discrimination as to race, religion or country of origin;

(ii) to accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.
(iii) to accord to refugees the same treatment as is accorded to aliens generally.\textsuperscript{29}

(iv) to grant exemptions to the refugees from such exceptional measures which may be taken against the person, property or interests of nationals of a foreign State solely on account of such nationality.\textsuperscript{30}

(v) to recognise the continuity of residence\textsuperscript{31} Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a State Party to the present Convention, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory. Where a refugee has been forcibly displaced during the Second World War from the territory of a State Party to the present Convention and has, prior of the date of entry into force of this Convention, returned there-for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purpose for which uninterrupted residence is required.

(vi) to give sympathetic consideration to the refugee seamen regularly serving as crew members on board a ship flying the flag of a State Party to the present Convention.

However, States Parties to the present Convention are not prohibited, in time of war or other grave and exceptional circumstances, from taking provisional measures against a person with respect to whom it is yet to be decided that whether he is in fact a refugee. The provisional measures
adopted in such cases must be considered by the States Parties essential in the interests of national security.\textsuperscript{32}

Their Rights, Responsibilities and Protection can be discussed under the following headings:

A) Juridical Status of Refugee - Juridical status of a refugee concerns primarily with his legal or juristic position with respect to his personal status, the status of his movable and immovable property, industrial property, right of association and access to courts.

Personal Status - The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. However, rights more particularly rights attaching to marriage previously acquired by the refugee shall be respected by the State Parties subject to compliance with the formalities required by the law of that State.\textsuperscript{33}

Status of Property - With respect immovable and movable property the States Parties to the present Convention shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.\textsuperscript{34} Thus, rights of a refugee with respect to movable and immovable property must be the same as have been accorded to aliens. In the matter of property rights a refugee is at par with an alien. The treatment accorded to a refugee should not be in any event, less favourable than that accord to aliens.
With respect to industrial property which includes inventions, designs or models, trade marks, trade names, and right in literary, artistic and scientific works a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to the nationals of that country. Further more even in the territory of other States Parties to the present Convention, 'he shall be accorded the same protection as is accorded in that territory to nationals, of the country in which he has his habitual residence\textsuperscript{35}. In this way, a refugee, in the matter of industrial property, has been accorded with the same treatment as are provided to the nationals of the country in which he has his habitual residence.

**Right of Association** - Association here means, non-political and non-profit making associations and trade union. In respect of such association, refugees shall be accorded the most favourable treatment similar to that accorded to nationals of a foreign country in the same circumstances.\textsuperscript{36}

**Access to Courts** - A refugee shall have free access to the court of law on the territory of all State Parties to the Convention. In the State in which he has his habitual residence he shall enjoy the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*. In the countries other than that in which he has his habitual residence, he shall enjoy the same treatment as has been accorded to a national of the country of his habitual residence.\textsuperscript{37}

**B. Gainful Employment** - Gainful Employment in which a refugee may be allowed to engage himself may be of three kinds, namely, wage earning employment, self employment and liberal professions. These may be discussed as follows:
Wage-earning Employment - A refugee lawfully staying in the territory of a State Party to the present Convention shall be accorded, as regards the right to engage in wage-earning employment, the most favourable treatment as that accorded to nationals of other State in the same circumstances. In respect of wage-earning employment the position of a refugee is the same as that of nationals of other countries. However, there is one fundamental distinctions between them as drawn under Article 17 of the Convention. Restrictive measures may be imposed on the aliens or on the employment of aliens for the protection of national labour market but such restrictive measures shall not be applied to a refugee who was already exempt from such measures at the date of entry into force of this Convention or who fulfill one of the following conditions.

(a) He has completed three years of residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

The States Parties to the present Convention shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Self-Employment - With regards to the rights of a refugee to engage in agriculture, Industry, handicrafts and commerce and to establish commercial and industrial companies, State Parties, within their territory,
shall accord treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. Thus, refugees in respect of self-employment shall be accorded same favourable treatment as accorded to the aliens.

**Liberal Professions** - Article 19 of the Convention makes provision for liberal professions to be practised by those refugees who hold diplomas recognised by the competent authorities of the State concerned provided they are willing to practise liberal professions. In the matter of liberal profession, the State Parties shall accord to the refugees treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

The States parties to the present Convention shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

**C. Welfare of the Refugees** - Welfare of the refugees includes provisions for rationing, housing, public education, public relief, labour legislation and social security.

**Rationing** - Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

**Housing** - With respect to housing in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, the State Parties shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
Public Education - With respect to elementary education the refugees shall be accorded the same treatment as is accorded to nationals.

With respect to education other than elementary education, and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fee and charges and the award of scholarships, refugees shall be accorded treatment as favourable as possible, and, 'in any event, not less favourable than that accorded to aliens generally in the same circumstances."

Public Relief - Under Article 23 of the Convention it is provided that refugees staying lawfully within the territories of the States Parties shall be accorded same treatment with respect to public relief and assistance as is accorded to the nationals.

Labour Legislation and Social Security - Article 24 of the Convention deals with the problems of labour legislation and social security concerning refugee. It provides that the States Parties to the present Convention shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of following matters:

(a) Remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restriction on home work, minimum age of employment, apprenticeship and training women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining, in so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities.
(b) Social security, (i.e., legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and, any other contingency which according to national laws or regulations, is covered by a social security scheme), subject to the following limitations.

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangement concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfill the contribution conditions prescribed for the award of a normal pension.

The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the State Party to the present Convention.

D. Administrative Measures - Administrative measures deal with administrative assistance to refugees, freedom of movement, issue of identity papers and travel documents, applicability of fiscal charges to refugees, right of refugees to transfer their assets, provisions relating to refugees requesting asylum and assimilation and nationalization of refugees. These may be discussed as follows:

Administrative Assistance - When the exercise of a right by a refugee would normally require the assistance of authorities, of a foreign
country to whom he cannot have recourse, the State Parties in whose
territory he is residing shall arrange that such assistance be afforded to him
by their own authorities or by an international authority. Such authority or
authorities, shall deliver or cause to be delivered under their supervision to
refugees such documents or certifications as would normally be delivered to
aliens by or through their national authorities. Fees may be charged for the
services mentioned herein, but such fees shall be moderate and
commensurate with those charged to nationals for similar services.45

Freedom of Movement - The refugees lawfully within the territory of
a State Party shall be accorded with the right to choose their place of
residence and to move freely within its territory, subject to any regulations
applicable to aliens generally in the same circumstances.46

Identity Papers and Travel Documents - A refugee, who does not
possess, a valid travel document, is entitled for identity papers to be issued
by the State Party within whose territory he happens to be.47 Travel
documents shall be issued by the States Parties within whose territories
refugees are staying lawfully. The purpose of issuing travel document to a
refugee is to enable him to travel outside the territory of the issuing State,
However, issuance of such travel documents may be refused on the ground
of compelling reasons of national security or, public order. Moreover, the
travel documents may also be issued to those other refugees who are
unable to obtain a travel document from the country of their lawful
residence. In such cases the State Parties are under an obligation to give
sympathetic consideration to those refugees who could not obtain travel
documents from the country of their lawful residence.48 Travel documents
issued to refugees under previous international agreements by parties
thereto will be recognised and treated by the States Parties to the present
Convention in the same way as if they have been issued pursuant to the provisions of this Convention. 49

**Fiscal Charges** - The States Parties are under obligation not to impose upon refugees duties, charges or taxes of any description whatsoever, other or higher than those which may be levied on their nationals in similar situations. However, it does not prohibit the application of laws and regulations imposing charges upon the refugees in respect of the issue of administrative documents including identity papers. But it must be the same as applicable to the aliens. 50

**Transfer of Assets** - A refugee will be permitted in conformity with its laws and regulations by a State Party within whose territory he has brought his assets to transfer it to such other country where he has been admitted for the purposes of resettlement. It is obligatory for a State Party to give sympathetic treatment and consideration to a refugee whenever he seeks its permission for transferring his assets to another country in which he has been admitted for the purpose of resettlement. 51

**Refugees Unlawfully in the Country of Refuge** - A refugee may, on account of well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, leave a territory where his life or freedom is so threatened and enters into or is present without authorization in the territory of a State Party to the present Convention. In such cases no penalty will be imposed upon him, on account of his illegal entry or presence provided he presents himself without delay to the authorities and show good cause for his illegal entry or presence. Thus the refugee who is unlawfully in the country of his refuge will not be subjected to penalties on account of illegal entry or presence. Moreover States Parties will not impose on the movements of such refugees

20
restrictions other than those which are necessary and such restrictions will be applicable only until his status in the country is regularised or he obtains admission into another country. The States Parties will allow such refugee a reasonable period and all the necessary facilities for obtaining admission into another country.\textsuperscript{52}

**Expulsion** - In general a refugee who is lawfully in the territory of a State Party to the Convention will not ordinarily be expelled save on grounds of national security or public order. In cases where his expulsion becomes necessary he can be expelled only in pursuance of a decision reached in accordance with due process of law. Due process of law here means that he should be provided with an opportunity to submit evidence to clear himself, to prefer appeal to competent authority and be represented before such competent authority for the purpose of clearing himself. However, in case of compelling reasons of national security he may not be provided with such opportunities.\textsuperscript{53}

When a decision has been so reached for the expulsion of a refugee, he will be allowed, within a reasonable period of time to seek legal admission into another country. The States Parties reserve the right to apply during that period such internal measures as they may deem necessary.\textsuperscript{54} It may be noted here that States Parties are under an obligation not to expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life a freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.\textsuperscript{55} This is very important provision incorporated in the present Convention for the benefit of refugees. However, this benefit may not be claimed by a refugee:
(a) who, on reasonable grounds regarded as a danger to the security of the country in which he is; or

(b) who, having been convicted by a final judgment of a particular serious crime, constitutes a danger to the community of that country.56

Naturalization - Emphasis is laid upon the assimilation and naturalisation of refugees under Article 34 of the Convention, States Parties to the present Convention are required as far as possible to facilitate the assimilation and naturalization of refugees. For this purpose they are required to make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

E. Executory and Transitory Provisions - The State Parties to this Convention undertake to co-operate with the Office of the United Nations High Commissioner for Refugees or any other agency of the United Nations which may succeed it in the exercise of its functions and will in particular facilitate its duty of supervising the application of the provisions of this Convention.57

It is one of the important functions of the Office of the High Commissioner to make reports to the competent organs of the United Nations concerning the implementation of this Convention. Thus, in order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it to make reports to the competent organs of the United Nations, the States Parties undertake to provide them in the appropriate form with information and statistical data requested concerning:
(a) the condition of refugees,

(b) the implementation of this Convention,

(c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.\(^{58}\)

The States Parties are required to Communicate to the Secretary General of the United Nation's the laws and regulations which they may adopt to ensure the application of this Convention.\(^{59}\)

Settlement of Disputes - Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Courts of Justice at the request of any one of the parties to the dispute.\(^{60}\)

Internally Displaced Persons - Internally displaced persons means persons who are displaced and move from one place to another within the territory of their own country. They are unable to cross borders and reach a country where they could receive the protection and assistance.\(^{61}\) The reasons for their displacement may be numerous, such as, armed conflict, foreign aggression, occupation, internal upheavals torture, terrorism or natural causes but their conditions are similar to the refugees. Both are in the disparate need of protection and assistance. The only difference between refugees and internally displaced person is that while the former are persons without documents thus giving rise to uncertainty as to their nationality status and even of their domicile whereas the latter enjoy their nationality status and domicile. The conditions of internally displaced persons may be more precarious than the refugees for the reasons that they are forced to remain in strife torn area where they could not have access to adequate food, clean drinking water and medical supplies. In India Kashmiri
Brahmins are the example of internally displaced persons. They have left their home in Kashmir and moved to other places within the territory of India. In Sri Lanka, a significant number of persons had become internally displaced. As of mid 2005, 4,50,000 people were forced to leave their home by the natural disaster and Tsunami of December 2004 and 3,50,000 people were uprooted by the internal conflict. In Liberia, Burundi, Uganda, Congo and Nepal although efforts have been made to encourage return of the internally displaced persons but the situation is still grim. In the Democratic Republic of the Congo, where more than 2.3 million people were displaced due to fighting between rebel groups and the national Government, security situation had improved with the establishment of a transitional Government at the end of June 2003. It had encouraged the process of release of the internally displaced person which was again jeopardised by the classes between insurgent groups to South Kiva and the Congolese army. In Nepal due to Maoist insurgency hundreds of thousands of people had been uprooted across the country. In Uganda nearly two million population have become homeless due to armed conflict between the Government and rebels of the Lord's Resistance Army (LRA). There are about 15 to 25 million persons who are internally displaced in the world.

The problems of internally displaced persons have been acquiring serious dimensions. It has attracted the attention of the General Assembly and the Commission on Human Rights. The Commission on Human Rights has adopted a resolution on 5 March 1981. Under his resolution the Secretary Generally was requested to submit report to the Commission on Human Rights at its forty eighth session on the internally displaced persons. Such report must be based on information furnished by the Governments, the specialised agencies, relevant United Nations Organs, regions and intergovernmental organisations. The International Committee of Red Cross
and non-governmental organisations.\textsuperscript{65} So far as the protection of the human rights of the internally displaced persons are concerned the Governments, regional and intergovernmental organisations, non-governmental organisations and the International Committee of Red Cross are providing material help to the internally displaced persons.

**Institutional Responses** - The General Assembly, in order to meet the problems of refugees and displaced persons has established following institutions of great significance:


3. The Executive Committee of the Programme of the United Nations High Commissioner for Refugees.

1. **United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA):** This Agency was established by the General Assembly in 1949 to look after the interest of Palestine Refugees in the Near East. It is working since May 1950. It assists Arab Refugees from Palestine by providing them relief, education, training, health and other services. Its activities are financed through voluntary contributions. However, its mandate has been extended from time to time by the General Assembly. In 1967 and 1982 for instance, its mandate was extended to provide humanitarian assistance "on emergency basis and as a temporary measure, to other displaced persons in serious need of immediate assistance as a result of the 1967 and subsequent hostilities."\textsuperscript{67}
The United Nations Relief and Work Agency (UNRWA) is composed of a Commissioner-General as its head and a 10 member Advisory Committee to assist the Commissioner-General in the performance of his duties. Besides providing protection and assistance to the Arab Refugees from Palestine he also submits reports annually to the General Assembly on the works performed by the Agency. He also submits reports to the Secretary-General on those matters which need attention of the United Nations or its appropriate organs. Although this Agency has rendered valual service to the Arab Refugees from Palestine, it has been experiencing financial constraints.

2. Office of the United Nations High Commissioner for Refugees (UNHCR) - UNHCR has been established on 3 December, 1949 by the General Assembly. It provides protection and assistance to refugees, displaced persons, stateless persons and internees. It advances the objectives of Article 14 of the Universal Declarations of Human Rights which runs as follows:

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

UNCHR has become very important institutions of the United Nations which provides assistance and protection to the refugees falling under its competence. Its importance may be highlighted from the fact that it has earned the Nobel Peace Prize twice, first, in 1954 and 1981. Moreover, it has also replaced the International Refugee Organisation (IRO), which was established by the General Assembly on 15 December 1946 with the
mandate to provide assistance and protection to the refugees so rendered by the repressive actions of the nazi, facist an falangist regimes.

**Organisation of the UNHCR** - The High Commissioner is elected by the General Assembly on the nomination of the Secretary-General. The terms of appointment of the High Commission are proposed by the Secretary-General and approved by the General Assembly. The High Commissioner appoints, for the same term, a Deputy High Commissioner of a nationality other than his own.

The High Commissioner also appoints staff of the Office of the High Commissioner who are responsible to him in the exercise of their functions. Such staff are chosen from persons devoted to the purposes of the Office of High Commissioner. The High Commissioner also, after consultation with the Governments of the countries of where there are significant refugees problem appoints representative. Such representatives must be approved by the Governments of those countries in which they are appointed and subject to this condition the same representative may serve in more than one country.

The Office of the High Commissioner is located in Geneva, Switzerland. It is financed under the budget of the United Nations. However, the General Assembly may provide that administrative expenditure relating to the functioning of the Office of the High Commissioner shall be borne on the budget of the United Nations and all other expenditure relating to the activities of the High Commissioner shall be financed by voluntary contribution.

**Functions of the High Commissioners** - The High Commissioner performs following functions:
(1) The High Commissioner provides for the protection of refugees falling under the competence of his office by:

(a) Promoting the conclusion and ratification of international convention for the protection of refugees, supervising their application and proposing amendments thereto;

(b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(c) Assisting Governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;

(d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;

(e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their settlement;

(f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;

(g) Keeping in close touch with the Governments and Inter Governmental organizations concerned;

(h) Establishing contact in such manner as he may think best with private organizations dealing with refugee issues;

(i) Facilitating the co-ordination of the efforts of private organisations concerned with the welfare of refugees.
(2) The High Commissioner performs such additional activities, including repatriation and resettlement, as the General Assembly determines, within the limits of the resources placed at his disposal.\(^70\)

(3) The High Commissioner administers any funds, public or private which he receives for assistance to refugees and distributes them among the private and, as appropriate, public agencies, which he deems best qualified to administers such assistance\(^71\).

(4) The High Commissioner reports annually to the General Assembly through the Economic and Social Council. Such reports are considered as separate item on the agenda of the General Assembly. The High Commissioner is entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies.\(^72\)

(5) The High Commissioner invites the co-operation of the various specialised agencies.\(^73\)

For the purpose of providing assistance and protection to the refugees the High Commissioner remains in touch with the centre for Human Rights the Commission on Human Rights and Human Rights Committee. It also maintains contact with such intergovernmental organisations as the Council of Europe, the League of Arab States, the Organisation of African Unity and the Organisation of American States. The High Commissioner also seeks co-operation from the International Committee of the Red Cross and such non-governmental organisations which work for refugees, displaced persons and stateless persons.\(^74\)
(3) Executive Committee of the Programme of the United Nations
High Commissioner for Refugees - Paragraph 4 of the Statue of office of
the Untied Nations High Commissioner for Refugees empowers the
Economic and Social Council to establish an advisory committee on
refugees consisting of representatives of States Members and States non-
members of the United Nations, to be selected by the Council on the basis
of their demonstrated interest in and devotion to the solution of the refugee
problem. The Economic and Social Council established an Advisory
Committee on 10 September 1951 in pursuance of the above provision. This
Committee was replaced by the Executive Committee of the United Nations
Refugee Fund and thereafter reconstituted on 30 April, 1958 as the
Executive Committee of the Programme of the United Nations High
Commissioner for Refugees with the following mandates.76

(a) To give directions to the High Commissioner for the liquidation
of the United Nations Refugee Fund;

(b) To advice the High Commissioner at his request, in the
exercise of his functions under the Statue of his Office;

(c) To advice the High Commissioner as to whether it is
appropriate for international assistance to be provided through
his office in order to help to solve specific refugee problems
remaining unsolved after 31 December, 1958 or arising after
that date;

(d) To authorise the High Commissioner to make appeals for funds
to enable him to solve the refugee problems referred to in para
(c) above;
(e) To approve projects for assistance to refugees coming within the scope of para (c) above.

(f) To give directions to the High Commissioner for the use of the emergency fund.

The Executive Committee meets annually at Geneva. Initially it was constituted with 44 representatives elected by the Economic and Social council from among the States Members the United Nations or Members of any specialised agencies on widest geographical basis. Now the number of representatives have been raised to 46 by the General Assembly by its resolution of 16 December 1991.

Durable Solutions - The United Nations High Commissioner for Refugees (UNHCR) is obliged under Paragraph 1 of the Statute of the Office of the United Nations High Commissioner for Refugees to find long term durable solutions for refugees world wide. The High Commissioner has made major contribution is solving the problems of refugees in Somalia, in Sudan and in Djibouti in 1986, in providing assistance to internees and displaced persons in Ethiopia and Chad and to displaced persons in Yugoslavia, and in 2001 it assisted Pakistan in providing temporary shelter to the Afghan refugees who fled their country and took refuge in Pakistan in the wake of the United States attack against ‘Al-quaída’, a terrorist organisation operating from Afghanistan.

The number of the refugees, displaced persons and internees is increasing day by day, with the result, the task of the UNHCR to provide permanent and durable solution has increased many fold. The UNHCR assists Governments and with the approval of the concerned Government, private organisations (NGOs) to facilitate the voluntary repatriation of refugees or their assimilation within new national communities. Thus, for
providing durable solutions for the problems of refugees following measures are adopted by the UNHCR.  

1. Voluntary Repatriation - Repatriation, i.e. returning back to one’s own country is the most preferred solution. Refugees who wish to return to their countries are helped by the UNHCR. It arranges and pays for their passage.

2. Local Integration - The UNHCR initiates process for the integration or assimilation of the refugees in their host country. This is done, first, by encouraging and making them self-reliant through vocational training and such other initiatives and secondly in cases where the refugees are willing to opt for local citizenship, by facilitating it through cooperation of concerned authorities of the host country.

3. Resettlement - The UNHCR helps the refugees to resettle in third country. Refugees from India are mostly settled in Canada the United States and in Scandinavian countries.

Legal Status of Refugees in India

In India, there is no national legislation concerning refugees, their legal status and rights. They are treated as aliens and their problems are dealt with on an adhoc basis. The refugees in India are governed under the Registration of Foreigners Act 1939 dealing with all the foreigners and the Foreigners Act 1946, empowering the State to regulate the entry, presence and departure of aliens in India. The Passport Act 1920, and the Passport Act 1967, governing the entry and departure of persons, are also made applicable to the refugees. Moreover, certain provisions of the Constitution of India such as Article 14 (the right to equality), Article 21 (the right to life and personal liberty) and Article 25 (right to freedom to practise
and propagate one's own religion) also apply to the refugees by virtue of their being applicable to citizens and non-citizens alike.

In National Human Rights Commission v. State of Arunachal Pradesh\(^6\), it was held by the Supreme Court that the State is bound to protect the life and liberty of every human being whether he is a citizen or non-citizen. Thus, the refugees are entitled to the protection of their life and liberty under Article 21 of the Constitution which clearly states that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. The protection of life and liberty under Article 21 is guaranteed to citizens as well as to non-citizens.

The fact of National Human Rights Commission vs. State of Arunachal Pradesh\(^7\), was that a large number of chakma migrants crossed over the borders of East Pakistan (now Bangladesh) in 1964 and entered into India. Most of them settled in Assam and Tripura and acquired Indian citizenship. However, the respective governments of Assam and Tripura expressed their inability to rehabilitate them. Therefore, some of them were moved to the State of Arunachal Pradesh and were settled there. An agitation was launched by the All Arunachal Pradesh Students Union to expel them out of the State and threatened to resort to violence against them in case they were not expelled. The National Human Rights Commission approached the Supreme Court for appropriate directions. The State of Arunachal Pradesh was directed by the Court to take all measures necessary for ensuring the life and personal liberty of chakmas. It was observed by the Supreme Court that the State of Arunachal Pradesh was under constitutional obligation to protect and safeguard the life, health and well being of the chakmas.
REFERENCES


2. Ibid.

3. Ibid., p. 193.

4. In pursuance of the General Assembly's resolution of 14 December, 1950, a conference of Plenipotentiaries was held in Geneva in 1951 to consider a draft convention relating to the status of refugees and a draft protocol relating to the status of stateless persons. These draft convention and protocol were prepared by an ad-hoc committee on Refugee and Stateless persons. This committee was established by the Economic and Social Council. The Convention Relating to the Status of Refugees was adopted by the Conference of Plenipotentiaries on 28 July, 1951.


11. The Resolution of the 104th Session of the Council of the League of Nations, 19th January, 1939:

12. Supra, n. 10, p. 3.
13. Ibid.

14. Article 1-B(1) of the Convention Relating to the Status of Refugees, 1951, provides that the words "events occurring before 1 January, 1951" in Article 1, Section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951" or (b) "events occurring in Europe or elsewhere before 1 January 1951" and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention. However, any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary - General of the United Nations.


16. The Convention Relating to the Status of Refugees, 1951, Article 1-C.

17. Ibid Article 1-D.

18. Ibid Article 1-E.

19. Ibid Article 1-F.


21. This Convention was signed by 9 States and ratified by 8 States, i.e. Belgium, Bulgana, Czechoslavakia, Denmark, France, Italy, Norway and U.K. with certain reservations.
22. This Convention was signed by 9 States and ratified by 3 States, i.e. Belgium, France and U.K. with certain reservations.


25. Ibid., pp.284 to 285, paras 2341 to 2350.


27. Ibid. Article 3.

28. Ibid. Article 4.

29. Ibid. Article 7.

30. Ibid. Article 8.

31. Ibid. Article 10.

32. Ibid. Article 9.

33. Ibid. Article 12.

34. Ibid. Article 13.

35. Ibid. Article 14.

36. Ibid. Article 15.

37. Ibid. Article 16.

38. Ibid. Article 17.1.

39. Ibid. Article 17.2.
40. Ibid. Article 17.3.
41. Ibid. Article 18.
42. Ibid. Article 20.
43. Ibid. Article 21.
44. Ibid. Article 22.
45. Ibid. Article 25.
46. Ibid. Article 26.
47. Ibid. Article 27.
48. Ibid. Article 28.1.
49. Ibid. Article 28.2.
50. Ibid. Article 29.
51. Ibid. Article 30.
52. Ibid. Article 31.
53. Ibid. Article 32.1 & 32.2.
54. Ibid. Article 32.3.
55. Ibid. Article 33.1.
56. Ibid. Article 33.2.
57. Ibid. Article 35.1.
58. Ibid. Article 35.2.
59. Ibid. Article 36.

60. Ibid. Article 38.

61. Supra n.15, para 2411, p.291.


66. Supra n.15 para 2412, p.291.


68. Ibid, para 2345, p.285.


70. Ibid. Paragraph 9.

71. Ibid. Paragraph 10.

72. Ibid. Paragraph 11.

73. Ibid. Paragraph 12.

74. Supra N.15, para 2370, p.287.
75. The Economic and Social Council's Resolution 672 (XXV) 430 April 1958; See also Supra, no.15 para 2358, p.286.

76. The General Assembly Resolution 1166 (XII) of 26 November, 1957; See also supra no.15 Ibid.

77. Supra, n.15, para 2367, p.287.

78. Un Weeding Newsletter, 23rd February 1, March 2002, p.8 (Published by United Nations Information Centre, New Delhi).


81. Ibid.