CHAPTER V
SRI LANKAN REFUGEES IN INDIA

INTRODUCTION

The Sri Lankan Tamils, who fled their country, have sought asylum in Europe, North America, Australia and India. According to the United States Committee for Refugees, there are about 200,000 to 300,000 Sri Lankan refugees in the world. Out of this, 110,000 are in India. (This includes resettled refugees, asylum seekers, rejected asylum seekers). The State of the World’s Refugees Report for the year 2000, states that at the end of 1999, there are almost 120,000 asylum seekers of Sri Lankan origin. Out of this, 15,900 are in France, 9,200 in Germany, 8,300 in United Kingdom, 4,300, 2,300 in Norway, 2,100 in Netherlands and 66,400 refugees are living in camps in India.

The following table indicates that majority of the displaced people from Sri Lanka have sought asylum in India. In fact India has been the easily accessible country. The Sri Lankan Tamil refugees were pouring into India throughout the eighties and the early nineties. But the picture has changed substantially since then.

Table 5.1 SRILANKA REFUGEE POPULATION AS AT 31/12/1999

<table>
<thead>
<tr>
<th>Country /territory of asylum</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>India*</td>
<td>66,400</td>
<td>56.18</td>
</tr>
<tr>
<td>France</td>
<td>15,900</td>
<td>13.45</td>
</tr>
<tr>
<td>Canada</td>
<td>9,700</td>
<td>8.21</td>
</tr>
<tr>
<td>Germany</td>
<td>9,200</td>
<td>7.78</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>8,300</td>
<td>7.02</td>
</tr>
<tr>
<td>Switzerland</td>
<td>4,300</td>
<td>3.64</td>
</tr>
<tr>
<td>Norway</td>
<td>2,300</td>
<td>1.95</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2,100</td>
<td>1.78</td>
</tr>
<tr>
<td>Other</td>
<td>2,500</td>
<td>2.12</td>
</tr>
<tr>
<td>Total</td>
<td>118,200</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Notes: Number of refugees estimated by the UNHCR, based on the arrival of refugees. These exclude resettled refugees. (*) include camp refugees only.

This chapter analyses the process of refugee influx and refugee management in India. The chapter is divided into four sections. The first section makes an overview of the Sri Lankan refugees in India, the next section deals with the Indian response to the refugee influx and management of the refugees, and the issue of repatriation is discussed in the last section.

THE PROCESS OF REFUGEE INFLUX

According to the Ministry of Home Affairs, there are about 64,500 Sri Lankan refugees residing in 116 camps in Tamil Nadu and one camp in Orissa at the beginning of 2001. It is estimated that more than 50,000 refugees are living outside camps. At the peak of the conflict in 1990-91, there were over two lakh refugees living in India. The choice of their destination to India can be located in three factors. The geographical proximity and contiguity of Sri Lanka makes India the only easily accessible country of asylum in a crisis situation. At the closest point, India and Sri Lanka are separated by the Palk Straits. The cultural and linguistic affinity with Tamil Nadu worked as a 'pull factor'. The third reason was the positive response of the Indian state as well as civil society towards the incoming refugees.

As mentioned earlier, there are over one lakh Sri Lankan Tamil refugees in India.¹ The number of refugees in India varied according to the

¹ Most of the refugees are Tamil, either Hindus or Christians. However, according to the UNHCR Reports on Repatriation, 1993 and 1994, there were some Muslim refugees as
situation in Sri Lanka. During major army operations, the number increased. On other occasions, the refugee influx registered a decline. It was during these phases that repatriation measures were undertaken, which further brought down the number of refugees. (Repatriation has been discussed separately in the last section of this chapter). At the peak of the conflict, in 1991, there were 230,000 refugees in India. Since 1998 the number of registered refugees has been around 62,000 to 65,000 refugees. The reasons behind this are two fold. One, there has not been a major exodus to India due to strict vigilance by the navy and coastguards in India and Sri Lanka. The other reason is that no organized repatriation has taken place since 1994. There has been a slow trickle of refugees for personal reasons and the natural increase in the population. Some refugees have left for Sri Lanka due to personal reasons. A few others have been able to join their relatives in the Western Countries.

At the end of January 1999, there were 17,165 families numbering 62,924 people living in 131 refugee camps in twenty-four districts of Tamil Nadu. They are spread out throughout the state. The largest number of refugees (5530) is concentrated in the Mandapam transit camp in Ramanathapuram district, followed by 4,885 refugees accommodated in four

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2 This figure is based on a Cabinet Memorandum of the Ministry of Reconstruction, Rehabilitation and Social Welfare Sri Lanka, issued by Mr. P. Dayaratne, Minister of Reconstruction, dated, December 5, 1991.
camps in Madurai district and 4,080 refugees in four camps in Erode. There were more than five thousand children below the age of eight, who in all probability were born in India. Apart from camp refugees, there are about 40-50,000 Sri Lankan refugees living outside camps. The following Table gives details of the camp refuges in Tamil Nadu.

Table 5.2 CAMP POPULATION OF SRI LANKAN REFUGEES AS ON 31.01.1999

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>District</th>
<th>No. Of Camps</th>
<th>No. Of Families</th>
<th>Children</th>
<th>Adults</th>
<th>Total no. of persons</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8 year and below</td>
<td>Between 9-11 years</td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
</tr>
<tr>
<td>1</td>
<td>Kancheepuram</td>
<td>9</td>
<td>383</td>
<td>128</td>
<td>108</td>
<td>43</td>
</tr>
<tr>
<td>2</td>
<td>Thiruvarur</td>
<td>2</td>
<td>908</td>
<td>207</td>
<td>210</td>
<td>282</td>
</tr>
<tr>
<td>3</td>
<td>Cuddalore</td>
<td>7</td>
<td>347</td>
<td>116</td>
<td>107</td>
<td>63</td>
</tr>
<tr>
<td>4</td>
<td>Vilupuram</td>
<td>3</td>
<td>262</td>
<td>109</td>
<td>99</td>
<td>31</td>
</tr>
<tr>
<td>5</td>
<td>Vellore</td>
<td>9</td>
<td>1099</td>
<td>664</td>
<td>422</td>
<td>122</td>
</tr>
<tr>
<td>6</td>
<td>Thiruvannamalai</td>
<td>16</td>
<td>875</td>
<td>253</td>
<td>247</td>
<td>142</td>
</tr>
<tr>
<td>7</td>
<td>Salem</td>
<td>8</td>
<td>646</td>
<td>268</td>
<td>272</td>
<td>73</td>
</tr>
<tr>
<td>8</td>
<td>Dharmapuri</td>
<td>16</td>
<td>875</td>
<td>253</td>
<td>247</td>
<td>142</td>
</tr>
<tr>
<td>9</td>
<td>Namakkal</td>
<td>2</td>
<td>357</td>
<td>121</td>
<td>96</td>
<td>112</td>
</tr>
<tr>
<td>10</td>
<td>Erode</td>
<td>10</td>
<td>1052</td>
<td>344</td>
<td>374</td>
<td>170</td>
</tr>
<tr>
<td>11</td>
<td>Coimbatore</td>
<td>9</td>
<td>779</td>
<td>252</td>
<td>238</td>
<td>145</td>
</tr>
<tr>
<td>12</td>
<td>Thuruchirur</td>
<td>2</td>
<td>766</td>
<td>251</td>
<td>258</td>
<td>98</td>
</tr>
<tr>
<td>13</td>
<td>Karur</td>
<td>7</td>
<td>593</td>
<td>194</td>
<td>183</td>
<td>69</td>
</tr>
<tr>
<td>14</td>
<td>Perambalur</td>
<td>8</td>
<td>141</td>
<td>28</td>
<td>26</td>
<td>8</td>
</tr>
<tr>
<td>15</td>
<td>Pudukottai</td>
<td>10</td>
<td>909</td>
<td>230</td>
<td>203</td>
<td>161</td>
</tr>
<tr>
<td>16</td>
<td>Madurai</td>
<td>4</td>
<td>1319</td>
<td>424</td>
<td>399</td>
<td>183</td>
</tr>
<tr>
<td>17</td>
<td>Dindukkal</td>
<td>8</td>
<td>846</td>
<td>275</td>
<td>262</td>
<td>122</td>
</tr>
<tr>
<td>18</td>
<td>Ramanathapuram</td>
<td>1</td>
<td>1824</td>
<td>516</td>
<td>467</td>
<td>248</td>
</tr>
<tr>
<td>19</td>
<td>Sivaganga</td>
<td>7</td>
<td>913</td>
<td>303</td>
<td>313</td>
<td>96</td>
</tr>
<tr>
<td>20</td>
<td>Virudhunagar</td>
<td>6</td>
<td>879</td>
<td>272</td>
<td>250</td>
<td>160</td>
</tr>
<tr>
<td>21</td>
<td>Thoothukudi</td>
<td>7</td>
<td>347</td>
<td>109</td>
<td>125</td>
<td>55</td>
</tr>
<tr>
<td>22</td>
<td>Thirumelveli</td>
<td>8</td>
<td>779</td>
<td>195</td>
<td>191</td>
<td>118</td>
</tr>
<tr>
<td>23</td>
<td>Kanyakumari</td>
<td>4</td>
<td>271</td>
<td>101</td>
<td>109</td>
<td>27</td>
</tr>
<tr>
<td>24</td>
<td>Chennai</td>
<td>2</td>
<td>200</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>131</td>
<td>17165</td>
<td>5503</td>
<td>5279</td>
<td>2663</td>
</tr>
</tbody>
</table>

Source: OfERR, Chennai
Trajectory of Flight

Sri Lankan refugees fleeing to India have adopted two main routes - one from Colombo to Madras by air and the other by boat. The first route was mostly taken by the first batch of economically well off people in the first phase in 1983.

However, most of the refugees have taken the more arduous second route. Refugees who have taken the sea route have not adopted only one route. The entry and exit points changed due to the change in the location of war, condition of the sea, safety and security concerns in Sri Lanka, deployment of naval forces at the exit points in Sri Lanka and India. With these overarching concerns and limitations the fleeing refugees have always sought to adopt the shortest possible route. The two main exit points from Sri Lanka are in Mannar and Jaffna:

1. Vidathaltheevu to Rameswaram: Vidathaltheevu is a small fishing jetty situated in Mannar mainland. This point has been frequently used since Mannar Island was wrested by the Army in 1991-92.

2. Nachikuda to Dhanuskody: Nachikuda is located in Mannar mainland. Since there is a naval detachment in Tallaimannar, it was not safe to depart from this point. Refugees, therefore, escaped to India from Nachikuda. This route was frequently used in the eighties
3. Mayiliddy to Vedaranyiam: Mayiliddy is close to Palaly and Kankesanthurai. To avoid the military patrolling, people chose to flee from this point to go to India. Vedaraniyam is north of Rameswaram. Refugees disembarked here due to two reasons. One, conditions of the sea, and two, it is the shortest route from Mayiliddy. It needs to be mentioned that this was the most frequent route used by militant refugees.

4. Valvettithurai to Thangachchimadam and around: Valvettiturai is located in the Northern tip of Jaffna. Valvettiturai and Mayiliddi are approximately ten kilometers apart. It is known for smuggling between Jaffna and Tamil Nadu for decades. From the seventies people have frequently used this as an escape route. Except during the IPKF period and in the post 1995 period (after Jaffna was wrested by the Army), this route was frequently used by the Sri Lankan Tamil militants.

5. Negombo to Rameswaram and around: This route was used rarely. Immediately after the 1983 violence and again in the early nineties, mostly by Southern Tamils who could not afford flight charges used this route.

6. Trincomalee to Thangachchimadam and around: This long and unsafe route was used by refugees between 1983 and 1987.
7. Kurunagar to Rameswaram: Kurunagar is adjacent to Jaffna town. This route was particularly used during the Operation Liberation 1987.

They start the journey amidst the fear of death and destruction. Their two major concerns are survival and security. "It is a terrible feeling, something I cannot describe... there is fear of death behind you and the fear of the unknown ahead."³ It is a difficult journey where they have to face human as well as natural threats. The jungle terrain is most unfriendly. There is fear of the LTTE, which wants money or gold, or a child of the fleeing family to recruit in its cadre. People have to go without food for days during this trek. Rain and bad weather conditions add to their ordeal. Once they reach the point closest to the sea, they have to escape from the Sri Lankan Navy, either by hiding from them or bribing them. Their next task is to arrange for a boat to cross the waters. Fishermen, who ferry them across, normally take substantial amount of money, ranging between 500 to 5000 Sri Lankan Rupees, for a boat ride. The refugees have constant fear of being shot by the Sri Lankan and Indian Navy and confiscation of the boats. For this reason the journey starts in the cover of darkness, and the refugees are dropped at remote unmanned

³This was expressed in a personal interview with Selamma who lives with two daughters and a disabled son in the Naranammalapuram camp in Tirunelveli district, Tamil Nadu. She sold all her jewellery to pay for the boat trip. She had lost her elder son during shelling and felt that with no money and no source of income and an imminent fear of death all the time she could not afford to live there anymore.
areas along the Indian coastline in Dhanuskody. In some cases they are also dropped off in the shallow waters from where they wade along to the shore. Sometimes they are left on little islands near to the Indian coast. These points are not shallow enough to wade, so the refugees remain stranded for hours before passing Indian fishermen or coastguards help them. From this point they walk to Mandapam camp or take a bus if they have Indian currency.

**Phases of Arrival**

The Sri Lankan Tamil refugees have come to India either in an exodus in the immediate aftermath of violence or as a trickle due to the overall impact of the conflict. Some of them have even come to India as the country of their first asylum and then left for Western Countries. According to Mc Dowell, India has been their 'stepping stone' for migrating to the West\(^4\). By and large the four main phases coincide with the four phases of violence discussed in Chapter Three. The phases could be identified as:

**Phase I, 1983-1987**

The riots of 1983, led to the first large scale displacement of Sri Lankan refugees outside the country. Though upper and middle class Tamils especially professionals had been gradually migrating to the West since 1950s (and even before)\(^5\) the scale and intensity of the refugee movement in 1983


had outstripped all previous cases of displacement. According to the USCR, about 27,000 to 30,000 Sri Lankan refugees came to India in 1983. During the entire phase, an estimated 1,34,053 refugees sought asylum in India. Out of this, over 88,000 refugees belonged to the affluent sections of the Sri Lankan Tamil society and chose to stay outside camps. Only 22,000 Sri Lankan Tamils were availing government assistance and camp accommodation. Most of the first batch of refugees came from Colombo to Madras by air. Some of the refugees came by boat. The refugees represented four distinct categories of refugees. (a) Semi-skilled or unskilled laborers, peasants, fisher folk and small traders from the North and East. (b) Estate Tamils of Indian origin who worked in Plantations in the Central Province, (c) Colombo Tamils who were affluent and took the flight route, (d) Militant refugees who maintained a regular traffic between the Jaffna Peninsula and Rameswaram.

**Phase II, 1987-1990**

With the signing of the Indo-Sri Lanka Agreement in 1987, and the induction of the Indian Peace Keeping Forces, there were hopes for peace. This resulted in the first phase of repatriation between December 1987 and August 1989. Since October 1987, the situation registered a change due to the

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7 Though there had been traffic of militant youths sporadically since the late seventies and regularly since the early eighties, the process intensified in the post 1983 period. Some cadres were also able to come through mingling with the refugee influx.

8 Repatriation is discussed in detail in a subsequent section of this chapter.
resumption of hostilities. The Indian Peace Keeping Force had increased their strength to 15,000 from the initial 5,000. Jaffna was wrested after a prolonged fight in October 1987. But most of the displacement was within the Peninsula itself.\(^9\) However, a fresh exodus began since August-September 1989 when the IPKF was preparing to withdraw from Sri Lanka. With the impending departure of the IPKF, the LTTE began to crackdown on leaders and cadre of other militant groups, especially the pro-Indian ones. Most of these refugees during the period were therefore belonged to different militant groups. According to figures provided by the Mandapam camp authorities, about 1650 refugees came to India through Rameswaram.\(^{10}\) The Government of India facilitated their arrival by flights as well as by other means.

**Phase III, 1990-94**

The period after June 10, 1990 was the most intense phase of violence, in the conflict. This also marked the highest point in refugee generation, within and outside the country. Between 10 June 10July 18,300 refugees came to India and by July25, the number had reached 50,000. The total number of refugees who sought asylum in India for the year 1991 was estimated at 2,10,000.\(^{11}\) Out of this, 113456 refugees were were accommodated in refugee camps.

\(^9\) This was due to three reasons: (a) there was curfew, (b) people feared getting caught in the crossfire (c) they fled to refugee camps. It was ensured that most camps had access to food.

\(^{10}\) Though Mandapam camp authorities do not specify the break-up of militant and civilian refugees, it is understood that a substantial number of refugees in 1989 belonged to various militant groups.

camps in Tamil Nadu. The profile of the refugees marked a difference from the first phase when most of them belonged to the upper strata of the Sri Lankan Tamil society. This period highlights three important features: One, high intensity of displacement, Two, complete reversal of condition of refugees after the assassination of Rajiv Gandhi in 1991, and three, resumption of repatriation in 1992.

**Phase IV, 1995-2000**

By the fourth phase, the situation had changed substantially both at home and in the country of asylum. There was substantial displacement but most of it was within the island itself. The exodus to India began in the wake of the Operation Riverasa in October 1995. Between October 1995 and December 1999, only 20,196 refugees came to India. Though there was intense violence in Jaffna, and later Vanni, the rate of refugee influx has been low as compared to other periods. Repatriation has also been completely halted due to the volatile situation. A large number of refugees who came during this phase were earlier repatriates. There were two reasons behind this change scenario: (i) There was increased vigilance in the Palk Straits because the Government of Sri Lanka wanted to contain the refugees within the country in order to reduce the ‘India factor’. (ii) India was also wary of refugees, particularly militants entering in the guise of refugees.

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12 Figures provided by Mandapam Camp
Each of these phases indicates a distinct process of refugee influx. In the first phase, most of the refugees belonged to the upper or upper middle class. The second phase brought militant refugees. The third phase marks the highest point of influx when the number crossed the 200,000 mark. In the fourth phase, the arrival of Sri Lankan refugees to India was largely induced by the LTTE. This depended upon the politico-military strategies adopted in Sri Lanka as well as the response of the host community.

THE MANAGEMENT OF REFUGEES

Understanding Refugee Management

Managing refugees is just as complex and varied as the dynamics of displacement. The response of the host country to incoming refugees has been diverse. At the same time, the same country responds in different ways to different refugee groups. There is, therefore, no definite pattern in which a host state responds to a refugee influx. It is due to this reason that understanding the phenomenon within a framework is difficult. Scholars in the area rarely attempt at constructing an explanatory framework. The fact that most studies so far have been refugee-centric (concentrating on the

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refugees and their impact) makes the task of evolving a model further problematic.

Broadly speaking the management of refugees includes:14

(i) Legal Mechanism - the response of the host country towards an influx of refugees.

(ii) Initial provision - care and maintenance.

(iii) Action in terms of repatriation - local settlement or resettlement outside the country of first asylum.

(iv) Financing the operations on the part of the host country or international community.

As per the norms of international law, while every state has the right to grant asylum to refugees, there is no corresponding duty to that effect. Furthermore, refugees do not have any right to be granted asylum.15

Although the Universal Declaration of Human Rights, 1948 categorically states, "everyone has the right to seek and enjoy in other countries, asylum from persecution,"16 States do not owe any fundamental duty. According to Corf, States are influenced by three factors in their

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response towards refugees.\textsuperscript{17} (i) Traditional norms, (ii) international initiatives, and (iii) political and security concerns.

Early scholarship in the 15\textsuperscript{th} and 16\textsuperscript{th} century pioneered by Fransiscus de Victoria, Franciscus Suarez, Hugo Grotius etc. felt the need to return the accused to the place of occurrence of crime. International initiatives for refugees became relevant in the aftermath of World War II. The new legal framework that emerged included the United Nations Charter, 1945, the International Human Rights Declaration 1948 and the 1951 Convention relating to refugees. Apart from traditional norms and international initiatives for the protection of refugees, every State has its own domestic compulsions, which influence its policy towards refugees. These include the electoral interests of parties, pressure exerted by interest groups, and financial and administrative concerns.\textsuperscript{18}

Karen Jacobsen identifies three possible options for a host country when refugees arrive at its borders: (i) it can do nothing, (ii) react negatively (iii) act positively. When the government does nothing it is incapable or unwilling to take a policy decision or the arrival of refugees does not become an issue.


\textsuperscript{18} Ibid, pp. 311-14.
The policy decision taken by the State is again influenced by three factors identified by Jacobsen. They are: the international refugee regime, the local community and the refugees themselves.\textsuperscript{19}

Myron Weiner and Rainer Munz have pointed out three possible responses to a growing number of refugees and asylum seekers.\textsuperscript{20} They are: (1) adoption and implementation of better ways of controlling migration and try repatriating existing refugees. (2) Accepting a certain number, and then addressing the social, political and economic consequences, passed by the refugees. (3) Adopting preventive measures and intervention strategies towards the country of origin.

According to Corf, when faced with a refugee situation, countries adopt any of the following five approaches based on humanitarian on domestic concerns the time. The approaches towards refugee resettlement are:\textsuperscript{21}

(i) The traditionalist approach: This is based on three assumptions - no state has a duty to accept refugees; a nation offering asylum is responsible for their maintenance and therefore, it should be cautious; and a global refugee market effort" will somehow regulate the system.


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and make it work. The US response is an example of the traditionalist approach. This approach gives prime importance to the state and protects it from accepting unwanted refugees.

(ii) Universalistic Approach: Diametrically opposed to the former, this approach is based on the following premises: refugees present global problem international instruments should form the basis for dealing with the problem; the problem should be solved through global cooperation. This approach aims at securing for the refugees protection and a new homeland. The Universal Declaration of Human Rights 1948, The 1951 Convention and the Protocol of 1967 are some of the instruments through which the universalistic approach seeks to deal with refugees.

(iii) The Regionalist approach upholds that countries of the region have a duty towards refugees. Organisation of African Unity has set a trend in the creation of a regional instrument for protection of refugees in the region.

(iv) The Causalist Approach puts the onus of the issue on the country of origin. The UN has adopted this approach for a number of years by advocating repatriation as the solution.

(v) The Hybrid approach, as the name suggests, is a combination of the above approaches. The Post World War II scenario gives a picture of
how each of these approaches has been implemented. First traditionalist, then universalist with the implementation of the Convention and Protocol, then an effort to regionalise the issue - the First World does not welcome Third World refugees, and often adopts the Causalist approach with an emphasis on repatriation.

The response of the refugee receiving State is based on one or a combination of the above approaches. The State grants or refuses asylum to refugees. Asylum is the permission granted by the host State in deciding to admit those in flight, allow them to remain and to protect them against removal and exercise of jurisdiction of the country of origin. The response of the State could vary from granting admission as a permanent right to settle, settle on a temporary basis, or just as an emergency measure. The UNHCR classifies these as: 22 (1) Convention status refugees who have been granted permission on a permanent basis. (2) Humanitarian status includes temporary admission, 'provisional admission' and 'exceptional leave to remain.'

Closely associated with asylum is the principle of non-refoulment, which is considered as the edifice of International Refugee Law. It declares that a state may not return a refugee within its border to the home country if they could face persecution there. In the final analysis, it needs to be stated that

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International Law is not binding, and ultimately it is the discretion of the states whether or not to grant asylum to refugees at its border.

**Legal Framework in India**

By and large, India has responded to refugee inflows within the parameters of the hybrid approach discussed earlier. Though the humanitarian principle was recognized, India has offered 'actual protection' to refugees "based on the principle of the right to life and liberty to all persons....." India's policy towards the Sri Lankan refugees has been broadly based on humanitarian concerns, foreign policy concerns and response of the local population.

India has not signed the 1951 Convention or 1967 Additional Protocol, the two major International Instruments on refugees. The rationale behind this can be located in three reasons. Firstly, India shares contiguous borders with most countries in the region. It also shares ethnic and linguistic affinity among people in the border areas. An 'open door' refugee policy could be adverse politically and demographically. It could adversely affect the labour market as well. Secondly, India is wary of the presence of an international body like the UNHCR, particularly in view of its foreign policy considerations especially in the South Asian region. Thirdly, considering the specific realities

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in South Asia, the 1951 Convention is not feasible, more so at a time when Convention countries are increasingly adopting non entée regimes. However, India is an EXCOM (Executive Committee) member of the UNHCR since 1995. It needs to be mentioned that adopting a Model National Law on Refugees is being discussed.\(^{25}\)

In March 1979 India acceded to the two 1966 Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and also the Convention on the Rights of the Child, in 1992. These are relevant in refugee situations as well.\(^{26}\) Though the Covenants have not yet been incorporated in Indian Law, this does not absolve India of its international obligations under the Covenants. Since there are no specific laws, a refugee influx is managed through administrative decisions rather than specific legislative enactments.\(^{27}\)

In India, refugees are therefore treated under the law applicable to aliens, unless otherwise specified\(^{28}\) as in the case of Ugandan refugees of Indian origin. According to the Supreme Court of India, the rights of foreigners are enshrined in Article 21 of the Indian Constitution - Protection of life and Person Liberty, which states that "no person shall be deprived of his

\(^{25}\) For text of Model National Law on Refugees, see Appendix.


life or personal liberty except by procedure established by law." This contains the principle of non-refoulment. However, the Supreme Court, in a case has further stated," the fundamental right of the foreigners is confined to Article 21 the right to life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19, which is applicable only to citizens of the country.  

The principal Indian laws relevant to refugees are: The Foreigners Act 1946 (section 3,3A, 7,14). It regulates entry of foreigners into India. It defines foreigner as a ‘person who is not a citizen of India’. Registration of Foreigners Act 1939 (section 3,5) deals with the registration for entry, stay, and departure of foreigners from India. The Passport (Entry of India) Act 1920 and the Passport Act, 1967 deal with powers of the government to impose conditions for entry into India and the issue of passport and travel documents to regulate their departure. This is applicable for citizens as well as foreigners. The Extradition Act, 1962 is also applicable to refugees. The above laws signify that refugees do not have specific legal protection. Thus bonafide refugees and asylum seekers could be indicted under (i) illegal entry, (ii) illegal (changeable under Foreign Act) and illegal departure with false passports (under Foreigners Act, passport Act and the India Penal Code).

29 Louis de Raedt Vs. Union of India 1291(3) SCC 554 at p.562 State of Arunachal Pradesh V. Khudiram Chakma JT 1993 (3) S.C. 546 at p. 552. The SC upheld the above in Louis De Roedt case.
The principles of customary international law cannot be enforced if they are in contravention with states.\textsuperscript{30} However, the National Human Rights Commission has been active in protecting the rights of refugees. Intervention made by the NHRC in a case relating to the Chakma refugees in Arunachal Pradesh and Tripura is also noteworthy. It has also intervened effectively in several cases of illegal detention of the Sri Lankan refugees in Tamil Nadu.\textsuperscript{31}

In the absence of a legal framework, the status of the Sri Lankan Tamil refugees in India is ‘ambiguous’.\textsuperscript{32} Though they do not have formal refugee status, they are referred to as refugees and not asylum seekers. They have been recognised as refugees in various documents, like refugee certificates for students applying for admissions to Colleges and Universities. The other point to be noted in this connection is that in the absence of any legal framework to this effect, the Sri Lankan Tamil refugees are accepted as\textit{de facto} refugees and the policy of\textit{non-refoulment} is not applied.\textsuperscript{33}


\textsuperscript{31} The NHRC had taken a positive step in the case of Chakma and Hajong refugees on the basis of a complaint by an NGO-people's Union for Civil Liberties (PUCL). The NHRC not only sent an inspection team to Arunachal Pradesh and when the state government did not cooperate they even filed a writ petition in the Supreme Court. The Court granted interim non-expulsion to the refugees. In its judgment in January 1996, the apex court recognized the threat to the life and personal liberty of the refugees and upheld that the rights to life as enshrined in Article 21 is applicable to citizens as well as non-citizens and upheld that the state shall ensure the protection of life and liberty of Chakma refugees in India, if necessary with the help of Para-military force.


\textsuperscript{33} Ibid.
Administrative Mechanisms in India

Despite the fact that India does not have an organized legal framework to deal with refugees, there has been an organised administrative mechanism set up for the Sri Lankan refugees. The Government of India accepted them within the legal framework prevalent in the country. The Government of India and Tamil Nadu made certain administrative decisions to facilitate the procedure. They were accorded humanitarian and sympathetic response. The Directorate of rehabilitation is in charge of managing the refugees. The Home Department in close coordination with the External Affairs Ministry deals with the incoming refugees. The External Affairs Ministry is involved because the refugees are covered under the Foreigners' Act. The Home Department is headed by a Secretary of the Government of India, who holds the rank of the Chief Secretary of a state government. He is assisted by a Joint Secretary, two Department Secretaries, one Desk Officer and a team of assistants to deal with refugees coming to India.

On arrival at Mandapam camp, the 'Q' branch interviews the refugees. Their papers are thoroughly examined to the satisfaction of the police to ascertain that they have no connection with militant groups. They are either sent to 'special' camps or accommodated in Mandapam camp itself. Within

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35 The Department was started in 1941 by the British Government to deal with the Burmese (now Myanmar) who migrated between 1940-44.
the camp, they are allotted a quarter. They are given money for meals at the rate of Rupees 14 per day. Later identity cards and ration card are provided so that they can purchase essential commodities at fair price shops. Cash relief is provided at the following rates as per Memo no. 1328 Public (Rehabilitation) Department dated 3.11.97:

<table>
<thead>
<tr>
<th>Size of family</th>
<th>Amount Paid per month (in Rupees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) First adult member</td>
<td>200</td>
</tr>
<tr>
<td>(ii) Second and subsequent adult member</td>
<td>144</td>
</tr>
<tr>
<td>(iii) First child in the family</td>
<td>90</td>
</tr>
<tr>
<td>(iv) Second and other children</td>
<td>45</td>
</tr>
</tbody>
</table>

This amount is paid fortnightly after physical verification of presence of refugees inside camp. In addition to cash doles they are provided the following:

(a) Each family is given a set of utensils every two years.
(b) They are provided saris and dhotis once a year during Pongal festival
(c) They can avail dry rations from fair price shops at the rate of Rupees 0.57 per grams. Each adult is supplied 400 grams rice per day and children 200 grams. Sugar and kerosene oil are also provided at subsidized rates.

Apart from these, they are also given medical facilities, primary education, and even money for funeral rites. The Government of Tamil Nadu provides free education and free notebooks. There are tuition centres in camps. Seats
are reserved for the Sri Lankan students in colleges. The break up is as follows: Engineering – 20 seats; Medicine- 10 seats; Agricultural Science- 10 seats; Languages- 10 seats; Polytechnics- 20 seats. The Government of India has so far spent more than 200 crore (Indian) rupees on providing relief facilities to the Sri Lankan refugees.

Categorisation of Refugees in India

The Sri Lankan refugees in India are broadly categorised into camp refugees and non-camps. The categorisation is based on the socio-economic differences between these two groups of asylum seekers.

Non-camp refugees

Generally, the middle and upper middle class people who can afford to sustain themselves without government assistance have opted to live outside camps. It is difficult to estimate number of non-camp refugees, because most of them have not registered themselves. Estimates vary between 25,000 and 50,000. The Government of Tamil Nadu periodically issues circulars for non-camp refugees to register at the nearest police station. There are two main reasons behind this: (i) bureaucratic red tapism and response of officials, (ii)

36 Interview with Selvy Shantha, volunteer in charge of Education, OfERR, Chennai, April 1999
37 For year wise expenditure on refugees see Annual Reports, Ministry of Home Affairs, 1985-2000
38 There was a circular issued by the Tamil Nadu government, which set the deadline for registration as September 15, 1999. But only 1820 had registered themselves. According to the Government sources there were at least 28,000 unregistered refugees in Tamil Nadu of which 10,000 were staying in Chennai and its suburbs. The Hindu, New Delhi, September 21, 1999.
Some people prefer to live anonymously in Tamil Nadu, mingling with the local Tamil population. There is an underlying fear that the Government of India or the state government may change their ‘open door’ policy towards the Sri Lankan refugees and order them back to Sri Lanka. Their legal status makes them feel particularly vulnerable.

Education of their children has been the main reason for their decision to take refuge in India. The volatile situation in Sri Lanka since 1983 has often affected education. Though there are a number of Tamil medium schools in the state, they insist on sending their children to English medium Schools because most of them aspire to go to the West. In fact, non-camp refugees source their income from family members living abroad. Most of them stay in Chennai, Trichy, Madurai. Some of them have opted to stay in Pudukottai and Coimbatore. They live in middle class localities in these urban areas.

**Camp refugees**

By and large, there are three kinds of camps in Tamil Nadu - temporary camps, permanent camps and special camps. There are three permanent camps in Tamil Nadu, namely. Mandapam camp in Ramanathapuram, Kottapattu camp in Tiruchirapally and Vingudi camp in Madurai. Permanent camps were constructed even before the current crisis, mainly at the time when Tamils were being sent as indentured labour during the Colonial period. At present, all three permanent camps have a Collectorate Office within the camp premises. This makes the issue of ration and money easier for
inmates. Camp facilities are adequate. Each family has a room and a little space outside, which is used as kitchen. Water supply is adequate. There are wells and taps with specific hours of water supply, within the camp itself. Electricity is provided (or use of a bulb only) between ten at night and six in the morning.

Temporary camps are old buildings – schools, abandoned factories, or cyclone shelters, which are used to host refugees. Sometimes semi permanent brick structures with tin roofs and temporary hutments are also constructed for the purpose. Conditions in temporary camps are deplorable. In most cases there is a large space or hall; each family is separated with the help of mats, or two to five feet brick walls or sheets hung on bamboo poles. The supply of water and electricity and hygienic conditions are poor. At times as many as two hundred people are forced to use a single bath and lavatory. There is absolutely no privacy in temporary camps.

There are three special camps in Tamil Nadu located at Madras, Vellore and Chengulpattu. These camps accommodate refugees who have been associated with any of the militant groups - the LTTE, EPRLF, ENDLF, EROS, PLOTE and TELO. At the peak of the conflict in 1990-92, there were over 2,000 people in five special camps. The five camps were: (1) Puzhal camp in MGR East District where EPRLF, PLOTE, TELO, ENDLF, EROS and CVF\(^{39}\) members

\(^{39}\)Civilian Volunteer Force (CVF) was set up by the North- Eastern Provincial Council in 1988-89. They were supposed to get police training and absorbed in the regular Provincial
and sympathisers were kept, (2) Vellore, North Arcot, Ambedkar District for
the LTTE, (3) Pudukottai, for TELO members, (4) Thammampatti, Athur
Police station, in Salem District, and (5) Saligramam camp near Madras for
TELO. The following table gives details of the ‘special’ camps in Tamil Nadu
during the period.

Table 5.3 NUMBER OF REFUGEES IN SPECIAL CAMPS IN 1991

<table>
<thead>
<tr>
<th>Location</th>
<th>Special Camp</th>
<th>Militant Group</th>
<th>No. of Families</th>
<th>Adult Male</th>
<th>Adult Female</th>
<th>Child Male</th>
<th>Child Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vellore, North Arcot Ambedkar District</td>
<td>Police Recruits School (Inside Vellore Fort)</td>
<td>LTTE</td>
<td>147</td>
<td>451</td>
<td>178</td>
<td>101</td>
<td>75</td>
<td>805</td>
</tr>
<tr>
<td>Puzhal, Chengal MGR District</td>
<td>Part of the New Jail Building, Puzhal</td>
<td>EPRLF</td>
<td>543</td>
<td>585</td>
<td>217</td>
<td>106</td>
<td>94</td>
<td>1002</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PLOT</td>
<td>22</td>
<td>21</td>
<td>5</td>
<td>1</td>
<td>6</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td></td>
<td>TELO</td>
<td>21</td>
<td>21</td>
<td>8</td>
<td>4</td>
<td>7</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ENDLF</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CVF</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>EROS</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Pudukkottai</td>
<td>Borstal School, Pudukkottai</td>
<td>TELO</td>
<td>162</td>
<td>162</td>
<td>8</td>
<td>4</td>
<td>6</td>
<td>180</td>
</tr>
<tr>
<td>Thammampatti, Athur, Salem District</td>
<td>Regulated Marketing Society, New Building, Thammampatti</td>
<td>ENDLF</td>
<td>25</td>
<td>74</td>
<td>15</td>
<td>8</td>
<td>11</td>
<td>108</td>
</tr>
<tr>
<td>Saligramam, Madras</td>
<td></td>
<td>TELO</td>
<td>5</td>
<td>5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5</td>
</tr>
</tbody>
</table>

Source: Jesuit Refugee Service, Dindukkal, 1992

Police. Recruitment for the CVF was by and large from the militant organisations like the EPRLF, TELO, PLOT, and ENDLF and civilians. But since the Provincial Council collapsed, they were not absorbed into the regular police force. The LTTE, at that time, considered those who were working for the Provincial Council as traitors to the cause of 'Eelam'. So they went about indiscriminately killing people belonging to the CVF. These people fled to India and were kept in ‘special’ camps.
Militant refugees who had specific charges against their names were sent to ‘special’ camps. Sometimes people who did not register themselves were also held under Foreigners’ Act and sent to these camps. At present, there are approximately two hundred people living in these camps. Camp conditions are very poor. Four people are kept in eight by eight rooms that also serve as kitchen and bathroom for the inmates. Only one bucket of water per day is provided for all four inmates. "These camps are like jails, with extreme restrictions on entry and movement of people.” It is inaccessible to family members of inmates. There are restrictions even on receiving and sending letters. 40

Role of the UNHCR and NGOs in the Management of Refugees

The UNHCR has a limited mandate in India. It does not have access to the camps in Tamil Nadu. The Government of India has not even accepted funds from the UNHCR. The Government of India has also not been NGO-friendly. Foreign funded NGOs have been specially kept out of bounds, because they follow an agenda, which may be in contravention to India’s national interest and specific foreign policy concerns. It is feared that NGOs could lead to the formation of pressure groups, which may be working at

40 These are the views expressed in an interview with Muthu who was wrongly kept in a ‘special’ camp in Vellore for three years and also Dr. Selvam whose son is still in a ‘special’ camp in Vellore. Neither he nor his wife is allowed to visit him.
cross-purposes with the aims of the Government of India. (It would be interesting to note that certain sections of the majority Sinhalese population, which are highly opposed to the role and activities of NGOs and Humanitarian Agencies in Sri Lanka, quote India's policy to assert their point). The Government is making conditions difficult for NGOs to enter into camps, and even relief items collected by them, were routed through local revenue officials. This deprives refugees of much needed help and makes the system less transparent. Organisations that are active in the field and aware of the issues at the ground level could provide a wide range of services for the uprooted, give them psychological counseling to cope with stress, and also help publicise their problems. A comparison with the situation in Sri Lanka shows that despite having much more access, there are still more problems in Sri Lanka. A few NGOs that are working in the area are:

**Organisation for Eelam Refugee Rehabilitation (OfERR)**

This organisation is run by the refugees themselves and is headed by Mr. S. C. Chandrachasan.\textsuperscript{41} The organisation started as a group trying to help students to secure admissions to local colleges and educational institutions. It has now diversified into a number of important areas like health, nutrition, psychological counseling, vocational guidance and other issues. It

\textsuperscript{41} Mr. Chandrachasan is a lawyer and son of the founder leader of the Federal Party (later TULF), Mr. SJV Chelvanayakam.
supplements what the government offers to the refugees in terms of food, shelter and other opportunities. It also takes up problems and specific issues of protection with the government and tries to gain concessions wherever possible. So far they have managed to get quotas in colleges. The OfERR has its head office in Madras and three zonal offices in Trichy, Tirunelveli and Erode. Volunteers are from within the refugee community, except for a few professionals who are local Tamils. It must be mentioned that the OfERR does not have access to Mandapam camp and its volunteers are not allowed to function in areas close to ‘special’ camps.

**Jesuit Refugee Service (JRS)**

The JRS has been working for the refugees since the beginning of exodus. In the initial years they helped put sheds, providing essentials like mats, water, pots and so on. In some camps, extra hutsments were constructed. Since then the JRS has diversified its activities. They have been active in the field of education, vocational training, sports and cultural activities, and counseling. They have also been conducting training programmes for stress management for volunteers belonging to the refugees. Volunteers can get direct access to refugees whenever required. Several schools have also been started in camps with the help of JRS. Books and study material are also provided in these schools.
An assessment of the management of the Sri Lankan refugees brings to light certain crucial points. One, despite the fact that India has not signed the 1951 Convention or the 1967 Protocol, Sri Lankan asylum seekers have been accorded refugee status. However, since there are no specific legislations on refugees in India, their position remains vulnerable. They live under constant fear of being repatriated at any time. According to S. C. Chandrahasan, “any legal framework can be of help to the refugees. At least they will not be under the constant threat of being put under the Foreigners’ Act.” 42 Despite these limitations it needs to be mentioned that “asylum commitments are perhaps more generous in India than anywhere else in Asia.” 43

Regarding camp conditions, it needs to be mentioned that it is generous on the part of the Government of India to provide rations and other amenities to the uprooted people. However, the total amount of money given to each family, which is around Rupees five hundred per month, is not enough to sustain the entire family. There are inordinate delays in receiving the money and at times highhanded behaviour of Government Officials. Even if one member of the family is not present at the time of distribution, none of them are given ration. Though there are practical difficulties, at a policy level, India has not withdrawn relief benefits even at any point. As mentioned earlier, the situation in temporary camps is appalling. It is unhygienic and unsafe to live

42 S.C. Chandrahasan in an interview with the researcher in Chennai, April, 1999
43 USCR, 1991, n. 11, p.2
in such deplorable conditions. However, refugees are forced to stay in the absence of any alternative. Conditions in special camps too are worse.

Officially refugees do not have the right to work in India. Most of them are therefore unemployed. Those who work in the unorganized sector are often exploited by their employers and paid lower wages than regular rates.

Though the Government of Tamil Nadu has consciously tried to reunite uprooted families, and camps are allotted accordingly, minor gaps still remain. This is mainly because the refugees are unable to locate where their relatives are\textsuperscript{44}.

Sri Lankan Tamil refugees in India are resigned to their fate. Since they live in an alien land, they do not have many expectations\textsuperscript{45}. Such feelings have gained ground particularly in the period after Rajiv Gandhi’s assassination in 1991.

\textsuperscript{44} Valli lives alone since her husband passed away in an accident in 1995. Her younger son Suresan and his family had sent her information that they had reached India in May 1998, but for the last one year, when the researcher met her in April 1999, she could not to trace them.

\textsuperscript{45} \textit{Nangal anniya naaddil valkirom, eppadi nangal vasathikalai ehir parka mudiyum?} We are living in an alien land, how can we expect anything? Several respondents in a focus group interview in Mandapam camp expressed this view.
Host-Refugee Relations

Relations between the Sri Lankan refugees and the local Tamil population have been dynamic. It is true that the ethnic factor has acted as a cementing force between the hosts and the guests in the initial years, but the picture has changed substantially since then. In fact the response of the government and civil society has changed in every phase of exodus. In the first phase in 1983, the local Tamil people had demonstrated with placards demanding security for the persecuted Tamils across the Palk Straits. Upon arrival, they were accorded a warm welcome. The Central Government as well as the state government geared up the administrative machinery to accommodate the incoming refugees. By the end of the eighties, the situation had begun to change, the warmth had been waning and host fatigue had begun to set in. Local people were also wary of the internecine warfare among different Tamil groups in Tamil Nadu. The Central Government gave a general order that incoming refugees be allowed to enter the country and allowed to stay. There were no visa restrictions and deportation was not applied. Schools and colleges admitted students without any hesitation. The state government also reserved seats in professional courses and polytechnics for the Sri Lankan refugees. The assassination of Rajiv Gandhi by an LTTE suicide bomber in May 1991 was the lowest point in host-refugee relations. Every Sri Lankan Tamil was seen as an LTTE cadre or sympathiser. There was
friction and hostility from the local population and regular police checks in every house. Special measures were adopted by the Tamil Nadu police to keep a regular watch on the activities of all the refugees in camps. They also had informers within camps to keep track of any suspicious movements. Apart from the regular Naval Coast Guards, the state government had deployed its own special force for surveillance on the coastline. The focus of Indian diplomacy also shifted towards persuading Colombo to repatriate refugees. Schools and colleges took tough measures to admit Sri Lankan students and insisted that every student produce a 'no-objection certificate' from the police station along with their application forms. This proved to be a harrowing experience for genuine students. Needless to add, reservation of seats for the Sri Lankan students was also withdrawn. After concerted efforts it has been restored. Though the warmth of 1983 is a thing of the past and the suspicion of 1991 is also over, the response of the local Tamils towards the Sri Lankan refugees remains apathetic and indifferent.

The reasons behind the change in host-refugee relations can be broadly summarised as:

**Security reasons:**

(a) One of the major concerns of the local Tamil population was the deteriorating law and order situation due to internecine rivalry and violence between the different militant groups. There were reports of an elaborate
LTTE network operating in and from Tamil Nadu. The LTTE had twelve units in Tamil Nadu.46

(b) The fact that six of the accused in Rajiv Gandhi’s assassination were registered as refugees made all refugees suspect in the eyes of local Tamils.

(c) The involvement of some students in the assassination added to the deteriorating situation.

Economic reasons:

(a) Since the government had been taking care of the camp refugees and providing them with food, accommodation and basic amenities, they were considered a strain on the exchequer. It must be mentioned that India does not take financial assistance from the UNHCR or any other international donor for the maintenance of refugees. Some local people who were poorer than the refugees felt that the Government had been taking care of the refugees and not its own citizens.47

(b) In certain specific jobs like road construction and domestic help, there was rivalry and competition among the hosts and refugees. According to refugees,

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46(i) Procurement of explosives in Dharmapuri, (ii) Arms and ammunition manufacturing in Coimbatore, (iii) Manufacturing explosive in Salem, (iv) Military uniforms in Erode, (v) A unit in the coastal area from where supplies were sent to Jaffna, (vi) A transit unit in Madurai, (vii) A landing area for supplies from Abroad, located in Nagapattinam, (viii) A recruitment area to recruit militants from the arriving refugees, at the arrival point in Rameswaram, (ix) a communication unit in Thanjavur, (x) A unit in Thutikodi for trade in gold, silver and narcotics, (xi) Liaison unit in Chennai, and (xii) A unit for treating wounded cadre in Trichy. Rohan Gunaratne, International and Regional Implications of the Sri Lankan Tamil Insurgency, (Colombo, 1997) as quoted in Suryanarayan and Sudarsen, n. 6, pp. 76-77

47 This fact came to light after discussions with local on Trichy and Mandapam.
they took up only those jobs, which the local population refused to do. But the local Tamil view is that because of the arrival of refugees, wage rates had gone down, as the refugees were willing to work for less money.

(c) The other economic concern of the host population has been that after the arrival of refugees, the house rent has increased in urban areas.

REPATRIATION OF THE SRI LANKAN REFUGEES

An ideal solution in a refugee situation would be repatriation, i.e. the uprooted people could get back and settle in their own homes. However, it is not easy in a conflict like Sri Lanka. There are two main issues of concern: the rationale and the ‘voluntariness’ of repatriation. Industrialised countries have been increasingly encouraging repatriation as a solution to the refugee situation. This approach could be ‘self-serving’ for states, by increasingly applying non-entree policies and closing their doors to refugees.48 The second issue relates to the voluntariness of repatriation, which primarily means the will to return. Conditions in the country of origin should be stable enough to ensure the safety and security of the returning population. Though there are no clear-cut guidelines to ascertain these facts, the UNHCR has an important role to play in ensuring that repatriation is undertaken in safety and dignity. Organised repatriation should take into account: (a) the support of refugees in the country of origin as well as the country of asylum. (b) Amnesty for

political offence and 'safe passage' for refugees. (c) Arrangement and assistance should form the basis for repatriation, and (d) Mechanisms to monitor their safety after return. With this basic overview, let us assess the repatriation of Sri Lankan refugees from India.

Repatriation of refugees has been one of the most delicate issues in recent years. The first phase of repatriation began on December 24, 1987, after the signing of the Indo-Lanka Accord in July that year. Clause 2.16(d) categorically states: "The Government of India will expedite repatriation from Sri Lanka of Indian citizens to India who are resident there, concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu." The Accord further stated, in Clause 2.16(e) "The Governments of Sri Lanka and India will cooperate in ensuring the physical security and safety of all communities inhabiting the Northern and Eastern Provinces." Later, a Memorandum of Understanding was signed on August 31, 1987 between the Government of India and Sri Lanka to this effect. In this spirit of hope for peace, the first phase of repatriation was initiated and all Sri Lankan refugees were asked to register for repatriation. Between December 24 1987 and January 1989, an estimated 43,000 refugees were repatriated and sent to Talaimannar. However, with the resumption of hostilities in June 1990, the process was halted and the exodus to India started once again.

50 USCR, 1991, n. 11, p.2
The second phase of repatriation was initiated in June 1991, but was called off in January 1992 because of civil society’s allegation of forced repatriation. This time the situation was tense and had deteriorated substantially in the aftermath of the assassination of Rajiv Gandhi. Indian policy towards the refugees had also changed for the worse. An enumeration (of refugees willing to return) was undertaken in July 1991, in which 30,000 refugees expressed their willingness to return. Due to complaints by the refugees as well as irregularities in the process, a second enumeration was done in December 1991. The number of refugees agreeing to return was reduced by half. It must be mentioned here that in the second round, the forms were circulated in English as well as in Tamil. The voluntariness of repatriation was questionable in this phase and there were complaints that the refugees were being coerced to go back. Though there were no specific policy decisions adopted to that effect by the Government of India, the political atmosphere was tense and the refugees were made to feel unwelcome and unwanted. Some of the ‘push factors’ that induced return were as follows:51

Returnee forms were issued in English, which most of the camp refugee did not understand. It did not give an optional clause so as to confirm voluntariness of return.

51 For details see Asha Hans, "Repatriation of the Sri Lankan Refugees from India" Bulletin on IHL and Refugee Law, vol. 2. no.1, Jan-June 1997, pp. 96-108
Refugees were given a short notice to return, sometimes less than three to five days to proceed to transit camps from where they would proceed to their country.

Some misinformation strategies were also adopted and news items were read out to show that the situation in Sri Lanka was improving.

Ration cards were withdrawn from several camps. Special quotas for refugees in educational institutes were also removed.

Repatriation was resumed in January 1992 and up to June that year 23,000 refugees were repatriated. Most of them were from the 132 camps in Tamil Nadu. Repatriation was voluntary in the first two months. However, by March doubts arose that people were being coerced to leave as per directives from New Delhi.\textsuperscript{52} Repatriation was halted once again and resumed in August 1992 after a Memorandum of Understanding was signed between the Government of India and UNHCR in July that year. The Madras office of the UNHCR was set up to facilitate repatriation. It was given a limited role and was permitted to interview refugees in order to ensure the voluntariness of return. But refugees could be interviewed only after they had boarded ships for departure or upon reaching Sri Lanka. In the first two days the repatriation was initiated according to plans but was halted a week later following a

complaint by forty eight families in Mandapam that they had been forced to repatriate.

The third phase of repatriation began on August 13, 1993 after a Court order. Consequently, 6,927 refugees were repatriated to Trincomalee in seven trips by ship up to September 7. The UNHCR conducted interviews with 70 per cent of the returnees in Madras and later in Vavuniya and Trincomalee. Refugees were from Vavuniya, Trincomalee, Mannar Island and Delft. However, only 3308 i.e. 47.8 per cent were able to return home or to friends and relatives. The rest 3519 i.e. 52.2 per cent could not return.

Repatriation from India continued in 1994. Between January 28 and February 19, 3575 refugees reached Talaimannar Pier by ships, 2700 returnees were from mainland areas under government control. There were more than eight hundred (858 to be precise) refugees from the areas remained under the LTTE control. They could not go back home and had to be accommodated in refugee camps on Mannar island.

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53 The Madras High Court passed a Judgement on August 27, 1992 in P. Nedumaran and Dr. S. Ramdoss v Union of India and the State of Tamil Nadu, stating, "In so far as the consent of refugees is concerned, when there is a world agency to ascertain whether the consent is voluntary or not, it is not for this Court to consent whether the consent is voluntary or not. Nothing has been suggested against the competence or impartiality of the representatives of UNHCR in ascertaining the willingness of the refugees to go back."

54 Repatriation of Refugees from India to Sri Lanka, 13th August to 17th of September 1993, Executive Summary, UNHCR, Colombo, pp.1-2

55 It was observed during field research in April 2000, that some of these refugees were still residing in the Alles Garden camp in Trincomalee even after seven years.

56 Repatriation of Refugees From India to Sri Lanka, 28 January to February 1994, Executive Summary, UNHCR, Colombo, p.1

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refugees were able to return in three batches by ship to Trincomalee. According to the UNHCR, 52.5 per cent of them were either resettled or relocated. This was the last batch of organized repatriation from India. Since then, the process has been completely halted.

The process of repatriation of Sri Lankan refugees from India indicates three points. One, repatriation in the second and third phases was not entirely voluntary. Apart from the government pressure, exerted on them, refugees also felt psychologically intimidated by the hostile response of the local population after the assassination of Rajiv Gandhi. Two, the role of Madras High Court was exemplary in setting a precedent for the protection of refugees. Three, considering the fact that the situation in Sri Lanka was so volatile, repatriation should not have been initiated at all. A large number of refugees belonged to the LTTE controlled areas to combat-zones. It was therefore a foregone conclusion that the resettlement of all these people was not possible or feasible. The UNHCR as an impartial body with a presence in Sri Lanka as well as in India could have anticipated the ineffectiveness of repatriation at that point of time.

CONCLUSION

The above discussion brings to light certain key points. The Sri Lankan refugees fleeing their country have found it expedient and accessible

to seek asylum in India. Apart from the geographical contiguity and cultural affinity, the strict policies against refugees in the Western countries have increasingly drawn them towards India. However, since the arrival of the first batch of refugees in 1983, the situation has changed substantially. In the recent years, the arrival of refugees has been in smaller batches of forty and fifty people, as against the massive influx in the eighties and early nineties. The reasons for this can be located in the lukewarm response in India and also the politics of keeping the refugees within the island itself. Strict and severe naval patrolling has resulted in the death of many refugees when boats carrying refugees have been shot down. This has further accentuated their problems. Though the Government of India has not applied the policy of non-refoulement, in the absence of a legal mechanism, the status of refugees in India remains vulnerable. For the Sri Lankan refugees living in an alien land, "life as a refugee is lamentable. But at least there is life. It is better than being dead at home." This testimony of a refugee in Tirunelveli encapsulates the trauma of Sri Lankan Tamil refugees in India. They are displaced; they have fled their home under terrible conditions to a country where they are treated with apathy.